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## **Standing Committee on Transport, Infrastructure and Communities**

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**EVIDENCE**

**Thursday, February 10, 2011**

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**Chair**

**Mr. Merv Tweed**



## Standing Committee on Transport, Infrastructure and Communities

Thursday, February 10, 2011

• (1530)

[English]

**The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)):** Thank you, and good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 46.

Before I go into the orders of the day, I just want to bring the committee up to speed about next Tuesday. We have secured the 11 a.m. to 1 p.m. timeframe. You will be getting a notice, if you haven't already received it. We're waiting for a response from the minister on our request to appear. In the meantime, we have confirmed that we will proceed with the aviation safety and security aspect of our discussions. CATSA and CUPE have confirmed their attendance for that timeframe. You'll get a notice in the mail. We will proceed with normal business again at 3:30 that afternoon.

Also, just for the advice of the committee, joining us today we have a group from the Carleton University School of Journalism and Communication. They're sitting at the back.

We welcome you, and hopefully you'll enjoy your day.

With that, we will move to the orders of the day pursuant to the order of reference of Wednesday, December 8, 2010, Bill C-33, An Act to amend the Railway Safety Act and to make consequential amendments to the Canada Transportation Act.

When we left the last meeting we had department officials and the minister. The department officials have been invited back. Joining us today is Luc Bourdon, director general of rail safety, and Carla White-Taylor, director, rail safety secretariat.

I understand you have an opening comment you'd like to start with, and then we'll move to questions and answers.

**Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport):** Thank you, Mr. Chair.

And thanks to the members for having us here today again.

The minister, on Tuesday, touched on some of the key issues in the bill, and I'd like to take about four or five minutes to let you know what we've done with all the recommendations that were generated by the Railway Safety Act review panel—the 56 of them—and the 14 that were generated by SCOTIC.

We acted on them as soon as we got them, and the first thing that Rail Safety did was create an advisory council on railway safety with the companies, Transport Canada, and the Canadian Labour Congress. That was a recommendation of the Railway Safety Act

review panel. So far we have had six meetings since that committee was put together, and that has proven to be very effective to communicate with all of our stakeholders. On the committee we have Transport Canada, the unions, the companies, the shippers, the suppliers, the provinces, the municipalities, as well as some observers.

We also created a Railway Safety Act review steering committee with the industry, Transport Canada, again, and the Canadian Labour Congress. The first thing we did was look at all the recommendations that did not require legislative amendments. They were divided among six working groups. All the working groups were also composed of union members from each of the railway unions, management, and the railway.

Just to give you an idea of what these committees have been able to achieve, one of the first committees we put together was on a safety management system. There have been several recommendations in the Railway Safety Act review and some recommendations as well done by SCOTIC. One of the recommendations that was provided by SCOTIC was to create a better tool to assist our stakeholders and Transport Canada to better manage rail safety. Carla has a copy of what has been published, which has been given to all our stakeholders. So we did publish some guidelines that are being used right now by all our stakeholders to help us with the implementation of a safety management system.

There were also some recommendations by SCOTIC for a non-punitive provision, which is in Bill C-33, as well as better employee involvement, which is also covered in the bill.

There is also one chapter dealing with information collection, analysis, and dissemination. We put together a working group, again, with unions, the railway, and Transport Canada, and it came up with some indicators that from now on will be shared between industry and the regulator through a data portal. We were fortunate to get about \$2.3 million to enable the technology to get that done for us.

We also created a third working group—operation and proximity—that deals, among other topics, with fatigue, which was also a recommendation of SCOTIC. We recently published some fatigue guidelines to help train crews deal with fatigue-related issues. That was done, again, in cooperation with unions and management as well as with Dr. Patrick Sherry from the University of Denver, who helped us with this.

Also, a recommendation from SCOTIC was to enhance training. The industry has filed new rules with us for enhanced training for safety-sensitive positions.

Terms of closing crossings was also in the recommendations. We're dealing with industry to come up with a list of crossings that can be closed.

Regarding Operation Lifesaver, two of the members have raised some issues with respect to crossings and trespassing. We've added five engineers to deal with crossings, and \$28 million was added to enhance crossings. We also added five outreach coordinators to assist us with education and awareness with respect to crossings and trespassing.

● (1535)

[Translation]

As for innovation and technology, there were a series of recommendations. Some came from the committee, others, from the panel. We created a new structure for managing these recommendations.

The working group, made up of transport company unions, has generated 25 new recommendations that have been scheduled to be carried out over the next few years. We were lucky to receive an additional \$5.3 million to invest in technology. We also formed alliances with some universities and some other countries that share the same concerns as we do.

The fifth working group looked at environmental protection. Among other things, it focused on the best emergency measures for products that are not considered dangerous goods, but that may be dangerous for the environment. And the group made suggestions to us. Also, there are provisions in Bill C-33 that require railways to provide Transport Canada with environmental plans that will be checked.

The last working group focused on the process for establishing rules. Once again, these are the same stakeholders who are at the table, and they worked on creating a better methodology for establishing rules, a better participation of unions and better existing rules.

[English]

I came before this committee about three years ago and talked about some new technology we had acquired, the track assessment vehicle, that would help us enhance our capacity to do track inspection. We got two more of those vehicles. Right now we have up to five vehicles. So we're better equipped than we've ever been in the past to perform track inspection.

I just want to make sure you fully understand that all the recommendations in these two reports were not left on the shelf to collect dust. Most of the recommendations have been addressed.

In closing, I'd like to emphasize, on behalf of everybody in Rail Safety at Transport Canada, that we firmly believe that although we've received many tools to do a better job, Bill C-33 is probably the last one we would need in order to have a full tool kit.

On that, I'll turn it over to you, Mr. Chair.

**The Chair:** Thank you. Thank you very much.

Mr. Dhaliwal, seven minutes.

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Thank you, Mr. Chair.

And I would like to thank Mr. Bourdon and Madam White-Taylor.

I'm going to start with the urban transit system. I recently met with TransLink in British Columbia, where I come from. It is my understanding that urban transit authorities were already treated differently, different entities, in the previous legislation. How many of the recommendations in the Railway Safety Act review said that you need to tighten up safety with urban transit authorities?

● (1540)

**Mr. Luc Bourdon:** First of all, I'd like to say that the three urban transit authorities we're dealing with, which are currently under provincial jurisdiction, are very safe companies, and they're definitely not operating in an unsafe manner.

However, it all goes through the railway operating certificate. So you can't see that as a permit that each railway will need to obtain in order to operate on federal track. Most of what may be required in the railway operating certificate these commuter railways already have in place.

The second thing that is really important to note is that in Bill C-33, under proposed section 12, concerning the railway operating certificate, there is a provision under proposed paragraph 17.9(1)(c) that allows the Governor in Council to exempt some persons from the railway operating certificate. So there was already provision at the time we were going to do the regulation to exempt some class of persons.

I honestly would be pretty uncomfortable right now to decide who should or should not require an ROC based on their current safety record. I don't think that should be perceived as a reward, that if you have a good safety record you don't need an ROC.

The legislation, the way it is now, already has some provisions that would allow them to be exempt at the time we do the regulation.

**Mr. Sukh Dhaliwal:** But we have a proven record that these transit authorities, whether it's TransLink.... And they have accountability as well, on a different level of government, or a different order of government.

On the one hand, you are very happy with their past safety record. On the other hand, we know they're already accountable to government on a different order. So why would we again like to put them into a situation that would put more burden on them by bringing in Bill C-33?

**Mr. Luc Bourdon:** There are two things. The first one is, and you touched on it, accountability. They may be accountable to the province or other governing bodies, but while they're operating on federal track, as I explained on Tuesday, we have the authority to measure compliance, but no authority to impose enforcement action when they're non-compliant. Therefore, we have to turn to the host railway and impose a corrective measure on the host railway, which then has to go and get the commuter operator to fix the issues they have to deal with.

The second thing is that I believe many of those commuter operators do already have in place what we're looking for. For instance, West Coast Express has a safety management system, which may be the tool that we will require to give an ROC. They already have one; they've asked us to audit their safety management system. However, we don't have the jurisdiction to do it.

**Mr. Sukh Dhaliwal:** You mentioned West Coast Express, so let me go to West Coast Express. They have 12 people who run their customer interface, like parking-related services. Today, if we look at their situation, the maintenance of the train is done by VIA Rail in that situation. The tracks are done by CP, and CP is also contracted to move trains. So to comply, we all know and you say they already have that provision in there that they can be exempted, but with this oversight in Bill C-33, where TransLink will have to hire more consultants, have you estimated how much it would additionally cost the taxpayers in British Columbia, and particularly in the—

**Mr. Luc Bourdon:** One thing they mentioned to us, and we told them this would not apply to them, was that many of them were concerned about the maintenance of track. A track is owned by CP or CN, depending on which commuter rail we're talking about, so it will not be the responsibility of these commuter rails under the railway operating certificate to maintain the track or to be accountable for that track. It will be supplied by whoever they have a contract with.

As far as the rest—

• (1545)

**Mr. Sukh Dhaliwal:** So it means it's not TransLink that has to supply...it would be CP then?

**Mr. Luc Bourdon:** CP owns the track; CP and CN would be accountable for the maintenance of the track, as they are right now. The only thing that will change is when that commuter rail has its own equipment, then they'll be subject for the maintenance of their equipment to Transport Canada, rather than going after the host railway to get the corrective measures.

**Mr. Sukh Dhaliwal:** What would it protect? CP and CN are the ones that will maintain the tracks, and it's their responsibility to comply with Bill C-33. What protection does TransLink have if they try to manipulate that or try to monopolize the situation so that tomorrow the taxpayers and the commuters, particularly from the Mission area into the downtown core, will not be in jeopardy?

**Mr. Luc Bourdon:** Nothing should change with respect to the track when you compare it with the current regime. Currently, they're operating on CN and CP track, and they're supplying the infrastructure for these commuter rails. Both CN and CP are responsible and accountable for maintaining a safe track. Nothing will change.

**The Chair:** Thank you.

I have to move on. We'll come back to you.

Monsieur Guimond.

[Translation]

**Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ):** Thank you, Mr. Chair.

My questions are along the same lines as my Liberal colleague's. The Bloc Québécois also has some concerns about this bill when it comes to areas of jurisdiction. Could you remind me what section it is in? I'm trying to find it. I didn't have time to write it down. I think it's subclause 9(1).

What section covers the permission for exemption granted to the government?

**Mr. Luc Bourdon:** Are you talking about the exemption from the operating certificates? It's section 17.9, if I remember correctly.

**Mr. Michel Guimond:** Okay. Proposed subparagraph 17.9(1)(a) reads:

The Governor in Council may make regulations:

(a) respecting conditions to be met ...

**Mr. Luc Bourdon:** I believe it's in proposed subparagraphs 17.9(1)(c) or (d) where you'll find that.

**Mr. Michel Guimond:** Proposed subparagraph (c) reads:

(c) exempting any class of persons from the application of section 17.1.

**Mr. Luc Bourdon:** Yes.

**Mr. Michel Guimond:** By persons, we mean legal entities as well.

**Mr. Luc Bourdon:** The railways, yes.

**Mr. Michel Guimond:** We are aware of the concerns of the *Agence métropolitaine de transport*, the AMT, which you are quite familiar with, given your role. Because you said in your testimony on Tuesday that you are from Quebec. Quebec has the shortlines, as well, and they fall under Quebec's jurisdiction.

I don't want my colleague the parliamentary secretary to start right away on negotiating an amendment. But I am going to say that it's a sensitive topic for us.

Why didn't you put this directly in the act?

**Mr. Luc Bourdon:** The possibility of exemption?

**Mr. Michel Guimond:** Yes. Why didn't you say straight out that the metropolitan transport agencies would be exempted? In proposed paragraph 17(9)(a), it says that the Governor in Council can make regulations for exemption.

Wouldn't it have been easier to say in the act that the metropolitan transport agencies and shortlines that come under provincial jurisdiction are exempt? Don't you think?

**Mr. Luc Bourdon:** I have two things I can say. First, no railway under strictly federal jurisdiction that does not operate on federal tracks will be subject to Bill C-33.

But your shortlines, which only operate on tracks under federal jurisdiction, will in no way be subject to it. Only railways under provincial jurisdiction that operate on federal tracks will be subject to Bill C-33.

The reason they won't be exempted...

• (1550)

**Mr. Michel Guimond:** Wait a minute. You used the word "federal" at least twice. Can you repeat that?

**Mr. Luc Bourdon:** Sure. Shortlines under provincial jurisdiction that operate only on provincial tracks will be completely excluded from Bill C-33. They won't be affected.

**Mr. Michel Guimond:** Okay.

**Mr. Luc Bourdon:** The only ones that will be affected are shortlines under provincial jurisdiction that operate on federal tracks. At that time, they will need to have an operating certificate whenever they are on federal tracks.

**Mr. Michel Guimond:** Who will be responsible? My riding is home to the first shortline in the history of Quebec—the Murray Bay line—which was operated by CN, very neglected by CN, and almost abandoned by CN. The Murray Bay line started in Limoilou, in the outskirts of Quebec City, and went to Clermont, in Charlevoix. When the Quebec government adopted legislation for the shortlines, it was the first in Quebec.

That's not the problem, because the *Société des chemins de fer du Québec inc.* bought the track. I'll give an example. If this shortline operated on a line that still belonged to CN, but it was given permission to use it... Are you with me?

**Mr. Luc Bourdon:** Yes.

**Mr. Michel Guimond:** In that kind of situation, who would be responsible for the costs incurred: the owner of the line, of the track, or the operator?

**Mr. Luc Bourdon:** It depends on the contract established between the two. If CN is no longer using the entire line and it rents it instead of selling it, it will depend more on a clause in the contract than on a clause in the bill. If CN says that it will continue to own the line and maintain it, but that someone is operating on that line, at that point, it would be CN who would be responsible for the maintenance.

I want to answer the question that you asked: why were they not exempted? One of the things that the panel heard from some of the people responsible for these commuter trains is that they wanted to be able to establish their own rules with the minister, and they wanted to request exemptions to the existing rules.

At the moment, they must conform to the rules of Canadian Pacific and Canadian National. In some cases, they determined that these rules were inadequate. They came to see me and said that they wanted an exemption to that kind of rule. We had to respond that, since their railway was not under federal jurisdiction, they could not request an exemption or establish their own rules, and they would have to negotiate with CN and CP, who had to agree to present an exemption to us. In a lot of these cases, this didn't happen.

One of the reasons we included them was to allow them to be able to make their own rules. That's what they asked the panel for and it's also what they have asked me for in the past, particularly AMT.

**Mr. Michel Guimond:** So, what can you tell me, exactly, about AMT?

What type of track does AMT operate on in Montreal?

**Mr. Luc Bourdon:** AMT mostly operates on CN and CP tracks, except for in the north, from the crossing in Blainville to Saint-Antoine or Saint-Jérôme. That is their property. It belongs to them. So, we don't meddle with it. We don't concern ourselves with that section.

When they go south, toward Montreal, and get to the Blainville crossing on Seigneurie Boulevard, they are operating on railway tracks that belong to Canadian Pacific.

**Mr. Michel Guimond:** So, Canadian Pacific could re-open the contract—perhaps this wasn't anticipated—and CP could say that they are operating on its paid track. When you get down to it, we know who is going to pay.

**Mr. Luc Bourdon:** Mr. Guimond, I could say that they can do it now if they want, despite Bill C-33. Canadian Pacific and Canadian National could announce at any time that they are changing the contract made with the other and that this is how they are going to do it. The bill makes no provision for that.

**The Chair:** Thank you, Mr. Guimond.

[English]

Mr. Bevington.

**Mr. Dennis Bevington (Western Arctic, NDP):** Thanks, Mr. Chair.

You're familiar with the safety report on Wabamun?

**Mr. Luc Bourdon:** Yes.

**Mr. Dennis Bevington:** A major spill occurred there. We're also looking at the potential for increased traffic through that area.

Would the amendments proposed in this bill help prevent another accident like Wabamun? How would they do that?

• (1555)

**Mr. Luc Bourdon:** Wabamun was a track-related derailment, and if I remember, it occurred on August 3, 2005, and it was 800,000 litres of bunker C oil and 88,000 litres of pole-treating oil. When we talk about some of the recommendations we dealt with that were formulated in this report under chapter 8, we are being asked to come up with a protocol to deal with goods that are not considered dangerous goods as per the act but are dangerous to the environment.

That is the case in Lake Wabamun. If you compare Lake Wabamun, which happened on August 3, and Cheakamus, which happened on the 5th, two days later, caustic soda was involved in Cheakamus, which was under what we call the TDG Act, and therefore the response plan kicked in right away. It did not kick in right away in Wabamun because the temperature at which the liquid was being transported was not a dangerous good.

We want to put something in place now that will take into consideration all those substances that are not under the TDG Act but can be harmful to the environment, and have the same type of emergency plan that would occur if a derailment like that happened.

**Mr. Dennis Bevington:** How do the amendments to this bill change your ability to do that?

**Mr. Luc Bourdon:** The first thing is that under proposed section 47 of the bill you will see that the railways would have to file environmental plans with Transport Canada. They would be audited by us and be included in the safety management system.

**Mr. Dennis Bevington:** Okay—

**Mr. Luc Bourdon:** This is where we would find the provision and the authority to be able to measure that and take some enforcement action, which we don't have at this time.

**Mr. Dennis Bevington:** What about just generally, in terms of derailments? How does this bill reduce the potential for derailments in the system? Is it simply that you have a better toolbox to work with? Is there any sense that—

**Mr. Luc Bourdon:** First of all, as the minister mentioned on Tuesday, we've been very fortunate to get \$44 million for our program, which equates to 56 more people joining rail safety, so we're going to have a lot more inspectors out there. We're going to have some enforcement officers. We're going to have some analysts, an outreach coordinator. We're going to have a lot more people than we had before in order to do more monitoring.

We're also going to have extra tools, such as the administrative monetary penalties, which we didn't have before. We could impose operational restrictions if there was an immediate risk. When there was non-compliance, we usually either asked the railway to fix the situation or we prosecuted them, which was very expensive and very lengthy. The administrative monetary penalty will allow us to fine an individual up to \$50,000 and the company up to \$250,000, so we'll have more tools.

**Mr. Dennis Bevington:** I'm trying to understand exactly how these administrative penalties will act. I see in the book here...you penalize somebody for inaction and they pay the penalty, or for a lack of action on a particular safety issue, fixing a track or doing whatever you decide on.

Where is the compliance?

**Mr. Luc Bourdon:** The first thing we would do in your example, if it's a track issue, would be to deal with the risk immediately. The fine would not be a condition that you pay and you get away with it. The first thing you get, if there's a problem with the track, would be a 10-mile-an-hour slow order on 50 miles, let's say, which would severely penalize them in terms of the fluidity of the network, which we're doing now.

On top of that, they would have to pay a fine. If for whatever reason it's been three or four times that we've been going after that railway and we keep finding stuff, they would pay the fine. So the fine would never replace some measure we would take.

• (1600)

**Mr. Dennis Bevington:** Who are we hurting when we put a 50-mile slow speed because we can't get the railway to fix one small piece of track?

**Mr. Luc Bourdon:** The railway.

**Mr. Dennis Bevington:** And not the customers?

**Mr. Luc Bourdon:** The railway usually—

**Mr. Dennis Bevington:** Not the people who are trying to get their goods to the market or to the port in Vancouver in a decent time, or the ship that's waiting for them there?

**Mr. Luc Bourdon:** You've got a good point there, but the thing is that it affects the capacity on their network. It affects their on-time delivery. Our experience is that usually they get on it pretty quickly because they need those cars at the port. They want to get the empties back. Usually, what we see is that they act pretty quickly on it.

From time to time, they may decide to live with a slow order for short distances, but usually on the main line, where there's heavy traffic, they'll be repaired pretty quickly.

**Mr. Dennis Bevington:** When you impose the penalty, what does that mean? Can you go through that a little bit more in detail?

You put a penalty on for a particular lack of action; the penalty is paid. I notice that in the act it seems to say that when the penalty is paid, immediately there's no further action taken. Is that correct? Or is there some process?

If we haven't fixed the situation for which the penalty is put in place—

**Mr. Luc Bourdon:** The first thing is that the administrative monetary penalty will be defined by a regulation. We don't have the enabling power in the act right now.

All of what you're asking me right now will probably be determined at the time we're putting the regulation together. What will it entail? How much will they be charged and for what?

Right now, assuming we ever get the bill passed...then we'll have to develop the regulations. This is where you will find what you're asking me right now.

**Mr. Dennis Bevington:** Is there any parliamentary oversight to those regulations that you're going to be establishing after this act is passed?

**Mr. Luc Bourdon:** At this time, no.

**Mr. Dennis Bevington:** Is that a common practice with Transport Canada, not to provide any parliamentary oversight?

**Mr. Luc Bourdon:** I can only speak for rail safety.

We've got the rule-making process in place. We don't make a lot of regulations. We usually go through a rule, which is not a statutory instrument.

For the few regulations we have made, to my knowledge, no, they were not subject to parliamentary oversight.

**Mr. Dennis Bevington:** So going to all these regulations is quite a change for you?

**The Chair:** Mr. Bevington, I have to stop you there.

**Mr. Luc Bourdon:** It will be an increase in workload for sure.

**The Chair:** Thank you.

Mr. Mayes.

**Mr. Colin Mayes (Okanagan—Shuswap, CPC):** Thank you, Mr. Chair, and thank you to the department for being here and the work you've done on this act to make our railroads safer.

I live in British Columbia. The community I live in is on the main CP line. We have, on a good day, 37 trains a day going through our community. The rail goes right along Shuswap Lake, which is where people enjoy recreation and it is also from where we draw our water. So rail safety is a big issue in my community.

One of the things I want to discuss is the rail operating certificate. There is a compulsory emergency response plan that the rail companies have to submit. I'm just going to give you an example. In our community, one of the CP locomotives went off the track and started leaking fuel toward the lake. We have our own regional emergency response plan. They were able to go out and secure the area. They were the first responders, the first ones there.

When they put these plans together, has there been consultation with the provinces and regional governments to incorporate their plans with the plans within the operating certificate?

**Mr. Luc Bourdon:** Currently, as I mentioned, the railway operating certificate will be defined by a regulation, so we don't know yet what that will entail. We have to consult with all our stakeholders to get the input from companies, unions, on what they'd like to see in it.

On the environmental side and what they currently have in place, basically, other than a certain environmental assessment infrastructure project, we don't have much in the Railway Safety Act that deals with environment. When it comes to dangerous goods, it's under the dangerous goods act and the dangerous goods directorate at Transport Canada.

I know there are usually multiple jurisdictions when these things happen, where the federal, provincial, and municipal governments may show up, so I don't quite have an answer for that at this time.

**Mr. Colin Mayes:** One of the issues that I think I'd like to take note of is that in British Columbia, the taxing authority was taken away from local government on the rights-of-way. Municipalities lost hundreds of thousands of dollars in tax revenue, but they're providing an emergency response plan for the railroad. So when they put their response in the operating certificate, I think it would be incumbent on the railroads to work with the local government, also maybe even to fund some of those costs for the planning process and the people who do that work.

•(1605)

**Mr. Luc Bourdon:** That's probably something to consider once we're at the regulation level.

**Mr. Colin Mayes:** Right.

How many miles of track do they have on the main lines of CP and CN?

**Mr. Luc Bourdon:** All together, in Canada we're talking about approximately 48,000 miles of track.

**Mr. Colin Mayes:** That's a lot of track.

What about the track that will not be under this jurisdiction? Do you have any estimates on that?

**Mr. Luc Bourdon:** Pardon me?

**Mr. Colin Mayes:** What about the railways that would not be under the authority of this act?

**Mr. Luc Bourdon:** I'd have to check. I'm more familiar with the federal regime, the network. It changes quite often with lines being bought, sold, or dismantled.

**Mr. Colin Mayes:** I think it's important that we're clear here that we're dealing with the main lines of CP and CN.

**Mr. Luc Bourdon:** Right.

**Mr. Colin Mayes:** In terms of the operation certificates and the penalties, how do you see that working? Would there be a warning? As you monitor violations of the operating certificate, would you give a certain period of time for them to rectify the problem before there is action taken? And how long is it going to take to get to the point where you're actually going to take them to court and fine them?

**Mr. Luc Bourdon:** At this time that would be defined by regulation. But I'd say it would have a lot to do with repeat offenders. If someone has a non-compliance placed that can be fixed right away, that can be done under a notice and order, we would still do it this way. It could be based on the severity of the violation as well, that we may decide to go directly to an administrative monetary penalty. It could be because we've been finding that type of defect time after time, and although they're fixing it, we're still finding it, so we'd want to go to an administrative monetary penalty system.

Obviously, there will be a schedule attached to the regulation that will determine what it could cost for which type of offence.

**Mr. Colin Mayes:** What about the environmental protection of the rights-of-way? It might not be part of rail safety.

For instance, in the community where I lived, one of the councillors and I went down on the track and did a cleanup. We got 24 bags of garbage, and the majority of it was from those maintenance people along the track. We were not impressed. There were oil cans that were spilt on the track and those types of things.

Is that going to be part of protecting the environment along those rights-of-way?

**Mr. Luc Bourdon:** What you call garbage on the rights-of-way has been an issue for many years. Unless it creates a safety hazard for train crews or people, there's very little we can do.

There's provision under proposed section 47 of the bill, under clause 37, and in your binders, I think, that deals with the environmental plan that will have to be submitted by railways, and that will be audited by Transport Canada.

How deep will we go with that? I don't know.



But in reference to what you're talking about, in the past, unless it could create a safety hazard, we did not have any authority in the act to take action.

To be honest, I don't know whether, when we work on the regulations for the environmental plan, that will be in it or not.

**Mr. Colin Mayes:** Do you think that might come under a different ministry, maybe a provincial ministry of environment?

**Mr. Luc Bourdon:** It could. It's something we can consider.

**The Chair:** Mr. Dhaliwal.

**Mr. Sukh Dhaliwal:** My questions are going to be focused only from the perspective of women and men, workers or employees.

I have heard many concerns from employees that they operate under a climate of fear, which would make them hesitant to use any non-punitive internal reporting. Shouldn't there be a clause or provisions in Bill C-33 to allow them to report, or make these non-punitive reports directly to Transport Canada?

•(1610)

**Mr. Luc Bourdon:** At this time it is under section 47.1 of the act, but the reporting would be to the company and not to us. That was the amendment that was suggested.

**Mr. Sukh Dhaliwal:** Basically you're telling me that they would not be reporting to you but to the company. That's my concern. I'll give you an example. An employee goes to his employer and says there is a safety-related issue. At that point in time, the employee is marked, and the next time that employee makes a minor mistake or something, that is kept in mind, because this person is a whistleblower. That is what I am concerned about.

All those women and men who are working there as employees have a sword of fear hanging over their necks all the time. How are you going to make sure it is taken off the employees? They should be able to report directly to Transport Canada.

**Mr. Luc Bourdon:** Right now, under the bill, it would be reported to the employer. There's also a system that exists, which unfortunately not too many people know about, under the Transportation Safety Board. It's called Securitas. People can call anonymously to let them know what is going on. Usually we're contacted to investigate the situation.

However, if you're talking about something that would be on the side of harassment, first of all, we investigate 100% of the complaints we get. We send someone out.

**Mr. Sukh Dhaliwal:** All I'm saying is that you know the fear exists. You know there's no provision in the act to report it to Transport Canada. What would it take? I don't think it would take a great deal. All it would take is a small effort to amend the bill so that those employees would be able to come directly to Transport Canada without having any fear of the employer if they reported a safety issue.

**Mr. Luc Bourdon:** Right now when there's a situation like that, which has been reported to us and which is perceived as harassment, it is usually dealt with by HRSDC.

Within the philosophy of the safety management system, we're trying to do as much as we can through the guidelines we've published and through the council we have in place to change the

culture in the rail industry so that this type of situation does not occur.

However, you're not the first one to raise that point. I guess it could be submitted as an amendment, and it would be considered by the department.

**Mr. Sukh Dhaliwal:** Would you support that amendment?

**Mr. Luc Bourdon:** I'm not saying we're going to support it. I'm saying we're definitely going to look at it, because we have heard it before.

**Mr. Sukh Dhaliwal:** On the other issue, fatigue, you mentioned that you have guidelines or something. What are the laws and regulations that govern the fatigue policies? Do agreements between management and labour ensure appropriate rules?

**Mr. Luc Bourdon:** Currently we have what we call the work-rest rule, which is a rule that everybody has to abide by. If you're in what we consider to be a position critical to safety—train crews, locomotive conductors, RTCs, or crane operators—you have to abide by this rule. The rule sets out maximum hours of duty and mandatory periods of rest. If the rule is not respected, then we will take action.

On top of this, as I mentioned earlier, when they did their report, SCOTIC recommended that we look into fatigue. So we had a joint working group that included labour organizations, transport, and the industry. We recently published new guidelines to help people cope.

**Mr. Sukh Dhaliwal:** Should we explicitly allow in the bill for regulations on scheduling, then?

**Mr. Luc Bourdon:** It's not in the bill. It's through a rule that we get the authority to do it under section 18.

**Mr. Sukh Dhaliwal:** But I'm saying should we—

**The Chair:** I have to stop it there. We will get another shot, I'm sure.

Monsieur Gaudet.

•(1615)

[Translation]

**Mr. Roger Gaudet (Montcalm, BQ):** Thank you, Mr. Chair.

When there is an accident, a derailment or something like that, is Transport Canada required to go to the site?

**Mr. Luc Bourdon:** When an accident happens, the Transportation Safety Board is responsible for investigating to determine the cause. I would say that we, ourselves, are under investigation in some way. The board may find that we did not do our job properly and submit a recommendation.

We still send someone to the site, especially if there are injuries. We must also check whether rules or regulations were not followed. We have the right to investigate to determine whether someone did something that was not in line with the regulations.

But, as for the cause of the accident, it's the TSB that investigates. Its employees go to the site. We have the power to appoint someone we call the minister's observer, someone who will liaise between the investigators and the minister should something need to be resolved right away.

**Mr. Roger Gaudet:** Aren't the observer, the minister and your department too closely connected? The same minister is responsible for the TSB and your department.

**Mr. Luc Bourdon:** No, the TSB does not fall under the Minister of Transport, Infrastructure and Communities.

**Mr. Roger Gaudet:** Who does it come under?

**Mr. Luc Bourdon:** I believe it reports directly to Parliament. It doesn't come under us.

**Mr. Roger Gaudet:** It doesn't come under you?

**Mr. Luc Bourdon:** No, not at all. The people in the office do a very good job. They conduct good investigations and aren't always very gentle with us, either.

**Mr. Roger Gaudet:** In the event of an accident, who is the report addressed to?

**Mr. Luc Bourdon:** It's addressed to the minister. The report is public and appears on the TSB website. If you go to the site, you'll find all the reports written each year. So, if an accident in your riding was investigated, there will be a full report.

**Mr. Roger Gaudet:** My other question is about the planned changes in Bill C-33. There are highlights, but I don't understand them at all. Why amend the act? Are things really that bad? Why change the regulations? Are some of its components upsetting people?

**Mr. Luc Bourdon:** In 2005, there were some accidents that received a lot of media attention. There was an increase in accidents between 2002 and 2005. At that point, the minister decided that it was time to revise the act, something that hadn't been done for a number of years. The most recent amendments dated back to 1999. At the same time, your committee—the members who were on it at the time—also considered the seriousness of the situation and decided to conduct its own study.

One of your colleagues, Mr. Bevington, spoke about the accident in Wabamun, which happened on August 3, 2005. It caused fairly significant environmental damage. Two days later, there was another in the Cheakamus Canyon, where there was also damage. There was a series of accidents, there were some fatalities, and so on. That's what instigated a review of the act.

**Mr. Roger Gaudet:** Had the standards been relaxed all of a sudden?

**Mr. Luc Bourdon:** I wouldn't say that...

**Mr. Roger Gaudet:** Things were going well for 15 or 20 years, then over a period of two or three, there were a lot of accidents. Is it because the standards had been relaxed? Was there negligence involved?

**Mr. Luc Bourdon:** There was an increase in railway traffic.

**Mr. Roger Gaudet:** And the number of employees didn't increase?

**Mr. Luc Bourdon:** We tried to carry out our mandate as best as we could. The minister determined at one point that, given the increase in accidents and in traffic, it was time that we sit down and revise the act, that we evaluate everything, because it had been a number of years since it had been done. We didn't get a lot of resources. I can say that we are satisfied with what we were given, to be perfectly honest.

**Mr. Roger Gaudet:** Today, you are satisfied, but in 2005, you were not.

**Mr. Luc Bourdon:** It was more difficult. I would not say that the industry became less safe, but there was an increase in traffic. So the frequency of accidents could well be the same, it could well be less, but in absolute figures, there were more accidents because there were more trains. We had to adapt to that situation.

**Mr. Roger Gaudet:** Thank you, Mr. Chair.

[English]

**The Chair:** Mr. Trost.

**Mr. Brad Trost (Saskatoon—Humboldt, CPC):** Thank you, Mr. Chair.

I just want to follow up on some of Sukh's questions about fatigue.

You mentioned there were new guidelines that had been introduced. Could you elaborate on the new guidelines and the reasoning behind the changes?

**Mr. Luc Bourdon:** First of all, as I said, both reports talked about it. We know it's a harsh environment for train crews. They're working in the middle of the night, sometimes in a dark territory. It's not always easy. Contrary to what a lot of people think, it's a pretty hard job. We have to come up with a better way to assist them in coping with fatigue. We have guidelines to help them cope with that. I mentioned earlier the work-rest rules. We're looking at reopening them, and we'll probably look at maybe fewer hours a day per train crew so that it's easier for them.

It will have to do as well with better scheduling of the train crews so that they know ahead of time that they may go out. Contrary to VIA Rail or commuter rails, which have scheduled trains, it's a bit harder for freight trains. A lot of times the train crew must be rested for a certain period, and they're not sure if they're going to go out. They're trying now, as much as they can, to do better scheduling so that they have a certain timeframe during which they know they may go out and will be rested properly. If you're 36 hours without going out on a train, there's a chance that you got your sleep after your last trip, and you may be awake for some time—12, 14, or 18 hours. So they're going to try, with the railways, to do better scheduling to assist the crews.

● (1620)

**Mr. Brad Trost:** Thank you for that.

One of the things I've found most interesting or different about this proposed legislation is the position of one officer in every company who would be completely in charge of safety. The person would be totally, ultimately, responsible for it. I wonder if you could elaborate on the reasoning for that. Has it been done in any other jurisdiction? Where did the idea come from? I'd like a little bit more background on that, because it seems to me a bit of a novel idea.

**Mr. Luc Bourdon:** It's in a lot of safety books you read. Somehow you need to find someone who's fully accountable for safety in an organization.

Safety has been, for many years, the job of a lot of people. It is very hard to pinpoint who is really accountable. This supervisor does this and that supervisor does that, and things like that. Now we want someone we can go to who we know has full authority, directly from the CEO, to get things done and to make the changes that may be required for having a safer workplace. Now we know who to go to.

**Mr. Brad Trost:** Has it been done in any other jurisdiction? Are we unique in trying this approach? Do you have any experience with that?

**Mr. Luc Bourdon:** It's pretty much standard for every industry that has adopted the safety management system. I wouldn't say that it's the pillar of the safety management system, but definitely a requirement is that you need to have an accountable executive.

**Mr. Brad Trost:** What other industries currently have this?

**Mr. Luc Bourdon:** I think civil aviation has it.

**Mr. Brad Trost:** Okay. So this isn't as unique an idea as it's been presented to me.

**Mr. Luc Bourdon:** No, no.

**Mr. Brad Trost:** One of the other questions that will come with the next witness, as has been pointed out, is the question of whether all rail traffic control of Canadian rail should be located in Canada. It has been noted that there may be a company moving to Chicago, or things like that. Has the department looked at the impact that may or may not have on safety for Canada?

**Mr. Luc Bourdon:** It was a recommendation of the RSA review panel. It was recommendation 45, if I remember, which asked us to keep the RTC offices located in Canada. At the time, when we looked at it, obviously we consulted with Justice. We were kind of told that we would be in breach of GATS, the General Agreement on Trade in Services, and NAFTA if we restricted the operation of RTC offices in Canada. In the States they've used security reasons, instead, to keep the RTC offices in the States.

**The Chair:** I'll have to stop it there, Mr. Trost.

We have a few minutes left, so I'm just going to give a one-minute round to everybody, and then we'll invite our new witnesses to appear.

Mr. Dhaliwal, you have one minute.

**Mr. Sukh Dhaliwal:** Thank you.

I would carry on with Mr. Trost's question. The review of the RSA recommended that the rail traffic controllers be required to be physically in Canada so they can be inspected. Would you like to see that provision in Bill C-33?

•(1625)

**Mr. Luc Bourdon:** If we look at it from strictly a safety point of view, if they are located elsewhere, we already have an agreement with the FRA allowing us to go and audit and do some inspections. I think the minister mentioned on Tuesday that he'd be open to considering this. But from the advice we received, we couldn't do it. That's what we were told.

**Mr. Sukh Dhaliwal:** Under proposed subsection 47.2(2), the federal crown corporations and provinces are exempted from monetary penalties. Does that apply to the provincial crown corporations as well, or should it?

**Mr. Luc Bourdon:** That, I don't know. On crown corporations, I don't have an answer for you. If you take a company like VIA Rail, they'd be subject to it for sure.

**The Chair:** All right. Thank you.

Mr. Bevington.

**Mr. Dennis Bevington:** We've had testimony with aviation SMS on whistleblower protection that internally is not adequate. Now we have another bill that gives the whistleblower information to the company. Is that correct?

**Mr. Luc Bourdon:** Yes.

**Mr. Dennis Bevington:** What we've seen with aviation from the testimony we got is that this is not effective. So why are we continuing this practice with this amendment?

**Mr. Luc Bourdon:** I think it was a suggestion from the panel. We looked at the philosophy of SMS, and we saw that with more openness and a better safety culture it could happen. If it's not happening, then they would not be in compliance with the act and we could take action.

**The Chair:** I'll have to end it there. Thank you.

Mr. Trost.

**Mr. Brad Trost:** If it's a security issue for the U.S., why couldn't it be a security issue here?

**Mr. Luc Bourdon:** I'm not an expert in security, so I can't give you the answer.

**Mr. Brad Trost:** Could you get Justice to forward their opinion and table it for us?

**Mr. Luc Bourdon:** We could look into it, but security is not under my mandate.

**Mr. Brad Trost:** We'll follow up, then.

Mr. Jean?

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Thank you, and my thanks to the witnesses for appearing today.

On the secure task, is there already a way for employees to report to Transport Canada or to the TSB if there's a situation?

**Mr. Luc Bourdon:** It goes to TSB, and then TSB relays the information to us. We don't know who it is; we just know what the situation is.

**Mr. Brian Jean:** So this is already available, then?

**Mr. Luc Bourdon:** It's available; maybe it's not well known, though. That's the issue.

To correct Mr. Bevington, it was a recommendation of SCOTIC for the non-punitive system, not the RC review. I just wanted to clarify that.

**The Chair:** Thank you.

We're going to take a brief recess and invite our next guests to come forward.

Thank you again, and I'm sure we'll be in touch before this is done.

• (1625)

(Pause)

• (1630)

**The Chair:** Thank you. We're back for part two.

Joining us at the table is Mr. Phil Benson from Teamsters Canada; Mr. William Brehl, president, Teamsters Canada Rail Conference, maintenance of way employees division; and Mr. Rob Smith, national legislative director, Teamsters Canada Rail Conference, locomotive engineers.

Welcome.

I know you have some opening comments, so I'll ask you to make those. Then we'll move right to questions.

**Mr. Phil Benson (Lobbyist, Teamsters Canada):** Thank you very much, Mr. Chair.

I'd like to thank the committee for having us here. As you know, it was on short notice.

I also want to thank the committee for the heavy-load lifting they did to help this bill appear before us—especially the government for bringing it forward in a timely manner.

We support the bill. We urge its fast passage, hopefully in the next 40 days, if possible, or whatever time. We think it came from a lot of work—from this committee, through the RSA review, and also from the department and staff. We'd like to commend Monsieur Bourdon and his staff, who always do an excellent job.

Basically, we see just four small areas for improvement. We've given you four small amendments.

The first one is just the standard, stock teamster amendment at this point—it actually is a teamster/Conservative amendment, a party amendment, or from the government—and that's to allow the committee to review the legislation for safety reasons. It appeared in the TDG Act, and also in the aviation act; though it died, we'd love it to come back.

All it is, basically, is a check on the regulatory process to make sure that the regulatory bodies we have in place always know that Parliament can have an overview and have a look. It is working in other areas, and we just urge you to agree to bring it forward again.

The second one is quite simply to urge you to have Rail Safety at Transport Canada be one of the contacts, one of the possibilities, to report safety conditions. No matter what you might hear from Monsieur Bourdon and the companies, etc., there's a climate of fear out there. Brother McDavid was fired for not having his boots correctly tied. We have all sorts of cases, especially with CN, where

they have a less-than-modern view of labour relations. These are not companies that you're going to call and make a complaint to.

Right now, the way it is handled is actually through Rail Safety. Either we contact Rail Safety or the transport board calls Rail Safety. So let's just cut out the middleman and let's go right to the people who do the job—because they do. And they should be congratulated for doing it so well.

The next one is an issue that was raised regarding the RTCs, the control of the rails. Going back to 1999, in fact, CP Rail attempted to do exactly what some American companies are trying to do—namely, to switch their operations from the United States to Canada—and the answer was “no”. If you look at the regulations, which we can get to you or your people can get, it's basically for security reasons. That was the reason given. If you say it's a trade issue, trade is supposed to be fair trade, so that if they can get the work, we can get the work. We can never get the work, period.

I think as we move forward with the North American perimeter system, we should be cognizant that it's up to the Canadian government to have security taken care of up in Canada. These people eventually receive transport security clearance, probably under the TDG Act or some other act. That's the way it should be.

The last one deals with scheduling rules. You've heard of the fatigue management systems. Well, I'll be honest with you; it would be great if they were put in place, but they're not. The truth of the matter is that these issues are dealt with by collective bargaining. It comes through a long line, from the Hinton disaster and the review they're after...

The truth of the matter is that we've almost had two national strikes over one issue: scheduling rules. And I'll be blunt; I'll give thanks to the minister, to the department, to the FRMS people over there, for all the work they did to help us get an agreement. But we don't believe that scheduling rules are something that necessarily should be set by collective bargaining, especially putting the issue of potential strikes on the line.

If you like my paragraph 47.1(1)(c), I actually stole that language from the aviation act, which I worked on with the minister and Mr. Jean and others. That's where I stole it from.

Scheduling rules should conform with fatigue science, period. I think if we put this in the act, we may not actually ever have to use it, but it will force companies to actually deal with the issue instead of just talk about it.

With that, I'll pass it on to Mr. Brehl to continue our comments.

•(1635)

**Mr. William Brehl (President, Teamsters Canada Rail Conference, Maintenance of Way Employees Division, Teamsters Canada):** Thank you, Phil.

Members of the committee, Mr. Chairman, honoured guests, good afternoon.

This is not my strong suit, so bear with me. I'm a track monkey by trade, and public speaking isn't my strength.

My name is William Brehl, and I'm the elected national president of the Teamsters Canada Rail Conference, Maintenance of Way Employees Division, the TCRMWED. I'm also an active and participatory member of the Advisory Council on Rail Safety, better known as ACRS.

Thank you for allowing me this opportunity to speak to Bill C-33, and more importantly, to the safety of railway operations in Canada.

The TCRMWED represents roughly 4,000 Canadian men and women who inspect, maintain, repair, and build the track and structures of Canadian Pacific as well as those on almost two dozen short lines, including three that are owned and operated by CN.

For this reason, we are positioned like no one else to truly appreciate the importance of rail safety in this country. We are on the ground—in the trenches, so to speak—working and fighting to ensure safe rail infrastructure. We see its failings, and we can properly recommend solutions. We fight for rail safety as if our lives depend on it, because often they do.

Here it is not even two months into 2011, and the Transportation Safety Board statistics show that over 106 derailments have been reported so far this year. At least 33 of them involved dangerous commodities. Thirty-one crossing accidents have been reported to the TSB over the last six weeks, and Canadian railway operating rule violations such as exceeding or operating without authority, which basically means that a train has entered into unprotected track—the leading cause of on-track collisions—number in excess of 20 reported.

Once you stop and actually look at the numbers, no matter what spin the railroads put on their safety records, you realize the potential for disaster that is lurking out there.

As Teamsters, as railroaders, and as Canadian citizens, we welcome any and all improvements to the regulations, which are designed to protect our membership and the country as a whole from the hazards of unsafe railway operations.

They can and they must run safe, profitable lines. We must ensure through proper regulations and enforced compliance that the railroads put safety as the first priority instead of simply depending on good luck and gravity to keep their trains on the track.

Therefore, we support Bill C-33. We have also submitted four amendments, which we see as enhancing the bill and allowing it to be more effective. One of them, non-punitive reporting, I would like to briefly speak on now.

To truly get a handle on the root cause of accidents or systemic failures, you need accurate, comprehensive data. Breakdowns in

procedure, as well as trends, may not be recognized if the information is lacking. That's why the reporting of all incidents is a necessity.

Railroads have long fostered a climate of fear—which we've talked about in this room quite a bit today—amongst their workers. As a 30-year CP maintenance of way employee, I can attest that this is nothing new. Rules violations are disciplined heavily. One accidental rules violation could lead to your dismissal. But the fear within our membership is not only of reporting their own errors. Often it is of reporting other contraventions to anyone beyond their immediate supervisor, even if they believe that their supervisor is covering the contraventions up. The optics within our ranks are that if you report something the railroad doesn't want reported, you will be punished. Punishments can range from less than desirable work assignments right up to discipline and/or dismissal.

As long as that underlying fear is there, we do not believe that proposed subparagraph 47.1(1)(a)(iv) will achieve the policy objective. We firmly believe that more is needed. Not only is non-punitive reporting a necessity to ensure the violations are getting reported, but we must have confidential reporting as well to alleviate these fears of hidden reprisals. We believe we should add to proposed section 47.1 our amendment to allow complaints directly to Transport Canada Rail Safety.

In the end, there is no downside to confidential third-party reporting, especially when you look at the positive benefits. After all, if the goal is to gather information to assist in the enforcement of the regulations as well as for the identification of problems, then it just makes sense to remove all of the roadblocks.

Allow the real railroaders the freedom and the security to honestly speak without fear of punishment or reprisal. That alone will move the issue of rail safety miles closer to resolution.

I'd like to thank the committee for their work on our behalf, and also for allowing me the chance to voice the concerns of our membership.

Thank you.

•(1640)

**The Chair:** Thank you.

Rob.

**Mr. Rob Smith (National Legislative Director, Teamsters Canada Rail Conference, Locomotive Engineers, Teamsters Canada):** Thank you, Phil and Bill.

First, I would like to take this opportunity to thank the committee for giving us this opportunity to speak here today on behalf of the Teamsters Canada Rail Conference, the TCRC.

My name is Rob Smith, and I have been recently elected to the position of national legislative director for the TCRC. I am also a qualified locomotive engineer and have worked in that capacity at Canadian Pacific Railway.

The TCRC represents approximately 10,000 members, which include conductors, rail traffic controllers, shopcraft workers, motor coach operators, customer service ambassadors, and locomotive engineers across Canada.

We are here today to briefly discuss Bill C-33, proposed amendments to the Railway Safety Act.

Our organization fully supports this bill as we feel it will address the safety and security concerns of our TCRC membership.

The TCRC welcomes the proposed bill as it will strengthen Transport Canada's enforcement powers to impose monetary penalties for safety and environmental contraventions by the railways. This is an essential element to ensure railway safety for all stakeholders.

The proposed bill also includes local railway companies that operate on federally regulated tracks governed under the rules of the Railway Safety Act. This also addresses an area of concern for our organization as we represent workers in these local railway companies.

The TCRC supports the proposed bill's addition of non-punitive internal reporting, the process for our membership, as well as additional accountability of the railways under the safety management systems.

In closing, I would like to again thank the committee for the opportunity to speak on behalf of our TCRC union members, who, as previously mentioned, are in full support of this bill. We urge you to support our position and have this bill passed in the interest of rail safety and operations throughout.

• (1645)

**The Chair:** Thank you very much.

Mr. Dhaliwal.

**Mr. Sukh Dhaliwal:** Mr. Chair, I would like to thank President William Brehl, my friend Phil Benson, and Mr. Smith for coming, and not only for coming here but in fact for the work you do. Any time a bill has come to the committee, you have always taken a leadership role.

Will, you are a great ambassador here on the Hill. I thank you for doing that.

On the other hand, it's very emotional for me when you raise the issue today of the workers. I came to this country in 1984 not speaking a word of English. I went through working with unions, to being a professional, to being a manager, to having my own business, and to today, sitting here representing the constituents of Newton—North Delta.

One thing I noticed is that if workers can go to their respective employment places without fear of being fired, they will be able to perform better. If that sword is hanging, you won't see that output there. Plus, it's a health and safety risk to their personal lives and to many other things.

Today you raise this issue. It's a very good issue. In fact, I already raised it with Transport Canada.

Bill, I would like to ask you about this, because I have had some interaction with your members, the Teamsters unions, in the Vancouver area, and I have heard similar complaints or similar concerns. Your members are concerned when it comes to non-punitive reporting to the companies without fear of retaliation, like being fired.

Do you agree that this is still out there?

**Mr. William Brehl:** Yes, Sukh, it's more prevalent now than ever before. I remember a couple of years ago when you came with us to see the guys in Coquitlam, the bridge and building department. Two of our members were called in by their supervisor the next day and were asked why a member of Parliament was visiting us at work and what they had told him.

There is a real fear on the railroads of their getting caught with things. There are policies out there now where you can be dismissed if you take pictures on the railroad without their permission, if you use your cellphone to take pictures. If you show up at a derailment and somebody takes a picture with their cellphone, there is the threat of dismissal over that.

**Mr. Sukh Dhaliwal:** When we see that threat of dismissal. You brought in a good recommendation that we should probably make part of Bill C-33, that employees be able to report directly to Transport Canada. Do you think it would make a big difference?

Two, because you know how many complaints will be coming in, what cost in dollars will it create for Transport Canada?

**Mr. William Brehl:** I can't talk about how much it will cost Transport Canada to do it. It will be up to their budget. I'm willing to fight for a bigger budget for Transport Canada any time.

The necessity goes without saying. Luc Bourdon brought up Securitas. You made a very good point when you said it's not in the act. There is a place where they can do third-party reporting anonymously, but it's not in the act. It's not protected. If it's already out there, they know what's needed. We should have it protected within the act.

**Mr. Sukh Dhaliwal:** Basically, they can anonymously report it to the Transportation Safety Board and Transport Canada—

**Mr. William Brehl:** I would say Transport Canada, not the Transportation Safety Board.

• (1650)

**Mr. Sukh Dhaliwal:** Okay. That's fine.

The next issue is Canadian trains entering the U.S. under the direction of rail traffic controllers. Do you think they should be operating in Canada?

**Mr. Phil Benson:** Absolutely. The issue was rejected—recommendation 45—for trade reasons, as Mr. Bourdon said, talking about GATT and NAFTA. But the truth of the matter is that America has already rejected Canadian companies from doing exactly what one American company is trying to do now—take a short-line railroad's RTC work down to the United States.

We're all for fair trade and sometimes free trade. However, if the security provisions apply for Americans and they are using them as reasons, I think exactly the same security reasons should apply here. If an incident occurs, surely to goodness the Canadian public would want to know that it was a Canadian, secured by Canada, who could be hauled right to this committee, or anywhere else, to talk about it. I'm not sure that if something happens you will get an American to come up here and sit before you.

**Mr. Sukh Dhaliwal:** Isn't it the same as if they were located in the U.S. and Transport Canada had the authority?

**Mr. Phil Benson:** We have no authority in the United States. Once you cross the border you have no authority.

**Mr. Sukh Dhaliwal:** I can give you another example from the other end. There are some small tracks, such as the Burlington Northern Santa Fe line in Vancouver, that do not go too far into Canada. If the RTC were required to be in Canada, what kinds of exemptions or grandfathering would be appropriate for those situations?

**Mr. Phil Benson:** If we follow the American prescription, it's 10 miles, and there are grandfathering provisions for companies that have done this prior to 1999. So this is something we can deal with through regulations for those unique circumstances that perhaps have been in the situation for a long time. That's the current requirement in the United States, and I'd live with that here.

**The Chair:** Thank you.

Mr. Guimond.

[Translation]

**Mr. Michel Guimond:** Thank you, Mr. Chair.

Thank you for your presentation. I also want to congratulate you on your excellent research service. That wasn't ironic, on the contrary. In addition to supporting certain proposals, you are suggesting amendments to improve the act. You said at the start that you were in favour of the act, and we are taking good note of that. I also want to congratulate you on suggesting four amendments.

In a previous life, I worked in the pulp and paper industry. I was in charge of industrial relations, and I must admit, I was a lousy boss. I was on the side of management, but the union representatives respected me. I suppose that you see, in your facilities, in the various workplaces, signs with the words "safety first". This motto must always be posted. Everyone supports this principle. It's fine to talk about "safety first", everyone would like to be canonized as a saint at the end of their life on earth—I don't want to get into a religious debate, which should please the conservatives, who were starting to get worked up—but, unfortunately, they do not always behave accordingly.

I would like you to tell me about the working relationships with railway companies when it comes to health and safety. How do the committees operate, in general? I suppose there must be joint health and safety committees. There are management representatives and workers' representatives.

Something you said in your presentation surprised me. You don't mess around. You said "Rail Companies have fostered a climate of fear on the job sites...."

[English]

Rail companies have fostered a climate of fear on the job sites....

[Translation]

That might perhaps explain why you want this legislation adopted. It would give your members more protection.

So, how is it going on the health and safety side?

• (1655)

[English]

**Mr. Phil Benson:** Thank you so much, sir. I really appreciate that question, and it probably reflects your background, coming from labour.

Unfortunately, Canadian National has taken a zero tolerance policy. Basically, everything you do will earn you demerits and get you out the door. As it works out, it means we have to go to grievances—I know you'll be familiar with the grievance procedure—and generally we will win.

Currently at CN they have more than 6,000 grievances.

**Mr. Michel Guimond:** How many?

**Mr. Phil Benson:** There are 6,000. And the way the grievance procedure works in the railway, you and I will be retired before that grievance is heard, if your number is 6,001.

A climate of fear is what we've called it. It's a style of management that says they're going to change our lives and threaten our jobs and we'll do whatever they want us to do, without complaint. That's the way they run their company.

I'll pass it on to my friends, who will have more direct.... Mr. Brehl looks after CP more than CN, but I'm sure Mr. Smith will have some direct stories.

When I first talked about Brother McDavid, who was fired for not having his boot laces correctly tied when leaving a cab to check out, some MPs told me I was a liar and I had made it up. I proceeded to bring them the case of Brother McDavid. I told him it would make him a poster boy. He was returned to work with all demerits removed, with interest pay—and you know the results of that. The company is willing to pay that to get their absolute control over membership.

Thank God we have the Teamsters union, because their answer is no.

When you ask these companies politely and nicely to do things... these are not companies like those in the air world who have a more mature relationship. These companies are not particularly friendly to workers. And quite bluntly, if they treat us that way, I'm sure they treat their customers the same way.

I'm shocked. If I were a shareholder I would be upset. You're absolutely correct that workers who are happy, who feel they have a place, are more productive and make more money for a company. I just wonder how much money those companies are leaving on the table for the shareholders.

[Translation]

**Mr. Michel Guimond:** I think you've given a good answer.

The second topic I would like you to talk about is fatigue. One of my friends in Saguenay—Lac-Saint-Jean is the only survivor of a head-on collision of two trains. The collision happened in the middle of the night, at 3:00 or 4:00 in the morning. My friend, who was in the locomotive pulling two trains of goods, said to his crew mate that he thought another train was coming because he had just seen the light through the trees. He was right. He was thrown from the car, but his companion died, as did the two crew members in the other locomotive. He was the only survivor.

You are talking about fatigue, and you are suggesting an amendment that we will study seriously. Is the time spent waiting before work calculated? From speaking with airline pilots and cabin crew, we know that there is time spent waiting before starting work. It's not like someone shows up at work at 8:02 in the morning and the train leaves at 8:03. That's not how it works. I have never driven a train, nor have you, since you're a lobbyist, but how does that work?

[English]

**Mr. Phil Benson:** It's a very important question.

The rest rules and work rules that Mr. Bourdon was talking about are absolutely laughable by modern fatigue science.

Teamsters Canada took the lead in helping the previous government move forward in the hours of service of trucking, which are still a little bit too long. However, the rules in there are compliant with fatigue science. It's just too long a day.

I'm currently representing Teamsters on a committee examining fatigue management for pilots. I will tell you, they're light years ahead.

The main problem, when I hear from the leadership in the union, is scheduling. That's why we address scheduling. It's not always the hours they work; it's the hours they have to wait.

I have a dear friend, and I was visiting his house. He was watching a computer—and this is what happens. You're supposed to go out at midnight, and then it's 2, then 4, then 6, then 8, then 10. Do you go back to bed? You never know.

By the time you show up to work, you could have been up all day. That's why we almost had two strikes trying to get scheduling rules, something the companies said, when they were here, that they're willing to do. Mr. Bourdon is saying they're willing to do it. So how come we have to almost push them to a national strike to get it? It's the scheduling rules.

We propose windows, so a person would be available for four or six hours, whatever the period was, and then they're off the clock. We offered to do it with the company at no charge. No standby, no nothing. Why? This is the issue for rails: fatigue.

Everybody ignored it. You didn't. Thank God this committee didn't do it. You did one bang-up job. All we're trying to do is finish it off and give some legislative authority to push the minister if the companies don't want to do it.

I'm very glad you asked the question. It is a really important issue, and I'm so sorry that your friend died. But it is not unique. Accidents happen with people.

● (1700)

**Mr. Michel Guimond:** No, he was the only survivor. There were three dead.

**The Chair:** I have to stop there.

**Mr. Phil Benson:** I'm sorry for the other three brothers.

**The Chair:** *Merci.*

Mr. Bevington.

**Mr. Dennis Bevington:** Thanks, Mr. Chair.

And I want to thank you all for joining us today.

I really appreciate the work you've done here. The issues that have been raised by the other committee members fit very well with what you're saying here. I mentioned earlier about the need for oversight of regulations. I like that. I think that's an excellent thing that Parliament has a responsibility for. The bureaucrats have said, give us a toolbox and we'll take care of the problem. Well, there's a lot more to good legislation than giving somebody some wrenches and a spanner. We need to know how those are being used. We need to know that. And without seeing those regulations, you can't get to the truth of it.

So I really appreciate that idea, and we'll certainly look at seeing how we can put that forward in an amendment.

Second, the previous witnesses said the idea of the internal reporting came out of this committee. Well, it might have come out of this committee before I was here, but I haven't heard any evidence in front of me over aviation that suggests to me that this internal reporting is a good idea. In fact, the opposite seems the case; that's not working out very well. If we can't learn from the mistakes we make, how are we to move ahead? I think that's another one we could definitely support.

The two other items, certainly, once again, are excellent positions.

I do support what you've brought here in front of me, and I really think they're all very sensible and sane amendments. But what really bugs me is the number of deaths we have of people on the rail lines and at the level crossings. I asked the minister about the money they were putting in the system to upgrade the level crossings. Is that anywhere near adequate, in your judgment?

**Mr. Phil Benson:** Just on the deaths, I'll pass it over because they'll have more information. I think, actually, Mr. Smith could talk about the deaths because I think they just conducted a study.

I'll leave Mr. Smith to talk about it.



**Mr. Rob Smith:** There is an ongoing study right now with Transport Canada. It's a suicide study. There is a draft out at this time. I know they've spoken in Washington, and they're actually working with the U.S. as well.

The railway suicides in the U.S. are much lower than they are here, and I think that's possibly because guns are more accessible in the U.S. But we do have a large problem with suicides, and our members who are involved in those sometimes never come back to work. That's certainly a huge concern for us. Their time off is not long enough after one of these incidents. I really think the study needs to go forward. I think the funding should be there for that. I believe it's going for another two years.

That's really all the information I have on it right now, but it is ongoing and it's a very important issue.

• (1705)

**Mr. William Brehl:** Mr. Bevington, you asked if the money that was budgeted for the level crossings was enough. It will never be enough as long as we have railways, if you have level crossings. Any time the public or road traffic intersects with a railway, there's a danger. But it's going to go a long way in minimizing the danger and minimizing the risks. We need more gates—of course we need more gates—we need more flashing lights, we need more warning for all the level crossings across the country, but until there's a bottomless pit of money, it isn't going to happen.

**Mr. Dennis Bevington:** But with \$21 million and 44,000 level crossings, the math doesn't seem to add up at all to me. It seems to be a drop in the bucket as to what would be required to fix them up.

And then we talk about fencing. I watched the television news last night about the fellow who got hit by a train, and I'm looking at houses all around and a train track with no fencing and no visible means of keeping people away from that rail. Is that an acceptable situation?

**Mr. Phil Benson:** I'd say, to give credit, that it was probably the first new money we saw in years. So we'll say thank you very much for giving us any money. It's a real positive.

You have to remember, too, that there's a difference. As you start getting near cities, especially near towns and cities, municipalities have much more say about what goes around. For example, they do not want us to operate the whistle because it keeps people awake. Well, exactly how am I supposed to warn somebody to get off the track?

So when you're talking about fencing, that may, in fact, be a city ordinance or a municipal ordinance. It may be a decision of the city to put fencing in. As cities grow around railways, is it necessarily the railway's responsibility to build a fence? It is the government's? Is it the municipality's?

I'm not sure if it's this body that is supposed to—

**Mr. Dennis Bevington:** These railroads are privately owned. Their tracks are privately owned by companies. They're in a non-competitive position, so they can pass their costs of operation on to their customers. Is that correct?

**Mr. William Brehl:** Yes.

**Mr. Dennis Bevington:** Then why, through regulation, can we not demand that the railway companies do proper safety procedures for pedestrians, for walkways, and for all the things that will make things safer for people? What's the problem there? They're just going to pass the cost on to their customers.

**Mr. William Brehl:** I wouldn't argue that with you, Brother.

**Mr. Phil Benson:** That's not up to us, Mr. Bevington. It's up to the committee to decide to bring forward an amendment. Then we'll come back and support it.

**The Chair:** I'll have to thank Mr. Bevington for his intervention.

Thank you.

**Mr. Dennis Bevington:** Thank you.

**The Chair:** We'll go to Mrs. Gallant.

**Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC):** Thank you, Mr. Chairman.

Through you, to our witnesses, in the past, the Teamsters have expressed some concern about the regulatory process. What would be the advantage to the Teamsters of having a parliamentary committee review regulations made under the Railway Safety Act upon request?

**Mr. Phil Benson:** Thank you for the question.

Yes, we've expressed a lot of concerns in the past. Before we get to the brickbat, we'll give out the credit. The Railway Safety Act advisory council, the way it was going to be set up, was going to be a disaster. I'll give full credit to the minister and to our parliamentary secretary here for bringing in a procedure and a process that I think, in the long run, will produce exactly the same results as we've seen in the transportation of dangerous goods. We're not there yet.

Just like in the TDG world and the aviation world before, comments I've had from senior bureaucrats are that the amendment we got in other bills was one of the best checks they had. What they said, very simply, Mrs. Gallant, to the senior people was, "Yes, we could do that, but those damn Teamsters are going to get in front of a transport committee. And what's the public going to think about it?"

It's one of those little tools in our tool box. I hope we never have to come back to this committee for safety. It's just in our tool box for making the regulatory process work better.

• (1710)

**Mrs. Cheryl Gallant:** The Teamsters have mentioned that they'd like an amendment that would allow them to report corporate safety concerns and safety violations directly to Transport Canada. How do you envision such a system working?

**Mr. Phil Benson:** Actually, it works now.

From Mr. Bourdon's testimony, you know that when somebody goes to the safety board, they call Rail Safety. Our members don't call the company; they call us. We call Rail Safety.

Right now, Rail Safety is, in fact, doing it. So let's not pretend that they're not. I'll give Mr. Bourdon at Rail Safety real credit. And I'll give the road people in transport real credit too. For the number of people they have for the work they do, it's truly amazing. I can't think of a better group of people to do it. I'll put in a pitch to get both groups more funding. We could take some people away from the aviation world and give them to rail and road. They're the people who do it now, so let's just cut through the malarkey and give it right to them, because they do it for us already.

**Mrs. Cheryl Gallant:** The Teamsters have indicated that they believe that rail traffic control of all Canadian rail operations should be located in Canada. Is this based on safety concerns about current systems?

**Mr. Phil Benson:** No. I think the RTCs are all Teamsters, and we have no concern at all about the RTC jobs.

As a matter of security, and I think as a matter of sovereignty for Canada, we simply can't allow American companies to do what Canadian companies cannot do in the United States. The reason they've given is security. No Canadian RTC may go past 10 miles if not grandfathered before 1998 or 1999. They may not do it. CP Rail tried to move RTC jobs from, I believe, Vermont to Canada, and the answer was no, for security purposes. We kind of feel that when we trade with people.... It's not a tit-for-tat, but it's fair all around.

Also, procedurally, if we move towards this perimeter security system and security protocol.... I think, as Canadians, we've always championed that security be done in Canada by Canadians. I really think we should have a Canadian doing it. It should be someone who is secured by Canadians and who is responsible to this committee and to Canada, not to a foreign country, no matter how great a friend it is. And it is a great friend.

**Mrs. Cheryl Gallant:** You referred to this when you talked about scheduling, but fatigue is often an issue for front-line workers. Can you outline the current regime for fatigue management and explain how you might improve it?

**Mr. Phil Benson:** I can pass it to Rob, but I'll answer quickly.

The best line I heard on this was when a department official went to examine a fatigue management program for a company. The company's response was that it was in the filing cabinet. He asked if it was implemented. The company said they were told they had to have one; they weren't told they had to implement it.

The truth of the matter is fatigue in a railway is recognized. Mr. Harrison Hunter previously stated to his shareholders that fatigue is the greatest cause of accidents. When he said that, we were in the middle of negotiations where they were saying we're not going to deal with scheduling rules.

We've almost had two national strikes, not over money, not over conditions, not over pensions, not over anything except scheduling rules. People are falling asleep.

We know this from medical science—people die younger when they're fatigued. It's a medical issue. It's an issue for our health care

system that we have to pay for. It's something that should be dealt with.

This is our way of doing it—I hope not in an aggressive, regulatory manner. This may not be the right place, but if a clause like this is in the bill, it will make companies aware that they have to deal with it.

We'll deal with it tomorrow. We'll do a memorandum of understanding. We'd do anything to have proper scheduling rules.

I'll tell you how silly it gets. Half of their employees have scheduling rules, I think maybe two-thirds, and maybe a half or a third don't. It depends on what part of the country you're in. It depends on what craft you belong to. It's not even that they're not doing it. It's just a matter of obstinance—they don't want to do it.

But they came before this committee, I believe, in 2007—at least I was informed—and said they were going to deal with it because it was a fatigue issue. It's 2011. Let's move forward.

All we want is your help. This clause we're talking about is just to help us get what we should have.

**Mrs. Cheryl Gallant:** Do you feel the amendments in this bill, particularly those regarding SMS, are sufficient to stimulate the development of a safety culture in the rail companies?

● (1715)

**Mr. Phil Benson:** Safety management systems are something the Teamsters and I have railed against for probably the better part of ten years. In fact, I think rail has safety management systems. They were a total failure. That's why the bill is here.

According to the air people, they're going to safety management systems, but they're not going to make the mistakes that rail made.

I think in a perfect world you don't need SMS in legislation. I'll be honest with you. I'm going to support it, but I'll tell you why you don't need it. It's best practices. No company needs anybody to tell them to put in best practices. Safety management systems are best practices.

Here's the problem. The original SMS model was sold as deregulation. In other words, under a safety management system, you tell us we're going to be safe and we'll believe you. This bill makes sure they're audited and inspected.

That's why previously in the air act, which I really want the government to bring back, we were successful in getting amendments that stated they would be inspected.

I very much thank you for the advisory council model. I believe over time the SMS, this entire process we have, will develop. It isn't today. It isn't going to be tomorrow. I'll be honest with you, it's not going to be over the next three, four, or five years. But maybe before I retire, whenever, 10, 15, or 20 years from now, I'll be able to come and smile and say it's a great thing.

It's a good model, but you didn't have to regulate it. It should have just been done. Companies should have done it by themselves. That's the pity.

So we support it, with those caveats.

**The Chair:** Thank you.

Mr. Dhaliwal.

**Mr. Sukh Dhaliwal:** Thank you, Mr. Chair, again.

Mr. Brehl, I was very disturbed to hear about the issues you raised, when you said train companies will fire employees for doing small things like taking photos or tying up a boot. Another issue...Mr. Tweed, as the chair of the committee, goes from Manitoba all the way to Coquitlam to talk to people, and the second they know, they question why this fellow came all the way from Manitoba to talk to them. This is very disturbing to me.

You say there is no such mechanism in place, through mutual agreement or bargaining or whatever processes you have, that gives those workers security so that they can fearlessly work in that organization.

What is it that members of this committee, where you are sitting today, can do to deal with those situations? What other situations besides these that you mentioned are there that we should be aware of and find a solution for?

**Mr. Phil Benson:** Thank you for your kind comments to me, Mr. Dhaliwal. I enjoy doing my job as a Teamster, but I do appreciate the kind comments. Also, I recognize that you're one of the few members I've actually seen on a rail job site, so I do appreciate that.

I think you should pass this bill. I think you should give us our amendments. I'm quite serious; pass it in the next 35 to 40 days. Get it through the House; get it through the Senate. Why? The air bill died during the last election. It was a really good bill. It would have really helped us in the air world—in my opinion. That's not shared by all unions and all of the parties, but we thought it was a good bill.

I want to suggest here that it's not a good news story, because the news isn't here. This is the one committee on Parliament Hill that seems to work together to get amendments, to get bills through, without controversy, without all the complaints we hear from everywhere else.

If you could move this bill forward, that's what you could do to help us. Just move the bill forward as quickly as possible.

**Mr. Sukh Dhaliwal:** I do appreciate that, and on behalf of my other friends on this committee, the Honourable Gerry Byrne from Newfoundland, and Mr. Russell, who's filling in for Mr. McCallum... and I'm sure that Mr. McCallum is on board with these. These are good amendments that will give peace of mind to the workers and will improve the bill. I do support that.

But on another note, on this issue of the department saying that it's a legal opinion that the rail traffic control centres in Canada would not be in compliance with the GATT, how can we do this in a GATT-compliant way?

● (1720)

**Mr. Phil Benson:** The answer is very easy; it's exactly as the Americans did: security trumps GATT. It's a security issue. And good work on the dangerous goods act that you passed, and we included the transport security clearances. But these people are going to be caught by the transport security clearances. It's a clear security issue, period.

As in America, we can rely upon their decision for our decision. They've made their decision; we can use the same decision. I do not see a trade issue at all.

**Mr. Sukh Dhaliwal:** You don't see a trade issue?

**Mr. Phil Benson:** None.

**Mr. Sukh Dhaliwal:** If that is the case, Mr. Chair, I'm pretty well satisfied. I would like to thank you for giving me an opportunity.

Thank you all again.

**Mr. Phil Benson:** Thank you, Mr. Dhaliwal, and thank you to your colleagues.

**The Chair:** Thank you.

Monsieur Gaudet.

[Translation]

**Mr. Roger Gaudet:** Thank you, Mr. Chair.

Mr. Benson, you spoke a few times about non-punitive reports. Could you explain a little what you mean by that and give me more examples?

[English]

**Mr. Phil Benson:** In other areas, "non-punitive" basically means that I can tell you, my boss, whatever I want under that particular circumstance and you will not take any kind of retribution against me.

I'm going to pass this to Mr. Brehl, and he'll explain it more.

**Mr. William Brehl:** I have a fairly good example of what this would be.

If someone has a rules violation, say an engineer or one of the maintenance employees who has track protection, and he violates the CROR, the Canadian rail operating rules, and nobody knows—he doesn't tell anybody—how do you correct what caused him to break it? How do you correct where the downfall was, where the miscommunication was, and where the problem was? He won't report it, because even though it had no effect, he caught it. Say he backed up over the signal or re-railed his truck back onto the track. Nobody ever knows and he can get away with it, but he may not report it for fear that he's going to get disciplined.

I will tell you, they will discipline you right up. We have a Brown system of discipline. It's a quantum discipline system where it's progressive, and if you hit 60 Brown points, "Brownies" we call them, you're dismissed. So they'll get people sitting at 45 or 50 Brownies and basically they'll have to do whatever they're told to do, because 10 more Brownies and you're gone. It's very scary out there for our guys. They could lose their jobs in an instant, so they don't report these things.

If we have non-punitive reporting...if they blow by a signal, say, and back up—it wouldn't happen in a train because the RCT would see it. But if they did it in a high-rail vehicle and backed up again, and they reported it, then they can come out and inspect it. They can look for a root cause. They can find out why they did what they did. They can look for trends, and we'll prevent the ones where people get killed. People get killed out there, lots of them—our members, CP's employees, CN's employees, and contractors. That's why having it non-punitive is important.

Anonymous reporting directly to Transport Canada is important. Let's say you see something on the railway that you think is a systemic failure. We had one with angle bars, where wheels were hitting the angle bars that held the track together. They're not meant for that. We found that this was becoming more and more common. We realized that the railways were going right to the extremes of the wear on their wheels and on the track, and it was causing these angle bars to get hit by the wheels. We reported it to Luc Bourdon. He looked into it, and, yes, they found that they have to move down the sill of the angle bar and they have to be a little more careful with their clearances. But what happened first—and I don't mean to go on here—was that our membership saw it because they are on the ground and they brought it to their supervisor. He said, "No problem. Take a grinder out there and grind off the mark where the wheel hit it." That was his solution.

They came to us and said, "This has to be wrong, a wheel flange hitting pig iron at 60 miles an hour has to be causing some damage", and they started finding pieces of wheel across the system. They'd find little pieces of wheel flange. Wheels were breaking down. The latest derailment in Buckskin they say was because of a wheel bearing.

We took it on from there, like I said to Luc, but if our guys had been able to report it right away to Transport Canada rather than to their supervisor, we might have found this problem a long sooner. That's why we need it.

In our opinion, you cannot tell a company that holds your livelihood in its hands that it's making mistakes again and again, and you can't just go to Transport Canada and report them, with your

name out, if it's going to cost them a lot of money. You just can't do it. That fear is in your head that they're going to get you.

• (1725)

[Translation]

**Mr. Roger Gaudet:** I now understand why you had 6,000 grievances toward the railway companies.

[English]

**Mr. William Brehl:** That's against one rail company. Double it for CP.

**Mr. Phil Benson:** No, CP is not as bad.

**The Chair:** Thank you.

I'll go to Mr. Watson for the final round.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair.

Thank you to our witnesses for appearing here today, and for your written submission as well.

Mr. Brehl, you said you were a track monkey. I was a major assembler on the assembly line at Chrysler, so I appreciate a working man.

First of all, let me just say thank you for your approach. I appreciate the balance in it, giving credit where credit is due, raising this to the level where it belongs: it's a public safety issue, it's not a partisan issue, right? I think all members of the committee are very serious-minded about coming to some agreement.

Notwithstanding that, there may be some differences. On non-punitive reporting, as I recall it, with respect to the Aeronautics Act, we did have three-party consensus on that. It actually got through committee, after being filibustered by one of the parties, and then was hoisted in the House, leaving us with no opportunity to pass the bill. It had to be done through regulation. We'll see whether or not we succeed with respect to rail safety in addressing that issue as well.

I have a press release from back in June that was issued. You talked about how the legislation was "the right thing to do". What are some of the elements—no pun intended—where we're on the right track? If you can just elaborate briefly on those, we'll use that as a starting point, and then I have a few subsequent questions.

**Mr. Phil Benson:** I think the key part of this is to allow Transport Canada Rail Safety to do their job, to inspect, to move forward. Even though I have a great deal of concern about the safety management system, that whole approach, in the long run, with all people being fair, is something that can work to make a better model of working railway, if you like.

**Mr. Jeff Watson:** Or, as we've said with respect to the SMS on the aviation side, it's an additional layer of safety on top of a regulatory regime.

**Mr. Phil Benson:** That's what the department tells me, that's what you tell me, but it's not what the companies tell me. And when I deal with them, in all the regulatory hearings and meetings I go to, they have a different interpretation.

I think properly applied, it is a really good method of having a continual upgrade of safety built into a culture of safety. And over time, Mr. Watson, I think that's what will happen. That's what this bill will actually help do—not in the short run, but in the long run. It's a good bill for the long run.

**Mr. Jeff Watson:** Are the administrative monetary penalties one of the contributing factors, perhaps, to changing the ongoing safety culture? It's not just having the natives with some of the sticks.

**Mr. Phil Benson:** I know we always have them. My hope is that over time they'll be looked at and kind of laughed at. If this bill works properly, the administrative penalties won't come into it in the long run. But in the short run they're needed.

**Mr. Jeff Watson:** Are you suggesting they're too low or at some point they're going to be obsolete?

**Mr. Phil Benson:** I'll be honest, too low or too high to a company that's making billions of dollars—how high can you raise them?

Do me a favour. Change the law about how much money you can get in tort suits. Make it like Louisiana, \$100 billion, and they'll obey the law. That's the problem with administrative penalties, because quite often they simply become a cost of doing business. Hopefully the culture will change more than the administrative penalties will change them.

• (1730)

**Mr. Jeff Watson:** With respect to your position on non-punitive reporting, I think I've heard two things today, and I'm not sure if they're conflicting or not. You'll have to forgive me—maybe use it as an opportunity to clarify.

I think in one instance I heard that there's support for the idea of NPR within the SMS, but then there was also the additional call for a direct reporting line to Transport Canada. Are both of those elements key to your position today? Have I understood it clearly?

**Mr. Phil Benson:** I'll put it this way. I think the bill, as written, is fine. I hope for the day I can come before you and tell you that the

membership have full confidence in calling their safety officer. As Mr. Bourdon said, that's what's part of this SMS we have to have.

**Mr. Jeff Watson:** Sorry to interrupt, but I only have limited time. Are those elements of your position, having both of those?

**Mr. Phil Benson:** Yes.

**Mr. Jeff Watson:** For me, what's a little difficult to understand logically is, if they have a direct line to report to Transport Canada, will they ever use a non-punitive reporting system in an SMS?

**Mr. Phil Benson:** I am hopeful that over time the answer to both of those questions will be yes.

**The Chair:** I have to interrupt there.

**Mr. Brian Jean:** Yes, on a point of order.

**The Chair:** On a point of order, Mr. Jean.

**Mr. Brian Jean:** Mr. Watson talked about one of the parties wasting hundreds of hours of this committee and witnesses a couple of years ago by doing a hoist moist motion in the House and wasting all of our time in committee. I was just wondering if he could clarify which party did that? Was it the NDP? I wanted to clear it up.

**The Chair:** It's not a point of order.

Thank you.

**Mr. Brian Jean:** I wanted to clear it up.

**Mr. Sukh Dhaliwal:** Just forget about it. Right now, let me—

**Mr. Brian Jean:** Are you sticking up for your NDP buddies?

**The Chair:** Order, please. We just had a compliment from our guests on the working of the committee.

With that, I will thank you—

**Some hon. members:** [*Inaudible—Editor*]

**The Chair:** Order, please.

Thank you for coming. We appreciate your input, and we look forward to talking to you again.

The meeting is adjourned.

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