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Chair

Mr. Larry Miller

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•(0845)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I call our meeting to order.

For the first hour today, we have representatives here from the Transportation Safety Board. Thank you very much for being here.

With that, I'll turn it over to you. I'm sure you have some opening comments.

Ms. Wendy Tadros (Chair, Transportation Safety Board of Canada): Yes.

Mr. Chairman, honourable members, I want to thank you for inviting the Transportation Safety Board of Canada to appear here today.

I bring with me three colleagues who offer a wealth of experience. Mr. Jean Laporte is our chief operating officer. He has been with us since our inception in 1990 and possesses a deep understanding of the mandate and the processes we follow. Kathy Fox has been a member of the board since 2007. She has over four decades of aviation experience and is an expert in safety management systems. Mr. Kirby Jang is our director for rail and pipeline investigations. He's well placed to provide greater context and information on TSB rail investigations, as well as the statistics we hold and why we hold them.

We are here today because you're conducting a review on the transportation of dangerous goods in Canada and the role of safety management systems.

A number of high-profile accidents here and south of the border have shone a spotlight on rail safety and the transportation of crude oil. They have forced us to re-examine whether our operations are safe enough, and if not, what needs to be done to improve matters.

Today there is a heightened fear. There has been, and there is no other way to put this, an erosion of public trust. Five years ago, the amount of oil moved by rail across Canada filled 500 cars, maybe five or six long trains. but last year, that figure rose to 160,000, and it is projected to go higher in the coming years. Canadians know that much of this oil is volatile.

No accident speaks more profoundly to the risks than that in Lac-Mégantic, where last July a train carrying crude oil derailed and caught fire, killing 47 people. In this investigation, we still have months ahead of us, months in which we will complete our investigation and report to Canadians.

That being said, early on in this investigation we identified important safety issues and communicated them to regulators. Then in late January, in an unprecedented move, the National Transportation Safety Board, NTSB, and the TSB made parallel recommendations aimed at making the transportation of crude oil safer across North America.

In Canada, we called for tougher standards for class 111 tank cars. That's because in Lac-Mégantic the entire train was made up of older unprotected tank cars, and almost every tank car was breached, fuelling the fire.

I want to show you an animation. This car was in the middle of the train, and you can see how very badly damaged it was. As you can see from this photo, even the cars at the end of the train, which are the cars on the right of the photo, these are the cars that were moving relatively slowly when they derailed. Even those cars were very badly damaged. That has taught us something.

Today, the rail industry is moving toward a new standard for general service class 111 tank cars, and that's a good thing. But a long and gradual phase-out of older model cars simply isn't good enough. It leaves too much risk in the system. That's why we were crystal clear that commodities posing significant risk must be shipped in containers that are safe, and the sooner, the better.

Our second recommendation dealt with the way railways plan their transportation, how they choose the routes on which oil and other dangerous goods are carried, and how they ensure train operations over those routes are safe. This involves a comprehensive system-wide review of many variables. It's about looking at what lies ahead along each route, identifying alternative routes, and choosing the ones with the least risk. It means, for example, ensuring that the track is maintained to the highest standard, that speeds are appropriate, and that wayside detection systems are in all the right places. This needs to be followed up with risk assessments in order to ensure the steps being taken will keep our communities safe.

•(0850)

Our final recommendation to emerge early from the Lac-Mégantic investigation was about making sure that when something does go wrong even in the face of advance planning, that the right resources are in place to reduce the severity and impact of a spill. We therefore called for emergency response assistance plans where large volumes of liquid hydrocarbons, like oil, are being shipped.

An answer to our recommendations is due later this month. We are encouraged by the minister's response to our early communications on Lac-Mégantic. It signals an understanding of the risks of carrying more and more oil by rail, what is at stake, and the need to address the risks that the TSB finds. In responding to our recommendations, it is my hope that the minister will lead with initiatives to squarely deal with these three important safety issues.

Now I'd like to discuss one of the other ways of ensuring our transportation network is as safe as it can be. That's the second topic you have been tasked with addressing: safety management systems, or SMS. As my colleague Kathy Fox so aptly put it, safety management systems help companies find trouble before trouble finds them. Let's be clear: an SMS is not a panacea, nor should it be mistaken for one. However, it is a very good tool, one that helps to find the biggest risks so that mitigating steps can be taken.

At the Transportation Safety Board, we think SMS is so important that we put it on our inaugural safety watch list in 2010. To be fair, Canada's major railways and a number of short lines have been working to implement SMS, and they've taken significant steps. However, 12 years later, many of the systems they've implemented are not yet mature. That means they are not netting all the safety benefits that they should. I'm talking about the need for audits and for strong regulatory oversight. I'm talking about risk-based inspections and, where appropriate, enforcement to ensure compliance. The Auditor General's report reaffirms the importance of all these things, and we strongly agree.

Before I close, I would like to note that we've recently updated our own regulations, modernizing reporting requirements, and harmonizing thresholds for dangerous goods with the TDG, transportation of dangerous goods, regulations. That will mean more notifications about trains that go off the rails. For example, all one- and two-wheel derailments must now be reported to the TSB. It will also mean that when a release of dangerous goods leads to consequences, such as death, injury, collision, derailment, fire or explosion, or any other threat to the safety of Canadians, railways must report these spills, no matter how small.

That's where we are today. None of the safety issues are about to disappear anytime soon. This committee has an enormous task ahead, not just to examine the issues of SMS and the transportation of dangerous goods, not just to hold hearings and find out ways to ensure that our railways, our waterways, our pipelines, and our skies are as safe as they can be, but also to make recommendations that will lead to real action, concrete measures to shore up and restore shaken public confidence. In all of this, we at the TSB share your goals. Advancement of transportation safety is our mandate. We've spent more than two decades working at it, and you will find us committed, informed, dedicated, and very cooperative.

Thank you, Mr. Chairman.

The Chair: Thanks very much, Ms. Tadros.

That picture you have up there, pictures don't always tell the whole story, but after being there last summer, it brings back that it was a terrible tragedy, a terrible mess.

Thanks very much for your opening comments.

With that, Mr. Mai, for seven minutes.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for being here today. I especially thank them for the work they do at the Transportation Safety Board of Canada.

For the NDP, all the recommendations that you have made are very important. You mentioned in closing that we need to act. When did the Transportation Safety Board of Canada raise the issue of the DOT-111 tank cars? When did you first point out there were problems with them?

● (0855)

[*English*]

Ms. Wendy Tadros: We first flagged issues with those cars about 20 years ago. They started to come up in our investigations. We made a couple of very specific points on them. As time went on we learned more and more. I would say that this accident gave us the opportunity to learn the very most, because the whole train was class 111 tank cars. We were able to study each and every tank car to see how it performed and how it failed in the accident. That's why we came out with a very firm recommendation on January 23.

[*Translation*]

Mr. Hoang Mai: Thank you very much for your recommendations.

With respect to the older DOT-111 tank cars, you said they should be retired from service. There is still no deadline for the gradual removal of these old tank cars.

The government says we must work with our neighbours to the south, meaning the United States. In your opinion, is it possible to issue a recommendation that the older DOT-111 tank cars be forbidden from moving through densely populated areas, for example, downtown cores? Would that not be an acceptable recommendation at least until the government sets a deadline?

[*English*]

Ms. Wendy Tadros: I'm not sure that it is possible from a system point of view. When I look at what is carried across Canada and the routes that those products have to travel over, I'm not sure that it is possible to avoid every urban area. We would rather see a more systemic approach that would have those older cars phased out so that the cars that do go through all of our communities will be safer.

[Translation]

Mr. Hoang Mai: I know the Minister of Transport has stated that a 10-year deadline, as proposed by the United States, is too long. We know that Canadian National has said that its deadline is about four years. The Irving oil company has mentioned a one-year deadline. Are you able to come up with a recommendation on that deadline? Or would you prefer leaving it up to the government to set its own deadline?

[English]

Ms. Wendy Tadros: What we have said is the sooner the better. The longer those cars are out there, the longer the risk is in the system. It is a very complex situation, and you're quite correct when you say that there has to be coordination with the Americans. This traffic is going back and forth across the border all the time, so you can't say some cars are American and some are Canadian. You can't do that.

What we have said to the regulators is, "This is your job. You work this out, and you come up with a timeframe that will get those cars out of service", and the sooner the better.

[Translation]

Mr. Hoang Mai: You stated that you discussed your recommendations with the Minister of Transport in terms of drawing up a plan. Do you know whether the minister has a specific plan for the deadline?

[English]

Ms. Wendy Tadros: The way it works with TSB recommendations is that the minister has 90 days in which to respond to our recommendations. That 90-day period is up on April 23. We will be watching very carefully to see what the response is.

[Translation]

Mr. Hoang Mai: After the Lac-Mégantic tragedy, you said that the Minister of Transport should require emergency preparedness plans for the transportation of large quantities of liquid hydrocarbons. Do those not already exist? What are the gaps and why do you need to make that kind of recommendations when it should have already existed? Are there currently gaps on the government side of things in this area?

[English]

Ms. Wendy Tadros: There are emergency response assistance plans required for some commodities, but they are not required right now for crude oil. This is what we are saying, that we need to take that model and extend it to crude oil.

• (0900)

[Translation]

Mr. Hoang Mai: Has the Transportation Safety Board expressed concern? We know that Transport Canada recently studied the classification of crude oil in one category. Has the TSB already raised the issue of crude oil being more dangerous today because of the additives it contains? If so, how long ago?

[English]

Ms. Wendy Tadros: We first raised the issue of the properties of the crude oil in the Lac-Mégantic tank cars in September. Then the

government moved forward with requirements for testing and proper classification of those goods.

[Translation]

Mr. Hoang Mai: I would like to come back to the issue of SMSs, which you discussed. In your opinion, for municipalities to be able to act and prepare themselves, would they not have to be properly informed about products moving through their area to ensure they have the necessary resources to prevent or deal with any accident or serious incident?

[English]

Ms. Wendy Tadros: This is an issue that we'll leave between the municipalities, the provinces, and Transport Canada. We are more concerned that there be emergency plans in place and that there be the right materials and resources there in the event that there is a catastrophe.

The Chair: Thank you very much.

We'll now move to Mr. McGuinty, for seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Good morning, everyone. Thank you for coming.

If I could quickly ask about the Lac-Mégantic investigation, does the Transportation Safety Board have all the financial resources it needs to complete this work?

Ms. Wendy Tadros: Absolutely. The way things work at the TSB is that we normally operate within our budget, the budget we're given, but if there are extraordinary circumstances, we can go to Treasury Board and request further funds. We can make a submission. We did that in the case of this investigation, and those funds were approved.

Mr. David McGuinty: Okay.

Ms. Wendy Tadros: This investigation, obviously, is one of our top priorities.

Mr. David McGuinty: The second question is based on the notes you distributed and spoke from, Ms. Tadros. It deals with the SMS. You say that the SMS is a very good tool that helps to mitigate steps in advance. Then you go on to say that you have serious problems with respect to the way in which the safety management systems are overseen by the regulator, Transport Canada. You talk about the need for audits and for strong regulatory oversight. You cite the Auditor General's report. I think a lot of Canadians get it; they understand that there's a partnership between the regulator—the government—and the railway companies.

How far are you willing to go? What else are we supposed to do here in this committee to strengthen regulatory oversight? What can you offer up here for our advice?

Ms. Wendy Tadros: I'm going to ask Kathy Fox to address that, because this is absolutely her area of expertise.

Mrs. Kathy Fox (Board Member, Transportation Safety Board of Canada): Safety management systems are extremely important to a transportation mode, an organization, to help identify and manage risk. That being said, they don't take away the need for very strong oversight, and that oversight can vary from strict inspections, to confirmed compliance, to auditing the effectiveness of their processes. The two work hand in hand. SMS shouldn't be a substitute for regulation or a substitute for oversight.

Mr. David McGuinty: Can you give this committee and Canadians three practical ideas for how we would strengthen this SMS private sector-regulator relationship and interface? What two or three things should we be doing?

Mrs. Kathy Fox: The first thing is to really look at how companies have implemented SMS. Unfortunately, some companies may see it as a manual and not a pervasive process that has to take place throughout the company, which has people in a constant mindset of looking for things that can go wrong. I think, first, the regulator has to look at how companies have implemented SMS and not just look at whether they have a process in place, but if that process is effective.

• (0905)

Mr. David McGuinty: Perhaps I could switch gears and go to another issue, which is the question of third party liability.

Since the accident in Lac-Mégantic, a lot of Canadians have been asking questions about who is responsible, who ought to have known, and who is responsible for the cleanup. We really have no idea and, to our knowledge, we have no real idea what the long-term costs of this are going to be. We have no idea, for example, what the ecological and environmental costs and damage will be in the waterways that have been affected.

Many Canadians have written to me asking this committee to look at third party liability and have gone as far as to say that liability has to be shared. They have mentioned bringing into the tent those who are importing, those who own dangerous goods. For example, if an oil refinery is importing diluted bitumen, or in this case, Bakken crude, and there's a problem and a major accident, then liability should be shared not only among the federal government, the provincial government, and the railways, but also with the owner of the crude in that tanker. Have you looked at this issue?

Ms. Wendy Tadros: No, we haven't looked at it and we won't be looking at it, because it's a matter outside our mandate. It's very clear in the legislation that we operate under that the board does not assign blame or liability. We leave that to other systems. We leave it to the CTA. We leave it to the courts. We leave it to policy-makers within government. We focus solely on safety issues.

Mr. David McGuinty: I'm not asking the Transportation Safety Board to assign blame; I'm asking whether the Transportation Safety Board has examined the question of liability in the context of improving safety. If liability were shared more directly with the owners of the dangerous goods that cause a problem, would that have a bearing, for example, on having the owner of that property, those materials, asking much more difficult, much more probative questions of the shippers, paying much closer attention to how that material is being transported? Would that not increase safety?

Mrs. Wendy Tadros: It would have to be clearly demonstrated that there was a strong link to the safety issues in a particular investigation before we would go down that road.

Mr. David McGuinty: Is that something you're looking at now in Lac-Mégantic?

Ms. Wendy Tadros: It's an ongoing investigation, so at this point we're still looking at everything, and I can't speak to the particulars in that investigation.

Mr. David McGuinty: You talked about the ERAPs, the emergency response assistance plans. When the government announced, with the Federation of Canadian Municipalities, that they had arrived at an agreement around disclosure, many people were astonished, frankly, that the decision made was that railways were going to be compelled to disclose 90 days after the fact what they had transported through a municipality. Many Canadians on the ground, councillors, mayors, citizens, were asking why we aren't actually asking them to disclose 90 days in advance what's coming through their municipalities so they can be better prepared, so their first responders can know, and all of these other issues that you've raised can be addressed.

Have you said anything about this or were you involved in this? Can you help us understand why it's after the fact and not before?

Ms. Wendy Tadros: We were not involved in that. I think that's an issue of public policy among the citizens, the municipalities, the government, and the railways. Where we do get involved is when there is a safety issue. There is a safety issue in terms of first responders. They absolutely have to know what they're going to be dealing with. They absolutely have to have the right resources in place if there is a major accident. That is the thrust of our third recommendation, calling for emergency response assistance plans.

The Chair: Thank you.

I will now move to Mr. Watson for seven minutes.

Mr. Jeff Watson (Essex, CPC): Ms. Tadros, thank you to you and your dedicated team. We appreciate that you are here as we undertake what is an important investigation of our own into how we can improve safety management systems in the transportation of dangerous goods regime. I want to thank you and your team for the work that you do, especially your work into what is a difficult and ongoing investigation into the tragic accident at Lac-Mégantic.

Let me start at the beginning. Obviously, we don't have a final report yet. Is there any expected timeline when we might see a final report? Is it likely to include additional recommendations than those that have been coming out so far?

• (0910)

Ms. Wendy Tadros: I'm always reluctant to give a date, because as soon as you give a date, it's not going to hold true.

This investigation is one of our highest priorities. We have a dedicated team on it. They are working on this and on nothing else. We are in the third phase of three phases of an investigation, which is the analysis and writing of a draft report. Following that, we have certain procedures that we absolutely must follow because they're in our act. That includes circulating a draft and receiving comments. We also have a huge number of laboratory reports that have been completed on this investigation. I think you can understand it's a huge task, but we are working to bring it to the Canadian public as soon as we possibly can.

Mr. Jeff Watson: Very good. I appreciate that. I appreciate the thoroughness with which you're tackling this particular issue.

I want to move to the issue of containment, if you will. With respect to Lac-Mégantic, there was a train that was going downhill, I believe at a considerable speed, prior to the derailment. Does anybody know how fast they would have been going before they derailed?

Ms. Wendy Tadros: The people at our lab, the engineers, did an analysis of that, and the speed depends on exactly which car you're talking about and at exactly which point.

Do you recall the average at the beginning?

Mr. Kirby Jang (Director, Investigations Rail/Pipeline, Transportation Safety Board of Canada): It was 65 miles an hour, in that range.

Ms. Wendy Tadros: The top speed was in the range of 65 miles an hour. But as I said earlier, those cars at the end were travelling much more slowly, and except for the last one there, you see that they are every bit as badly damaged as the ones that were travelling fast. So we don't think, and I have seen things in the press that have written off the notion...well, nothing would have withstood that kind of speed. I discount that.

Mr. Jeff Watson: I wanted to ask that question, actually. Is there a container that could have survived it, and if so, what features would it contain? That would obviously point us to a standard, if you will.

Ms. Wendy Tadros: Well, I can't tell you what would have withstood it, but I can tell you that if you have strengthened tank cars, they will hold up much better. The new proposals coming out of the Association of American Railroads are to require strengthening.

Mr. Jeff Watson: I'd like to clarify your position with respect to the DOT-111 standards. We understand there are essentially two classes of them. We had National Steel Car here talking about the difference between what they called legacy cars and good faith cars. Does the recommendation to phase out the DOT-111s relate exclusively to the older standard of DOT-111s or to the newer DOT-111s as well?

I'm trying to understand what your recommendation actually goes to.

Ms. Wendy Tadros: What we're saying to the Minister of Transport is that these cars need to be as tough as they can be. We know that the older cars, the cars that were in Lac-Mégantic, are not strong enough. They do not withstand collisions and derailments, and we've seen this for more than 20 years. We've seen it here and we've seen it in accidents in the United States.

There was a standard put out in 2011, and that standard is stronger than the standard for these older cars; however, we have seen cars that are built to the 2011 standard that are not withstanding derailments either. In particular, they have half-head shields, and we also see damage sometimes to the top of the head of the car.

We've suggested to the minister to take a look at the new standard that's being proposed by the AAR.

Mr. Jeff Watson: I appreciate that, because the question of phasing out points to the question of where we phase to, if we don't have a new standard. Clearly, if the old DOT-111s are inadequate entirely and the newer DOT-111s have deficiencies, then we have to arrive, especially with our American partners, at what a new standard would be so that we have a comprehensive solution as to where to point the phase-out.

Once that standard is in place, I think we can predict more accurately what the phase-out period will look like.

• (0915)

Ms. Wendy Tadros: Yes.

Mr. Jeff Watson: I appreciate that.

Emergency response action plans are a very important component, obviously, of the transportation of dangerous goods regime. As we know, I think in large measure because of your efforts to point us in this direction, we are looking at plugging gaps with respect to crude oil. An advisory committee has reported already to the minister, and officials are reviewing their recommendations on an expedited basis. We'll be hearing something about that in the near future.

The question I have for you, and I don't know whether TSB has a position on this or is agnostic on it, is, would you prefer to see separate emergency response action plans developed for classes of oil based on ignition potential or flashpoint? Should Bakken oil be treated differently from, say, Alberta crude that has been thinned with dilbit?

Do you people have a position on that?

Ms. Wendy Tadros: I would say generally that you want the emergency response plan to be geared to the risk of the product, but whether you want to divide oil as to which type of oil is a policy decision.

Mr. Jang is going to speak on that.

Mr. Kirby Jang: Certainly, in terms of ERAPs, they are based on risk assessments. We do know the properties of petroleum, crude oil, liquid hydrocarbons...also have variations in it.

Obviously the ERAPs are approved by the regulator. Our expectation is that those risks would be looked into, and it's a good point whether they are separate or perhaps encompassed within the same ERAP, with possibly the idea that we're looking at the same types of resources and of the expertise required, whether it's, for example, packing group 2, packing group 1, or packing group 3 risk involved.

The Chair: Thank you.

Mr. Braid, you have seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Ms. Tadros and your team, for being here today and for the important work that you are doing on behalf of Canadians.

Ms. Tadros, in your opening statement you mention that the second recommendation of the TSB deals with the way railways plan their transportation. You go on to say that this involves a comprehensive system-wide review of many variables. I want to ask you to elaborate a little bit on what those variables are and on the complexity of this particular recommendation.

Ms. Wendy Tadros: There are really three elements to this recommendation. The first is group planning. You take a look at your route and choose the safest route over which to carry those dangerous goods. If there's only one route, then you move to the second element, which is an examination of train operations to make sure that the operations on that route, whether it's the chosen route or the only available route, have the highest safety standards.

We would be looking to the railways to look at such things as track-side testing, speeds, ensuring that the equipment is of the highest standard, things like that, to make sure that they're playing the A game, really, on those routes.

Then what we've asked them to do is not make it static. You don't just put this in place and then move goods over that route for the next 20 years. We want them to follow up with risk assessments on an ongoing basis to make sure that the control measures they have put in place are working. You can have an accident with the same consequences as Lac-Mégantic that is caused by something totally different.

What you need to do is bring down the risk in the whole system that there are going to be accidents, derailments, for instance. You want to bring down that whole risk.

• (0920)

Mr. Peter Braid: To what extent are railway companies doing this now on their own?

Ms. Wendy Tadros: Some railway companies are, particularly Canadian National. There are some requirements in the United States called OT-55. If a large Canadian railway operates in the United States all the time, for those operations they have to comply with the requirements. Canadian National has said they are going to bring those requirements north of the border and implement them in Canada. We are asking them to go a little bit further than OT-55.

In terms of the concept, I think we've received positive feedback.

Mr. Peter Braid: I want to move on and ask you about safety management systems. In your opening statement you indicate that Canada's major railways and a number of short-line railways have been working to implement SMS and have taken significant steps. Then you go on to say that 12 years on, many of the systems they've implemented are not yet mature.

Why is that?

Ms. Wendy Tadros: Madam Fox.

Mrs. Kathy Fox: As I started to indicate earlier, some companies may—and I'm not talking about any one company, but just in general—take a very bureaucratic approach to safety management systems, assuming that the documents are just a manual; whereas in true

safety management, the best principles of safety management boil down to having processes in place that identify hazards, having very good internal incident reporting systems and follow-up on incidents before they lead to accidents, and having a positive safety culture in the company.

Some organizations, maybe partly as a result of the infrastructure to support it, of the internal knowledge within the company, or of whatever their priorities are, may not be moving as far along the continuum as they could be or should be or as we would like to see this far in.

Mr. Peter Braid: Generally speaking, though, do you agree that the introduction of the SMS some years ago and the continued evolution of that system is an important pillar of rail safety in Canada?

Mrs. Kathy Fox: Absolutely. We'll never know the accidents we didn't have because of safety management systems, so sometimes it's hard to measure the effect over a short period of time, but over a longer period of time, we would expect to see the risk in the system go down, and that should translate into less serious accidents.

Mr. Peter Braid: In your various reviews and investigations you must come across some safety management systems that are best examples or models of best practices. Has that been the case? How would you suggest that we further build out this important pillar of rail safety in Canada?

Mrs. Kathy Fox: We haven't done a cross-modal comparison or cross-company comparison of safety management systems. Certainly in each of our investigations we look at how companies are managing safety and we identify areas of risk.

Mr. Peter Braid: Finally, if I understand correctly, the Transportation Safety Board has something called a watch list. Could you explain what that is, what's on it, and how that evolves?

Ms. Wendy Tadros: This is something we began a number of years ago to bring attention to the safety issues that we felt were most important. On the watch list right now are the nine most important safety issues in the transportation system.

Are you interested in the rail issues only, or in all of the issues?

Mr. Peter Braid: The rail issues primarily.

Ms. Wendy Tadros: We have on-board video and voice recorders, following signal indications, and passenger trains colliding with vehicles in our high-speed train corridor. The first two of those issues are squarely coming out of our Burlington investigation, and they are both outstanding recommendations. As for the third, we see an awful lot of collisions in the high-speed corridor at rail crossings, and that's why that's on the list. These really are the issues where we verified and have done an awful lot of analysis to determine that they are the most important issues, and they're the issues that we really want to see action on.

• (0925)

The Chair: Thank you.

We'll now move to Mr. Sullivan, for five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): I want thank you for your excellent presentation at the very beginning because it gave us a very succinct analysis of where we are today.

I want to talk about risk analysis by the railroads themselves. In the U.S., rail carriers must analyze risk. Do they need to do the same thing in Canada, or is it only in the U.S. that they do that?

Ms. Wendy Tadros: This is part of a safety management system, so I'll let Madam Fox speak to that. She has a great deal of experience, particularly in the aviation industry, in terms of safety management systems, but the principles are the same.

Mrs. Kathy Fox: I would just say that there's a need for ongoing risk analysis of ongoing day-to-day operations, and there's certainly a need when operations change. For example, changes in the carriage of dangerous goods should trigger an SMS-type risk analysis. Changes in routes, changes in going from primarily, say, transporting goods on the Prairies to transporting goods in the mountains, any type of operational or significant change should trigger a risk assessment.

Mr. Mike Sullivan: Are you aware whether the railroads report these risk analyses to the government, or to Transport Canada, or to the Transportation Safety Board, or are they just left to their own devices?

Ms. Wendy Tadros: Transport Canada would audit the safety management system of railway companies because they're the regulator. The only way we would get involved in this is in an ongoing investigation. If we want to look at how the safety management system operated, then we would look at that in the context of that particular company and that accident.

Mr. Mike Sullivan: So you're not aware then whether or not any of the carriers in Canada have undertaken a new risk analysis based on the 400-fold increase in the transportation of diluted crude oil, for example.

Ms. Wendy Tadros: I'm not aware.

Mr. Mike Sullivan: I read the U.S. National Transportation Safety Board recommendation dated January 23, and yours is similar:

Rail carrier[s]...must annually analyze the safety and security risks for the transportation routes to include 27 risk factors, such as the volume,...track type, class,...maintenance schedule...curvature, environmentally sensitive or significant areas; population density along the route; emergency response capability...; areas of high consequence along the route.... [They] must identify alternative routes over which it has authority to operate and perform a safety and security risk assessment of those routes for comparison.

Then the FRA, the Federal Railroad Administration, analyzes those risk analyses and determines whether or not they need to be revised, whether in fact they are the safest opportunities.

We don't do that in Canada, do we?

Ms. Wendy Tadros: I can't tell you that we don't do it in Canada, because I'm not aware of what every single railway is doing in terms of their risk analysis. We're calling for the same thing in our second recommendation. However, there would be nothing to stop a railway company from doing that kind of analysis within their safety management system.

Mr. Mike Sullivan: With regard to what we've heard from people in the public who have asked why they don't move the trains around

major population centres, that would be part of the risk analysis, whether or not it's too expensive, whether or not it's possible, whether it's not as practicable. I know in the U.S. they do legislatively prohibit the transportation of dangerous goods, for example, around the city of Washington, D.C.

We don't do the same thing in Canada, do we?

Ms. Wendy Tadros: I'm not aware that we're doing that, but you have to look at things from a logistics point of view. These railways were built throughout Canada, and cities grew up along the railways. They grew up there because that's where their industries are.

For instance, if you want to route everything around the city of Montreal, but the goods are going to the port in Montreal, you're going to end up with a rail line—I don't know—way north or way south of Montreal, and then how are you going to get the goods in? You're going to have to truck them in.

I think that sometimes easy solutions are not the way to go. You have to look at the network. You have to look at the realities on the ground, and you have to bring the risks down within the system that's there.

● (0930)

Mr. Mike Sullivan: In terms of the DOT-111 specifically, since 1991 we've known they're not safe for the transportation of dangerous goods, and yet we've continued to use them for the transportation of dangerous goods.

When the Mississauga train derailment happened in 1979, the reaction from the regulator was to lower the speed to 15 miles per hour, until it was determined that it was safe, in other words, until there were enough inspection points along the route to give a reasonable assumption that it was safe. The transportation of dangerous goods in DOT-111s is now widely known not to be safe. Since we cannot stop them, can we at least slow them down? Is there a possibility that a 15 miles per hour regulation could be placed on DOT-111s through densely populated areas?

Ms. Wendy Tadros: Part of the route analysis is to look at the speed. That's one of the risk factors. Certainly that's something they should be looking at, but what was the speed...?

I was just asking Mr. Jang about the last cars there. For the cars you see that are very badly damaged, the ones that have derailed, the analysis has shown they were going about 20 miles per hour, so they were going very slowly. The problem with these tank cars is that they do not perform well in a derailment or a collision, even at lower speeds.

The Chair: Thank you very much.

Ms. Young, you have five minutes.

Ms. Wai Young (Vancouver South, CPC): Thank you very much for being here today.

I note that in the range of questions that were already asked, there seems to be a gap between what the standards say, what the train companies are doing, and what's being implemented. Would you agree with that comment?

Ms. Wendy Tadros: The devil is in the detail. I would think it would depend on exactly which fact situation you're talking about. As we have pointed out, there is certainly some room for improvement in the standards for the tank cars, for the operations, and for the emergency response.

Ms. Wai Young: For example, there's SMS, there are ERAPs, but it doesn't appear there's a consistent way of ensuring that SMS is followed or ERAPs are monitored or filed somewhere where they're consistently upgraded, looked at, or implemented. Would you say that's correct?

Ms. Wendy Tadros: We haven't looked at the ERAPs for other products, but they are required to be filed and approved by Transport Canada. You're talking about the auditing of the SMS, and that is something the Auditor General has dealt with in his report.

Ms. Wai Young: What I'm struggling with is we're hearing from you that obviously we know a lot more today than we did before, which is fantastic. We have these systems in place, but having said that, we've also heard from others to say that these things aren't followed up, or that's not done on a regular basis, etc.

Who looks after best practices to ensure that those safety mechanisms are consistently followed and in place?

Ms. Wendy Tadros: It's primarily the responsibility of the individual companies, the railways. The regulator provides regulatory oversight, so they do audits for SMS. They do inspections on the ground. Those two are intended to complement one another.

Ms. Wai Young: Do you think sufficient measures will be put in place in the report you've tabled and in your ongoing investigation to ensure that these gaps or oversights no longer happen?

Ms. Wendy Tadros: In this investigation and in almost all the investigations we do, one of the elements we look at is regulatory oversight. We will be examining those issues.

Ms. Wai Young: How is the public assured that the safety management systems are being followed to the highest standards?

• (0935)

Ms. Wendy Tadros: Kathy.

Mrs. Kathy Fox: Again, the Auditor General has done an extensive review of the implementation of safety management systems and Transport Canada's oversight of SMS in railways.

I'd like to add that every safety management system must have certain basic principles. They are specified in slightly different ways, depending on the mode of transportation. Air is a little different from rail, a little different from marine, but they're all based on the same principles.

I think what we've seen in our investigations is it isn't always easy to foresee the combination of circumstances that can lead to an accident, because there's always more than one, as we saw in the release of our report last week on the First Air accident. It has to mature over time as people gain experience, but that's why it's very important to have effective oversight.

Ms. Wai Young: As a committee we have heard from air, for example, but what I found interesting today in hearing from rail is that there doesn't seem to be the stringent reporting. With air, every incident must be reported. What I read here is that with rail that's not the case, but we're moving toward that. Is that correct?

Ms. Wendy Tadros: I'll ask Mr. Laporte to answer that question.

Mr. Jean Laporte (Chief Operating Officer, Transportation Safety Board of Canada): The standards for rail are just as stringent as in aviation or marine or pipeline. There are 10 criteria in our regulations, and if any one of those 10 criteria applies, then there's an obligation to report the incident, the accident, whatever the case might be. Most of the time we find a multiple of those criteria apply to a particular situation, so pretty well all the occurrences are reported.

In the rail mode, over 1,000 occurrences were reported in the past year. That figure has increased from the previous year by 4% in the number of reported occurrences in 2013 compared to 2012.

The Chair: Your time has expired.

Mr. Mai.

[Translation]

Mr. Hoang Mai: Thank you, Mr. Chairman.

In the case of the Lac-Mégantic tragedy, we know there was only one conductor. The Department of Transport had allowed only two companies to have a single conductor. MMA was one of those two companies allowed to operate trains with a single conductor. Have you any recommendations to make on that subject?

[English]

Ms. Wendy Tadros: This is one of many issues that we are looking at in this ongoing investigation from a safety perspective.

[Translation]

Mr. Hoang Mai: In 2012, the TSB issued recommendations on automatic braking systems for trains. We know that this is considered the ultimate integrated safety mechanism. It has already been implemented in the United States. However, Transport Canada has not yet proposed that this be required for railways in Canada. Have you any comments to make on that subject? Have you made recommendations to the minister? Why has this not been implemented here? Were you told why your recommendations were not followed?

[English]

Ms. Wendy Tadros: In the United States, positive train control was required by Congress, so a number of railways on a number of lines in the United States are moving towards that. I understand it's quite a challenge in terms of technology and in terms of money.

When we came to look at the situation in Canada following the Burlington accident, we decided there are a number of systems out there and we're not going to be prescriptive and say that it has to be PTC. We've outlined the safety problem and said there could be a number of ways whereby you get to that result, that you fix that safety problem.

This is a matter that I believe has been sent to an advisory committee and we're hoping there will be some positive movement on it.

[*Translation*]

Mr. Hoang Mai: Precisely, we should have an integrated system with the United States when it comes to DOT-111 tank cars. In the case of automatic braking, can you confirm that the United States are further ahead than Canada when it comes to implementing this safety measure?

• (0940)

[*English*]

Ms. Wendy Tadros: They absolutely are further ahead in the United States.

[*Translation*]

Mr. Hoang Mai: Let us be brief, as I do not have much time left.

You mentioned the Auditor General's report. As we know, he sharply criticized Transport Canada. He pointed out the lack of resources that would allow the minister to follow up on problematic cases. Could you please quickly tell us which portions of the auditor general's report you support?

[*English*]

Ms. Wendy Tadros: I'll have to go high level since there isn't a lot of time—

The Chair: Very quickly.

Ms. Wendy Tadros: —but, basically, I think that even though the Auditor General found problems with the way Transport Canada was overseeing safety management systems in transportation, if you read that report carefully, the Auditor General is strongly endorsing the notion and the principle of a safety management system.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you to our panel this morning. It's been very enlightening.

The issue of two-man crews has been brought up a couple of times and I wanted to touch very quickly with regard to the implementation of that. My understanding is a new directive that came out of your initial assessment of the Lac-Mégantic incident was for a permanent move to the use of the two-man crews. Is that also your understanding? With respect to the transportation of dangerous goods, is that the minister's directive?

Ms. Wendy Tadros: We'd have to go back and see if there was a time period on that. Yes, it was put in place very quickly, but whether it will continue ad infinitum, I can't speak to that.

Mr. Lawrence Toet: It is my understanding that it is a permanent —

Mr. Jean Laporte: Only to the transportation of dangerous goods; it doesn't apply to all trains.

Mr. Lawrence Toet: That's correct. But it is a very important issue that has been addressed in a fairly timely fashion based on initial recommendations, so it's good to see that.

I wanted to touch a little on one issue. In your look at the system-wide review of many variables, in dealing with your recommendations, you talk about the transportation of dangerous goods and how they're carried by railways. You gave one quick example of that, the

maintenance of the highest standards of the track and speeds that are appropriate. How do you see the whole network aspect of it? You do talk about that, the system-wide review of all the variables in the complete network. How do you see that being brought forward through this recommendation that you've brought up on the risk assessments? How do we ensure that these steps are being followed?

Ms. Wendy Tadros: There are two ways of doing it. You can have the railways file their plans with Transport Canada and have Transport Canada review them, or they can do it on an audit basis, and go out and choose based on the highest risk and audit those sections. There are a couple of different options that would be open to the regulator.

Mr. Lawrence Toet: It was interesting to note also in your presentation the changes we've seen. You talked about five years ago there were 500 cars moving oil and 160,000 in the last year. We've seen such a change in that, and yet today you also talked about the challenges we also face in that many of our centres, whether they are small centres or large centres, have grown up around the tracks and have moved in around the tracks to a large degree. The communities have actually moved closer to the tracks rather than farther away.

Ms. Wendy Tadros: Yes, that's correct.

Mr. Lawrence Toet: That's all part of that whole situation of how we come up with regulations that take into account those different factors. We have a lot more dangerous goods being moved as we see growth and expansion, and yet we also see growth towards the railways themselves.

How are we going to deal with this going forward? Have you given any thought to that at this point, or are there any recommendations you would be bringing forward concerning that?

Ms. Wendy Tadros: I think that really was the thrust of the three recommendations we made in January.

The first one is to get those class 111 tank cars out of there as soon as possible so that they are not running through our communities. The second is route planning and analysis, and following up with risk assessment to ensure that the operations over those routes where dangerous goods are being carried are the safest possible. The third is to make sure you have the resources in place if there is an accident so that you can contain the danger and the risk.

• (0945)

The Chair: Thank you. We never have enough time, but we have come to the end of the session.

I want to thank all of you for being here today. We have some more witnesses coming forth, so we are going to suspend for about two minutes. Thanks again.

• _____ (Pause) _____

• **The Chair:** We will resume for the second half of our meeting.

I'd like to welcome Mr. Jeanes and Mr. Gardner. Thanks for being here, gentlemen.

Without further ado, we'll turn it over to Mr. Jeanes, for 10 minutes or less, please.

Mr. David Jeanes (President, Transport Action Canada): Thank you, Chair.

Transport Action Canada is a national volunteer-based organization and a registered charity. We were created back in 1976 in response to an invitation from the government for public participation in planning the future of transcontinental rail travel. At that time we were known as Transport 2000. We later extended our area of interest to all public transportation modes—intercity bus, ferries, urban transit. We have had a long-standing interest in transportation safety and are frequently called on by the media for comment on safety matters.

We have affiliate organizations across Canada. One of our affiliates, le Groupe TRAQ, organizes the annual colloquium on railway safety in Quebec City, which I attended last week, along with many industry and government experts. We also have a strong involvement with airline passenger safety. This dates back to the Swissair flight 111 crash in 1998 when, with other groups, we founded an air passenger safety group that continues to consult with Transport Canada on an ongoing basis on air safety matters.

We do believe that statistically air and rail, which are generally federally regulated transportation modes, are very safe. However, accidents, particularly those with multiple fatalities, dangerous goods spills, or major fires do attract considerable media attention and raise public concern. We note that highway rail collisions or pedestrian accidents at rail crossings or on railway lines are actually a very small number when compared to the accident statistics for the highway mode. Nevertheless, we believe that rail crossing safety should be a continuing major concern of the federal government and particularly here in Ottawa where, in September of last year, there were six passenger fatalities on a double-decker transitway bus, an accident that should have been avoidable. Hopefully, we'll find out precisely why that accident happened before too long.

We are strongly supportive of the expertise and independence of the Transportation Safety Board and particularly of its openness about ongoing investigations. We understand the importance of not trying to second-guess the reasons for an accident before the TSB's investigations are complete. We note the items that have already been discussed today on the TSB watch list, and one which we feel particularly strongly about is the need for positive train control. Ms. Tadros mentioned to you the progress that's being made because of legislative action in the United States. Certainly in many other parts of the world, positive train control is the standard rather than something to think about sometime in the future. The TSB has been recommending it strongly, particularly since the VIA Rail accident at Saint-Charles-de-Bellechasse, Quebec, in February 2010, and the Burlington accident in 2012.

I will say as an aside on positive train control that I personally was involved in Ottawa with the planning of our O-Train here, which is the only federally regulated railway that does operate with positive train control. The O-Train has one-man operation. There is a German-based system that ensures the train cannot exceed allowable speeds at stations or cannot pass signals that are at stop. That technology has permitted that system to achieve a complete absence of fatalities or injuries among passengers over its more than 12 years of operation. Today it carries more than 14,000 passengers a day. It

would be good if that kind of technology had been extended to other railways in Canada.

We're also concerned, very much, about the issue of misinterpretation of rail signals, which was mentioned also by Ms. Tadros. Modern signal indications, particularly on high-speed lines, such as in Burlington, are purely visual; there is no backup and they're very complex for the train crews to interpret and react to correctly. In this context, the recommendations from the TSB regarding video and audio monitoring of locomotive engineers in the cab, as well as the monitoring of what is in front of the train, which involves cameras looking forward, are very important.

We participated in a number of railway safety events. We submitted to the Railway Safety Act review panel, which reported back in 2007. We've appeared before the House of Commons, before this committee, on air safety. We've appeared before the Senate committee on the amendments to the Railway Safety Act, where we strongly supported the introduction of safety management systems.

● (0950)

In May last year we spoke at a conference of the International System Safety Society of Canada on system safety in rail transportation. We attended the Canadian Transportation Research Forum seminar in January of this year on rail safety and transporting dangerous goods in Canada and, as I mentioned also, the TRAQ conference in Quebec City last week.

Looking at another recommendation of the TSB that relates to alternate routes for dangerous goods transport, we have a strong concern right now about the abandonment of historical main railway lines which is putting our national rail system at risk. For example, when Canadian Pacific sold its line that used to operate through northern Maine to Saint John, New Brunswick, this essentially reduced our rail network to a single route east of Quebec City, which totally disrupted train transport between the port of Halifax and central Canada when a major derailment occurred in Montmagny a few years ago.

In the last two years we've seen abandonment of the historic transcontinental railway lines in the Ottawa Valley, leaving only trackage through the greater Toronto area to connect eastern and western Canada, with no alternate routes that avoid that populated area. This year we're about to see the abandonment of the historic Intercolonial Railway segment in New Brunswick between Newcastle and Bathurst, which will leave only one railway route into New Brunswick. We think that's an area which the federal government and Parliament should be concerned about.

Looking back at passenger transportation safety, which is our main concern, obviously, since the disastrous Hinton crash in 1986 when 23 people died, we've had a very good record with VIA Rail. VIA has actually only had three passenger fatalities in accidents since then: two at Coteau, Quebec, in 1992, and one at Biggar, Saskatchewan, in 1997. It has of course had accidents causing the deaths of train crews: the tragic loss of three lives in Burlington in 2012 and of two engineers in Kemptonville, Ontario in 1999, but essentially travel by train in Canada is extremely safe.

With respect to technology investment, the railways must continue to invest in technology as well as in their processes for safety management systems. An example of the failure to do that was the Toronto subway accident in 1995 where 40-year-old automatic train-stop technology failed to operate correctly and there were three fatalities. That, of course, was not a federally regulated rail system, but it's still an example of what happens when you fail to go with the latest technology.

In fact, in other countries that do have modern technology for automatic train control, there have still been serious accidents where there were gaps or flaws in the system. The two most serious accidents were in Britain: at Ladbroke Grove in 1999, with 31 deaths when two trains collided head on because of a failure to observe signals and a failure to use the existing positive train control on that system; and an earlier accident in 1988 with 35 deaths, again involving a failure of an outdated signalling system. In Spain, the crash at Santiago de Compostela with a high number of fatalities last year was a result of a bad design interface on completely new track between two different and incompatible signalling systems. Investment in technology is important.

To wrap up, again, Transport Action supported the safety management systems in the Railway Safety Act. We did express in the past some concern about the resources of short-line railways particularly to afford the implementation of these measures, though the major railways clearly have been making the appropriate investments in introducing that safety culture. The Lac-Mégantic accident may in fact show a failure of the application of SMS, but we await the TSB report on that.

I will point out that those concerns, particularly about the ability of smaller companies to implement SMS, were previously raised by Mr. Justice Virgil Moshansky, who led the inquiry into the Air Ontario crash in Dryden, Ontario, in 1989, obviously long before this. Mr. Justice Moshansky expressed concerns to the Railway Safety Act review panel back in 2007 and more recently about whether the safety regime can be effectively implemented everywhere.

I think those are my main points, and I'd be happy to answer any questions.

• (0955)

The Chair: You were right on time, Mr. Jeanes. Thank you very much.

Mr. Gardner, for 10 minutes or less, please.

Prof. Daniel Gardner (Professor, Law Faculty, Université Laval, As an Individual): I will try to do the same.

Good morning, everybody.

In a perfect world I would make my presentation in English but the problem is my English is only good after the first hour, and I don't think we're going to be here after an hour, so allow me to do it in French, please.

The Chair: No problem.

[Translation]

Mr. Daniel Gardner: Good morning to all.

I was invited to appear, but not told why. I will therefore be perceptive. Given that I am a specialist in liability, insurance and assessment of damages, I suppose I am here to speak about compensation rather than prevention.

Since this morning, we have heard a great deal about safety and prevention. Those are extremely important and must be seen to. That being said, we will never be able to reduce the risk of railway accidents to zero, anymore than we can with highway accidents or airline accidents. We must therefore consider, following the Lac-Mégantic disaster, creating a better compensation system than the one we presently have.

The evidence will no doubt be painful for the families of the 47 deceased victims. The compensation process will take over a decade and will provide extremely disheartening results. In fact, I predict that whatever compensation is offered to the victims, if there is a commitment with respect to liability, will not amount to anything by the end of the process as there is inadequate insurance coverage.

Let us set out a fundamental rule. So-called adequate insurance coverage is not a panacea. Even if we replaced MMA in the Lac-Mégantic accident by CN or CP, who both have insurance coverage of \$1 billion or \$1.5 billion depending on the type of disaster, we would still find ourselves with the same problem. The problem is one of liability. Insurance, as the word indicates, is liability insurance.

Therefore, what must be changed and has not changed to this date in terms of railway transportation, are liability rules. Railway transportation is the last major system that has not been updated when it comes to compensation rules. This has now been done in air transportation and of course, in road transportation—which generally comes under provincial jurisdiction—as well as marine transportation. Railway transportation is the only area in which this has not yet been done. It took a disaster of the magnitude of Lac-Mégantic to awaken people's minds to this issue.

I prepared a page and a half summary for you which I translated myself. I take responsibility for any errors it contains. The proposals in the summary could be implemented fairly easily.

There are all kinds of possible solutions. We could introduce, as they have in some Australian states, an automatic compensation system for railway accident victims. This would require changing certain structures. I could discuss this further with you if you wish, but I would like to be more pragmatic and as efficient as possible. Under the current structure, it is possible to improve the compensation system for victims of railway accidents fairly easily by using rules that have been in place since 2003 in air transportation.

I say this would be fairly easy to implement, since the Canadian Transportation Agency, which is responsible for railway transportation, also supervises air transportation. The same organization would therefore be responsible for supervising these new compensation rules, which it already knows quite well.

How would this work? Essentially, in air transportation, we had the Montreal Convention. It was signed in 1999 and implemented in 2003. Over 100 countries signed the convention, including the United States and Canada, obviously. That convention stipulates a two-stage liability regime for the carrier. As you will see, it is easy to draw parallels with a railway carrier.

First of all, because this is an international convention, we do not speak of dollars, but rather Special Drawing Rights, or SDR. In the Montreal Convention, there is a first level of compensation set at 100,000 SDR, which is equivalent to \$175,000 Canadian today. Obviously, this varies from country to country.

In this first level of compensation, the carrier's liability is automatic. The only way the air carrier can avoid having to pay—or rather having its insurer pay—is to prove that the victim was at fault. If we transpose this to the railway transportation context, we could point to the example of trespassing on railway tracks. In such a case, the carrier would have the right to invoke the trespasser's faulty behaviour and avoid having to compensate anyone following injury or death.

That first level provides quasi-automatic compensation, unless there is evidence that the victim was at fault.

• (1000)

Beyond that first level, the carrier may still be liable, but has more means at its disposal for exoneration. I am talking about what currently happens in the case of air carriers. The carrier may invoke the victim's faulty behaviour and its own lack of faulty behaviour. It may claim to have taken all reasonable measures to avoid the accident or claim that the accident was caused by a third party.

We therefore see that it is still presumably at fault, but not liable. Compensation may still be granted without a ceiling since the Montreal Convention abolished previous ceilings for compensation in the case of airline accidents. Compensation remains possible, but the carrier has more means at its disposal to exonerate itself.

Ladies and gentlemen, this is easily transferable to the railway sector. All that would be necessary would be separating, on one hand, personal injury, cases of bodily harm and fatalities and, on the other hand, property damage. The current problem is that the system deals with personal injury and property damage under the same liability insurance coverage.

This is my deeply held opinion. It seems to me that the motto “people before property” should be applied to our way of viewing compensation issues for victims of accidents. It is all very well to pay for environmental damages and to rebuild destroyed property, but the priority should be first and foremost to compensate people. That is why we must set up a liability insurance regime for railway carriers based on bodily harm to ensure it does not go beyond the limit, so that victims do not end up with nothing. The goal is also drawing attention, above all else, to the victims.

With respect to the terrible accident in Lac-Mégantic, let us imagine the money is found and those responsible identified and that in 15 years, for example, the whole thing is finally settled and victims are compensated. Unfortunately, it would be too late because orphans will have grown up and people will have passed on or

moved on to something else. People need the money now, immediately.

You all know the English proverb which goes as follows:

[*English*]

Justice delayed is justice denied.

[*Translation*]

It applies perfectly to accidents involving bodily harm and fatalities. We must change the system and ensure that attention is given to people first and, afterwards, to property. If we do that, we will realize that not only is it feasible, but it is probably also what costs the least money.

It is terrible to say, but in the case of a disaster like the one in Lac-Mégantic, the worst damage was done to the environment and will probably cost well over half a billion dollars. Then, there is the damage to buildings and vehicles that were located in Lac-Mégantic's downtown core. The last item is compensation for the families of the 47 deceased victims.

As you know, I am a specialist on bodily harm and have made some quick calculations. Even though I am not familiar with the specific circumstances of the 47 victims, I guarantee you that if, tomorrow morning, full reparation was paid out, as happens before the regular courts, and the families of the 47 victims were compensated, it would all add up to less than \$25 million. It would probably be less than \$15 million. That is a drop in the ocean of costs following an accident like the one in Lac-Mégantic.

I would like to emphasize the economic feasibility of changing such a system. It could be done very quickly. The proof is that with a similar system, things have been working very well for the last 10 years in air transportation. Insurance premiums are predictable, fixed and accepted by insurance companies. Unfortunately, as they say, human life does not have a price, but it does have a cost which in legal terms is limited.

Thank you.

• (1005)

[*English*]

The Chair: Thank you very much, Mr. Gardner.

We'll now move to Mr. Sullivan, for seven minutes.

Mr. Mike Sullivan: Thank you, Mr. Jeanes and Mr. Gardner.

Mr. Gardner, I'm going to let my colleague ask questions of you, and I'm going to focus on Mr. Jeanes.

The reason we're here, I guess, is Lac-Mégantic, but in general the transportation of dangerous goods. You mentioned the abandonment by the railroads of a couple of what I would have thought to be key routes which didn't go through the city of Toronto but up the Ottawa Valley. These were done after the beginning of the wave of the transportation of crude oil. I wonder if you know—you probably don't—whether the railway companies actually used profit as the only driving method for determining whether or not to abandon those lines, or whether they took safety into account in analyzing the risk of whether or not to transport more dangerous goods through Toronto as a result of abandoning those lines.

•(1010)

Mr. David Jeanes: Well, the Canadian Pacific line up the Ottawa Valley avoided major population centres because it passed south of Ottawa through Smiths Falls. Of course many towns are on the railway lines. Many of the towns owe their existence to the railways, as did the town of Lac-Mégantic. So one cannot avoid population centres altogether.

The concern we have is there is such a concentration in such very narrow corridors. If you go east of Toronto, the only railway lines connecting east and west within Canada pass a few hundred yards apart through the city of Port Hope, and there are no other east-west routes connecting eastern and western Canada.

The derailment I mentioned, a very serious one that destroyed a bridge over the rivière du Sud in Montmagny, completely severed the only container route available to Canadian National between the port of Halifax and the rest of Canada.

This is partly to do with the effectiveness of our system as well as the safety of the communities. We've known about the dangers of transporting dangerous goods since the Mississauga derailment in the 1980s, and as was discussed earlier, there have been measures, mainly lower speeds and more automation in monitoring the correct performance of wheels, axle, etc., on the trains.

We just think that the abandonment of railway tracks in Canada for economic reasons should be counterbalanced with a government concern for the integrity of our national rail network so that we do have the kind of options the Transportation Safety Board is looking for.

Mr. Mike Sullivan: Thus far, this government and the government before it have been relatively silent on the whole notion of maintaining an integral structure.

Mr. David Jeanes: Also, the New Brunswick and federal governments are being almost completely silent right now on the abandonment of the Intercolonial Railway between Bathurst and Newcastle, New Brunswick, which is severing VIA Rail's passenger route from Montreal to Halifax and is taking away an alternate freight route into New Brunswick, should the main freight line through Edmundston become unavailable, as it did during the recent major CN derailment on that line.

Mr. Mike Sullivan: In terms of the Transportation Safety Board's recommendations in the past, and we expect there will be some in the future—there were some on January 23—with regard to the Burlington crash, which is the most recent on VIA Rail, there were three very specific and very detailed recommendations: one, positive train control; two, that video recorders be installed on trains; and three, that the cab of the train be structurally sound enough to protect its occupants in the event of a derailment.

To date, this government has not yet adopted any of those measures in any forceful way. VIA Rail has said that they will voluntarily comply.

Ought there be some kind of force by the Transportation Safety Board on this government to actually impose these new regulations?

Mr. David Jeanes: We think there should be. The example of the United States is that Congress took that responsibility by enacting legislation that there would be positive train control. Now there are

some logistical problems in when it will actually be completely rolled out, but the railways are already investing heavily there because they have to.

In the rest of the world, those kinds of investments have already been made. Positive train control in the United States actually goes back to the 1920s, when it was first introduced. Yet in Canada, with the single exception I mentioned of the O-Train in Ottawa, a passenger railway, we don't have it on any of our federally regulated rail lines that carry passenger traffic.

So yes, federal government action is required there. We're moving much too slowly in the wait-and-see attitude to see how it works in the United States after the railways there have made these investments, including Canadian-owned railways. CN and CP are making those investments in the U.S. portions of their network.

I think that's something the government must do.

•(1015)

Mr. Mike Sullivan: Those investments will cross the border. As those locomotives cross the border, so will the positive train control

Mr. David Jeanes: No, unfortunately—

Mr. Mike Sullivan: —on the locomotive itself—

Mr. David Jeanes: On the locomotive, but it's—

Mr. Mike Sullivan: —but not on the—

Mr. David Jeanes: But it has no value if it isn't also implemented by the wayside systems along the track—

Mr. Mike Sullivan: Exactly.

Mr. David Jeanes: —and that is an expensive component that must be addressed, whether it has to be addressed with private money solely.

The railways are the only mode that has to pay for all its own infrastructure. To solve this problem it may not be something that can just be left to the railways and their own investment programs. I think the government must be involved, particularly because of how far we lag behind the progress in the rest of the world.

Mr. Mike Sullivan: One of the things from the Transportation Safety Board in the analysis of the Burlington crash was that it was a missed signal, so it's human error. A missed signal is missed hundreds of times each day in Canada; it's only a handful of them that result in a collision.

Mr. David Jeanes: I don't think it's hundreds of times a day, because—

Mr. Mike Sullivan: Hundreds of times a year—sorry. It's hundreds of times a year.

Mr. David Jeanes: Hundreds of times a year, but I think perhaps once a day.

Now, many of those incidents are occurring at very low speeds in rail yards and so on, but it's not only driver inattention; the interpretation of those signals is extremely complex. There are many, many different colours of light indications. The colour and position of the lights are all you have to go on. There is no readout in the locomotive cab that tells you what the signal means, unlike railways in most other parts of the world, and there's no backup should the crew, for whatever reason.... And we will never know the reason for the Burlington crash, because we don't know exactly what was happening in that cab, hence the recommendation for cameras and audio recording.

On the third recommendation on protection of the actual driver's cab, that was a tragic way that accident unfolded, with the way the locomotive collided with a concrete building beside the track. That particular thing, while important, we don't view as being nearly as important as addressing the need for positive train control.

The Chair: Thank you.

Mr. McGuinty, you have seven minutes.

[*Translation*]

Mr. David McGuinty: Thank you, Mr. Chairman.

Professor Gardner, I would like to discuss your proposal. You mentioned the importance of placing people above all else and, in that perspective, you are proposing a new compensation regime for people who are victims of accidents. However, in today's study, we are mostly discussing railway safety to avoid having accidents. I understand what you are proposing quite well in terms of compensation, but I would prefer the issue not be addressed after the fact, but rather avoided altogether, so that a tragedy such as the one in Lac-Mégantic does not reoccur.

In Canada, railway companies have to transport all the products they are presented with, including dangerous goods. It is therefore understandable that Canadian National and Canadian Pacific each carry liability insurance of over \$1 billion. What do you think of the idea that owners of dangerous goods should also have to share the liability?

In the case of Lac-Mégantic, the Irving company owned the goods being transported. From what I understand, that company had absolutely no responsibility. In other words, it was not up to Irving to pay for the clean up in Lac-Mégantic. It was not responsible for compensating local residents. Finally, it did not have to pay for the environmental remediation.

Is it your opinion that the time has come for the owners of such goods to assume some responsibility? What do you think about this issue?

Mr. Daniel Gardner: This may surprise you, but that already exists in Quebec, and has been there since 1978. That is not recent. Since 1978, the Environment Quality Act stipulates that all owners of contaminants — and of course the act lists contaminants, including the oil that was being transported through Lac-Mégantic —, even if they are not in their control at the time of the accident, are responsible for the clean-up costs. Furthermore, the order was issued by the Minister of the Environment.

You say that Irving owned the oil, on July 6, the day of the tragedy. However, according to certain statements made in the context of the current class action suit, it would seem that that issue is in dispute. Did World Fuel Services, the company who initially owned the oil, remain its owner until the oil arrived in the port of Saint John, New Brunswick? Or did Irving own it? To my knowledge, the notice was sent to both presumed owners.

As you can see, such measures already exist, but unfortunately, the Department of the Environment is the only beneficiary. This only has a bearing on environmental damages. That provision cannot be invoked for anything to do with victims' compensation, including under a class action suit.

Would it be feasible? Certainly. Will this provision, which triggered an order, be challenged by the owner, probably all the way to the Supreme Court, so it can be deemed unconstitutional? Most probably. Will these people succeed? In my opinion, no, as was the case for tobacco companies who lost before the courts when legislation specifically allowing them to be sued was enacted.

The fact remains that for this particular issue, things will drag on for 10 years. That is how long it would take for a constitutional challenge of this provision. I do not know if such a provision already exists in other provinces, but this particular one has existed in Quebec since 1978.

• (1020)

Mr. David McGuinty: Given the Lac-Mégantic events, is Quebec rethinking the fact that liability begins and ends with issues that are strictly ecological and environmental?

Mr. Daniel Gardner: As you know, railway transportation is mostly under federal jurisdiction. Therefore, even if Quebec wanted to intervene in an accident such as Lac-Mégantic's, it would be unable to do so. It would have happened a long time ago were it possible. For example, the Automobile Insurance Act, which provides for automatic compensation, excludes trains simply because of jurisdictional issues, whereas in other states like Australia—I am choosing Australia as an example because its federal regime is similar to ours—not only are car accidents covered by automatic compensation, but train accidents are as well.

This really is about shared jurisdiction. The Quebec government could in fact go that way for its internal railway tracks over which it has jurisdiction. The problem or advantage is that internal railway tracks, which fall under Quebec's jurisdiction, go through very sparsely inhabited areas, whereas tracks that are under federal jurisdiction go through Quebec's cities and villages. Those tracks present the greatest risk of incidents in which there would be victims suffering bodily harm and victims of property damage.

Mr. David McGuinty: According to your testimony today, it would be possible for the federal government to completely review the issue of civil liability and that that liability be shared with the deemed owner, meaning the company which would eventually be affected.

Mr. Daniel Gardner: There are two ways of approaching this. The first would be to make only the carrier liable but the freight rates would vary according to the dangerous nature of the product and everyone would have that mandatory insurance.

The second would be to make the carrier directly liable—ultimately it is their insurer who will have to pay compensation—and to give them a special subrogatory recourse right against the owner who would have shared liability for the goods in question. Regardless of the approach, I think that it would be logical to make the owner of a dangerous good more responsible than the owner of chickens or grains, which is how it used to be in rail transportation.

The point is to share the risk, whether that is done directly with a regime by which the owner pays a share of the insurance premium, or a liability regime for the owner who will have to subsequently respond.

What is important is that it not be the victims who have to figure out who to prosecute and who to ask compensation of. The carrier or the insurer must provide automatic payment.

[English]

The Chair: Thank you, Mr. McGuinty.

We'll now move to Mr. Watson.

[Translation]

Mr. David McGuinty: Thank you very much.

[English]

The Chair: Sorry, I didn't mean to cut the interpreters off. My apologies.

Go ahead, Mr. Watson.

Mr. Jeff Watson: I appreciate that. I'm actually writing down what the interpreters were just saying because that latter point was an important one about—if I understood correctly—victims being compensated apart from the question of shared liability between the carrier and a third party. That was the point made at the end.

Let me thank, of course, our witnesses for appearing here today. We appreciate your contributions. Obviously we are undertaking at the minister's request an important study into how we make improvements both to safety management systems and the regime around the transportation of dangerous goods as well.

On issues of liability, I know we're looking more at what we're doing to improve liability regimes for the marine sector, for example, with a major panel report that has already come due. Their recommendations are under consideration and review, if you will, in an expedited fashion by the government and our officials. I suspect we'll be hearing more about the crude oil regime in particular. There's an additional element where we're looking at our preparedness for hazardous materials by the marine mode of transport as well, so these are very timely.

Your contributions, Mr. Gardner, on the issue of liability are important to this committee.

I have a question, Mr. Gardner, about the Canadian Transportation Agency's consultation, the railway third party liability insurance

coverage regulations. Have you contributed or made a submission to that particular effort by the CTA?

• (1025)

[Translation]

Mr. Daniel Gardner: I learned last week that there were consultations. On top of teaching, I travel all over the world. For example, at the beginning of the month I went to France to speak about railway accidents. Next May I will be in Spain speaking about the Saint-Jacques-de-Compostelle tragedy. I only learned more or less yesterday that there had been an invitation to contribute and that the deadline was March 21.

I'm late and it is simply because I was not told. There's some news that apparently does not make it all the way to the rural areas in Quebec.

[English]

Mr. Jeff Watson: It's not a question of blame or anything, Mr. Gardner. We appreciate that. I just wanted to know whether you were aware of it or had a chance to do that. Your submission here obviously is important. It's on the public record, and it's important for consideration as well.

If you wish, as well, to table for the benefit of this committee any type of written submission, that would be appreciated. If you want to formalize some of your thoughts or put together a more comprehensive submission to the committee, we'd welcome that for sure.

That could also be distributed, I presume, as well.

[Translation]

Mr. Daniel Gardner: Yes.

[English]

Mr. Jeff Watson: I could take a copy of that to the minister, relative to the other process.

Mr. Jeanes, you've been before our committee before. I've been on this committee since 2007. We value that you and your organization continue to stay actively engaged and active with respect to appearing before this committee.

I don't want to sound like I'm picayune, if you will, on this, but I do want some clarity on a particular point. That relates to positive train control. Ms. Tadros was here earlier, and I think what I heard in her response was that the TSB's recommendation was not specific to positive train control, but to fail-safe mechanisms for braking. That implies there are other ways of achieving fail-safe than positive train control.

I'm hearing the NDP continue to raise this, that it was a recommendation for PTC, and I think I've heard the same, Mr. Jeanes. For clarity's sake, there are other mechanisms to achieve fail-safe other than PTC. Is that correct?

Mr. David Jeanes: The problem is that PTC, depending on where you are in the world, is really a generic term and has different meanings. There are very specific implementations of different kinds of positive train control.

The Japanese bullet trains, shinkansen, have had complete automated train control in the cab, not dependent on signals beside the railway lines, since 1964, when those trains started running. As I mentioned, even American steam railways back in the 1920s, the Pennsylvania Railroad, for example, had mechanisms for positive train control, as did the Great Western Railway and other railways in the United Kingdom.

The technology has many forms and has evolved in many ways. You have situations like the one in Santiago de Compostela, Spain, where there was an older system interfacing to a more modern system, and the interface itself between the two systems was part of the cause of that accident.

The situation in Canada is that we only have the visual indications and the two engineers in the cab as the way of checking that. In the case of Burlington, that didn't work. There was a third qualified engineer in the cab. Although in training, he was a qualified and experienced engineer. That still did not prevent the misinterpretation of the signals there.

When I say positive train control, I mean a system that provides the second line of defence so that if there is a mistake made, or if a signal malfunctions, as it did at Saint-Charles-de-Bellechasse when the VIA Rail train derailed when the signal was partly obscured, there will be a second line of defence. That is the recommendation of the TSB.

• (1030)

Mr. Jeff Watson: Okay. I appreciate that. I only draw the distinction because Ms. Tadros drew the distinction herself, Mr. Jeanes.

If there are varying models, which one are you recommending that Transport Canada implement here? Is it what they're doing in the United States? Is it a different model? For greater clarity, when you're talking about positive train control and making the recommendation, what model are you asking us to consider?

Mr. David Jeanes: Because we have a fully integrated rail network between Canada and the United States, because both Canadian railways operate extensive track in the U.S., and because they're equipping their locomotives to meet the American standards, I think we have to observe that integration.

What's done in Europe is useful. The German technology I mentioned, Indusi, is used on Ottawa's O-Train, the only federal railway that uses it. It's also used on light-rail systems in Calgary and Edmonton, for instance, to provide safety.

But we can't go and buy a European system off the shelf, because it would not work across the interface between Canada and the U.S.

The Chair: Thank you very much.

We'll now move to Mr. Toet, for seven minutes.

Mr. Lawrence Toet: Mr. Jeanes, I also wanted to touch on the positive train control aspect of things. There does seem to be a little bit of misunderstanding on exactly what is happening in the United States today on this particular issue also.

Are you aware that currently in the United States there is a bill that has been introduced to extend the full implementation of positive train control?

Mr. David Jeanes: Yes.

This is an administrative issue because railways have indicated back to the government that they cannot meet the original deadline of 2015, which was mandated by congressional legislation. It's still an open question as to when. What is not an open question is whether it is going to happen. It is happening, and the railways are investing heavily. The only question is by when will it be converted. Obviously, that's still a matter for discussion. But in Canada there is not yet any program.

Mr. Lawrence Toet: However, in the U.S. one of the challenges they're facing with their 2015 deadline is the technology is not really there yet 100%. They're still working through that process.

Also, they estimate, from the Federal Railroad Administration, that PTC would prevent perhaps 2% of collisions and derailments and it's going to cost over \$10 billion to do the implementation. That money is also being diverted from other safety measures. There is a belief out there also that these would actually create more effect than the 2%, but because of the railways investing so heavily into PTC right now, there is a challenge there as to directing their funds in the right direction.

This is not to say there's an issue with PTC and that it's not something that should be looked at seriously, but I think it is important that we recognize these factors in this going forward and that there is a reality that this legislative requirement has put a real burden on the railways. Some of their other safety measures that they may be able to implement they haven't been able to implement because of the money that they're actually directing so strongly into this particular piece of legislation.

I think it's just good and important that we're recognizing those types of things.

The other thing I wanted to ask you about is in regard to safety management systems. You touched on it briefly in your introductory remarks that you were supportive of safety management systems. I'm glad to hear that. I just wanted you to comment on your perception of the addition of SMS to the safety regime for Canadian rail, and the effect that has had. Maybe you could comment on your perception of the effect that has had on the safety regime in Canada.

Mr. David Jeanes: I think the important thing is that it has established that the railways have to have their own safety culture; they have to have responsibility for safety at the highest management levels. It isn't something that is just responding to problems identified by government investigators, but it is part of the operating culture. It is something that requires continuous investment by the railways. I mentioned already that the railways have to invest in their own infrastructure because governments, unlike other modes, don't pay for railway infrastructure in general, with the exception of course of infrastructure improvements for VIA Rail, which is a crown corporation and therefore depends on government investment for its infrastructure improvements.

Generally what we have seen, and it has certainly been evidenced by the presentations that I've heard at the number of events I've attended.... I mentioned the Canadian Transportation Research Forum meeting earlier this year, where we had a number of presentations from the mainline railways, the short-line railways, and the supply industry. It was the same thing with the International System Safety Society meeting, which I attended and presented at last year, and the TRAQ conference.

The railways are all extremely conscious of the importance of safety. I think it is the introduction of SMS that has brought this elevated consciousness. The question is one really related to the resources of the smaller companies and can companies like MMA, Montreal, Maine & Atlantic, with respect to Lac-Mégantic, afford to properly implement the safety regime that is required. We don't know yet because we haven't had the final report from the TSB to what extent the safety management culture within MMA may or may not have been deficient. We're waiting to hear that.

•(1035)

Mr. Lawrence Toet: I would submit that they cannot afford to do.

Mr. David Jeanes: With tragic consequences if they don't.

Mr. Lawrence Toet: Yes.

Going further, when you answered the question, you talked about SMS being so critical and important at the management level. Last week I had a tour of one of the major rail facilities with the president of the company, and also the president of the union. Actually, what I saw at that particular time was a real pervasiveness right across the structure into the safety management system. The workers also have been very much involved in it and its being important.

Can you comment on how important it is? It's important for management to have this buy-in and to be involved, but could you comment on how important it is from a worker's aspect, because the culture, if it doesn't get down to the people at the ground level, doesn't really adequately suffice, right?

Mr. David Jeanes: No. The railway employee who is in that high rail truck that is actually running out on routine inspections on the rail line is just as important as the chief safety officer of the corporation in making that happen. If there is any reluctance, for example, to do whistle-blowing on safety problems at the working level, then it will not actually be possible for the chief safety officer to do his job and perform his role.

That openness and the fact that everyone in the corporation understands that safety is part of the corporate culture and not just a management and reporting issue, is essential. I think SMS is understood to require that culture to be created.

The Chair: You have 40 seconds.

Mr. Lawrence Toet: I have a quick question on that. As we go forward looking at safety management systems, if you could give us one recommendation as to one of the most important components of safety management systems which we should be looking at as a committee, what would you say that is, in a very brief response?

Mr. David Jeanes: Well, the effectiveness has to be monitored. We've already had some concerns expressed by the Auditor General, and if there any concerns about the implementation of safety

management systems that come out of any of the TSB reports that we're awaiting, then those should be promptly responded to.

The Chair: Thank you very much.

Ms. Boutin-Sweet, you have three minutes.

[Translation]

Ms. Marjolaine Boutin-Sweet (Hochelaga, NDP): Thank you very much, gentlemen.

Given that I only have a little time, both my questions will be for Mr. Gardner.

You have referred several times to compensation, civil law, and so on, but I personally would like to hear you speak about the human aspect. You said that we need to put people first and I really appreciate that.

In a article in *La Presse canadienne* in August you wrote about our moral obligation. My first question is this. What do you mean by that?

You did not mince words in speaking about the Transportation Safety Board of Canada, the TSB, and Transport Canada. You stated that they had failed and that they had been lax in the case of the Lac Mégantic tragedy. My second question is, what should they have done, what do they not do, and what should they do?

Mr. Daniel Gardner: In answer to your first question about a moral obligation, I will simply remind you of what happened in Canada approximately 20 years ago with the tainted blood scandal. In that specific case, civil liability on the part of the Department of Health was never established in the federal government court.

However, at the same time, there was a collective realization after political pressure that it was unacceptable that the victims of contaminated blood be left to deal with complex legal procedures that would never reach their conclusion because the victims would die before that happened. In the end, moral obligation and national solidarity dictated the implementation of a compensation regime that, without necessarily fully compensating victims because of the thresholds set out in legislation, provided for at least faster payments of reasonable compensation.

I feel, without wanting to imply federal responsibility in this catastrophe, that the Lac-Mégantic tragedy was a wake-up call for everyone. We realized just how much railway transportation had evolved and how necessary it was that insurance limits, and monitoring and other measures, be updated. This tragedy happened and it led to 47 deaths.

As I already stated, compensation costs would not be particularly high for government if, on the grounds of national solidarity, it provided partial, not full compensation for the victims, as civil courts do. The government could ensure that these individuals not have to wait 15 years before they receive any compensation. That is my answer to your first question.

The second question is an interesting one because the Transportation Agency was the last to be added to the list of respondents in the class action suit in Quebec brought by representatives of the victims. Is the Transportation Agency legally liable for what happened?

Obviously one cannot accuse the Transportation Agency on the grounds that there were insufficient regulations. That is a political issue and, fortunately, judges do not get involved in political issues, in other words, which regulations should be adopted.

Did the agency improperly enforce current regulations? That was the argument in the amendment put forward regarding the CTA's liability. I see absolutely no evidence on one side or the other that would indicate to me that the CTA wilfully turned a blind eye to how the regulations were enforced, that they were complacent and that that was the cause of the derailment in question.

We can certainly agree that the legislation was insufficient with respect to the current liability insurance coverage regulations that provide for sufficient coverage, when we know that some of these companies were insured for less than \$100 million and even considerably less than \$50 million. Now that we know the potential consequences of these accidents given how dangerous these products are, obviously the law is inadequate. The problem is that this still does not deal with the civil liability of the state.

• (1040)

[English]

The Chair: Thank you. I'm sorry to cut you off, but we're getting to the end, and I think we got the answer.

Mr. Komarnicki, you have the last three minutes.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): With respect to the compensation issue, I gather you were saying that justice delayed is justice denied. I suspect that you're suggesting a more expedited process. What are you suggesting as a tribunal or a process? It has to be quasi-judicial or a court-like setting, because you're dealing with issues of fact and law and so on. What are you proposing that would expedite the system, as opposed to a regular court system?

[Translation]

Mr. Daniel Gardner: Consider the case of a two-tiered regime. As I said, unless it's the victim's fault, the carrier is automatically liable. The current Carriage by Air Act allows for compensation if there is an air accident. That could simply be made mandatory for rail transportation. Some compensation would have to be provided to the victim very quickly, in the months following the accident, up to a

first level. That is what I proposed in the summary that I gave you. In cases of derailments and collisions, because there would be automatic liability, an amount would be immediately provided to the victim and following that, there could be a trial to determine any further amounts.

[English]

Mr. Ed Komarnicki: You do interject another issue, and that is whether or not the damage was contributed to or caused by the negligence of the victim. Once you start determining that, and let's say it was mostly the victim, do you not find that you have to go through some kind of process before there's a payment out? There obviously wouldn't be any recourse for the funds afterward. Once you get into the process, it becomes a question of finding out what the facts were, what the responsibilities were, and so on.

Is it not, then, realistic to expect a payout if you have to determine that additional issue?

• (1045)

[Translation]

Mr. Daniel Gardner: Let's apply what is currently done for air transportation to rail transportation. If a plane were to crash at take-off or landing, the carrier would definitely not go before the courts to argue against the victim. Obviously the passengers would not be at fault. The same would apply in cases of train collisions or derailments.

I gave you a hypothetical intrusion example, someone putting themselves on a train track. In that case there would be a trial in order to determine whether or not the victim was responsible. In the case of the Lac-Mégantic disaster, the carrier absolutely cannot argue that the victims were at fault. Therefore, there should be no question of deadlines for challenging payment of the first portion of compensation.

[English]

The Chair: Thank you very much, Mr. Gardner and Mr. Jeanes. We never have enough time, but our allotted time is up for this meeting. Thank you very much for being part of our study on rail safety.

The meeting is adjourned.

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