



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 027 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, May 15, 2014

—
Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

Thursday, May 15, 2014

• (0850)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call our meeting to order. I want to thank our witnesses for being here today. With us we have representatives from the Federation of Canadian Municipalities, FCM. We also have members from the Canadian Transportation Agency. I think everyone knows from the agenda that they're certainly two distinct organizations. I know there was a request from one of the groups to have their presentation and questions afterwards. We may have been able to deal with that in advance, but it's kind of hard at this point. I think the members here will certainly have questions for both of you, and they're going to be distinct and separate.

With that we're going to start with FCM, and I'll turn it over to Ms. Quinlan.

[Translation]

Ms. Pauline Quinlan (Co-Chair, National Municipal Rail Safety Working Group, Mayor, City of Bromont, Federation of Canadian Municipalities): Thank you, Mr. Chair.

I thank all the members of the committee for inviting the Federation of Canadian Municipalities to participate in the review of the Canadian transportation safety regime.

I am the mayor of the City of Bromont, Quebec, and president of the Quebec caucus of the Federation of Canadian Municipalities, FCM. I am very happy to be here today to represent FCM as the co-chair of the National Municipal Rail Safety Working Group of the Federation of Canadian Municipalities.

Unfortunately, Claude Dauphin, the president of the FCM, was unable to join us today. As a result, he asked me to pass on his regrets to you.

Accompanying me this morning is Daniel Rubinstein, senior policy advisor at the FCM on rail safety and transportation of dangerous goods. He is FCM's representative on the Transportation of Dangerous Goods General Policy Advisory Council and on the Advisory Council on Railway Safety. Also accompanying me is Stéphane Énard-Chabot, our external legal advisor, who spearheaded our third party liability commitment.

While my remarks are focused on third party liability, according to the agenda of today's meeting, we would be very happy to take this opportunity to answer the questions of the members of the committee on other aspects of rail safety in Canada, including information sharing, emergency response plans, tank cars standards and the need for sound risk assessments by railway companies and

companies that ship dangerous goods. We have worked closely with Minister Raitt and Transport Canada officials on all those issues.

As you may know, the Federation of Canadian Municipalities represents 90% of Canada's population, or about 2,000 municipalities from across the country. Our mission is to promote and protect the interests of all communities, small or big, urban or rural, central or remote, on all issues related to policies and programs that fall under federal jurisdiction.

The Federation of Canadian Municipalities has been raising various issues related to rail safety for decades. It has participated actively in a number of rail safety initiatives, particularly on the Transportation of Dangerous Goods General Policy Advisory Council and on the Advisory Council on Railway Safety. More recently, the FCM has played a key role in helping Transport Canada review regulations on level crossings.

FCM members are in a unique position to discuss this issue. Local leaders in Canada are not only deeply committed to ensuring the safety of the constituents they represent, but they are also very aware of the importance of rail transportation to the economy of their communities.

In the wake of the rail disaster that devastated the city of Lac-Mégantic, FCM's president formed a national rail safety working group with municipal leaders from across Canada. The working group has set a number of priorities, which, in FCM's view, need to be addressed in order to improve rail safety and to restore the public's trust in Canada's rail system, particularly in terms of the shipping of dangerous goods through our communities.

One of the priorities set by the working group is to ensure that the costs of rail accidents are borne by the industry and, in the broadest sense of the word, are not downloaded onto taxpayers, at the municipal level in particular.

[English]

Earlier this year, FCM participated in two consultations on the liability issue: the Canadian Transportation Agency's review of Railway Third Party Liability Insurance Coverage Regulations, and Transport Canada's comprehensive review of the third party liability and compensation regime for rail.

FCM's position on the need for changes to the current compensation regime for accidents involving railways is based on several principles.

First, the regime must provide comprehensive coverage and full compensation to anyone incurring costs or suffering damages as a result of a railway incident. This includes individuals, businesses, and public bodies such as municipalities and all levels of government.

Second, the regime must provide comprehensive coverage and full compensation for all types of losses, including environmental damages.

Third, the regime must provide compensation regardless of the cause of the incident, whether it be the result of an intentional act of negligence or even if it is purely accidental in nature.

Fourth, the regime must be based on the polluter pay principle, meaning that those members of the shipping continuum who use rail or benefit from the transportation of goods must contribute to the costs of the regime.

Fifth, while any insurance regime will generate costs to the railway industry and those who rely on it for their commercial activities, the regime must also recognize the essential role of railways in supporting economic activity throughout our country. The regime must, therefore, be structured in such a way as to avoid harming the viability of railway companies, especially short line operators whose resources are more limited than those of class I railways. It must also be structured in such a way as to avoid harming the competitiveness of the countless businesses that rely on rail transportation.

Lastly, access to compensation must not be contingent on the solvency or continued existence of the railway involved in the accident giving rise to claims for compensation.

Given these parameters, FCM recommends a two-tiered regime. The first tier, designed to address more frequent incidents arising generally from the day-to-day operation of the railway network, should be market-based, essentially building on the existing regulations enforced by the Canadian Transportation Agency. The second tier, designed to address catastrophic incidents, should be similar to the model currently in place for marine transportation that is funded not only by the carriers but by the entire continuum in the distribution chain, especially those involved in the importation, manufacture, distribution, and use of dangerous goods.

● (0855)

[Translation]

In terms of the first tier, we recommended that the Canadian Transportation Agency expand the list of factors currently used to determine whether the coverage is appropriate by including the geography, topography and environmental risks specific to a place where a railway company operates.

The Canadian Transportation Agency should also strengthen its transparency process to determine the adequacy and the disclosure of insurance amounts considered sufficient for each railway company.

The Federation of Canadian Municipalities also recommends that contractual deficiencies be eliminated so that innocent third parties can recover the damages from the insurance companies in the event of insolvency or bankruptcy.

An option would be for all insurance contracts to name the Crown in a subrogation clause. Railway companies should also be required to have policies that cover the late reporting.

Finally, we hope that mandatory minimum requirements will be implemented, but we also think that railway companies should be required to buy as much insurance as the private market will reasonably allow them to buy. In both cases, it is essential that insurance requirements reflect the scope of the carrier's operations, because it would not make sense to impose the same requirements on short line operators as on class I railways.

[English]

Even with these improvements to the day-to-day insurance regime, the fact remains that the public purse would act as the de facto insurer in the event of a catastrophic incident. Should a disaster strike in a densely populated area, it is not at all inconceivable that damages would exceed even the class I railways current coverage, understood to be well in excess of \$1 billion for both CN and CP.

Given these limitations, a new second-tier mechanism should be established to cover the costs and losses resulting from catastrophic railway accidents. While the exact structure and scope of this mechanism requires further consultation and financial modelling, FCM recommends the mechanism include the following characteristics.

First, the mechanism, whether it is a fee or cost-recovery levy, should be financed through contributions from the entire continuum involved in transportation of dangerous goods by rail—importers, exporters, brokers, producers, industrial purchasers, carriers.

Second, the mechanism should be accessible to anyone who has suffered a loss as a result of a railway accident—individuals, corporations, public bodies, and the various levels of government.

Third, indemnities paid through this process, per incident or per claimant, should not be capped.

Fourth and finally, the mechanism should include an emergency account that can be accessed immediately by authorities responding to an accident or an incident.

● (0900)

[Translation]

The Federation of Canadian Municipalities was happy to see that last year's throne speech included the commitment to require shippers and railways to carry additional insurance in order to be held accountable.

We hope that this clear commitment will result in a two-tiered third party liability approach that will make it possible to meet the challenges of providing coverage for disasters while ensuring the viability of short lines, which are essential to regional economies across Canada.

I thank the committee once again for allowing the Federation of Canadian Municipalities to share its point of view on this extremely important issue. As I mentioned at the beginning of my speech, we will be happy to answer any questions you may have about any aspects of the committee's study on the rail transportation of dangerous goods.

Thank you.

[English]

The Chair: Thank you very much, Ms. Quinlan.

We now turn to Ms. Frid, please, for 10 minutes.

Mrs. Nina Frid (Director General, Dispute Resolution Branch, Canadian Transportation Agency): Thank you very much, Mr. Chair and members of the committee.

[Translation]

My name is Nina Frid and I am the director general responsible for dispute resolution at the Canadian Transportation Agency.

[English]

With me here today is the agency's general counsel, Ms. Liz Barker. Thank you very much for the invitation to speak about the agency's role and how it relates to your study on rail safety.

I'd like to start by offering a few words about the agency and its role and its mandate. The agency is an independent administrative tribunal and economic regulator at the federal level with jurisdiction over rail, air, and marine modes of transportation as well as accessibility for persons with disabilities for all of these modes, including extra-provincial bus transportation.

I brought the Canada Transportation Act of 1996 here with me, the agency's enabling legislation. It outlines the extent of the agency's jurisdiction and its role in administering the act. Section 5 of the act sets out Canada's national transportation policy, highlighting a vision of an economic, efficient, and accessible national transportation system that meets safety and security standards and contributes to the sustainable environment. The objective of the policy is to allow competition and market forces to be the prime agents in providing viable transportation services while using regulation and strategic public intervention to achieve the outcomes that cannot be achieved by market forces alone.

In rail transportation, the agency's authority applies only to railway companies under federal jurisdiction. Currently there are 31 operating federal railway companies. The full list is available on the agency's website and anybody can view it. Among those companies are some of the largest railway companies in North America such as CN and CP, our passenger rail VIA Rail, and there are also some smaller railways that would be considered short lines.

What makes a railway operation a federal undertaking? For example, if the lines of that railway company cross a provincial, territorial, or international boundary, it is deemed federal. So Canadian National and Canadian Pacific are classic examples. They cross the Canada-U.S. border, so they're federal. If you ever visit the agency's website to see the list of the federal railways, you will see another example of a company called the White Pass and Yukon

Route Railroad company. That one operates across the B.C.-Yukon border, which is why it is deemed federal.

Another instance is the railway that is an integral part of an existing federal undertaking. For example, we have on our list the CSX intermodal terminals railway. It was deemed federal because it is an integral part of CSX Transportation, a large North American railway company.

With respect to federal railway companies, the agency performs a number of functions. It resolves disputes between railways and shippers regarding rail level of service, disputes between railways and citizens regarding railway noise and vibration, and other matters. The agency uses a range of dispute resolution mechanisms from facilitation and mediation to arbitration and adjudication.

As well—which is probably what you're mostly interested in—the agency issues certificates of fitness allowing railways to operate. The agency approves railway line construction, establishes inter-switching rates and determines maximum revenue entitlement for the movement of western grain and carries out a number of other functions.

The agency has no authority over railway safety or the transportation of dangerous goods. These matters are under the purview of Transport Canada.

● (0905)

As an economic regulator, the agency issues certificates of fitness for the proposed construction or operation of a railway. This is where we have a connection to the third party liability insurance coverage for a federal railway. Please allow me to explain in a few words.

Subsection 90.(1) of the Canada Transportation Act says, “ No person can construct or operate a railway under federal jurisdiction without a certificate of fitness.”

Subsection 92.(1) of the act states that:

The Agency shall issue a certificate of fitness for the proposed construction or operation of a railway if the Agency is satisfied that there will be adequate liability insurance coverage...

Subsection 92.(3) gives the agency the authority to make regulations related to certificates of fitness and railway third party liability insurance.

Subsection 94.(1) says that the holder of the certificate of fitness shall notify the agency in writing without delay if the liability insurance coverage has been cancelled or altered or if there has been a significant change in the operations of that railway that would mean that the agency has to revisit the liability insurance coverage.

It is very important to underline the fact that the legislation places the onus on the railway company and the holder of the certificate of fitness to inform the agency on a timely basis. The act also allows the agency to suspend or cancel a certificate of fitness if the agency determines that the liability insurance coverage is no longer adequate. How do we define adequacy? The agency issue of railway third party liability insurance coverage regulations, as the act allows...and I brought a copy with me. The regulations are available on the agency website, if somebody is interested. In those regulations, the agency determines the adequacy coverage on application by a railway in each case. You would hear an expression sometimes “on a case-by-case basis”.

Given the variety of railway undertakings at the federal level, as I mentioned earlier—and including on the one hand North American-wide railway companies like CN and CP, and on the other hand, seasonal tourist-operating undertakings—it was most reasonable to look at the adequacy in each individual case and application.

The regulations do not specify the minimum or the maximum amounts. Rather, the regulations outline a set of factors that the agency considers and applies consistently in reviewing each application and in determining the adequacy of third party liability insurance. These factors are all listed in the regulations but, to give you an idea, they include such things as the volume of traffic, the scope of the network—so we look at the freight miles or the passenger miles—the types of commodities carried, the types of population areas served, and the overall safety record of the applicant.

A typical third party liability insurance policy consists of two parts, essentially, the self-insured retention amount and an amount of coverage per occurrence and in the aggregate. The self-insured retention amount is what a railway must first pay, before the insurance company issues a payment to cover a claim. We think of it as a sort of deductible. The agency ensures, through its examination, that the applicant railway has the financial capability to pay the self-insured retention amount. The regulations require the railways to provide to the agency a written confirmation that they have fully disclosed to the insurer the nature and the extent of the proposed construction or operation and any associated third party liability risks. The regulations also require the railway to fully disclose all relevant information to the agency.

● (0910)

In the examination of an application for the certificate of fitness the agency verifies not only the financial strength of a railway company to pay its self-insurance portion, but also the financial strength of the insurance company to pay the contractual coverage obligation. The agency ensures that the proposed coverage is not out of line with similar railway undertakings. The specific amounts of third party liability insurance coverage for each federal railway are confidential, as well as the financial information that the railways provide to the agency for the examination. By the way, the railways make a claim for confidentiality for that information for competitive and commercial reasons.

The rail insurance market is highly specialized and it involves approximately 30 to 40 worldwide companies that are willing and able to offer railway liability insurance. And given their under-

writers' risk tolerance there are practical limits to what railways can obtain in the market for third party liability insurance. Rail insurers manage their exposure to risks by requiring detailed disclosure of risk factors by the railway at the moment of establishing the insurance policy. And according to rail insurers the most significant they consider is the railway safety record.

I understand that the Minister of Transport and the Department of Transport have made significant improvements and continue to work on improving rail safety, but as I said this is outside of the agency's jurisdiction.

The tragic derailment of the MMA train in Lac-Mégantic in July 2013 was the worst rail disaster in Canadian history. Prior to this, based on information that has been filed with the agency, to date in the past 10 years no federal railway company's claims ever exceeded the limits of their third party liability insurance coverage.

That said, the tragic derailment raised very important questions at every level including at the level of adequacy of third party liability insurance to deal with catastrophic events like in Lac-Mégantic and especially for smaller railways. This is why the agency announced public consultation and review. It was launched this fall. Comments were received from 23 various groups of stakeholders including the FCM as you heard. We heard from shippers, railways small and large, as well as insurers. The agency produced a summary report and opened another round of consultations to allow for comments and we received an additional eight submissions. That second round closed on May 9. And the agency is at the point right now of analyzing all of this information and preparing recommendations. We're working very closely with our colleagues Transport Canada on their review. Our review is limited to the review of the regulations and the agency processes and procedures, whereas Transport Canada's review could be much broader.

Thank you.

● (0915)

The Chair: Thank you very much.

We'll now move to questioning. You have seven minutes, Mr. Mai.

[*Translation*]

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

I would also like to thank the witnesses for joining us today. Their testimony contains a lot of very important information.

I will start with Ms. Frid.

[*English*]

Was a certificate of fitness given to MMA before the Lac-Mégantic tragedy and when was it given?

Mrs. Nina Frid: Yes. The certificate of fitness was issued to MMA first in 2002.

Mr. Hoang Mai: And then do you have to renew? Do you have to look at what's happening? For instance, we know that MMA didn't follow some of the rules, but there were no penalties by Transport Canada. Were you aware of that?

Mrs. Nina Frid: If I heard your question correctly, after 2002, MMA requested amendments to its certificate of fitness from the agency. The last amendment was in 2005, so that was prior to the accident.

Mr. Hoang Mai: Okay, thank you very much.

[Translation]

I will now turn to Ms. Quinlan. I would like to tell her that her work with the Federation of Canadian Municipalities is much appreciated. When a representative from the federation talks, all the parties, even the government, listen.

Let me personally thank you for the work that you are doing on rail safety. I know this is a very important issue for you.

I would like to ask the FCM some general questions. My colleagues will ask about insurance. What issues have not been dealt with by the measures taken so far? What could we do to improve rail safety further?

Ms. Pauline Quinlan: Actually, we have three priorities. We must inform our first responders better, ensure that all equipment and infrastructures are safe and that insurance companies can cover any incidents or accidents. I must say that a great deal of progress has been made on those three issues. Of course, there is still a lot of work to do. We are here this morning to show that we are extremely concerned about the insurance issue and we feel that FCM staff must also take part in the consultations to represent municipalities.

• (0920)

Mr. Hoang Mai: You just said that you would like to be better informed. Transparency is important for everyone, especially for municipalities and first responders. The public also needs to be reassured, especially after what happened recently.

Do you think municipalities should be informed about the shortcomings of railway companies or those perceived by Transport Canada?

Ms. Pauline Quinlan: Do we have to tell the public what goods are being carried on the tracks that go through our municipalities? I think the first priority is to inform first responders and, if there are changes to the products being shipped, we must be informed right away. We have been assured of that.

As for the people, I think more and more transparency is needed. However, the first step is to ensure that our first responders are trained and able to respond to any incidents that may occur.

[English]

Mr. Daniel Rubinstein (Senior Policy Advisor, Federation of Canadian Municipalities): Just to add to Madame Quinlan's comments, there is a separate issue about being notified about serious safety deficiencies on the railways. That is a conversation we're having with Transport Canada, about what the appropriate process is for doing that, so we know what measures to take in terms of emergency planning if there's an issue identified.

[Translation]

Mr. Hoang Mai: Could you give us an example? What we are seeing and hearing is that municipalities are having to use the Access to Information Act to learn about safety deficiencies. It is a little ridiculous when we need to be well informed.

Can you give us concrete examples of cases where information has not been shared? How would it be helpful for a municipality to know whether a company has safety problems when Transport Canada knows?

[English]

Mr. Daniel Rubinstein: A good example of the starting point is that after the tragedy in Lac-Mégantic some of the neighbouring communities had asked for information about the quality of the network in the area and they were told to file an ATIP request. Obviously we as a sector feel there should be a standardized threshold to deal with notifications. It could be a deficiency with a bridge, or it could be a slow order on a track. These are normal operating practices that Transport deals with, and we should be notified.

[Translation]

Mr. Stéphane Émard-Chabot (Legal Advisor, Federation of Canadian Municipalities): I would like to add that Transport Canada will also issue orders when it conducts inspections, but most operational decisions, whether they have to do with a speed limit or the closure of a stretch of a rail line because of work being done, are made by the railways. These companies must inform Transport Canada when they decide, for instance, to temporarily reduce the speed on a rail line while they are doing work.

That type of information is already shared between railway companies and the department. We are now discussing whether there is a way to share that information with the municipalities, so that first responders can prepare when there is work or a defect identified by the railway company. First responders must be able to update their plans and prepare accordingly.

Mr. Hoang Mai: What additional measures should railways take to reduce the risks on communities?

[English]

Mr. Daniel Rubinstein: Sure. I think this comes out of the ministerial order announced a few weeks ago that requires companies to do detailed risk assessments. I have the document here with me. The requirements in here are ones that we've been asking for: emergency response capability along the route, venues along the route, population density, types of grade crossings. These are the types of issues that could elevate risk in our communities. We think it's appropriate that the railways do those risk assessments and that we have confidence in that system, and then, ultimately, that mitigation measures are taken. It's not only about reducing speed; it's also about critical areas doing mitigation where needed.

• (0925)

The Chair: Thank you.

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

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

Good morning, everyone. Thank you very much for coming.

I listened to both of your presentations intently, and I particularly followed the FCM's proposal here for a five- or six-element proposal, which I assume is being discussed with the minister and Transport Canada.

Is that public? Are those meetings public? Is the public invited to attend? Are they tracking the debate, do they see the comments, do they see the briefs?

Mr. Daniel Rubinstein: The CTA review, all the submissions—

Mr. David McGuinty: Not the CTA review; the FCM-Transport Canada working group that Madam Quinlan referred to earlier. Is that public?

Mr. Daniel Rubinstein: The way we've engaged with the insurance issue is both through the CTA review and Transport Canada also had its own consultations. We have met bilaterally with Transport and provided comments and the next step, I suppose, will be for Transport to decide how to proceed with their policy development.

Mr. David McGuinty: Right. Then, so far, it's not public. I can't access the dialogue between FCM and Transport officials, can I?

Mr. Stéphane Émard-Chabot: On the insurance issue, the only dialogue that has taken place is the same that occurred, in fact, with CTA, which was an initial fact-finding meeting so that we understood what each part of the government did and where they were going. Then we simply filed submissions as part of that process. That's where things stand on the insurance issue.

Mr. David McGuinty: That's fair enough.

On the FCM proposal and on the CTA description, what strikes me is that all of this, whether we're going to move to a two-tier regime, whether the CTA is going to strengthen liability coverage—all of these proposals, all of this good work presupposes that Transport Canada is doing its job. Is that not right? This is a study about rail safety and safety management systems. We were clear in the CTA testimony that CTA is not responsible for rail safety. That's a Transport Canada matter, right? FCM's not responsible, nor municipalities, for railway safety or SMS.

Doesn't all your good work, your mandated work at CTA, which is defined by the statute under which you operate, and the proposal from FCM—doesn't that all presuppose that there is a proper functioning of Transport Canada's job as a regulator and as an enforcer of standards? Isn't that the floor on which you're all building?

[Translation]

Ms. Pauline Quinlan: Mr. McGuinty, I would like to add something. A working group was created by the Federation of Canadian Municipalities in order to look at the issue of rail transportation. The group represents municipalities from across Canada. We have done a lot of work since last summer. On three occasions, Minister Raitt participated in our work.

Mr. David McGuinty: I am sorry, but I must cut you off, because that was not really my question.

[English]

I'm going to repeat the question for my colleagues across the way who want to hear it again. The question is, doesn't the proposal you're putting forth from FCM presuppose that Transport Canada is doing its job with respect to enforcement, auditing, inspections, and that the safety management systems are working, that they're being enforced?

Mr. Daniel Rubinstein: From our perspective, I'm not sure it's a question of presupposition. There are separate issues here. When we identified our rail safety priority areas last summer, we talked about: if you have an emergency, how do you deal with it? If you have an emergency, how do you pay for it? Then separately, and really most importantly, how do you prevent emergencies? They are separate questions. We're not pretending to conflate them.

Mr. David McGuinty: Have the CTA and the FCM read the report of the Auditor General of Canada from last fall on rail safety?

• (0930)

Mr. Daniel Rubinstein: Yes.

Mr. David McGuinty: Okay. What does the FCM have to say about the conclusions of the Auditor General with respect to Transport Canada? The Auditor General says, for example, he cannot determine whether there's a functioning safety management system in place. The Auditor General's concluded that on inspections and audits, 25% of the audits that had to be completed were completed. The Auditor General told us that even though Transport Canada and this government say they need 20 inspectors, they've only got 10 to enforce, inspect, audit, and regulate 31 railways, plus another 37 railways that are now on stream.

This document tells the Canadian people in black and white that enforcement is not happening, and this is the most credible voice I would argue, not the CTA, not the FCM, certainly not Transport Canada, the minister. The capacity we need to do the job to maintain SMS is not in place. Surely the FCM and the CTA have something to say about that. If you're going to propose a two-tier regime for new insurance, if you're going to propose a polluter pay principle, if you're going to talk about a massive exculpatory clause called the economics of shippers and the economics of railways, as you put it in your last couple of points, surely you're presupposing that Transport Canada is doing its job. Am I wrong here? Are Canadians wrong to conclude that they expect Transport Canada to be doing its job?

Mr. Daniel Rubinstein: From our perspective, obviously a robust audit function is critical. I'm sure anybody in the transportation regime would agree with that. The minister has said that the statistics that came out of the AG report will be improved, and we would expect that to be the case.

Mr. David McGuinty: I would expect that too. That's why I wrote to the Auditor General after getting numbers from Transport Canada about qualified inspectors. The Auditor General wrote back to me after the audit, and here's what he said:

...we cannot provide any level of assurance on the information recently provided by Transport Canada officials.

If I'm at the FCM and I'm representing hundreds if not thousands of municipalities and small towns and villages, don't I have a responsibility to make sure that Transport Canada, as the national regulator, enforcer, inspector, and auditor is doing its job before I come forward with liability changes? Don't I want to see evidence up front for my municipalities, given what's happened in Lac-Mégantic?

The Chair: You're out of time, but we'll allow the answer.

Mr. Daniel Rubinstein: Obviously, all these issues have to happen in concert, and we've been asking for more prescriptive regulations across the industry. Yes, inspection is important, but you also have to start with the regulatory regime. We're not experts in SMS. I read all the transcripts from this committee, and I know any witness here says they've never seen an SMS. This is why it's important that we understand the regulations will be more prescriptive. In addition, we've been asking for things like the new risk assessment order that will improve safety in our communities. Not to diminish what you're saying, but all these things have to happen at the same time.

The Chair: Thank you.

Mr. Watson, you have seven minutes.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair, and thank you to our witnesses for appearing.

For the benefit of the public watching, it was Mr. McGuinty who was begging for a meeting on liability, and has now wasted seven minutes on the Auditor General's report, and not a single question on liability...

To clarify the record, the Auditor General did appear before Public Accounts and said he wouldn't be able to provide information on the progress of Transport Canada until he does a follow-up audit, so perhaps Mr. McGuinty should have read the rest of the quote that was likely in the letter.

To our witnesses today, let's start with protective direction 32, which FCM has been participating in, along with the Canadian Association of Fire Chiefs, in the discussions with the federal railway companies. Do you support protective direction 32, which effectively calls on three things, as I understand it? One, it effectively establishes a registry of emergency planning officials in the communities; two, it establishes the obligation to provide historical data to these communities on dangerous goods through their communities; three, a means of engaging with those particular communities under confidential disclosure.

Mr. Daniel Rubinstein: Absolutely. Just to be clear for members of the committee, we asked for the content of protective direction 32. This was our request, developed in conjunction with the fire chiefs, and we're pleased that the government has implemented it.

There is one piece that you haven't mentioned, that I think gets to a concern that some of our members have raised, and it's certainly been raised here at the committee, that there is a need for real-time information. If you will give me a moment here I'll explain it the way I have to our board of directors.

We have an emergency planning concern and we know from the fire chiefs that before Lac-Mégantic, they did not have access to specific detailed technical information, so not a roll-up to say, "We

ship chemical products on this line", but detailed product name, UN number, and volumes. That's what PD 32 provides.

We do understand, though, that for short lines as in Lac-Mégantic with MMA, these companies do sometimes ship products for the first time during a year and we didn't feel it was appropriate to wait, which is why PD 32 obliges those companies to offer that information immediately.

• (0935)

Mr. Jeff Watson: When there is a significant change....

Mr. Daniel Rubinstein: That's right.

Mr. Jeff Watson: That's correct, okay.

Now it hasn't been argued yet today by the members opposite, but at meetings they have been consistently suggesting that there needs to be advance notification. The Canadian Association of Fire Chiefs disagree. They said that, for the purposes of emergency planning, for them such information is effectively futile and useless, in their words.

Does FCM suggest that there should be advance notification?

Mr. Daniel Rubinstein: Our position remains that PD 32 meets the planning need. We have a separate issue when an emergency happens.

I know CAFC went through this. Firefighters call CANUTEC. CANUTEC has been provided with the "consist" and MSDS from the railway, and that does need to happen in real time and effectively.

Mr. Jeff Watson: Right, now the suggestion, though, that PD 32 is somehow deficient, you would rebut that?

Mr. Daniel Rubinstein: We feel it meets the planning need that we identified when we made the request for this order.

That being said, this is a three-year temporary order. We'll see how it rolls out and if there are systemic issues there that we need to address, obviously we'll lobby for them, but we're just starting in the process and we do have confidence that it will meet the need that we identified together.

Mr. Jeff Watson: Before I move on to the issue of liability, how would you characterize the relationship with Transport Canada and Minister Raitt?

Ms. Pauline Quinlan: Immediately after the incident there was immediate concern and answer from the minister, assuring us that the government would cooperate with the FCM committee on railway safety.

As I mentioned before, we have had the chance to have the minister come to our meetings, listen to our concerns, and also listen to the degree of satisfaction following some of the steps that have been taken. We hope to continue that relationship. We know that Minister Raitt is probably going to come to Niagara for the FCM annual conference, and for us it is very important that we can express our concerns and satisfaction also.

It's a work in progress. It's going to take a long time before we make things perfect, but we should all follow that direction that has been set by FCM.

Mr. Jeff Watson: I look forward to the ongoing relationship for continuous improvement of our safety regime.

On to the question of liability, you've made some comparisons with respect to the marine sector in terms of how you would like to see the liability regime look for rail.

Once we ratify Bill C-3 for hazardous and noxious substances the marine sector will have access to an international fund, one will be created that way.

Under crude oil they have access to an international fund, and in addition, a domestic fund, the ship-source oil pollution fund.

Rail, though, is not a globalized mode of transport in the same way, so when you're making a comparison to marine I presume it's to the ship-source oil pollution fund and not access to an international fund. Is that fair to clarify FCM's position?

Mr. Stéphane Émard-Chabot: That is correct. We understand there are differences in the way these modes of transportation are structured globally. There is no worldwide organization to govern this, so it is a rough comparison. But the notion is a catastrophic fund that was set up for those big emergencies in the marine mode, and the need for that in a rail mode.

Mr. Jeff Watson: To the CTA, the description of how insurance happens makes it sound more like what we'd call a homeowner's policy. You have insurance and a high deductible. I'm glad you clarified what self-insurance really, effectively, acts like.

Now, railway companies have told us that, based on the pools of funds available for rail insurance, they have no more capacity to take on more insurance. Does CTA share that? How much insurance is available to railway companies globally for that purpose? Also, what level should the liability be, in terms of how much insurance they carry?

• (0940)

Mrs. Nina Frid: I will try to address each of your questions. There were several.

In terms of current levels, class I members carry insurance in excess of \$1 billion. That is quite a significant amount, and is considered by the insurance industry overall quite sufficient.

What we heard through the consultation is that the market for short lines is a more difficult issue and that all the insurance available for railways for third party liability is purchased by those in class I in North America. But I must also clarify that the access—

Mr. Jeff Watson: You mean that they have no more ability to get any more insurance, should we require more of them. Is that a fair statement?

Mrs. Nina Frid: That's what we hear.

The Chair: Mr. Watson, you're out of time.

Mr. Jeff Watson: Okay. That's what you hear.

Mrs. Nina Frid: That's right.

Mr. Jeff Watson: You don't know for a fact whether that's true.

Mrs. Nina Frid: We don't know for a fact, because we don't have jurisdiction over insurance companies. We've solicited inputs and submissions. That's what we have.

The Chair: Okay. Thank you.

Mr. Braid, you have seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

And thank you to all our presenters for being here this morning

Both the FCM and the CTA have provided excellent and very thorough presentations on the topic of the day, which is third party liability insurance and how we improve that regime as well as the compensation regime. As you know, Transport Canada is conducting a review of the overall third party liability insurance and compensation regimes, so your input is very helpful and timely.

Ms. Frid, I want to begin with a question for you. You mentioned in your presentation that currently third party liability insurance that railway companies hold is confidential or proprietary. Could you just help us understand why an insurance policy would be confidential or proprietary?

Mrs. Nina Frid: The railways provide a lot of detailed financial information to the agency for a number of purposes, not just for the purpose of establishment and analysis of their liability coverage and their operations. The agency develops costs, rates, and so on, so we have access to railways' detailed financial information. The railways have a right to claim confidentiality over this information because releasing it, they claim, would harm them commercially. They compete within the North American context, and that's why they require us to keep this information confidential.

Mr. Peter Braid: Generally speaking, what percentage of the overall policy is this self-insured retention amount? Do you know what that is?

Mrs. Nina Frid: I brought some notes to help me answer the question. I don't have the percentages, but I can tell you that for those in class I that hold insurance in excess of \$1 billion, the self-insurance retention percentage is substantial. It could range anywhere from 10% to 25%.

Mr. Peter Braid: Okay. That's helpful as a clarification. Thank you.

Ms. Quinlan, I want to start by asking you if you could sort of boil things down for us. You've made a very detailed presentation and proposal.

In essence, with respect to third party liability insurance and compensation, what is different between what exists today and what you're proposing?

• (0945)

Ms. Pauline Quinlan: I think in view of what happened in Lac-Mégantic, where we discovered there was not sufficient coverage on the part of those companies that were not classified—the number one companies like CN and CP—we feel there has to be a responsibility there to cover incidents. But what we are saying today is that we have to have the means to ensure that the local citizens, like those in Lac-Mégantic, who are paying for this disaster, or any other level of government, should not have to do that.

That's what we are saying. We are saying to our people who are working for us at FCM, find a way to make sure that if anything like this happens again, the responsibility would lie with the companies that are transporting and also with the manufacturers. We stated that in our presentation. There is a responsibility that has to be shared, but it should not be at the cost of the citizens.

Mr. Peter Braid: That was my second question.

Could you elaborate on that? Why do you believe this notion of insurance should be financed by the entire continuum? Why is that important? And what would this look like?

Ms. Pauline Quinlan: Well, maybe I should ask Stéphane to be more technical and answer that part.

Mr. Stéphane Émard-Chabot: In a nutshell, what it boils down to is the test of adequacy. Adequate for what? As we embarked on this, we came to the realization that the system that is in place and managed by CTA could be improved on a few fronts, but it is adequate for day-to-day operations.

There is nothing in place for catastrophic incidents. Why should this be financed by the whole continuum? It's simply because this is a societal risk. The transportation, the use of dangerous goods in our society, is something that we all partake in, we all benefit from. The risk is created by the entire sector, not just by those carrying the goods. In fact, those carrying the goods will probably tell you they don't know how their goods are packaged necessarily. They can't be 100% sure that the shipper or the importer or the broker is telling them the truth as to what is in there, or what the qualities or characteristics of those goods are. It makes sense to us, from a policy perspective, to have everybody who contributes to the risk—on the polluter pay or risk pay principle—to contribute to that fund in some fashion or to recognize that they have a role to play.

There's a policy reason there, and there's a financial economic reason as well. If you put this entirely on the carrying sector, the railways themselves, most of the short lines will not be able to carry that burden. They can only purchase what they can purchase on the market, and the market will only go so far. The market will not cover Lac-Mégantic. The market will not cover Mississauga, or heaven forbid, the next one that will happen in 40 years. If we agree as a community that this is not something that should be carried by the taxpayer and the public purse, which is what's happening in Mégantic, then we have to create a system that is bearable to the sector, and spreading out the pain seemed to make the most sense economically, and it has a solid policy basis as well.

Mr. Peter Braid: You mentioned toward the end of your presentation, Ms. Quinlan, an emergency fund. What would the role of the emergency fund be? Who would fund that?

Ms. Pauline Quinlan: I'll ask Stéphane to answer.

Mr. Stéphane Émard-Chabot: Very quickly, again, this was something that came out of the marine transportation improvement recommendations, a report that came out not too long ago, and that is immediate cash for first responders to be able to do their work. For a small municipality like Lac-Mégantic, the reserves are not massive, so when you have to respond—again, we're only talking about catastrophic incidents—to a catastrophe, as a small community, you don't have the financial resources to start writing cheques to all the people who are there. It's that simple. It's a fund that can be accessed

immediately by public bodies that need it, to shelter people, to move people, to respond to the emergency.

It is part of, it is not in addition to, that fund. We're just saying that if we create a fund like this, there has to be a mechanism whereby the public bodies that are responding to a catastrophe can access funds without waiting for a long process.

● (0950)

Mr. Peter Braid: Just to clarify, who funds the fund?

Mr. Stéphane Émard-Chabot: Again, that's part of the continuum. It's part of the catastrophic fund.

Mr. Peter Braid: And sharing the risk across the continuum.

Mr. Stéphane Émard-Chabot: Exactly.

Mr. Peter Braid: Thank you.

The Chair: Thank you.

Now we move to Ms. Morin, for five minutes.

[*Translation*]

Ms. Isabelle Morin (Notre-Dame-de-Grâce—Lachine, NDP): Thank you, Mr. Chair.

My thanks to the witnesses for being here.

Ms. Frid, could you tell me specifically which factors the Canadian Transportation Agency takes into consideration when it issues certificates?

Mrs. Nina Frid: Yes, I would be happy to. Thank you for your question.

The factors are set out in the Railway Third Party Liability Insurance Coverage Regulations. Three categories of factors are listed: third party bodily injury or death, including injury or death to passengers; third party property damage, excluding damage to cargo; and named perils pollution.

You can have the regulations if you wish.

In addition, the regulations also set out 10 very specific factors, including passenger ridership, train miles, volume of railway traffic

Ms. Isabelle Morin: I am sorry, but since I have access to the regulations, I would like to continue with my next question.

I imagine that those factors can change over time. Why, after providing the certificate of fitness to MMA in 2002, was the certificate never renewed or reviewed? Does the agency have the obligation of seeing what happens after a while? We know that the company can change.

Once again, is that self-regulation and does the company have to advise you that it has changed? Would it not be safer for the agency itself to conduct a review?

Mrs. Nina Frid: As you said, under the legislation, the railway company has the obligation to advise the Canadian Transportation Agency.

Ms. Isabelle Morin: So it is still a self-regulation process that can lead to accidents. That is unfortunate.

Ms. Quinlan, you said that you wanted more transparency to determine the adequacy of insurance coverage. Could you tell me what the benefit would be for municipalities if there were greater transparency? Why do you want more transparency?

Ms. Pauline Quinlan: I will ask Daniel to answer that question.
[English]

Mr. Daniel Rubinstein: Sure. I think this responds directly to questions that were raised after Mégantic: how did MMA end up with \$25 million in coverage; what was the process to get there; and what does the adequacy test mean?

There are sort of two options for the CTA: to establish a minimum that is transparent because it's the minimum for everyone; or, to explain their rationale.

[Translation]

Ms. Isabelle Morin: In your view, is the agency's explanation about not making that information available valid?

Mrs. Nina Frid: I can try to answer that question.

[English]

This is exactly the question that we asked in our consultation: should those amounts be made public? We solicited a broad range of views, and we will consider that perhaps more information should become publicly available for the people to see.

Mr. Daniel Rubinstein: As my colleagues reminded me, there wasn't public trust in the system, right? To have that, it's reasonable to say that the commercial financial information would be kept confidential, but it seems reasonable that knowing what the insurance level is would be public. Again, this is all for day-to-day operations, so if we don't build a comprehensive regime for a catastrophic incident, these kinds of questions are really not the point. The point is to build a catastrophic regime for an incident of the scope of Mégantic.

[Translation]

Ms. Isabelle Morin: The Canadian Transportation Agency is in the process of holding consultations. The review was supposed to have been completed by the end of March 2014. It is now May.

What happened? Why do we still not have the results of the review?

Mrs. Nina Frid: As I explained, we have two types of consultations. The second round of consultations ended recently, on May 9.

• (0955)

Ms. Isabelle Morin: When can we expect to have the results?

Mrs. Nina Frid: We will try to have the recommendations ready for the fall.

Ms. Isabelle Morin: Okay.

It is still a significant delay, considering that we were supposed to receive them at the end of March.

I have one last question.

The Vice-Chair (Mr. Hoang Mai): I am sorry, but your time is up.

Ms. Young, you have five minutes.

[English]

Ms. Wai Young (Vancouver South, CPC): Yes, thank you so much for being here and for sharing that really great information with us. Because this is a rare opportunity for us to have FCM here, we're very grateful for you to be here. We're also very grateful for how you've worked with the government on this most tragic incident.

Moving forward, then, we talked a little bit about the need for the railway operators to provide information to municipalities and to first responders. You are saying that's there now, but more work could be done.

Could you elaborate on that a little bit, and also maybe provide us with some information about how many municipalities have registered with CANUTEC, whether it's all of them now, or just 50% of them? Where is that process?

[Translation]

Ms. Pauline Quinlan: The answer to your question is yes.

[English]

Concerning the importance of having all the information so that we can act in case of emergency, we are, I think, accomplishing progress.

On your question of how many municipalities, of course we want all municipalities that have a railway system that crosses their territory to be part of that group that will receive the information. We have 18 municipal unions, provincial unions in Canada. We are talking to these unions to make sure that all municipalities can take advantage of what is being offered. I believe we have maybe 700 to 800 municipalities at the moment, but every day we are getting more. We want 100% of the municipalities to be part of that effort.

Ms. Wai Young: Can you give me an indication as to where that is right now, though? Is it 10% or 50%? How many have registered with CANUTEC?

Mr. Stéphane Émard-Chabot: It's a difficult call, because we don't actually have a number of how many municipalities are crossed by a railway. We know from CN, which is a really good indicator because they cover pretty much the country, they have about 1,100 municipalities that they cross. About 800 municipalities have registered, so that gives you, I think, an idea of scale.

The other thing to keep in mind is several municipalities, especially in the smaller cities or rural areas, are grouped together, so they are jointly appointing one person for five, six, ten municipalities. Individual fire chiefs have been appointed officials. We are close to 800 appointed officials. Many of them represent more than one municipality. If CN has 1,100 municipalities, and we know there are 800 officials or so registered, we're in the 80%, 90% range probably achieving that over the next few months.

Ms. Wai Young: Now I know that you can't answer this question today because it's going to take too much time and I do have a secondary question that I would like some back and forth on, but my other question around this is of course with the FCM conference coming up in Niagara. I'm hoping that all the municipalities would be registered because of course we as a government would not want to see this incident happen again.

In addition to that I did hear, I think, in your testimony today that there is some consideration around working with the first responders as well as working with government to ensure that there is a good balance between the information given to municipalities, compared to security issues in the country. I know that's a debate you are currently having.

In other testimony for this study, other groups were talking about the development of municipalities and how municipalities were building too close to railroads. Is that an issue or something that is being talked about at FCM? Are there workshops or zoning things that are being talked about? That's one side. The other side to that concerns transfer stations, where railways go to transfer their loads. Again, we're understanding that some of these transfer stations are either being encroached upon by municipal development or they're simply being built close to municipalities because that's where people work and live.

How are you looking at that now and learning from that? I think we are all in a situation where we want to learn and do our best around zoning and having standards. What is FCM doing around those big issues?

• (1000)

The Chair: The time is expired but we will have the answer.

[Translation]

Ms. Pauline Quinlan: Here is a quick answer.

That issue is discussed at all the working meetings of the Federation of Canadian Municipalities. Ontario has demonstrated great leadership in its urban planning legislation to better regulate the development of the rail system. We educate the other provinces and territories to ensure that we are good neighbours and that our plans also include regulations that limit the distances for railways.

[English]

Mr. Daniel Rubinstein: FCM has developed proximity guidelines with the railway associations. In our role at a federal level, we don't do land use planning, it's a provincial thing, but we do have guidelines adopted by the City of Montreal, by the City of Moncton. They have setbacks recommended in new development and also now a process for mitigating redevelopment of an urban area. We recognize there is a lot of work to do there. The more municipalities adopt this internally, the better the outcomes will be.

The Chair: Okay, thank you.

Mr. Chabot, just some clarification on a question that Ms. Young asked.... It was to do with the number of municipalities and I think the figure was around 800, correct? My question is, in my riding, I have 17 municipalities. Many of them are members but we have absolutely no railway in our riding anymore, they've been taken out, so is that 800 municipalities that have railways that run through them?

Mr. Stéphane Émard-Chabot: Yes, the 800 municipalities are directly affected by railway traffic. They're the only ones under PD 32 that have a right to receive the information. You have to have a railway to be able to access that data.

The Chair: Good. Thank you for that.

I'll move to Mr. Sullivan for five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you, Mr. Chair.

Sticking to liability, your suggestion that those in class I have over \$1 billion of insurance is counterbalanced by the Association of American Railroads saying:

Should an incident occur within or near a densely populated area... [it] has the potential to be truly catastrophic and result in billions of dollars of personal injury and property damage claims.

The damages potentially resulting from an exposure could risk the financial soundness and viability of the rail transportation network in North America.

That's what the Association of American Railroads said to you in your study. How do you respond to that? How do we deal with that?

Mrs. Nina Frid: I'll try to respond to this as best as I can. It might be interesting to note that in the United States, there is no requirement as there is in Canada for a railway to specifically acquire third party liability insurance. There is no government oversight or requirement in the United States similar to what we do at the agency,

I met with my colleagues at Surface Transportation Board, which is sort of a similar organization to ours. They told me that they do not have information at all about what levels of insurance U.S. railways are holding. I have some difficulty reconciling what the Association of American Railroads provided with the regime that exists in the United States.

• (1005)

Mr. Mike Sullivan: We're not here to study the U.S. regime; we're here to study the Canadian regime. If it's billions of dollars, and railroads only have \$1 billion, it's still ruinous, is it not, even in Canada?

The second question is, MMA was a class II and carried \$25 million of insurance, yet they're allowed by their certificate to carry dangerous goods. Should class II railways, with so little liability insurance, be allowed to carry dangerous goods?

Mrs. Nina Frid: It's a very complex issue. The railway companies in Canada have what is called common carrier obligations. The law prescribes railway companies to accept freight that is offered to them for carriage, and they're supposed to carry the freight that the shipper provides at a certain fee, which they establish on a commercial basis. It would be difficult to suggest that the railways can pick and choose what they carry, or the government prescribes what the railways will carry.

Mr. Mike Sullivan: If there isn't enough insurance in a class II system, then why are those in class II actually operating dangerous goods?

I guess that's a question for the government, not for the regulators. I think the FCM had a comment, too.

Mr. Daniel Rubinstein: This is exactly why we're saying that we need a catastrophic regime for the short line. There are two policy questions there. How do you bridge the gap between whatever level the CTA establishes for MMA, say \$25 million, and the billion or billion and a half dollars that CN has? That's the first policy question.

Then the second policy question is, how do you fund more serious incidents involving those in class I? We're not prescribing what an upper limit should be. There's going to have to be a pooling to deal with both situations.

Mr. Mike Sullivan: With regard to the study you're currently undertaking, can you supply to the committee all of the responses from the railroads and from everybody to the study so that we can actually see what everybody is saying? I've seen the summary, but there are clearly gaps in the summary.

With regard to densely populated areas, the insurance companies in their responses to you seem to suggest that a pattern of avoidance of densely populated areas is ideal for them. You don't have any regulatory ability in that regime. You can't order a railroad to avoid densely populated areas.

Mrs. Nina Frid: In response to your first question, all submissions that were received by the agency are available on the agency website. They're completely public, so anybody can see, but we would be pleased to compile them for you and provide them.

Mr. Mike Sullivan: With regards to railroads operating in densely populated areas, railroads have expropriation ability. In fact, in my riding, they have expropriated land in order to move their railroads closer to homes, considerably closer to homes.

Is this an appropriate use of the railroads' expropriating ability in an urban area?

The Chair: I will allow for the answer.

Mr. Daniel Rubinstein: Obviously we've been focused on making sure that the railways are doing appropriate risk assessment so that this kind of thing is minimized. Again, the ministerial order that was announced two weeks ago does look at a series of factors, including proximity and population density. It also looks at identifying and comparing alternative routes, if available. We are being consulted on that process. That was mentioned in the order. We're pleased to see that because, frankly, that hasn't always been the case. Rule making is happening, and we'll be notified after the fact.

This will be one of the issues that we're raising. This process has to work, and there has to be mitigation at the end. We know that in a lot of communities, there won't be an alternative railway to use. That doesn't mean there won't be places where mitigation is still necessary.

The Chair: Thank you.

We now move to Mr. Komarnicki for five minutes.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you, Mr. Chair.

Thank you for appearing before us today.

I understand that there are various types of accidents. Some can be intentional and some can be purely accidental. I think you'd have agreement that the general public would like to see the damages or injury paid for entirely, without regard to one or the other, something close to strict liability perhaps.

I also gather from hearing your statements that, in the case of Lac-Mégantic, something obviously went perhaps terribly wrong in terms of determining the certificate of fitness amount, or perhaps those are only meant for day-to-day operations and you can't really face the issue of a catastrophic event.

Am I correct in those observations, and are we really at the place of saying we can deal with day-to-day operations but catastrophic events are not something we can actually adequately plan for in terms of insurance?

• (1010)

Mrs. Nina Frid: Yes, your last expression I would agree with. As I mentioned in my presentation, we have analyzed the claims history of every federal railway over 10 years, and we never had a situation where those claims exceeded the levels of their insurance.

Lac-Mégantic was clearly a unique, a very unfortunate, tragic event that brought everyone to review the way we look at insurance.

For day-to-day operations, MMA's level of insurance was \$25 million per occurrence and actually \$50 million in aggregate, which means they could have two events of \$25 million each in one year. So for day-to-day operations, we consider that adequate, also because it was in line with what similar railways with similar operations held.

Mr. Ed Komarnicki: I guess I'm hearing that, if you're going to have two tiers, the ultimate question is who's going to pay for the upside in the cost. I have a sense that ultimately, if it's not going to be the taxpayer, it's going to be somebody very close, because if it gets very broad it's going to be passed on to the consumer and, ultimately, that will perhaps end up in the taxpayer's realm.

We had some testimony that said the person who handles the product should be primarily responsible and insured because they have the care and handling of the product. When you start moving away from that principle, there may be less care in the handler. So they're opposed to broadening the coverage beyond the person who handles and carries. What's your thought about that?

Second, there was some testimony that rail companies, which are insured as much as they can be, charge premiums or extra costs depending on the type of goods the customers caused the rail to carry. So they're already paying an amount to offset the cost of insurance and they think it's inappropriate to include them in yet additional insurance. What do you have to say about that?

Mrs. Nina Frid: I am aware of the various testimonies that were presented to this committee. There were some shippers representing chemical producers testifying. I can say that the creation of a pooled mechanism or some catastrophic insurance type fund is beyond the agency's authority and jurisdiction, but we will work with all the stakeholders and we'll help in any way we can.

In terms of railways passing on the cost to the shippers, from the economic standpoint the industry is supposed to be working on a commercial basis, so the rates that the railways charge the shippers are established usually through commercial negotiations. It could be in a confidential contract, in the service agreement, or it could be in the tariff. The government has no oversight over the transportation rate. It has been deregulated for a long time.

Mr. Ed Komarnicki: Do you want to make a quick comment? I have another question and I'm sure my time is getting close to being up, but go ahead.

• (1015)

Mr. Stéphane Émard-Chabot: If I may.

The key thing is, if we want to put in a regime, who's going to fund it? Is it the public, or the private sector, and who is best placed to do that? The free market insurance can't cover that kind of incident, we know that. Spreading the burden so that everybody chips in seems to make the most sense, because it will not, hopefully, bankrupt any of the railways.

On the shipper versus the producer or the carrier debate, you have to keep in mind that a lot of dangerous goods, and more and more, are being imported. If the liability or the financial obligation is placed only on the person carrying it, they don't know what's being imported. We didn't know that crude oil would behave the way it did until Lac-Mégantic happened. Now we're realizing it's not the same thing; it has different properties.

The only person who knows the exact properties of what is being shipped is the person who manufactured it. The person in China, who is shipping chlorine through the country because we're not producing any more here...we're not sure what they're sending in. The railway companies don't test those shipments. They have to take them. There are risks there that it makes sense that everybody participate in this, not only the carrier.

Mr. Daniel Rubinstein: There's a precedent here with the emergency response assistance plans system that places the onus for providing training, specialized equipment, and resources on the shippers because they know best about the specific characteristics of the product.

The Chair: Mr. Toet, five minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

I would like to pick up on that a little bit. It has become pretty obvious from the conversation here that there is a sense that there should be a sharing of responsibility on behalf of the shipper. As Mr. Komarnicki mentioned, a lot of the shippers, especially of dangerous goods, have already indicated they have a premium placed on the shipping of their goods, higher than any other particular good would be, moving down the exact same line at the exact same speed with the exact same train assemblage.

The question is, if that's a shared responsibility, should that premium be going into a separate entity, a separate fund, that really is a third party liability fund?

Mr. Daniel Rubinstein: That's what our proposal has been. We're not the economic regulator and we don't deal with these kinds of issues either, but it makes sense that these are happening in the absence of that fund. It doesn't exist today.

Mr. Lawrence Toet: Based on having that perception, how do you propose a breakdown of this liability? What percentage of liability is going to be taken by the shipper? What percentage by the rail line? On what basis do you come up with those breakdowns?

It's good to have these conversations and to say we need to do this, but we need to have an understanding of where the breakdown comes in and on what basis you come up with that.

Mr. Stéphane Émard-Chabot: We've said this in our documents and our presentation. Obviously, that is subject to a lot of modelling, to see if what we think is a good idea can actually work on the ground. It's not only the shipper and the carrier, it's also the end industrial user. You can include in there the brokers who import and export, which is big business. That's how the marine model was developed. How you do the breakdown, obviously we're no experts on that front. We would like to participate in a process to explore further the feasibility of this and the economic impacts on the different industries.

Let's not forget that this is very different from buying insurance for operations for a one-year contract with your insurance company. This is not insurance on your home. This is a very long-term proposal. The fund doesn't have to be capitalized in the first three years. You can take a much longer window on that and it becomes, at that point, something that becomes manageable.

Mr. Lawrence Toet: I would like to get back to Mr. Sullivan's line of questioning, with regard to the train tracks being moved closer to development. That may happen the rare time. Essentially, I think we all know and will acknowledge that the reality of what's happening is development is moving toward the train tracks; it's not happening the other way around for the most part.

I was hoping you would actually build a table with the committee, through the Chair, of the exact wording of the proposals you've been bringing forward to members of the FCM as to setbacks and urban planning, because it's more than only setbacks, it's also urban planning. It's not building a high school on one side and allowing them to put a Tim Hortons on the other side of a railway track. These are things that are happening and they need to be looked at.

At what point do municipalities take on a liability if they're not following some kind of reasonable structure in this urban planning?

• (1020)

Ms. Pauline Quinlan: I believe that the work that we are doing with proximity issues will bring us to these discussions. We realize that the provinces are, to start with, making sure that in each municipality we have what we call

[Translation]

a city plan, a development plan.

[English]

I believe it has to start at that level, and municipalities definitely have to have better regulations.

To your question, yes, I think FCM is very aware. We have been working for the last couple of years on those proximity issues with the Railway Association of Canada. I think your point is very well taken that it's not only the responsibility of the railway system, it's also a great responsibility of municipalities. Lac-Mégantic has brought us all, I think, to realize that we all have a role to play and the objective is the safety of our population and of our economy.

Mr. Lawrence Toet: We've talked a lot about the railways consulting with municipalities as to what comes through. I think we all agree that's appropriate and should be done and we're happy to see that. We've heard today that this is a much better and more robust conversation than it ever has been before.

But I hope that the municipalities are also looking at it and, as they're doing development, especially when they know they're going to be developing around railway tracks, they're actually having consultations with the rail lines and talking to them. What's going down this line? What particular things do you see going down this line in the next five to ten years? I think that would also be a helpful conversation to try to avoid some of these situations.

We're talking about alternate routes, but sometimes we can end up taking away an alternate route if we're not really thinking about that in the development stage.

The Chair: Mr. Rubinstein, do you want to comment on that?

Mr. Daniel Rubinstein: This is exactly what the guidelines are about and communities that are doing it properly are having those conversations. When we first produced the guidelines in 2003, it assumed that all the development was happening in a greenfield setting. Where you can do a setback and a berm, then it's great, but the challenge is really in an urban core. What do you do when Montreal or Toronto or somewhere else wants to develop their urban core? That's reasonable, but you have to mitigate it, and the cost has to be on the developer and you have to have that conversation at the front end.

The challenge we have at FCM is we don't have jurisdiction over land use. I know it's very frustrating for the federal railways and it's a constant thing. These are provincial decisions, but we certainly are providing as much guidance as we can.

The Chair: Thank you very much.

We're going to have about four minutes for Mr. Mai, Mr. McGuinty, and two here.

Mr. Mai.

[Translation]

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

My question is for the people from the FCM.

You talked about the government's throne speech. We are also outraged by the fact that the taxpayers will ultimately have to pay for the damage caused by railway companies. The objective is not to

demonize railway companies, but it must be said that it is not fair that taxpayers have to pay.

What promises have been made but not yet delivered on? What else do you expect from insurance companies? What should the government do from a legislative point of view?

[English]

Mr. Daniel Rubinstein: There are two processes that have been happening. We have the CTA process to refine the day to day, which I think we all agree generally works, but could be tweaked. Then we have a challenging concept here of how to build a catastrophic regime and the kinds of questions we've had today about how to share the costs. We're not the ones to arbitrate that and that's the difficulty. How do you build that, what's the full continuum, what are the rates, do you do it as a fee, do you do it as a cost-recovery levy after the fact? Obviously, there are precedents in other modes.

What we've said is the government's recognized the principle. That was big step and, obviously, that will have to be followed by a proposal that all stakeholders can comment on.

Mr. Hoang Mai: Since you're more involved with the government than we as the opposition are—you're able to get information from the government—do you have any idea of when such regulations will be put forward in terms of your legislation?

• (1025)

Mr. Daniel Rubinstein: No, we don't have a firm timeline. Obviously, the CTA has a process it's going through and I'd imagine it would make sense to have the CTA conclusion and at least Transport's initial thinking happen at the same time. Otherwise, the CTA is going to be faced with some very uncomfortable questions about why they're not addressing an issue that's outside their jurisdiction. I think these timelines will influence each other.

Mr. Hoang Mai: But ideally the timeline would be to have regulations as soon as possible, I assume.

Mr. Daniel Rubinstein: Of course, yes.

Mr. Hoang Mai: I have a question for the CTA. Basically, you don't have the authority to ask for either shared liability or the shippers' liability because there was no legislation that was brought forth by the government. So, at the end of the day, you have to work within the regulatory framework that you have.

Can you make the recommendation that we want, for instance, to make sure that taxpayers don't have to pay, so we have to have more shared liability or...? You can't do that, I guess.

Mrs. Nina Frid: No, I'm sorry.

Mr. Hoang Mai: But I guess we understand that at the end of the day, if we really want to make sure...

I'll come back to the MMA issue. If I understand correctly, MMA, or for all other companies...that's what we've been saying in terms of self-regulation or auto-regulation. Is it the company that has to tell you, well, for instance, we've increased our shipping, or we have more dangerous goods, so you have to ask us to increase our insurance? Is that how it works?

Mrs. Nina Frid: How it works is very close to what you described except for the last part. So let's take MMA, for example. If a railway decides to acquire additional lines, so expand the network, or abandon some of the lines, which was the case with MMA, they have to apply to the agency for the amendment of their certificate of fitness. That's all they ask. The agency will investigate what kind of impact the change in their network will have on the insurance, and so whether it is still adequate or not.

The Chair: Thank you very much.

Mr. McGuinty, four minutes.

Mr. David McGuinty: Thanks, Mr. Chair.

Ms. Frid, can you tell us how many qualified auditors there are right now auditing for rail safety? Do you have any idea?

Mrs. Nina Frid: No, unfortunately, I can't say that because we don't have any role in safety and we don't have inspectors on this.

Mr. David McGuinty: In your criteria that you listed for the providing of a certificate of fitness, do you demand the written copy of the safety management system for the federally regulated railways?

Mrs. Nina Frid: No, we don't. To assess the safety record of a railway, we talk to our colleagues at Transport Canada, and we ask them to give us information specifically about that railway and what they know.

Mr. David McGuinty: Do they give you a copy of a safety management system for each railway?

Mrs. Nina Frid: No.

Mr. David McGuinty: Have you ever seen a copy of a safety management system?

Mrs. Nina Frid: No.

Mr. David McGuinty: Have you ever asked for one?

Mrs. Nina Frid: No, we haven't. The safety management system is a framework.

Mr. David McGuinty: It's a framework. CTA describes it as a framework.

Mrs. Nina Frid: That's my understanding, that's just my personal understanding.

Mr. David McGuinty: In your dealings with Transport Canada, is that their understanding as well?

Mrs. Nina Frid: I believe so, but we ask specific questions. We are less interested in the framework. We're interested in whether or not Transport Canada performed any inspections on specific lines, and Transport will then share their reports with us. If they have any orders against specific parts of the line that need to be repaired, they will provide this information to us. In other words, when they find some deficiencies related to railway infrastructure, they will advise —

Mr. David McGuinty: So what they tell you, from Transport Canada, is entirely discretionary on their part? Can they decide what they can or cannot tell you?

Mrs. Nina Frid: Well, I wouldn't say it's entirely discretionary. We work together, we're in the same portfolio, so we share information.

Mr. David McGuinty: In the three years that the audit was done by the Auditor General, did they tell you that they only audited eight federal railways, and they didn't audit VIA Rail once in three years—carrying four million passengers a year? Did they tell you that?

Mrs. Nina Frid: No, and this was not the question we asked because when we were examining MMA, for example, we asked specifically about that railway, we didn't—

• (1030)

Mr. David McGuinty: Did they tell you that they have a three-year rotation cycling system for the auditing of railways?

Mrs. Nina Frid: I understand from their statements that this is publicly available.

Mr. David McGuinty: Publicly available? Okay, I'm not sure—

Mrs. Nina Frid: The rotational audits of—

Mr. David McGuinty: Okay.

Did they tell you that they only had half of the qualified inspectors to perform the audits for safety systems?

Mrs. Nina Frid: No.

Mr. David McGuinty: So none of this has been factored into the certificate of fitness?

Mrs. Nina Frid: No.

Mr. David McGuinty: Do you see a problem with this?

Mrs. Nina Frid: As I said, we asked specific information about MMA, the condition of their track, and any kinds of orders that Transport Canada put on specific parts of that track, and Transport provided this information.

Mr. David McGuinty: Did they tell you that the methodology used to determine the inspections was flawed?

Mrs. Nina Frid: No, we have no authority to discuss the methodology, because we don't have the competence in this area.

Mr. David McGuinty: Okay.

Did they tell you that Transport Canada doesn't even know whether its current staff of inspectors have the required skills and competencies to do their jobs?

Neither...

Did they tell you that their inspectors and managers were not trained on a timely basis?

Neither...

Did they tell you that they can't even warrant that their inspectors are objective and independent, because most of them come from the private federal railways? Did they tell you that?

The Chair: You're out of time. We'll allow the answer.

Mrs. Nina Frid: No, we just looked for the facts, that's all.

Mr. David McGuinty: These are all facts.

Mrs. Nina Frid: Yes, I mean the facts related to a specific railway, that is kind of a very narrow interest that we have in assessing each obligation.

Mr. David McGuinty: Wow.

Thank you.

The Chair: Thank you.

Mr. Watson, four minutes....

Mr. Jeff Watson: Thank you, Mr. Chair.

Mr. McGuinty has now used 11 minutes to not talk about liability today, when he asked for a meeting on liability.

That's okay, Mr. McGuinty, you can talk about information that's two years old if you wish, but I'm going to ask the witnesses different questions.

So here's a question on liability. Returning to the question of liability, how do we handle the short lines?

For the creation of a fund where there is joint liability among shippers and the railway companies, as you've suggested, perhaps even brokers or others who may be part of that supply chain, there's concern about whether short lines can manage the cost. Should they be levied in the same way that a class I railway should be? Should everybody be proportionally in at the same amount, or should they be structured differently according to their risk profile? What would you recommend, or what kind of guidance would you give us with respect to developing that?

Mr. Daniel Rubinstein: Obviously, the risk profile is a key component to begin with. I think we all agree on that. In terms of balancing short lines and class I railways, we've said very clearly in our submission that they can't be the same level, that the economics of short lines are very different.

Mr. Jeff Watson: But in fairness to those in class I, they weren't involved in Lac-Mégantic and the scale of a disaster with respect to Lac-Mégantic, so how do we address this? If it's true that the insurance is all taken up, we also have a fund, we have to look at how people are assessed in the fund.

Second, if we look at the ship-source oil pollution fund itself, which is at about \$400 million, there hasn't been a levy paid into that since about the time I was born. It's gone through periods of 22% interest rates, where obviously that's been allowed to accelerate to a level of about \$400 million.

We have to be able to consider what would be sufficient if they carry less insurance for a short line, how sufficient a size should a fund be structured, what would the levy look like for them, and is it fair in light of the scale of Lac-Mégantic that they pay less than others who are in that?

Mr. Daniel Rubinstein: We know that short lines are key components of the entire transportation system, and if you listen to CN, they'll say "our short line partners," so there is a shared responsibility across the transportation network. The class I railways need the short lines to deliver some products.

There is a mechanism here that's going to have to be figured out on how to share that risk. We know from our members, especially in Quebec, the sensitivities of adding financial burdens onto short lines that are key economic drivers. We have to find a way to do it. You've used the example of the ship-source oil pollution fund, small levies across the full continuum for a short period of time—

Mr. Jeff Watson: If you have \$50 million in insurance and you have a very significant occurrence that would exceed a \$400-million

fund potentially in terms of cleanup, and all of the compensation to victims, and environmental damages, and everything else, is \$400 million sufficient? Should it be higher?

• (1035)

Mr. Daniel Rubinstein: That will be a decision for the government to decide.

Mr. Jeff Watson: We're looking for your guidance.

A voice: Do your job.

Mr. Jeff Watson: We'll do our job in the end, don't worry about that.

Mr. Daniel Rubinstein: Just to finish the thought, the announcement that Minister Raitt made on the oil tankers sets up a potential model, where you have access and above that cap it's available. Consolidated revenue fund pays for it and then a levy is charged afterwards. There are options here on how to deal with that.

Mr. Jeff Watson: There would essentially be two levies, right?

Mr. Daniel Rubinstein: Yes.

Mr. Jeff Watson: The fund would still have to be contributed to in order to build the fund. The other levy would be a charge back to the general revenue, if we have to cover the potential liability up front.

Mr. Daniel Rubinstein: That's right.

The Chair: No further comments.

Mr. Komarnicki, you have the last four minutes.

Mr. Ed Komarnicki: Thank you.

Just back on that short line issue, our mayor in my town of Estevan has said that one of his concerns was whether the various short lines operating in the province have enough insurance for operating and if there was a major disaster. Would you agree that the issue with the short lines is quite different from the issue of those in class I?

If I heard you correctly, Mr. Rubinstein, you're suggesting a broadening of the coverage for class I and sort of a gradual building of a fund. The issue relating to that is quite different from the short lines that are operating on a more immediate basis and having difficulty reaching what you might consider a reasonable amount of insurance. How do you consider that and what are you taking into account for issuing these certificates of fitness for short lines?

Mrs. Nina Frid: You're absolutely right, and I agree with my colleagues from FCM. Short lines are absolutely vital and they're not only vital for the transportation system, they're vital for the shippers as well, especially in the prairies and out west. There are a number of short lines that help deliver commodities, the goods that are produced, and that support economic activity overall.

What we are seeing is that the short lines currently—and I'm only speaking about federal ones, I cannot comment on the provincial railways—are holding amounts of insurance that are commensurate with the scope of their operation. In the prairies, there are very few dangerous commodities that are carried, but where they are carried is where we need the particular fund that would cover catastrophic events, should they happen. On a day-to-day basis, they mostly carry just regular bulk goods, forest products, grain, pulses, and so on.

Mr. Ed Komarnicki: I'll go back to Mr. Rubinstein. Of course in the prairies, we've tested the hauling of grain and commodities related to the agriculture industry, but with the Bakken oil exploration, they've now used some of those same lines not only for hauling grain but for hauling Bakken oil.

What do you do in terms of your certificate of fitness for those rail lines and how have you changed the coverage when that type of change takes place?

Mrs. Liz Barker (General Counsel, Legal Services Branch, Canadian Transportation Agency): When railway companies apply for a certificate of fitness, they indicate their commodity mix at the time, and the assessment of the certificate of fitness or the assessment of the adequacy of the liability insurance is done on the basis of the information that's provided at the time. The issue of whether the commodity mixes that are declared reflect the Bakken oil increases is a question.

Mr. Ed Komarnicki: Do you do any audits periodically from time to time to be sure that changes are properly indicated?

Mrs. Liz Barker: No, we don't have an audit function. We rely on the legislation that puts the obligation on the railway companies to self-declare.

Mr. Ed Komarnicki: Mr. Rubinstein.

Mr. Daniel Rubinstein: I just wanted to clarify that our comments are directed only to federally regulated railways. We're not speaking to provincially regulated railways like in your province.

Further to the comment just now on the certificate of fitness, that language is something that we've really grappled with after Mégantic, trying to make this connection between changes in dangerous goods movements and the fitness of the railway. We really understand the day-to-day operations. The fitness is about the economics of getting that insurance certificate, self-insuring, being able to pay that out, and the safety functions with Transport, which is why we're looking to Transport to develop a comprehensive regime for catastrophic incidents involving Bakken or another dangerous good.

● (1040)

The Chair: With that, we're out of time. Thank you very much, ladies and gentlemen, for being here. I appreciate it.

With that, everyone have a good weekend and a good May break.

This meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>