



HOUSE OF COMMONS
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CANADA

AN UPDATE ON RAIL SAFETY

Report of the Standing Committee on Transport, Infrastructure and Communities

**Hon. Judy A. Sgro
Chair**

June 2016

42nd PARLIAMENT, 1st SESSION

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has the honour to present its

SIXTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied Rail Safety and has agreed to report the following:

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AN UPDATE ON RAIL SAFETY

Introduction

Railways are of paramount importance in the Canadian transportation system as they provide a low-cost long-haul transportation service that is the only economical choice for commodity shippers. There are in the order of 30 railway companies under federal jurisdiction.¹ The major federal freight carriers are Canadian National (CN) Railway and Canadian Pacific (CP) Railway; VIA Rail Inc. is the largest passenger rail service provider.

Canada's transcontinental rail network extends into the United States and railway companies from both countries cross the border regularly. The high level of integration between the Canadian and U.S. rail networks has led regulators to harmonize their railway safety and economic rules closely.

Rail is traditionally a safe method of transportation, but accidents – particularly those involving dangerous goods – can have serious consequences. Canada's worst rail accident in history, involving a derailment and crude oil explosion in downtown Lac-Mégantic, Quebec, took place in 2013. The derailments and toxic spills into Lake Wabumum, Alberta, and the Cheakamus River in British Columbia in 2005 and the derailment and chemical explosion in Mississauga, Ontario in 1979 also illustrate the potential for disaster when dangerous goods travel by rail through environmentally sensitive or densely populated areas.

Therefore, the House of Commons Standing Committee on Transport, Infrastructure and Communities ("TRAN" or "the Committee") decided on rail safety as its first study of the 42nd Parliament. The members of the Committee agreed to examine:

- the implementation of recommendations made in TRAN's March 2015 report *Review of the Canadian Transportation Safety Regime: Transportation of Dangerous Goods and Safety Management Systems*;
- the safety of the section of the Burlington Northern Santa Fe Railway line that runs across the U.S. border and through the Semiahmoo First Nation land, the City of White Rock and the City of Surrey (Crescent Beach/Ocean Park) in British Columbia;
- potential safety issues related to the use of remote control devices by rail companies to move locomotives and to assemble trains;
- measures taken or identified as necessary to address outstanding concerns with respect to fatigue management as it relates to rail safety, including hearing from Transportation Safety Board analysts and other

1 Canadian Transportation Agency, "[Federal railway companies](#)," *Rail*.

relevant parties on the impact of train engineer fatigue on railway safety in Canada; and

- other items found to be appropriate by the Committee.

The Committee convened five meetings in Ottawa and heard from 40 witnesses. It invited other stakeholders to submit briefs summarizing their positions and travelled to Lac-Mégantic to meet with local administrators, residents and a health expert.

This report reflects the continuous evolution of the rail safety regime in Canada. The first section outlines the recent changes to the federal legislative framework for rail safety and the transportation of dangerous goods. The second section presents stakeholder views on the Transportation Safety Board of Canada's key rail safety recommendations, many of which led to the recent changes to the regulatory regime and upon which Transport Canada continues to make progress. Sections describing what the Committee heard about railway operating crew fatigue, remote control operations for locomotives and locomotive voice and video recorders follow. The issues of federal resources for rail communities, the railway rule-making process, whistle-blower protections for railway employees and the unique situation of short-line railways were additional topics of interest to the Committee and are also discussed. The Committee's recommendations for a more agile and robust regulatory rail safety regime that is better harmonized with the regulatory framework in the United States are provided throughout the report.

Lac-Mégantic: Case 1

Some members of the Committee were able to travel to Lac-Mégantic to meet with elected representatives, citizen groups involved in safety advocacy and reconstruction as well as a health expert. Members expressed their condolences and best wishes to the community and indicated that rail safety is the Committee's top priority. Members also commended the work of local administrators and residents to recover and rebuild since the rail accident in 2013.

The members received information about the psychological impacts of the accident, which extend into the surrounding region. A health expert indicated that 70% of adults surveyed suffered from post-traumatic stress disorder and that the region exhibits twice the normal rate of other anxiety disorders as compared with the rest of the Canadian population. She also reported that negative health impacts have actually worsened over time as a result of secondary stressors, such as the resumption of rail operations and ongoing site remediation and reconstruction. While help with emotional stress was initially provided in the months following the accident, in the opinion of the health expert, adequate healthcare support is no longer provided to residents in the region.

The stakeholders concerned about community health advised members that the community needs more assurance from the federal government that the railway line in the area is safe, that repairs are being made and speed limits are being respected; such assurance would help mitigate the psychological impact of the rail disaster. The establishment of a long-term health outreach office in Lac-Mégantic was also

recommended. Stakeholders explained that a broadly applicable lesson they learned about disaster response from the experience in Lac-Mégantic is that help with emotional stress should be provided within the first weeks following an incident.

Members received information from elected officials and citizen groups about the profound concerns regarding the safety of the railway infrastructure in the area. They testified that the rails look extremely worn and unsafe in some locations and that Transport Canada does not have enough visibility in the region. The group Convoi-citoyen recommended that a decision to build a bypass line be taken immediately and that it be built quickly; that there be an inquiry into the events of 6 July 2013; and, that effective regulations be enacted to protect the community.² The views of Convoi-citoyen regarding how to make regulations more effective are reflected in the section of this report entitled “Safety management system versus regulatory oversight.” The group Comité de vigilance pour la sécurité ferroviaire Lac-Mégantic offered several recommendations to improve rail safety for all Canadians.³ It recommended that railway companies be required by law to: have an external auditor regularly review their operations and submit the findings to Transport Canada; submit to a regular financial audit by an independent expert who is not their usual auditor and submit the findings to Transport Canada; ensure that their locomotive mechanics are certified by an independent organization certified by Transport Canada; and slow down trains carrying dangerous goods by one track class through inhabited areas. The Comité de vigilance also recommended establishing a regulatory requirement that would force Transport Canada to make public a railway company’s non-compliance with safety requirements beyond a certain threshold. Finally, the Comité de vigilance also recommended that a group of independent experts be mandated to find a way to accelerate the replacement of Class 111 tank cars.

The members were greatly encouraged by the plans and progress with respect to reconstruction presented to them by the Bureau de reconstruction Lac-Mégantic. This group indicated that Lac-Mégantic will have a new, environmentally sustainable, downtown core including an education and training centre for railway safety, emergency response and reconstruction. The training centre is expected to serve Eastern Canada and generate economic activity for the region and, as such, a positive outcome from the community’s experience in dealing with the rail disaster.

The region is currently analysing a proposal to construct a rail bypass around Lac-Mégantic. The stakeholders suggested that the psychological health of the community should be taken into account as the proposal is further developed. Members were informed that much of the population is losing sleep over the train operations, as the trains wake residents during the night and they cannot go back to sleep out of fear. Some stakeholders suggested that a bypass may be the only solution to this problem.

In order to address some of the concerns expressed by stakeholders in Lac-Mégantic the Committee recommends

2 Convoi-citoyen, *Brief*, 3 June 2016, p. 3.

3 Comité de vigilance pour la sécurité ferroviaire Lac-Mégantic, *Brief*, May 2016, pp. 8-9.

That Transport Canada accelerate the current study examining the feasibility of establishing a rail bypass around the town of Lac-Mégantic and that, should the said study confirm the recommendation of the creation of a by-pass, the Government of Canada partner with the municipality to facilitate the request as a way of mitigating instances of post-traumatic stress syndrome within the local population following the accident at Lac-Mégantic.

That Transport Canada re-examine the rules and technology on maximum wear of rails to ensure that visual assessments of the rails' conditions and improved technologies are included in the inspection criteria.

That Transport Canada put in place an enhanced qualification and training program for the rail industry for engineers and other workers directly involved in rail safety.

That Transport Canada collaborate with the municipality of Lac-Mégantic in the establishment of the Lac-Mégantic Canadian Centre for Training and Certification for first responders and teams of interest.

That Transport Canada undertake frequent, interactive and publicly visible inspections of railway operations in communities where there have been major incidents to mitigate ongoing fears.

Legislative framework for rail safety

The *Railway Safety Act* is the main safety legislation governing the operations of federally regulated railways. The *Railway Safety Management System Regulations* (SMS Regulations) were promulgated under the Act in 2001 and require railway companies to have formal plans for assessing and managing risks in their operations and to be accountable for them. Among other things, the SMS Regulations require a railway company to have processes for hazard identification; incident reporting; performance measurement; employee involvement in the development and implementation of the safety management system (SMS); and, mechanisms for continuous improvement in safety performance. The *Railway Safety Act* also empowers railway companies to propose rules for the industry, which must be approved by the Minister of Transport, but permits individual railway companies to ask for exemptions from the rules.

The *Railway Safety Act* authorizes the Minister of Transport to issue immediate Ministerial Orders and Emergency Directives, to develop regulations and to approve a wide range of operating rules to improve the safety of all aspects of rail operations. Transport Canada's Rail Safety Directorate is responsible for inspecting federal railway companies to ensure that they comply with the entire regulatory framework for rail safety, including taking enforcement action when required.

The *Transportation of Dangerous Goods Act, 1992* (TDG Act) regulates the transportation of dangerous goods by all federally regulated modes of transportation, including rail. The *Transportation of Dangerous Goods Regulations* (TDG Regulations) made pursuant to this Act require that anyone who imports, handles or transports a dangerous good respect a certain set of safety standards, including requirements for documentation, means of containment, qualifications for those handling and transporting goods, and Emergency Response Assistance Plans.

Transport Canada's Transportation of Dangerous Goods Directorate inspects shippers, carriers and companies that make the means of containment for dangerous goods to ensure that they comply with the TDG Regulations through planned and random inspections, investigation and enforcement programs.

Recent Transport Canada rail safety initiatives

Officials from Transport Canada appeared before the Committee on 21 March and 16 May 2016. On the subjects of departmental oversight of the rail industry and rail safety regulatory developments since TRAN's last report in March 2015, officials told the Committee that:⁴

- the new *Grade Crossings Regulations*,⁵ the *Railway Operating Certificate Regulations*,⁶ the *Railway Safety Administrative Monetary Penalty Regulations*,⁷ and the *Railway Safety Management Systems Regulations, 2015*⁸ made pursuant to the *Railway Safety Act* came into effect as of April 2015;
- amendments to the *Transportation Information Regulations*, pursuant to the *Canada Transportation Act*, requiring Class I and Class II rail carriers to report leading indicator data to Transport Canada came into effect in April 2015;⁹
- *Rules Respecting Key Trains and Key Routes*, which apply to any track that carries more than 10,000 railcars loaded with dangerous goods per year, came into effect on 12 February 2016.¹⁰ The rules require risk

4 House of Commons Standing Committee on Transport, Infrastructure and Communities (TRAN), [Evidence](#), 1st Session 42nd Parliament, 21 March 2016 (Laureen Kinney, Assistant Deputy Minister, Safety and Security, Department of Transport and Brigitte Diogo, Director General, Rail Safety, Department of Transport). Hereafter, unless otherwise specified, the *Evidence* is from the 1st Session of the 42nd Parliament.

5 [Grade Crossings Regulations](#), SOR/2014-275.

6 [Railway Operating Certificate Regulations](#), SOR/2014-258.

7 [Railway Safety Administrative Monetary Penalties Regulations](#), SOR/2014-233.

8 [Railway Safety Management System Regulations, 2015](#), SOR/2015-26.

9 [Transportation Information Regulations](#), SOR/96-334.

10 Transport Canada, "[Rules Respecting Key Trains and Key Routes](#)," *Rules*.

assessments that involve municipal consultation, speed restrictions and additional inspections for rail operations on key routes;

- amendments to the *Canadian Rail Operating Rules* in July 2015 now require railway companies to use a standardized method to secure unattended trains;¹¹
- new whistle-blower provisions in the *Railway Safety Management System Regulations, 2015* require railway companies to establish a policy enabling employees to report safety concerns without fear of reprisals; and
- the *Safe and Accountable Rail Act*, which received Royal Assent in June 2015, contains a new liability and compensation regime for rail accidents involving dangerous goods; new powers for railway safety inspectors when they perceive a threat to safe railway operations; and, new powers for the Canadian Transportation Agency to order that provinces and municipalities be reimbursed for the costs of fighting fires that result from railway operations.¹²

Under the TDG Act, Transport Canada amended the TDG Regulations to require Emergency Response Assistance Plans for crude oil, gasoline, diesel, aviation fuel and ethanol shipments (December 2014) and a more robust tank car for flammable liquids (May 2015).

Transport Canada's progress on government commitments

The government response to TRAN's 2015 report concerning rail SMSs and the transportation of dangerous goods was tabled in July 2015. The response noted the recent changes to the legislative framework, including the new *Safe and Accountable Rail Act* and new tank car standards. The former Minister of Transport further undertook to continue to:¹³

- regularly review the composition of Transport Canada's railway safety and transportation of dangerous goods oversight workforce in conjunction with annual inspection plans to help ensure proper risk-based analysis, budgets, and staffing levels; and
- study the use of voice and video recorders in locomotive cabs and explore the parameters for their use.

The following sections provide more details about Transport Canada's progress on the government initiatives.

11 Ibid., "[Canadian Rail Operating Rules](#)."

12 [An Act to amend the Canada Transportation Act and the Railway Safety Act](#), S.C. 2015, c. 31.

13 TRAN, [Government Response](#), 2nd Session, 41st Parliament, July 2015.

Safety oversight

Transport Canada officials testified that they believe the department “has a rigorous and robust oversight regime in place to monitor compliance with rules, regulations, and standards through audits and inspections, and to manage safety issues on an ongoing basis.”¹⁴ Transport Canada’s national oversight plans for the federal railway industry are developed and regularly reviewed based on risk indicators such as accident investigations, safety records, previous inspections and safety studies. Transport Canada expected to realize a 4% increase – for a total of 33,400 – in the number of rail oversight activities, including track inspection, bridge inspection, verifications of compliance with operating and other rules (e.g., train securement), and inspections against the SMS Regulations in 2015-2016.

Transport Canada advised that it has increased the number of rail inspectors within the department since March 2015 by approximately 30% (to 137 inspectors)¹⁵ but has had difficulty recruiting for this position. Transport Canada competes for qualified oversight employees with the railway companies, which employ such personnel for their internal inspection and audit activities. Transport Canada told the Committee that the salaries and benefits the department offers compare unfavourably with those offered by the railway companies.¹⁶

Locomotive voice and video recorders

Transport Canada officials told the Committee that the department co-led a project on the use of locomotive voice and video recorders (LVVRs) in locomotive cabs with the Transportation Safety Board in 2015. The working group was given the preliminary task of examining the technical requirements and potential safety benefits of LVVRs in order for Transport Canada to formulate recommendations requiring the use of this technology in Canada. In addition to considering the intended use of the equipment (e.g., for accident investigation only or for proactive use in SMSs as well), the working group was to consider technical issues such as the type of recording equipment used, its capability and durability, and where to install it. As employees would be subject to surveillance, privacy concerns from both personal and legal standpoints were part of the evaluation. Transport Canada expected the final report on the project to be completed by the end of April 2016 but the Committee was not informed if the deadline was met.

A summary of stakeholder perspectives on the use of LVVRs and the Committee’s recommendation are provided in the section of the report entitled “On-board voice and video recorders.”

14 TRAN, [Evidence](#), 42nd Parliament, 1st Session, 21 March 2016, 1535 (Kinney).

15 TRAN, [Evidence](#), 9 March 2016, 1605 (Kinney).

16 TRAN, [Evidence](#), 16 May 2016, 1700 (Diogo).

Tank car standards

Transport Canada issued a Protective Direction under the TDG Act in April 2014 that removed 5,000 of the least crash-resistant Class-111 tank cars from dangerous goods service. The department established new standards for tank cars for flammable liquids through amendments to the TDG Regulations in May 2015.¹⁷ The amendments to the TDG Regulations specify that only tank cars meeting the new TC-117 standard for flammable liquid service may be manufactured as of May 2017. The amendments also describe how the remaining 7,500 Class-111 and CPC-1232 tank cars in Canadian service must be retrofitted in order to continue to be used to transport flammable liquids. The May 2015 amendments to the TDG Regulations also contain a phase-out schedule for the retro-fitted tank cars, which permits them to be used to transport certain dangerous goods until 2025.

A summary of stakeholder perspectives on the phase-out schedule for Class 111 tank cars and the new tank car standards is provided in the section of the report entitled “Transportation of flammable liquids by rail.”

Transportation Safety Board of Canada – Rail safety recommendations

The mandate of the Transportation Safety Board of Canada (TSB) is to advance safety through accident investigation in the rail, marine, air and pipeline modes of transportation. The TSB does not assign fault or liability. The TSB may issue a variety of safety communications to government during and after its investigations, as necessary. According to the current Chair of the TSB, the Board’s “recommendations,” which address safety deficiencies that create significant risks to the transportation system, “are our highest level of communication and they carry significant weight.”¹⁸ Federal ministers are required to respond to TSB recommendations. The TSB studies departmental responses and re-evaluates a department’s progress annually to ensure that the risk is reduced or eliminated. Transport Canada’s responses to almost 88% of the 144 rail safety recommendations the TSB has made since its inception in 1990 have been assessed as being fully satisfactory. The TSB currently has 18 active recommendations with respect to rail safety.¹⁹

Some of the TSB’s active and long-standing rail safety recommendations have been captured on the Board’s *Watchlist*, which includes safety deficiencies that pose the greatest risk to the Canadian transportation system.²⁰ The TSB told the Committee about five outstanding rail safety issues on its *Watchlist*: safety management and regulatory oversight; railway crossing safety; transportation of flammable liquids by rail; following railway signal indications; and on-board voice and video recorders. These issues are addressed in detail below.

17 [Regulations Amending the Transportation of Dangerous Goods Regulations \(TC 117 Tank Cars\)](#), SOR/2015 May 1, 2015.

18 TRAN, [Evidence](#), 16 May 2016, 1610 (Kathy Fox, Chair, Transportation Safety Board of Canada).

19 Ibid.

20 Transportation Safety Board of Canada (TSB), [“Safety products,” Safety](#).

Safety management system versus regulatory oversight

In 2014, the TSB recommended that Transport Canada audit railways' SMSs in sufficient depth and frequency to confirm that the processes are effective and that corrective actions improve safety.²¹ The TSB's recommendation concerning railway companies' SMSs is one that arose from the investigation of the accident in Lac-Mégantic.

The TSB expressed support for railway SMSs stating that "any commercial operator regardless of mode should have a means to manage their safety risks, and that requires some sort of institutionalized documented formal process for identifying hazards and mitigating risks."²² The TSB also stressed that SMSs demand an effective regulator to resolve compliance problems where companies are not able to manage their safety risks or do not want to do so. Given the variance in the effectiveness of an SMS from one railway company to another, the TSB suggested that "the system of regulatory oversight has to take into consideration that spectrum of operators, and maybe focus more on inspections for compliance for those operators who have demonstrated that they're not capable of, or are not as effective at, managing their risks, and more audits for those who have demonstrated that they have a mature safety management system."²³ The TSB stated that Transport Canada ultimately needs to be more effective at "bringing a company back either into compliance with the regulations or to being more effective in addressing the risks."²⁴

Some witnesses testified that there should be more rail inspectors, more on-site rail inspections and more training provided to inspectors. The Toronto-area citizen group Safe Rail Communities and others advocated for increasing the number of inspectors.²⁵ The Union of Canadian Transportation Employees (UCTE), which represents Transport Canada's safety inspectors, recommended to the Committee that more on-site rail safety inspections (as opposed to SMS oversight activities), particularly unannounced inspections, are necessary.²⁶ The representatives from the Saskatchewan Shortline Railway Association and Unifor also expressed support for more on-site inspection activity by Transport Canada. The National President of UCTE also told the Committee that Transport Canada should invest in appropriate inspector training to maintain their skill levels, separate inspectors from auditors and create multi-modal enforcement teams.²⁷

Some stakeholders provided their views on why SMSs should not be relied upon to ensure rail safety. Mark S. Winfield, an associate professor at York University who submitted a reference document to the Committee, suggested that the SMS model and its

21 Ibid., "[Rail Safety Recommendation R14-05](#)," *Recommendations*.

22 TRAN, [Evidence](#), 16 May 2016, 1615 (Fox).

23 Ibid., 1645.

24 Ibid., 1615.

25 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

26 TRAN, [Evidence](#), 11 April 2016, 1355 (Christine Collins, National President, Union of Canadian Transportation Employees).

27 Ibid., 1555.

role in transportation safety in Canada are flawed and should be reconsidered.²⁸ He noted that the move to performance standards gives railway companies broad discretion about how to meet outcomes prescribed by the SMS Regulations. As such, railways are permitted to decide the appropriate balance between efficiency and safety, which is potentially a conflict of interest. In order to avoid straining Transport Canada's oversight capacity with the simultaneous implementation of both SMS and other oversight activities, he recommended replacing SMS with provisions making company officers and directors personally liable for safety. In his opinion, repealing SMS regulations would permit Transport Canada to focus exclusively on other oversight functions. The group Rail Safety First endorsed Professor Winfield's views and suggested a thorough reconsideration of the SMS model for rail safety.²⁹ The former director for the Canadian Centre for Policy Alternatives, Bruce Campbell, similarly submitted that Transport Canada is a victim of "regulatory capture" by the railway industry, which is "where industry is routinely able to shape the regulation governing its operations, block or delay new regulations, and remove or dilute existing regulations deemed to adversely affect costs."³⁰ He recommended strengthening Transport Canada's resistance to regulatory capture by increasing resources to the department and the Canadian Transportation Agency, as well as increasing on-site inspections, among other things. Convoi-citoyen also testified that they believe that deregulation has benefited the railway companies.

The Assistant Deputy Minister for Safety at Transport Canada advised the Committee that, in their view, the appropriate balance between on-site inspections and SMS audits is in "continuing evolution."³¹ In order to ensure that railway companies comply with the safety regulations while they continue to refine their SMSs following changes to the regulatory requirements in 2015, the Committee recommends

That Transport Canada immediately increase the number of on-site and visual inspections for compliance with rail safety regulations and rules it conducts in a given year, prioritizing rail operations with a record of poor performance in terms of developing and implementing effective safety management systems or have demonstrated repeated marginal or non-compliance with federal rail safety regulations.

That Transport Canada assign increased resources and training for field inspections on rail safety.

Some stakeholders provided suggestions for changes to some or all of the legislation governing rail safety in Canada. The representative from the United Steelworkers, a union which represents Canadian and U.S. railway operating employees, including the operating crew of the Montreal, Maine & Atlantic train that derailed in Lac-Mégantic, recommended to the Committee that:

28 Mark S. Winfield, *Correspondence*, 18 April 2016.

29 Rail Safety First, *Brief*, 22 April 2016, p.2.

30 Bruce Campbell, *Brief*, 11 May 2016.

31 TRAN, [Evidence](#), 16 May 2016, 1720 (Kinney).

- all railway companies, regardless of their size, be required to have an emergency team of qualified personnel to respond to major incidents and mechanical problems, such as the fire in July 2013 on board the Montreal, Maine & Atlantic locomotive in Nantes, Quebec, and ensure that a train is secure before the team leaves the site;³²
- the history, reputation and financial fitness of railway companies be rigorously audited before they receive licences to operate; and³³
- one-person crews be prohibited on all trains, not just those transporting dangerous goods, because there could be an accident involving two trains.³⁴

There are already regulations and rules in place respecting railway emergency response, train securement and vetting of railway companies by Transport Canada and the Canadian Transportation Agency prior to licensing. At the moment, however, it is possible for railway companies to operate freight trains with one-person crews as long as the train has no rail cars loaded with dangerous goods.

Some stakeholders raised concerns about the absence of rules or regulations governing railway companies' use of new safety technology.³⁵ The Committee received information about wheel impact load detectors (WILDs), which Canadian railways have adopted to identify wheel flaws before they result in a wheel failure or derailment. Stakeholders advised that, since there are no rules or regulations that address WILDs, individual railway companies have established their own thresholds for when wheels need to be fixed or replaced based on WILD data. Stakeholders noted that Canadian companies' thresholds for WILDs exceed those adopted by the railway industry in the United States and may be unsafe.

Unlike witnesses that recommended revisions to specific aspects of the rail safety regime, a union which represents approximately 65% of railway employees in Canada recommended that the federal government conduct a review of the entire *Railway Safety Act*.³⁶

The Committee notes that the last independent review of the *Railway Safety Act* was completed almost a decade ago. Given the testimony the Committee received on some areas of weakness in the Act, the Committee recommends

32 TRAN, [Evidence](#), 11 April 2016, 1530 (Pierre Arseneau, Coordinator, Montréal, United Steelworkers).

33 Ibid., 1535.

34 Ibid.

35 Rail Safety First, *Brief*, 22 April 2016, p. 3; Bernard Beukeveld, *Brief*, 18 March 2016.

36 TRAN, [Evidence](#), 11 April 2016, 1540 (Phil Benson, Lobbyist, Teamster Canada).

That the Government of Canada accelerate the 5-year statutory review of the *Railway Safety Act* and complete a comprehensive, independent review of the *Railway Safety Act* prior to 2018.

Railway crossing safety

There are 22,000 crossings throughout the nearly 46,000 kilometre railway network in Canada. Railway crossing accidents caused 14 of the total 46 railway fatalities in 2015; trespassing accidents (i.e., unauthorized incursion onto railway property) resulted in 31 fatalities in 2015.³⁷

The TSB has issued three recommendations concerning the safety of railway crossings in Canada. In 1991, the TSB recommended that Transport Canada establish minimum standards for fencing along railway rights-of-way.³⁸ In 2009, the TSB recommended that Transport Canada conduct safety assessments of level crossings on the passenger rail corridor between Quebec City and Windsor.³⁹ In 2015, following the fatal collision between an OC Transpo bus and a VIA Rail train in Ottawa, the TSB recommended that the department provide guidance about when grade separation at a crossing should be considered.⁴⁰

Transport Canada establishes the safety standards for railway crossings and has a role in assessing their safety. In 2014, Transport Canada published new *Grade Crossings Regulations* that clarify the roles of road authorities and railway companies with respect to their safety. In April 2016, the Minister of Transport responded to requests from the public for more information about grade crossings in Canada by making public a list of all grade crossings ranked according to a number of important risk factors.⁴¹

Railway companies and the road authorities are responsible for investments in the appropriate warning systems for public crossings as well as the costs of maintaining and operating them. Transport Canada has devoted resources to raising awareness of the new regulatory requirements with road authorities and continues to offer financial assistance through the Grade Crossing Improvement Program for stakeholders to make improvements to existing crossings. The department also partners with industry to educate the public on the dangers at railway crossings and the dangers of trespassing. The Federation of Canadian Municipalities (FCM) has called for additional federal funding to assist municipalities with upgrading crossings as well as for Transport Canada to develop guidance materials to assist municipalities in complying with regulations.⁴²

37 TSB "[Monthly Rail Occurrence Statistics – December 2015](#)," *Statistics*. There was one other fatality in 2015.

38 TSB, "[Rail Safety Recommendation R91-01](#)," *Recommendations*.

39 Ibid., "[Rail Recommendation R09-01](#)."

40 Ibid., "[Rail Recommendations R15-04](#)."

41 Transport Canada, "[Grade Crossings Inventory](#)," *Grade Crossing Safety*.

42 Federation of Canadian Municipalities (FCM), *Brief*, 21 April 2016, p. 3.

The TSB noted that Transport Canada's implementation of new grade crossing regulations in 2014 marked some progress with respect to this *Watchlist* issue. While no timelines have been provided, Transport Canada has indicated that it will engage the provinces and railways to develop guidelines for when grade separation at a crossing should be considered.⁴³

The Committee raised concerns about grade crossing safety since crossing accidents cause approximately one-third of the railway fatalities that occur each year. Therefore, the Committee recommends

That Transport Canada require effective signage and/or other safety measures at unmarked passive railway crossings that have been identified as most dangerous, or where accidents have repeatedly occurred, and that the cost of these safety modifications not be placed upon local government or ratepayers.

Transportation of flammable liquids by rail

The Chair of the TSB advised the Committee that "there are still a number of outstanding risks notably with the transportation of flammable liquids."⁴⁴ TSB recommendations concerning stringent criteria, including risk assessments, for the operation of trains carrying dangerous goods and enhanced protection standards for the Class 111 tank cars used to transport flammable liquids have not yet been fully implemented by Transport Canada.

The *Rules Respecting Key Trains and Key Routes* under the *Railway Safety Act*, which require speed restrictions for trains carrying dangerous goods, greater inspection requirements on restricted rail routes, and the completion of risk assessments for rail transportation routes, came into effect in February 2016. Transport Canada is currently conducting research to establish appropriate threshold criteria for key routes, however, with a final report expected to be completed by October 2016.

Some stakeholders had recommendations regarding the risk assessments conducted by railways, which are required under the *Rules Respecting Key Trains and Key Routes* as well as the *Railway Safety Management Systems Regulations, 2015*. Although railway companies are required to consult municipalities while preparing their risk assessments, the FCM would like summaries of the risk assessments to be provided to communities.⁴⁵ The Toronto-area group Safe Rail Communities supported the publication of railway company risk analysis, better monitoring of dangerous goods classification and speed limits, and independent risk analysis of routes used for dangerous goods.⁴⁶ The Chair of the TSB expressed the view that independent risk assessments of railways' activities might be unworkable. She noted that rail companies

43 TSB, "[Rail Recommendations R15-04](#)," *Recommendations*.

44 TRAN, [Evidence](#), 16 May 2016, 1635 (Fox).

45 FCM, *Brief*, 21 April 2016, p. 3.

46 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

often employ third parties to verify their internal risk assessments and that Transport Canada also reviews them.

Despite the recent amendment to the TDG Regulations requiring that tank cars be built to the new TC-117 standard, the TSB remains concerned about the extended timeline for the retirement of remaining Class 111 tank cars from dangerous goods service. The TSB remarked that “we know that regulations are in effect, but we are concerned about the timelines because we might have to wait until 2025 before all the deficient cars are withdrawn.”⁴⁷ Safe Rail Communities advocated for the immediate retirement of Class 111 tank cars.⁴⁸ Rail Safety First noted that the TC-117 tank car standard does not require the same brakes mandated by the new standard in the United States.⁴⁹ Rail Safety First also informed the Committee that evidence has shown that the enhanced Class 111 tank cars still in use for dangerous goods could be breached at speeds lower than those prescribed for key trains.

Some witnesses noted that technology designed to reduce the volatility of crude oil exists.⁵⁰ Safe Rail Communities recommended that a safety-based standard for volatility of crude oil be introduced under the TDG Act.⁵¹

Following railway signal indications

Crew misinterpretation or misperception of train signals has been cited as a causal or contributing factor in several TSB accident investigations.⁵² In 2000, the TSB first recommended additional backup safety defences for trains to help ensure that signal indications are consistently recognized and followed by crew.⁵³ Although the railway companies did adopt a number of administrative measures to reduce the incidence of missed signals, the TSB does not find them to be sufficient.⁵⁴ A second TSB recommendation in 2013 was for major Canadian passenger and freight railways to implement physical fail-safe train controls, beginning in Canada’s high-speed rail corridors.⁵⁵ The Chair of the TSB noted that the U.S. rail industry has been using such systems for some time and that the Federal Railroad Administration is moving forward with regulations mandating physical fail safes on trains. For Canada, the TSB Chair remarked that “definitely, more needs to be done to slow, stop a train, to make sure it follows the signal indication and it’s not entirely dependent on the human.”⁵⁶ Safe Rail Communities

47 TRAN, [Evidence](#), 16 May 2016, 1650 (Fox).

48 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

49 Rail Safety First, *Brief*, 22 April 2016, p. 8.

50 Ibid.; Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

51 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

52 TSB, “[Following Railway Signal Indications](#),” *Watchlist*.

53 TSB, “[Rail recommendations](#),” *Recommendations*. See Recommendation R00-04.

54 TRAN, [Evidence](#), 16 May 2016, 1635 (Fox).

55 TSB, “[Rail recommendations](#),” *Recommendations*. See Recommendation R13-01.

56 TRAN, [Evidence](#), 16 May 2016, 1635 (Fox).

recommended that industry be required to utilize safety technology including Positive Train Control (PTC), automated rail car monitoring and automated track inspection programs.⁵⁷ The TSB further recommended that whatever requirements are imposed, they need to be compatible with the requirements in the United States as the technology represents a significant investment.

According to an official from Transport Canada, there is a working group under the Advisory Council on Rail Safety looking at options on how to enhance train control.⁵⁸ The working group includes representatives of the railways, the unions and Transport Canada.

Given that there are approximately 30 occurrences per year in Canada in which train crew do not respond appropriately to signals, that there is a significant risk to the public and the environment when these occurrences result in a collision or derailment, and that the United States has already moved to require physical fail-safes (“positive train control”) on certain trains to prevent accidents caused by missed signals, the Committee recommends

That Transport Canada publicly release the report of the Enhanced Train Control Working Group immediately after receiving it.

On-board voice and video recorders

Numerous North American rail accident investigations have identified human factors such as driver distraction, speeding and failure to follow signals as causal factors.⁵⁹

According to the TSB, on-board voice and video recordings would provide information about whether and how the actions of train crews contribute to rail incidents and accidents and therefore would be very helpful for advancing rail safety. The TSB testified that, for accident investigation, “it’s absolutely essential to finding out what happened and why it happened. In some cases, we don’t have a live crew.”⁶⁰ The TSB issued recommendations for on-board cab voice recordings in 2003 and for in-cab video cameras in 2013. The Chair of the TSB also expressed support for the proactive use of on-board voice and video recordings by railway companies. She told the Committee that “the use of voice and video recordings in all modes of transportation and particularly in this case in rail, can go a long way to helping railway companies identify hazards in their operations and take steps before an accident occurs provided it is used in the context of a proactive non-punitive safety management system.”⁶¹

57 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

58 TRAN, [Evidence](#), 16 May 2016, 1700 (Diogo).

59 Allison Padova, [Advancing Rail Safety: Employee Privacy and the Public Interest](#), Publication No. 2015-117-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 26 October 2015.

60 TRAN, [Evidence](#), 16 May 2016, 1615 (Fox).

61 *Ibid.*

Railway companies testified that they generally support the use of in-cab recordings and would like to use the recordings to identify unsafe trends in employee activities in order to take corrective action before an accident occurs. CN Rail is of the view that in-cab cameras would assist the company in mitigating the risks of human factors, including fatigue. CN Rail would like to use on-board voice and video recordings for safety monitoring and training as part of the company's SMS. CN Rail indicated that the company would use the recorded information to discipline employees found breaking the company's rules or Canadian laws but stated that employees have recourse to internal, union and external resources for support if an employee feels that a punishment for an infraction is too harsh.⁶² The President of Southern Railway of British Columbia also showed support for legislation mandating railway companies' use of on-board voice and video recordings "to conduct rules compliance testing and promote safety."⁶³

In February 2015, Transport Canada announced its intention to explore mandatory requirements for on-board recording devices with stakeholders, including the TSB. A Transport Canada-TSB working group established to examine the technical requirements and potential safety benefits of in-cab locomotive voice and video recorders (LVVRs) was launched in May 2015. According to Transport Canada officials, the final report on the first phase of a two-phase study to evaluate the safety benefits of LVVRs was due to be completed by the end of April 2016.⁶⁴ The second phase, if it proceeds, would involve legislative, regulatory and/or rule changes to mandate the use of LVVRs.

A representative of Teamsters Canada who was involved in the Transport Canada-TSB working group suggested that there would be no safety benefit from on-board voice and video recordings.⁶⁵ It is the position of the Teamsters that privacy, disciplinary and constitutional issues make the proposal an impossible one. A representative of the Teamsters Canada Rail Conference (TCRC) suggested that the use of on-board voice and video recordings for accident investigations only would be acceptable as provided under the *Canadian Transportation Accident Investigation and Safety Board Act*. The TCRC representative told the Committee that knowing that they were being monitored would be a distraction for employees and would have a chilling effect on employee communications and an adverse impact on safety.⁶⁶

Given that the TSB advocates for the use of in-cab recordings and noting that the U.S. Federal Railroad Administration has already announced its intention to proceed with a Notice of Proposed Rulemaking process in 2016 with respect to the use of on-board recorders, the Committee recommends

62 TRAN, [Evidence](#), 13 April 2016, 1610 (Jim Vena, Executive Vice-President and Chief Operating Officer, Canadian National Railway Company).

63 Ibid., 1705 (Frank Butzelaar, President, Southern Railway of British Columbia).

64 TRAN, [Evidence](#), 21 March 2016, 1540 (Kinney).

65 TRAN, [Evidence](#), 11 April 2016, 1715 (Phil Benson, Lobbyist, Teamsters Canada).

66 TRAN, [Evidence](#), 11 April 2016, 1720 (Don Ashley, National Legislative Director, Teamsters Canada Rail Conference, Teamsters Canada).

That Transport Canada publicly release the final report on the first phase of a two-phase study to evaluate the safety benefits of locomotive voice and video recorders.

That Transport Canada immediately develop legislative and regulatory structures to mandate the use of locomotive voice and video recorders by railway companies, and that effective rules be put in place to ensure recordings are used exclusively by the appropriate government authorities during Transportation Safety Board accident investigations or in subsequent criminal investigations to which they directly relate.

Transport Canada's implementation of TSB recommendations

Considering that it took Transport Canada more than 10 years to promulgate new grade crossing regulations, the Chair of the TSB observed that "sometimes it takes Transport Canada a very long time to implement our recommendations."⁶⁷ She recommended to the Committee that there is a "need for an expedited regulatory process when it comes to implementing safety related regulations."⁶⁸

For its part, Transport Canada reported that it may take time to implement TSB recommendations when consultation, regulation, research or provincial involvement is required.⁶⁹

Some witnesses, such as the Union of Canadian Transportation Employees and the United Steelworkers, have suggested that Transport Canada should be obliged to implement, not just respond to, TSB recommendations.⁷⁰ When asked whether the TSB should have powers to issue directions, the Chair of the TSB responded that an independent accident investigator is the best practice globally. She cautioned that "if we were to become involved in prescribing solutions they may have unintended consequences, and that would potentially put us in a conflict of interest down the road if we're then investigating."⁷¹

While the Minister of Transport may issue immediate Ministerial Orders, Emergency Directives and Protective Directions to impose enforceable requirements on the railway industry temporarily, the Committee believes that these measures are insufficient. Furthermore, the Committee agrees with the TSB that it takes too long to make safety regulations and recommends

That Transport Canada establish and adopt an expedited process for responding to Transportation Safety Board safety-related

67 TRAN, [Evidence](#), 16 May 2016, 1610 (Fox).

68 Ibid., 1615.

69 Ibid., 1715 (Kinney).

70 TRAN, [Evidence](#), 11 April 2016, 1535 (Arseneau); 1705 (Collins).

71 TRAN, [Evidence](#), 16 May 2016, 1625 (Fox).

recommendations and that an enhanced reporting system be adopted to prevent recommendations from languishing, without action, on the Transportation Safety Board Active Rail Recommendations list.

Railway operating crew fatigue

The Committee was informed that effective fatigue management for “safety-critical” employees is essential for 24/7 operations such as those of the Canadian railway industry. The Chair of the TSB told the Committee that their investigators always assess whether fatigue may have played a role in an accident and that its reports identify fatigue as a contributing factor if it was found to be one. All of the railway companies that testified before the Committee indicated that fatigue had not been a factor in any of the accidents or incidents involving their operations in the past five years. However, the TSB has indicated that at least one incident has involved fatigue and the railway employees also raised the issue.

The legislative instrument that governs the railway companies’ scheduling practices for their train crews is the *Work/Rest Rules for Railway Operating Employees* (WRR) under the *Railway Safety Act*.⁷² The WRR have been described as an attempt “to balance the interests of the railways (safe and cost-effective crewing of their trains), of employees (quality of life and incomes) and the public interest in safe railway transportation.”⁷³

An official from Transport Canada told the Committee that the department takes enforcement action when it finds non-compliance with the WRR.⁷⁴ For example, in January 2016 Transport Canada issued a notice and order to a number of rail terminals in British Columbia, citing hazards related to accumulated crew fatigue created by rail operations.⁷⁵ The department follows up on whether the companies have responded to the enforcement action and whether it is sufficient.

The Committee heard testimony that, while the WRR provide a basis for determining railway employees’ hours of work, collective agreements between employees and railway companies also contain terms related to opportunities to work and rest. A representative from Teamsters Canada characterized the situation as one in which work hours are governed by weak regulations and collective bargaining.⁷⁶ He observed that “hours of work are set by regulation in trucking and air and should never be left to collective bargaining in the first place: fix it for rail.”⁷⁷ Teamsters Canada recommended that the *Railway Safety Act* be amended to give Transport Canada the power to set hours

72 Transport Canada, “[Work/Rest Rules for Railway Operating Employees](#),” *Rules*. Railway companies develop safety and operating rules, which must be approved by the Minister of Transport. Approved rules have the same force and effect as regulations.

73 *Rail Safety Act Review Panel, Stronger Ties: A Shared Commitment to Railway Safety*, Ottawa, 2007, p. 155.

74 TRAN, [Evidence](#), 16 May 2016, 1705 (Diogo).

75 Transport Canada, [Notices and Orders](#).

76 TRAN, [Evidence](#), 11 April 2016, 1540 (Benson).

77 Ibid.

of work, as is the case in other transportation sectors. Furthermore, rule-making should be based on fatigue science, with consideration for the health of workers and in collaboration with Labour Canada. Teamsters Canada recommends that “Labour Canada take[s] the lead when Transport Canada deals with hours of work and fatigue in rail and all transportation sectors.” Teamsters Canada also recommended that a joint study involving Health Canada, Labour Canada and Transport Canada “assess the health costs of fatigue in the transportation sector and the publicly funded health care [sector and], the social costs to transportation workers, their families, and society.”⁷⁸

The representatives of the largest freight and passenger railway companies in Canada told the Committee that provisions in their collective agreements with employees permit employees to take rest whenever they need to. CN Rail explained that the railway has “measures in place to ensure our employees have the right to refuse work or stop work if they believe they are not well enough rested to work safely.”⁷⁹ Executives from VIA Rail Canada Inc. and CP Rail confirmed that they offer the same opportunity to take rest to their employees. Representatives of Teamsters Canada submitted a written response to the railways’ testimony asserting that employees must choose work over rest to avoid retribution from railway companies.⁸⁰

The TSB did not denounce the role of collective agreements in fatigue management but cautioned that it is “up to companies and bargaining agents to work together and not to allow scheduling practices into collective agreements that are counterproductive from a human fatigue perspective.”⁸¹

Transport Canada tasked the Advisory Council on Railway Safety (ACRS) Fatigue Management Working Group with studying the issue of rail operating crew fatigue and making recommendations to the Minister of Transport. According to the official from Transport Canada, the members of the working group could not agree on recommendations and the group was disbanded in 2014. The department intends to consider the results of its audit activity and consult with stakeholders before taking further measures to manage railway crew fatigue.⁸²

Representatives of CP Rail confirmed that a different system for wages and scheduling, which pays employees and hourly wage and which permits two consecutive days off, has been adopted by the railway company for its operations in the United States. CP Rail indicated that they would favour this system for use in Canada and that it had offered it to their employees.⁸³ The Teamsters Canada Rail Conference testified, however, that this wage and schedule model was “not a system that we thought really addressed

78 Ibid., 1545.

79 TRAN, [Evidence](#), 13 April 2016, 1545 (Vena).

80 Teamsters Canada, *Written Response*, received 27 April 2016.

81 TRAN, [Evidence](#), 16 May 2016, 1640 (Fox).

82 TRAN, [Evidence](#), 21 March 2016, 1605 (Diogo).

83 TRAN, [Evidence](#), 13 April 2016, 1635 (Edwards).

any of our needs here” and also noted that it was based on the U.S. hours-of-service regulations, which are different from Canada’s.⁸⁴

Given the potentially serious consequences for public safety and the health of employees in the railway industry, the Committee believes that improvements to the legislative tool governing fatigue are possible and necessary. Therefore, the Committee recommends

That Transport Canada, in cooperation with the federal departments responsible for health and labour, take immediate action through a working group to develop options to improve the management of railway crew fatigue, including (but not limited to) (1) enhancing work/rest rules in safety management systems (SMS); (2) removing work/rest provisions from collective bargaining processes; (3) introducing guidelines or a regulatory framework in place of SMS-based fatigue management; and (4) ensuring that fatigue rules are science-based. The working group’s report must be tabled in Parliament by 1 January 2018.

Remote control devices for locomotives

The Committee heard testimony that Canadian railways have been using remote control technology since the 1990s, for the most part inside rail yards or terminals. The safety concerns about remote control technology include those related to inadequate training for users as well as the safety of other employees working in the vicinity of the locomotives.

Transport Canada officials advised the Committee that any use of remote control devices to operate locomotives is subject to the conditions in the *Canadian Rail Operating Rules* concerning “how the equipment must operate, what the training is and how the people using it must operate.”⁸⁵ Transport Canada rail safety inspectors have the authority to oversee the use of the remote equipment and take enforcement measures when it is not in compliance with the law. According to officials from Transport Canada, the remote control equipment is used mainly in yards but may also be used on main-line track. The *Railway Safety Management Regulations, 2015* require railway companies that wish to change the way they use the technology (e.g., start using it on main-line track) to assess the risk of the change and provide advance notice of the desired use to Transport Canada.⁸⁶ At the moment, there is a speed restriction on remote control operations and the user must be trained as a conductor or foreman.

The Committee heard opposing views on the impact of the use of remote control locomotive operations on rail safety. The National President of Unifor told the Committee that the administrative procedures for the use of remote control devices in rail yards and

84 TRAN, [Evidence](#), 11 April 2016, 1640 (Ashley).

85 Ibid., 1710 (Kinney).

86 TRAN, [Evidence](#), 21 March 2016, 1710 (Diogo).

sidings did not protect employees as effectively as conventional lockout procedures that provide a physical barrier to train movements where employees are working.⁸⁷ Conversely, a representative from CN Rail told the Committee that research has shown that remote control devices are actually safer than conventional locomotive operations, though this research was not provided to the Committee.⁸⁸

A representative from the Teamsters Canada Rail Conference expressed concern that, while remote control technology was initially used in yards to build trains and switch cars, its use is being expanded to purposes for which it was not designed, which is not in the public interest.⁸⁹ He also expressed concern about recent rail incidents causing derailments of dangerous cargo. According to the Teamsters, there is no legislated definition of “qualified operator” or “operator control unit” and the training standards are not specified in regulation. Furthermore, there is concern that there are no limits imposed on the types, tonnage or length of trains, or the distance they can be operated using remote control technology as is the case in the United States. The Teamsters recommended that Transport Canada halt expansion of remote operations until independent safety studies and risk assessments have been performed in consultation with communities and that it develop specific regulations governing the safe operation and use of remote control technology, including qualifications and training.

Transport Canada has indicated that it intends to raise the issue of changing the rules to address distance and tonnage for remote control operations, as well as the training requirements to operate them, at an upcoming meeting with industry and unions.⁹⁰

In order to reduce the risk associated with the use of remote control devices for locomotives and to close the regulatory gaps that exist in Canada relative to the rules for using the technology in the United States, the Committee recommends

That Transport Canada (1) conduct a comparative study on the rules for remote control locomotive operations in Canada and the United States; and (2) take measures that lead to the harmonization and adoption of rules governing more aspects of remote control locomotive operations, including rules concerning the tonnage of a train, the length of remote control movements and the training requirements for operators of the technology.

Rail relocation in urban areas and community impacts: Case 2

In its consideration of the potential impact on public safety of railway operations in urban areas, the Committee used as an example the situation that exists in one area: the cities of White Rock and Surrey, British Columbia. Since the Burlington Northern Santa Fe (BNSF) Railway began running trains along the beach in White Rock in 1909, the amount

87 TRAN, [Evidence](#), 11 April 2016, 1550 (Jerry Dias, National President, Unifor).

88 TRAN, [Evidence](#), 13 April 2016, 1545 (Vena)

89 TRAN, [Evidence](#), 11 April 2016, 1645 (Ashley).

90 TRAN, [Evidence](#), 16 May 2016, 1715 (Diogo).

of rail traffic traversing the communities has increased dramatically, as have the volume of dangerous goods being transported and the length of the trains themselves.

Aside from concerns about the long-term stability of the waterfront terrain on which the rails are built, the municipalities testified that they are particularly worried about trains that stand in urban crossings for long periods of time. The municipal administrators advised that they recognize the economic value of having the rail service in the area, but are wary of the risks to the population of the seaside community of Crescent Beach, which has a permanent population of 1,250, when a stationary train blocks all access for residents and first responders.

A representative from the City of White Rock testified that it has called on the federal government to:

- confirm that the track complies with the *Railway Safety Act*;
- change the grade crossing rules that sanction the current situation;
- investigate the cause of stoppages of BNSF trains blocking access to the Crescent Beach community; and
- support relocation of the railway pursuant to the *Railway Relocation and Crossing Act*.

A representative of the Canadian Transportation Agency testified in more detail on the practicalities of invoking its authorities contained in the *Rail Crossing and Relocation Act*. One of the principal requirements for Agency intervention pursuant to the Act is that the parties negotiate and submit an accepted transportation plan for the region. According to the Agency's Chief Compliance Officer, "the intention of that plan is to really to identify how the transportation network of that entire region is going to properly function after the proposed relocation."⁹¹ Another condition that potential applicants must meet under the Act is a financial one, as the Agency's "powers may only be used when certain criteria are met, including a determination by the Agency that any such relocation or rerouting would occur at no net cost to the railway company."⁹² It appears that the financial condition for Agency intervention in a rail relocation project, which may cost hundreds of millions of dollars or more, is a considerable obstacle to would-be applicants for rail relocation projects. The Committee was advised that there have been no applications to the Agency under the Act since 1987.

Representatives from the BNSF Railway, which owns and operates the line through Surrey and White Rock, suggested that its rail line is a strategic link in the trade route between Canada, the United States and Mexico. The company testified that "BNSF's service to Canada's Pacific gateway provides Vancouver with the unique strategic

91 TRAN, [Evidence](#), 16 May 2016, 1555 (Gaspar).

92 Ibid., 1535.

advantage of being the only port on the west coast served by three class 1 railroads.”⁹³ The Amtrak passenger rail service between Seattle and Vancouver also uses the track.

The BNSF Railway testified that safety is its core value and claimed that the company exceeds Transport Canada’s requirements for inspections of its track and structures. They advised that the company inspects busiest mainline track daily, uses technology to detect flaws and reinforces areas showing signs of erosion. The company’s investment of \$37 million in its track and bridges in British Columbia since 2013 have included “replacing bolted rail with continuous welded rail and by replacing the bridges over the Little Campbell and Serpentine waterways.”⁹⁴ The BNSF Railway has also increased the resources devoted to policing its right-of-way and, in collaboration with the municipalities, is making improvements to fencing in the area to reduce the risks to trespassers.

The representative of BNSF Railway expressed sympathy for the community that becomes inaccessible when trains stop unexpectedly. To mitigate the impact of blocked access to the Crescent Beach community in Surrey, the railway company signed a Stopped Train Protocol with the City whereby it would break the train to let emergency vehicles through the crossing. The railway representative conceded that, according to its records, the railway did not follow the protocol on one occasion but that “we are taking actions to address that, and we continue to listen to our communities and try to be responsive.”⁹⁵ BNSF also reported that there were 10 “major track blocking events resulting from mudslides” in the past five years.⁹⁶

The railway company’s records were contradicted by the Chief of the Surrey Fire Service who advised the Committee that “in the past few years we have seen several incidents where a stopped train protocol should have been exercised but was not.”⁹⁷ The Surrey Fire Service testified that Transport Canada is investigating the City’s recent complaint but, to date, has not sanctioned BNSF for not complying with the operating rules that prohibit a standing train from blocking a crossing for more than five minutes. The discrepancy in the information provided by the two parties signals a problem for the enforcement of the railway operating rules.

Representatives from the BNSF Railway indicated that the railway would consider relocating its operation from the beach in Surrey and White Rock but suggested that “it would be very, very expensive.”⁹⁸ Less expensive alternatives might include building an underpass, which could cost \$35 million or more, or establishing some emergency services in Crescent Beach.

93 TRAN, [Evidence](#), 18 April 2016, 1540 (Orest Dachniwsky, Associate General Counsel, Operations and Regulatory, BNSF Railway Company).

94 Ibid., 1545.

95 Ibid., 1625.

96 Burlington Northern Santa Fe Railway, *Written Response to Questions*, 23 May 2016.

97 TRAN, [Evidence](#), 18 April 2016, 1550 (Fire Chief Len Garis, Surrey Fire Service, City of Surrey).

98 Ibid., 1600.

The Committee recommends

That Transport Canada immediately pursue in consultation with provincial and local governments legislative and/or regulatory structures to require rail companies operating in Canada to (1) develop and implement long-term plans to mitigate environmental impacts on railways, including but not limited to ongoing destabilization of slopes, mudslides, flooding, extreme weather conditions, and floodplain issues; and (2) when these issues affect a company's railway in a community, that these communities be consulted in the development and implementation of the plan.

Other priority rail Issues

During the course of its study on rail safety, the Committee's discussions with witnesses ranged beyond the precise terms of reference that the members had agreed upon. While these issues may be considered outside the scope of the study, members decided that stakeholder positions on the following merited mention:

- the interaction between federal and municipal agents following a rail accident;
- the manner in which some of the legislative instruments governing the federal railway industry are established;
- whistle-blower protections for railway employees; and
- the unique challenges of short-line railways.

Emergency planning and response

FCM raised the importance of improved communication about support programs for emergency responders. They support the recommendations by Transport Canada's Emergency Response Task Force for municipal first responder training and hoped for action. They also raised concerns with the limitations of the AskRail mobile device application to provide "real-time" information on rail car contents during an emergency, particularly where a lack of necessary equipment or reliable cellular network exists. They support broadening the role of Transport Canada's Canadian Transport Emergency Center (CANUTEC) to provide "real-time" train information during emergencies.

At Lac-Mégantic, the Rehabilitation Committee also recommended establishment of a special training center for all emergency responders dealing with dangerous goods incidents.

The Teamsters recommended that all rail companies be required to have emergency response teams available.

Resources and information for rail communities

Freight railways carrying dangerous goods traverse hundreds of Canadian communities, large and small, every day. When accidents involving a release of dangerous goods occur nearby, these communities send their own personnel and resources to help respond to the emergency. In small communities, the fire department is often a volunteer force and may not be equipped with adequate and appropriate materials for dealing with the types of dangerous goods that travel in large volumes through their area.

One federal resource provided to communities is the Canadian Transport Emergency Response Centre (CANUTEC). Transport Canada staffs this 24/7 national call centre with professionals qualified to provide technical advice to individuals responding to accidents involving dangerous goods.

As mentioned earlier in this report, recent amendments to the *Railway Safety Act* increased the amount of liability insurance the railway companies must carry in order to be licensed to transport dangerous goods. The *Safe and Accountable Rail Act*, which received Royal Assent in June 2015, also established a pooled compensation fund to cover damages from accidents involving crude oil that exceed the railway's liability.⁹⁹ The 2015 bill also authorized the Canadian Transportation Agency to direct railway companies to reimburse a province or municipality for the costs of responding to a fire caused by railway operations. The Minister of Transport recently announced that the new liability and compensation regime for rail comes into force in June 2016.¹⁰⁰

Transport Canada set up an Emergency Response Task Force in 2014 including railways, emergency response contractors, municipalities, firefighters, aboriginal volunteer firefighters and others to consider how the emergency response system could be improved. Transport Canada's Assistant Deputy Minister of Safety and Security testified that the task force was assembled "to identify some of the common issues facing first response, including things like communications, incident command protocols, training standards, training opportunities, and certainly the issue of funding for both training and equipment."¹⁰¹ The task force completed its work after 18 months and is expected to make 40 recommendations, some of which are for other jurisdictions (e.g., recommendations respecting incident command systems). Transport Canada advised that twelve or more of the task force's recommendations have already been implemented.¹⁰²

Transport Canada requires railway companies to provide municipalities with lagged information about the types and volumes of dangerous goods that typically travel by rail through their community. Transport Canada recently issued Protective Direction (PD) 36

99 [An Act to amend the Canada Transportation Act and the Railway Safety Act](#), S.C. 2015, c. 31.

100 Government of Canada, "[Strengthened liability and compensation regime for rail to come into force June 18, 2016](#)," *News Releases*, 18 May 2016.

101 TRAN, [Evidence](#), 21 March 2016, 1545 (Kinney).

102 TRAN, [Evidence](#), 16 May 2016, 1720 (Kinney).

under the TDG Act requiring railway companies to provide information about shipments of dangerous goods through communities, more frequently, and in a standardized format.¹⁰³ PD 36 also compels railway companies to report the top 10 dangerous goods they transport through a province on their websites.

In response to requests for real-time information from communities, Canadian and U.S. railway companies operating in Canada established a web-based platform for municipal officials to access real-time information about the trains presently running through their communities. The application is called AskRail and provides registered users, of which there are more than one thousand to date, information about the contents of every rail car on every train they query using the identification numbers on the train.

The Committee recommends

That Transport Canada immediately develop legislative and/or regulatory structures to require rail companies operating in Canada to (1) provide real time knowledge of dangerous goods to first responders in communities via cellular or Internet services where possible (such as the AskRail app); (2) study other means of delivering this information ahead of time or in real time via other mediums to communities outside of cellular range; and (3) that these communities be consulted in the development and implementation of the plan.

The FCM noted that some of the municipal concerns related to liability and compensation, information sharing and oversight of federal railways were addressed by the end of the 41st Parliament.¹⁰⁴ The FCM's subsequent request for higher frequency information about dangerous goods on trains for municipalities and some information for the general public appears to have been addressed by PD 36. The FCM informed the Committee that it would like the new compensation regime for rail accidents involving crude oil to be extended to other dangerous goods. Safe Rail Communities advocated for unlimited and absolute liability for rail carriers.¹⁰⁵ Rail Safety First has put forth that the new compensation and liability regime is inadequate in the case of a high consequence event.¹⁰⁶

The FCM is also concerned that AskRail is not accessible in locations without cellular service. The FCM recommended that Transport Canada broaden the role of the CANUTEC so that it could provide real-time information about what is on trains to first responders attending emergencies.¹⁰⁷ Safe Rail Communities also recommended that real-time data be provided to first-responders.

103 Transport Canada, "[Protective Direction No. 36](#)," *Transportation of Dangerous Goods*.

104 FCM, *Brief*, 21 April 2016, p. 2.

105 Safe Rail Communities, *Brief*, 19 April 2016, p. 2.

106 Rail Safety First, *Brief*, 22 April 2016, p. 10.

107 FCM, *Brief*, 21 April 2016, p. 3.

Rules

The *Railway Safety Act* authorizes railway companies to develop safety and operating rules, which must be approved by the Minister of Transport.¹⁰⁸ Rules have the same force and effect as regulations, but regulations take precedence over rules. While the rules are intended to apply broadly across the industry, railway companies can apply for exemptions. According to the Director General for Rail Safety at Transport Canada, three new rules have been finalized since March 2015: one respecting key routes and key trains and two concerning train securement.¹⁰⁹

Concern was expressed that the rule-making process for the federal rail industry amounts to self-regulation and has a negative impact on safety. The former director for the Canadian Centre for Policy Alternatives, Bruce Campbell, submitted that Transport Canada is a victim of “regulatory capture” by the railway industry. Mr. Campbell defined regulatory capture as “where industry is routinely able to shape the regulation governing its operations, block or delay new regulations, and remove or dilute existing regulations deemed to adversely affect costs.”¹¹⁰ The group Rail Safety First also noted that company specific rules reinforce the policy role of the railway companies, which is a departure from public administration norms.¹¹¹

Transport Canada’s Assistant Deputy Minister for Safety and Security argued that the rule-making process for the railway industry exists partly because there is no international regime that applies to rail and rail traffic crosses the border. She also noted that, while the operational rules may come from industry, all rules must be approved by Transport Canada. The Assistant Deputy Minister told the Committee that, “if we aren’t satisfied with [the rules], we will direct them to make amendments, and that’s happened in a number of cases.”¹¹² By law, the formulation of rules must involve labour representation, but there is no legislative requirement for communities to be involved.

The TSB was not categorical about exemptions to the rules, reasoning that “there can sometimes be reasons to provide some flexibility with respect to the regulations, but from our perspective you always have to look at the safety.”¹¹³

The railway unions expressed concerns about company exemptions to rules and the role an exemption played in the Lac-Mégantic accident. The Committee recommends

That advance notice and opportunity for consultation with municipalities be provided on rules and any exceptions to rules.

108 [Railway Safety Act](#), R.S.C., 1985, c. 32 (4th Supp.), ss. 19-20.

109 TRAN, [Evidence](#), 21 March 2016, 1540 (Diogo).

110 Bruce Campbell, *Brief*, 11 May 2015.

111 Rail Safety First, *Brief*, 22 April 2016, p.3.

112 TRAN, [Evidence](#), 16 May 2016, 1710 (Kinney).

113 *Ibid.*, 1630 (Fox).

Whistle-blower protections

According to witnesses, allowing employees to report safety concerns, both internally and externally, without fear of reprisals is essential for maintaining and improving the safety of operations in any high-risk industry. As previously mentioned in this report, the *Railway Safety Management System Regulations, 2015* require railway companies to establish a policy enabling employees to report safety concerns without fear of reprisals.

Outside the railway companies, the TSB maintains SECURITAS, which is a direct line for reporting transportation safety concerns.¹¹⁴ Officials from Transport Canada told the Committee that railway employees can also report safety concerns directly to the department.

The representatives of railway employees all told the Committee that their members are not safe from reprisals from their employers if they report safety concerns. A representative from Unifor told the Committee that railways quickly find out who made such reports “because they know who’s scheduled there and who was working and who was on the train, who was on the ground.”¹¹⁵ The representative from Teamsters Canada Rail Conference testified that employees who have reported safety concerns have been disciplined, losing income or their jobs, for different reasons because such employees “would have a target on their back and be under extreme scrutiny.”¹¹⁶ Another representative of Teamsters Canada advised that whistle-blowing should not be part of a company’s SMS and that Transport Canada should have the reporting line, not the TSB. The Teamsters would prefer that Transport Canada be able to defend employees who are disciplined as a result of whistle-blowing. The representative from the United Steelworkers suggested that “you need to put in place a truly watertight [reporting] system so that people feel entirely confident. Otherwise, you are wasting your time.”¹¹⁷

Other stakeholders are also in support of more effective whistle-blower protections. For example, it is the view of UCTE that there is confusion about the options to report to either Transport Canada or the TSB and suggested rationalization of the options available and better communication broadly to explain the procedure and the protections they offer.¹¹⁸ The UCTE sums up the situation as follows: “Having a safe whistle-blower line is critical for the workers to have the confidence to report safety violations and other shortcuts that are being taken. Without it we will just continue the way we are.”¹¹⁹

The Committee agreed that improvements to whistle-blower protections are needed in order to encourage railway employees to report any safety concerns they may have and therefore recommends

114 TSB, “[SECURITAS – Report transportation safety concerns in confidence](#),” *Contact us*.

115 TRAN, [Evidence](#), 11 April 2016, 1635 (Stevens).

116 Ibid., 1705 (Ashley).

117 TRAN, [Evidence](#), 11 April 2016, 1710 (Arseneau).

118 Ibid., 1610 (Collins).

119 Ibid.

That Transport Canada review whistle-blower protection provisions to determine if their inclusion in safety management systems provides the appropriate framework for responsible and effective raising of operating safety issues.

Short-line railways

Short-line railways, which exist to serve the needs of particular industries or regions, are an essential component of the rail transportation system in Canada. Most short lines were established on track that CN and CP Railways abandoned because it was unprofitable. Therefore, the short-line freight railways tend to operate on thin margins.

The *Safe and Accountable Rail Act*, which received Royal Assent in June 2015, has raised the amount of liability insurance that short-line railway companies must carry in order to transport dangerous goods. In addition, the new *Grade Crossings Regulations* mandate investments in crossings, for which the railway companies are partly responsible, to achieve higher safety standards.

Representatives of short-line railway companies who came before the Committee provided some examples of their recent financial challenges. The representatives of a few short-line railways operating in Canada told the Committee that the short-line industry in the United States receives grants and tax credits from the U.S. government. In order for Canadian short-lines to invest in their railways to enhance track and crossing safety, the short-line companies recommended that the federal government introduce a refundable tax credit for their industry.¹²⁰ A representative of Southern Railway of British Columbia further recommended that short-line railway companies be able to apply to the New Building Canada Fund without a government sponsor.¹²¹

The Saskatchewan Association of Rural Municipalities suggested that short-line railways should not be required to maintain the same insurance requirements as the larger freight railways for moving dangerous goods.¹²²

120 TRAN, [Evidence](#), 13 April 2016, 1705 (Frank Butzelaar, President, Southern Railway of British Columbia); 1710 (Perry Pellerin, Chairman, Saskatchewan Shortline Railway Association); 1715 (Ryan Ratledge, Chief Operating Officer, Central Main and Quebec Railway).

121 Ibid., (Butzelaar).

122 Saskatchewan Association of Rural Municipalities, *Brief*, 21 April 2016, p. 3.

LIST OF RECOMMENDATIONS

Recommendation 1

That Transport Canada accelerate the current study examining the feasibility of establishing a rail bypass around the town of Lac-Mégantic and that, should the said study confirm the recommendation of the creation of a by-pass, the Government of Canada partner with the municipality to facilitate the request as a way of mitigating instances of post-traumatic stress syndrome within the local population following the accident at Lac-Mégantic. 4

Recommendation 2

That Transport Canada re-examine the rules and technology on maximum wear of rails to ensure that visual assessments of the rails' conditions and improved technologies are included in the inspection criteria..... 4

Recommendation 3

That Transport Canada put in place an enhanced qualification and training program for the rail industry for engineers and other workers directly involved in rail safety. 4

Recommendation 4

That Transport Canada collaborate with the municipality of Lac-Mégantic in the establishment of the Lac-Mégantic Canadian Centre for Training and Certification for first responders and teams of interest. 4

Recommendation 5

That Transport Canada undertake frequent, interactive and publicly visible inspections of railway operations in communities where there have been major incidents to mitigate ongoing fears..... 4

Recommendation 6

That Transport Canada immediately increase the number of on-site and visual inspections for compliance with rail safety regulations and rules it conducts in a given year, prioritizing rail operations with a record of poor performance in terms of developing and implementing effective safety management systems or have demonstrated repeated marginal or non-compliance with federal rail safety regulations..... 10

Recommendation 7

That Transport Canada assign increased resources and training for field inspections on rail safety. 10

Recommendation 8

That the Government of Canada accelerate the 5-year statutory review of the *Railway Safety Act* and complete a comprehensive, independent review of the *Railway Safety Act* prior to 2018..... 12

Recommendation 9

That Transport Canada require effective signage and/or other safety measures at unmarked passive railway crossings that have been identified as most dangerous, or where accidents have repeatedly occurred, and that the cost of these safety modifications not be placed upon local government or ratepayers. 13

Recommendation 10

That Transport Canada publicly release the report of the Enhanced Train Control Working Group immediately after receiving it..... 15

Recommendation 11

That Transport Canada publicly release the final report on the first phase of a two-phase study to evaluate the safety benefits of locomotive voice and video recorders..... 17

Recommendation 12

That Transport Canada immediately develop legislative and regulatory structures to mandate the use of locomotive voice and video recorders by railway companies, and that effective rules be put in place to ensure recordings are used exclusively by the appropriate government authorities during Transportation Safety Board accident investigations or in subsequent criminal investigations to which they directly relate. 17

Recommendation 13

That Transport Canada establish and adopt an expedited process for responding to Transportation Safety Board safety-related recommendations and that an enhanced reporting system be adopted to prevent recommendations from languishing, without action, on the Transportation Safety Board Active Rail Recommendations list..... 17

Recommendation 14

That Transport Canada, in cooperation with the federal departments responsible for health and labour, take immediate action through a working group to develop options to improve the management of railway crew fatigue, including (but not limited to) (1) enhancing work/rest rules in safety management systems (SMS); (2) removing work/rest provisions from collective bargaining processes; (3) introducing guidelines or a regulatory framework in place of SMS-based fatigue management; and (4) ensuring that fatigue rules are science-based. The working group's report must be tabled in Parliament by 1 January 2018. 20

Recommendation 15

That Transport Canada (1) conduct a comparative study on the rules for remote control locomotive operations in Canada and the United States; and (2) take measures that lead to the harmonization and adoption of rules governing more aspects of remote control locomotive operations, including rules concerning the tonnage of a train, the length of remote control movements and the training requirements for operators of the technology. 21

Recommendation 16

That Transport Canada immediately pursue in consultation with provincial and local governments legislative and/or regulatory structures to require rail companies operating in Canada to (1) develop and implement long-term plans to mitigate environmental impacts on railways, including but not limited to ongoing destabilization of slopes, mudslides, flooding, extreme weather conditions, and floodplain issues; and (2) when these issues affect a company’s railway in a community, that these communities be consulted in the development and implementation of the plan..... 24

Recommendation 17

That Transport Canada immediately develop legislative and/or regulatory structures to require rail companies operating in Canada to (1) provide real time knowledge of dangerous goods to first responders in communities via cellular or Internet services where possible (such as the AskRail app); (2) study other means of delivering this information ahead of time or in real time via other mediums to communities outside of cellular range; and (3) that these communities be consulted in the development and implementation of the plan..... 26

Recommendation 18

That advance notice and opportunity for consultation with municipalities be provided on rules and any exceptions to rules. 27

Recommendation 19

That Transport Canada review whistle-blower protection provisions to determine if their inclusion in safety management systems provides the appropriate framework for responsible and effective raising of operating safety issues..... 29

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Transport</p> <p>Brigitte Diogo, Director General, Rail Safety</p> <p>Nicole Girard, Director General, Transport Dangerous Goods</p> <p>Laureen Kinney, Assistant Deputy Minister, Safety and Security</p>	2016/03/21	6
<p>Teamsters Canada</p> <p>Don Ashley, National Legislative Director, Teamsters Canada Rail Conference</p> <p>Phil Benson, Lobbyist</p>	2016/04/11	7
<p>Unifor</p> <p>Jerry Dias, National President</p> <p>Brian Stevens, National Rail Director</p>		
<p>Union of Canadian Transportation Employees</p> <p>Christine Collins, National President</p> <p>Michael Teeter, Political Advisor</p>		
<p>United Steelworkers</p> <p>Pierre Arseneau, Coordinator, Montréal</p>		
<p>Canadian National Railway Company</p> <p>Sam Berrada, Vice-President, Safety and Sustainability</p> <p>Michael Farkouh, Vice-President, Eastern Region</p> <p>Sean Finn, Executive Vice-President, Corporate Services and Chief Legal Officer</p> <p>Jim Vena, Executive Vice-President and Chief Operating Officer</p>	2016/04/13	8
<p>Canadian Pacific Railway</p> <p>Peter Edwards, Vice-President, Human Resources and Labour Relations</p> <p>Jim Kozey, Director, Hazardous Materials Programs</p> <p>Keith Shearer, General Manager, Regulatory and Operating Practices</p>		
<p>Central Maine and Quebec Railway</p> <p>Ryan Ratledge, Chief Operating Officer</p>		

Organizations and Individuals	Date	Meeting
<p>Saskatchewan Shortline Railway Association Perry Pellerin, Chairman</p> <p>Southern Railway of British Columbia Frank Butzelaar, President Derek Ollmann, Director, Operations</p> <p>As an individual</p> <p>Mary-Jane Bennett, Lawyer</p> <p>BNSF Railway Company Orest Dachniwsky, Associate General Counsel, Operations and Regulatory Glen Gaz, Engineering Johan Hellman, Executive Director, Government Affairs Courtney Wallace, Regional Director, Public Affairs Jared Wootton, General Manager, Operations</p> <p>City of Surrey Jaime Boan, Manager, Transportation Dan Branscher, Deputy Fire Chief, Surrey Fire Service Len Garis, Fire Chief, Surrey Fire Service</p> <p>GO Transit Gregory Percy, President</p> <p>VIA Rail Canada Inc. Marc Beaulieu, Chief, Transportation and Safety Office Jacques Fauteux, Director, Government and Community Relations</p>	2016/04/18	9
<p>Canadian Transportation Agency</p> <p>Fred Gaspar, Chief Compliance Officer Randall Meades, Chief Strategy Officer</p> <p>Department of Transport Brigitte Diogo, Director General, Rail Safety Laureen Kinney, Assistant Deputy Minister, Safety and Security</p>	2016/05/16	14

Organizations and Individuals	Date	Meeting
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Benoit Turcotte, Acting Director General

Transportation Safety Board of Canada

Kathy Fox, Chair

Kirby Jang, Director,
Investigations Rail and Pipeline

Jean L. Laporte, Chief Operating Officer

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Beukeveld, Bernard

Bureau de reconstruction de Lac-Mégantic

Canadian National Railway Company

Canadian Pacific Railway

Centre intégré universitaire de santé et de services sociaux

City of Surrey

Collectif pour des passages à niveau

Comité de vigilance ferroviaire de Lac-Mégantic

Convoi-citoyen

Coalition des citoyens et organimes engagés pour la sécurité ferroviaire

Fecteau, Marielle

Federation of Canadian Municipalities

GO Transit

Greater Sudbury Watershed Alliance

Plateau Mont-Royal

Rail Safety First

Rosemont La Petite-Patrie

Safe Rail Communities

Saskatchewan Association of Rural Municipalities

Saskatchewan Shortline Railway Association

Teamsters Canada

United Steelworkers

Wilson, Derek

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 6, 7, 8, 9, 14, 15, 16, 17, 18 and 19](#)) is tabled.

Respectfully submitted,

Hon. Judy A. Sgro
Chair

An Update on Rail Safety: Supplementary report submitted by the New Democratic Party

While we concur with the majority report and recommendations, the level and depth of concerns with rail safety felt across the country demands a more comprehensive response. There was broad agreement by Committee members that while Transport Canada has taken some action to address deficiencies, additional expedited action is necessary on the part of the government to restore confidence in the rail safety regime. This is particularly the case given the substantial increase in dangerous cargo, including crude oil.

As is evident from the report, the public risks and costs that may arise from failed regulation or enforcement of rail safety demands an expedited public review and potential significant overhaul. Based on testimony and submitted briefs, it is starkly evident that the circumstances behind the Lac-Mégantic rail disaster are triggering concern about the potential for similarly dire risks to other communities, if not addressed. The regulation of dangerous rail traffic should no longer be left to a conversation between rail companies and transport authorities. Communities and rail workers alike are demanding a greater voice.

Municipalities, communities, rail workers, regulatory experts, rail inspectors and the TSB have all called for deeper reforms to the rail safety regulatory regime. Concerns range from perceived overreliance on industry-developed operating rules, to allowing exceptions to rules, to overreliance on self-regulation, to weak whistleblower protections, to limits on liability for catastrophic incidents. Legal experts and communities alike share concern that the degree of reliance on self-regulation (SMS) in the rail sector has created a situation of regulatory capture. Regrettably, the Committee failed to hear testimony from key witnesses expressing these deeper concerns, including community organizations and legal experts. Testimony by community organizations and legal experts could have strengthened our examination of the Self-Management System (SMS), and other identified regulatory gaps or deficiencies.

It will be therefore be imperative that the government directly engage these views during its review of the Railway Safety Act.

It is notable that high on the list of concerns raised by the Federation of Canadian Municipalities (FCM) and communities located along rail lines were the lack of duty to actually consult those parties in making, auditing and enforcing the SMS, rail regulations, rules and exceptions.

Concern was similarly expressed about the lack of disclosure of real-time, detailed information on dangerous rail cargo, risk assessments, SMS reports and government enforcement actions. There was recognition that information access should be subject to valid requests for exclusion of confidential business information (BCI), consistent with processes established pursuant to other federal laws.

Regulatory capture was a cross cutting concern of legal experts, communities, rail workers and government inspectors. Concerns ranged from over-reliance on the Self-Management System (SMS), to paper audits of the SMS replacing regulation, inspection and enforcement. These concerns mirror those of the Auditor General of Canada who in his fall 2013 report recommended that Transport Canada take action to address significant weaknesses in its oversight of safety management systems.

Director of the Canadian Center for Policy Alternatives, Bruce Campbell, asserted that regulatory capture exists where regulation is systematically directed to benefit the private interest of the regulated industry at the expense of the public interest. This occurs where the industry is able to shape the regulations towards their interests. It may be noted that current law for the most part does not require consultation with potentially impacted communities on rules or exemptions. He asserts that the SMS system and limited consultation on regulations has created this a climate for regulatory capture for the rail industry. In the absence of strong government oversight the companies are in effect self-regulating.

Professor Mark Winfield in his submission observed similar problems with a substantial shift in redirecting government resources away from regulation and enforcement towards implementing a Self- Management System (SMS). He recommended that imposing statutory duties of care for rail company officers and directors could provide a more effective trigger for implementing internal company environmental and safety management systems, as has been the practice for other industrial sectors, thereby freeing up government officers to inspect and enforce. He also recommended introduction of a general offence provision under the Act and a reconsideration of the reliance on company developed safety rules.

Toronto based Rail Safety First expressed the view that “SMS has demonstrably failed to protect the public interest” and called for increased budget for rail inspectors to provide on- site verification of compliance, independent risk analyses of dangerous goods by rail and increased enforcement of rail speed.

At Lac-Mégantic the Convoi-Citoyen called for fundamental changes to rail regulations to make protection of community safety the primary objective rather than rail company profits. Similarly, the Coalition des Citoyens expressed concern that that previous federal governments and the current administration have neglected their primary duty, to ensure the health and safety of the Canadian public. They complained of a laissez faire approach to deregulation and self-management of the rail transportation. In the opinion of this Lac Mégantic based citizen group, the major deregulation of Canada’s rail transportation industry, begun under Paul Martin’s Liberals and increased under Stephen Harper’s Conservatives, has significantly threatened the health and safety of Canadians. They suggest that while tangible evidence of this is the Lac-Mégantic tragedy, we cannot overlook the recent derailments in other cities that could have claimed many victims.

For these reasons there have been calls for an independent public inquiry into the tragedy of July 6, 2013 into all the circumstances and roles in this tragedy.

The Auditor General of Canada sounded the alarm in 2013 regarding Transport Canada's major shortcomings in applying and following up on rail safety management systems and highlighted the overly close relationship between private rail companies and Transport Canada's regulatory agency.

Recommendations:

That Transport Canada in its review of the Railway Safety Act, and related Dangerous Goods Act, examine the decision to adopt a self- management regime for rail safety.

That in support of this review, the government commission independent legal and technical analyses with a focus on ensuring that the primary objective of the rail safety regime is ensuring public safety.

That intervenor funding be provided to enable the constructive participation by concerned communities, including their access to legal and technical experts.

That rail companies be required to provide expanded access to information to concerned or interested communities on risk assessments, SMS reports, emergency response plans and enforcement and compliance policies for rail safety.

That municipalities and communities be provided notice and opportunity to comment on any proposed rules or exceptions to rules.

