



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Accounts

PACP • NUMBER 023 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Wednesday, April 30, 2014

—
Chair

Mr. David Christopherson

Standing Committee on Public Accounts

Wednesday, April 30, 2014

• (1530)

[English]

The Chair (Mr. David Christopherson (Hamilton Centre, NDP)): I now declare this 23rd meeting of the Standing Committee on Public Accounts in order.

Colleagues, as you can see, we have guests with us today to give testimony on the report we're reviewing. Beforehand, if I may, I will ask for the indulgence of our guests to give me a moment to do a little quick business. I think that would then negate any need for us to have a follow-up business meeting at the end.

Today, obviously, we're here doing chapter 7 of the fall 2013 Auditor General's report. There was another hearing scheduled for Monday, which we cancelled, and we are trying to reschedule that one for next Monday. We had an open date on the calendar and we're good from the AG side. We're still waiting for confirmation from the department involved.

Upon receiving confirmation that they can be here, we'll go ahead and schedule that meeting, as we had agreed to earlier. If we get a no-go answer, then I would suggest, colleagues, that we flip that meeting from a hearing meeting into report writing. We have a number of reports to go through, so we don't need to lose any time. If you're in agreement, that's what will happen going forward.

For next week, though, we do need to do some scheduling, because we don't have anything scheduled after next week. We have a lot of work. We just haven't sorted it out yet. We will need to do that.

Also, just as a reminder to everyone, next Tuesday, May 6, Mr. Ferguson will be releasing his spring 2014 report. You will recall that on the day it's released we will be meeting here at nine in the morning informally, in camera, to receive a briefing a couple of hours prior to the report being tabled in the House.

As you'll recall, that's an invitation to all members of Parliament, so it includes all members of the House as well as the Senate. I want members to remind themselves that it is actually the Auditor General's meeting, and the chair of our committee chairs it at the request of and as a matter of convenience on behalf of the Auditor General. At 10 a.m., when the report is tabled in the House, we will open the doors, and that ends that.

The next day, we'll receive the report publicly. At that time, all chapters are up for discussion and presentation by the Auditor General. Subsequent to that, our responsibilities as a committee will be to decide which chapters of that report we're going to have

hearings on, and then, of course, to decide the process of scheduling those hearings and holding them.

If colleagues are good with the status of our work plan and our business—I see no interventions, so I'll assume everybody is good with that—then I will turn us to the matter at hand.

Today, on chapter 7 of the 2013 Fall Report of the Auditor General of Canada, “Oversight of Rail Safety”, we have with us, of course, the Auditor General. We also have with us Madam Lévesque, the deputy minister from Transport.

I'll ask each of you to introduce your delegation when you take the floor.

Unless there are any last-minute interventions—and I see none—we will now begin the hearing.

Therefore, Mr. Ferguson, welcome. It's good to have you here, sir. Condolences on your recent loss.

You have the floor, sir.

• (1535)

Mr. Michael Ferguson (Auditor General of Canada, Office of the Auditor General of Canada): Thank you.

Mr. Chair, thank you for this opportunity to discuss chapter 7 of our 2013 fall report on the oversight of rail safety. Joining me at the table is Régent Chouinard, principal, who was responsible for the audit.

The primary responsibility for the safety of day-to-day rail operations rests with federal railways. Transport Canada is responsible for the regulatory framework required for rail safety in Canada. It is also responsible for overseeing whether federal railways have complied with that framework and for taking enforcement action when necessary.

[Translation]

We examined whether the department has adequately overseen the management of rail safety risks by federal railways. We focused on Transport Canada's regulatory framework, oversight activities, human resources, and quality assurance program. We did not examine the safety of Canada's rail industry or the safety of the railways' operations. Our report was not an investigation into the tragic accident at Lac-Mégantic, Quebec or any other rail accidents.

[English]

Transport Canada has implemented a regulatory framework for rail transportation that includes a safety management system approach for identifying, analyzing, and responding to rail safety risks. It has made progress in working with federal railways to implement such systems. For example, it published guidance on safety management systems in 2010 and in 2012. It has also made progress in addressing many recommendations from the 2007 Rail Safety Act review and those of the Standing Committee on Transport, Infrastructure and Communities.

However, despite discussions with the industry and progress over the past 20 years a number of long-standing and important safety issues remain including trespassing, grade crossings, and the implementation and oversight of safety management systems. It is taking too long to resolve them.

[Translation]

We found that Transport Canada has conducted many inspections and some audits to identify non-compliance with rail safety regulations, rules, and engineering standards. However, the department is missing key performance and risk data to target higher-risk railways and the most significant safety risks.

Fourteen years ago, Transport Canada recognized the need to shift from an inspection-based oversight approach to one that integrates the oversight of safety management systems. This shift is still ongoing, much work remains to be done, and the transition is taking too long.

[English]

Transport Canada has audited only 26% of the federal railways that it planned to audit over a three-year period. And the audits it did complete were too narrowly focused. At that rate it will take many years to audit all of the key components of safety management system regulations, including the key safety systems of each of the 31 federal railways.

[Translation]

We concluded that Transport Canada needs to address the significant weaknesses we found in each aspect of the department's oversight of the safety management systems implemented by federal railway companies. Otherwise, it may not have the assurance it needs that they are effectively managing safety risks on a day-to-day basis.

[English]

Mr. Chair, we are pleased to report that Transport Canada agreed with our recommendations. Transport Canada has shared its action plan with us and it includes actions for each of our recommendations. The department expressed its commitment to implement all of them by early 2016.

[Translation]

This concludes my opening remarks. We would be pleased to answer any questions the committee may have. Thank you.

• (1540)

[English]

The Chair: Very good. Thank you.

I apologize to Mr. Lévesque, I demoted you to ADM, as and I bumped into ADM Kinney as I was walking in and linked her with your name. So I do apologize. You got a promotion. You got demoted. We'll have to fix it.

Mr. Lévesque, you are the deputy minister and Laureen Kinney is here as the assistant deputy minister. Welcome and my apologies for the mix-up. You, sir, now have the floor.

Mr. Louis Lévesque (Deputy Minister, Department of Transport): Thank you very much, Mr. Chair. No offence. I hope it's not a harbinger of things to come.

I thank the committee for the opportunity to talk to you today. As you mentioned, Laureen Kinney is with me as the newly formally appointed assistant deputy minister for safety and security, but has been in the portfolio and the business for a long time. I also have Luc Bourdon with me, who is the director general for rail safety and is a very experienced manager of safety issues.

[Translation]

The Auditor General's report identifies major priorities for Transport Canada to improve its rail safety oversight. It identifies some areas that Transport Canada could further improve upon, and we accept all the recommendations made in the Auditor General's report.

Our efforts to strengthen the rail safety program and to address the Auditor General's recommendations, have led to the development of an accelerated action plan. Work has already begun on its implementation. Most action items are to be completed by fall 2014 and the entire action plan is expected to be fully implemented by fall 2015. Putting the action plan to work is a departmental priority for the coming years.

I would first like to take a few minutes to explain what a safety management system, or SMS as most call it, is exactly.

[English]

A safety management system is a formal framework that helps railway companies integrate safety into their day-to-day operations. It encourages the development of a safety culture throughout all levels of an organization and ensures that safety is considered a factor in all decision-making in the business.

The safety management system approach is not deregulation or self-regulation. In fact it helps organizations comply with regulatory requirements and demonstrate their commitment to the safety of their employees and obviously their whole operation. Key elements of safety management systems for railways include the development of safety goals and performance targets; risk assessments; clarification of rules, responsibilities, roles, and authorities in respect of safety; and development of rules and procedures in monitoring and evaluation processes.

Companies have a wide range of options for compliance within the regulatory requirements and are encouraged to identify means of compliance that are in keeping with the regulations and tailored to specific company circumstances.

In the past, railways and many other safety-critical industries pursued safety through compliance with prescriptive rules and regulations. As safety research progressed during the 1990s, it became clear that compliance tools and regulations alone were insufficient to ensure the highest possible level of safety. What companies really needed for a truly effective safety regime, in addition to specific prescriptive regulation, was a proactive, systemic approach to safety that allowed them to proactively identify hazards and mitigate risk in order to prevent accidents. This approach also allowed lessons learned from minor incidents in day-to-day operations to input into the system, thereby creating a state of continuous safety improvements with more likelihood of avoiding accidents in the first place.

In short, SMS is predicated on moving away from a finite and fixed risk mentality to a greater focus on systemic issues, from being reactive to becoming proactive, from simply measuring by the number of interventions to being really focused on the results, and from only inspecting individual elements to also auditing the whole system. The benefits of a more advanced approach were recognized during the Railway Safety Act review in 1994. Amendments were introduced in 1999 requiring railway companies to develop and implement safety management systems.

[Translation]

When the Railway Safety Management System Regulations came into force in 2001, they were the first of their kind in the federal transportation sector. They were created with significant industry input and emphasized the railways' responsibility for safe operations.

These regulations were not intended as a replacement for existing rules, regulations and inspection practices. On the contrary, they were implemented as an important complement to other forms of rail safety oversight, which is how they remain today.

● (1545)

That being said, there is always room for improvement, and I am happy to share how Transport Canada is addressing the recommendations of the Auditor General.

[English]

On the regulatory framework, the report recognizes that Transport Canada has kept abreast of safety issues and it has made significant progress in implementing recommendations from the Railway Safety Act and the Standing Committee on Transport, Infrastructure and

Communities, but notes that more work needs to be done, and we agree with that.

We remain committed to addressing all remaining relevant recommendations, and we have developed a detailed plan to complete their implementation.

We are accelerating the development of several regulations to further strengthen the rail safety federal regulatory regime. Our intent is to pre-publish the proposed regulations of top priority in the *Canada Gazette* Part 1 before Parliament rises for the summer break in June 2014. In fact, as part of Transport Canada's accelerated plan, the department has already pre-published two proposed regulations in the *Canada Gazette* Part 1: the grade crossings regulations on February 8, 2014, and the railway operating certificate regulations on March 15, 2014.

The department has also established a formal process to assist with addressing safety issues on an accelerated basis. The department's rail safety integrated gateway data system will track and monitor progress on safety issues from the time they are identified to the point they are mitigated to an acceptable level.

In addition, the department will continue to work with the Advisory Council on Railway Safety and its working groups to mitigate safety issues. As a matter of fact, following Lac-Mégantic we have already had specific meetings and follow-ups with them to address safety issues.

On the planning side, to respond to the Auditor General's recommendations Transport Canada is undertaking a review of its risk-based planning process with a view to ensuring our audit and inspection activities are focused on areas of highest risk, including railway companies' compliance with the regulatory framework. From the results of the review, the risk-based planning process will be enhanced and will provide the basis for the number of annual audits and inspections.

Resources will be allocated accordingly, keeping in mind the need for the rail safety program to complete a sufficient number of audits and inspections to provide assurance that the federal railways have implemented adequate and effective safety management systems to comply with the regulatory framework.

By fall 2015, according to our plan, the department will have identified key safety risk and performance indicators and specific safety performance information that it requires from railway companies. It will have developed the regulatory requirements outlining the specific safety performance information required from railway companies, and will have communicated this information to federally regulated railways. It will also collect risk and performance information on an ongoing and systematic basis. In that respect, we have regulatory initiatives to ensure we have the instruments to do that. It will review the information to ensure it is both reliable and complete, and analyze information gathered and taken it into account when preparing annual oversight plans.

To this end, Transport Canada's rail safety program in headquarters and the regions will together monitor the implementation of the annual oversight plans and, if necessary, adjust plans and calibrate planned inspections and audits in response to emerging risks to ensure that plans provide for adequate coverage.

Regarding the conduct of oversight activities,

[*Translation*]

Transport Canada will use its Rail Safety Integrated Gateway data system to address the Auditor General's recommendations on conducting oversight activities. This system was developed to provide inspectors with the tools needed to document, analyze and report on the results of their oversight activities.

To enhance its systems-based approach to oversight, Transport Canada will amend the current Railway Safety Management System Regulations. That is in keeping with the new Railway Safety Act that was passed and came into effect last spring.

In addition to existing measures requiring a railway company to address deficiencies within its safety management system, the amendments would also require the railway company to document the results of the activities undertaken to implement and monitor the corrective actions taken.

Transport Canada also has a detailed action plan in place, which includes measures to enhance its oversight activities. Under this plan, the department is updating and developing tools, processes and guidance materials as well as delivering training to ensure that oversight activities are conducted consistently following established processes and procedures.

• (1550)

In order to achieve this, we will meet the following deadlines.

[*English*]

By next spring, we will have developed, documented, and communicated a management review process for rail safety oversight activities. The process will define roles, responsibilities, and accountabilities for both management and inspectors. We will have included performance expectations in managers' annual performance agreements.

By next fall, we'll have developed the follow-up procedures for audits and inspections and will have begun tracking follow-up activities in our railway data system.

By the spring of 2015, we will have updated the inspection procedure to refine the expectations.

To ensure the methodology is consistently applied, training and guidance on all new initiatives will be provided to managers and inspectors on a timely basis.

With regard to human resource planning, we continually analyze our workforce, and we work to recruit and retain staff to make sure we have the resources where they're needed to provide the greatest safety benefits. We have a highly dedicated professional corps of inspectors, which I personally meet with on a regular basis here in Ottawa and across the country.

Transport Canada developed a human resources strategy that will identify the inspector skills and competencies required in a systems-based approach to oversight. It will also include an assessment of skills and competencies found in its current workforce and an assessment of the gaps, if we find any. The assessment will form the basis for inspector training, recruitment, and retention strategies that will ensure the rail safety program has the required staff with the skills and competencies it needs to plan and implement its oversight activities.

Targeted timeframes for mandatory training will be established and monitored on a regular basis to ensure that training required for inspector credentials for oversight activities is taken in a timely manner.

The department will also put in place additional measures. In fact, I shouldn't say "will": we have put in place additional measures that require all inspectors to update their conflict-of-interest declarations every two years and submit new declarations whenever circumstances change. The railway safety program validates on a regular basis that inspectors have complied with this requirement, if instituted in a departmental cycle, to ensure that they maintain their independence and objectivity.

[*Translation*]

In terms of quality assurance, Transport Canada Rail Safety has a comprehensive quality management system that includes directives, procedures and processes and a quality assurance program to identify any gaps and best practices.

Transport Canada Rail Safety has developed a risk-based approach to prioritizing internal assessments as part of its established quality assurance plan, which includes regular evaluations of audit and inspection procedures.

A three-year plan for conducting quality assurance assessments, based on risk, has been established and includes periodic assessments of oversight activities, including audits and inspections.

Rail Safety has scheduled a quality assurance assessment of oversight activity on the inspection procedure to be completed by next fall.

[*English*]

We certainly recognize that we need to continue to improve our program, and we certainly take to heart the message. We're making progress, but we need to accelerate the pace of progress.

Last week, Minister Raitt announced multiple decisive actions that Transport Canada is taking to address the Transportation Safety Board of Canada's initial recommendations regarding the ongoing investigation into the Lac-Mégantic train derailment. As we speak, and as people may be aware, there's an ongoing incident in the U.S. involving another derailment of crude oil, in Lynchburg, Virginia. Obviously, we are working continuously with our American counterparts to ensure we share as much information as possible, both to keep our regimes integrated and to benefit from learning about everything that happens in North America.

These actions, in combination with the Transport Canada rail safety action plan presented to you today, not only demonstrate the department's commitment to improve railway safety in the transportation of dangerous goods by rail, but also will further strengthen Canada's regulation and oversight of rail safety and the transportation of dangerous goods.

The Auditor General's report certainly confirmed that the issues we have identified and the actions we are beginning to take are the right ones, which makes us confident that in the coming years we will respond to the Auditor General's recommendations and contribute to Transport Canada having a strong, risk-based safety program. This will ensure that the Canadian railway system remains one of the safest in the world and one that Canadians can trust.

• (1555)

Thank you, Mr. Chairman. Obviously we welcome questions from committee members.

The Chair: Very good. Thank you.

Colleagues, we'll now begin our questioning and comments in the usual fashion, beginning with Mr. Woodworth.

You have the floor, sir.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair, and as always, my thanks to the witnesses for attending today.

Mr. Ferguson, I'd like to direct some questions to you about the timeline of events, to put into context the results of your audit. As I understand it, the issue of safety management systems dates back to 1999, when the act was amended to require safety management systems.

Is that correct? I'm looking at page 7 of your report.

Mr. Michael Ferguson: Right, and in terms of the background of the information we presented for the report, the 1999 laws, the starting point for the history we described, yes.

Mr. Stephen Woodworth: As I understand from page 7 of your report, two years after that, in 2001, the government tabled

regulations, based on those amendments, to require safety management systems.

Is that correct?

Mr. Michael Ferguson: That's right.

Mr. Stephen Woodworth: It seemed to me from your report that nothing much happened until 2007, when Minister Cannon, under the current government, initiated a review of the Railway Safety Act.

Is that correct?

Mr. Michael Ferguson: That time period per se wasn't the focus of the audit, so I can't give you specifics of what would have happened in that timeframe, but certainly the next important event that we identified was the 2007 review.

Mr. Stephen Woodworth: Right. It didn't say so in your report, but I understand that the recommendations from that rail safety review were delivered in 2008.

Is that your understanding also?

Mr. Michael Ferguson: That's right.

Mr. Stephen Woodworth: I understand further that in response to those recommendations in 2009, the current government dedicated \$71 million in order to address the problems found in that review and to fund improvement to rail safety.

Is that correct?

Mr. Michael Ferguson: In paragraph 7.21, we explain that, in 2009, the government did approve \$71 million in funding and explain some of the details around that.

Mr. Stephen Woodworth: Thank you. Then the next development was in fact in the following year, in 2010, when the government finalized and published a railway safety management systems guide.

Is that correct?

Mr. Michael Ferguson: Yes. My understanding is that it happened in 2010.

Mr. Stephen Woodworth: It seemed to me to be a fairly big step forward to have a guide out there, establishing the framework for a safety management systems.

Would you agree?

Mr. Michael Ferguson: Certainly I would agree it was an important step that needed to be done.

Mr. Stephen Woodworth: I understand that your audit began to study this issue effective the April 1, 2011 fiscal year. It was the 2011–12 year that your audit examined.

Is that correct?

Mr. Michael Ferguson: Yes. That's the right time period.

Mr. Stephen Woodworth: I understand that your audit of that year found a number of things. I'm referring now to page 2 of your report. First of all, you found in that 2011 fiscal year that Transport Canada had implemented a regulatory framework for rail transportation that included "a safety management systems approach to identify, analyze, and respond to rail safety risks". That's the first finding that you mention on page 2.

Is that correct?

• (1600)

Mr. Michael Ferguson: That's correct.

Mr. Stephen Woodworth: Also, that audit of the 2011–12 fiscal year found that Transport Canada had "made...progress in working with federal railways to implement safety management systems". That's the second finding you mention on page 2.

Is that correct?

I'm looking at it in the section "What we found".

Mr. Michael Ferguson: Yes, that's correct.

Mr. Stephen Woodworth: All right. I know I'm just reading your own report to you, but I find it necessary to put some of this on the record.

You also found during that 2011–12 year that Transport Canada had made "significant progress in addressing many recommendations from the [2007] Railway Safety Act review".

Is that correct?

Mr. Michael Ferguson: That's correct, and then we have a "however" that follows that.

Mr. Stephen Woodworth: Understood, but what I'm—

The Chair: Sorry, Mr. Woodworth, but the time has expired. We're actually a little bit over.

Thank you, and now we to Mr. Allen. You now have the floor, sir.

Mr. Malcolm Allen (Welland, NDP): Thank you, Chair.

Perhaps we'll talk about the audit period that you actually audited now. History's always a wonderful thing. I studied that once, but it's always in the past. That's the great thing about history.

Mr. Ferguson, you did note in your report that of the minimum number of inspections the department actually thought it should do, I believe you said they actually only did 26% of those.

I certainly won't put words in your mouth, sir, but my father would have said to me when he was alive if I got 26% out of 100, I didn't do too well.

You have highlighted that in your report, sir. Why would you have highlighted the fact that you only did 26%?

Mr. Michael Ferguson: Mr. Chair, I think we really come to sort of the why of that in paragraph 47 where we say the findings indicate that Transport Canada does not have the assurance it needs that the federal railways have implemented adequate and effective safety management systems.

I think we were highlighting that they had put in place a plan to do a number of these audits. Those audits were important for them to

get all of the assurance they needed about the safety management systems, and without all of those audits, I think we made the reference it would take many years for them to get the level of assurance they were looking for.

Mr. Malcolm Allen: It was also noted in your report that this system is the SMS system, if I can to use the acronym that Mr. Lévesque quite competently outlined for us. I appreciate, Mr. Lévesque, that you explained the SMS earlier, so now we can use the acronym and don't have to keep saying it. I appreciate that.

The system had been around for about 15 years, and yet this audit, I would suggest to the department, is not the most pleasing one for them based on what you have seen inside here. It seems to me that your not knowing in a 15-year period whether you have personnel who actually can conduct SMS and whether you have the appropriate skill levels, and capacities, and competencies with those individuals isn't very reassuring for the general public.

What's your sense of where you think they need to take their competencies in the sense of, are there still deficiencies in your view inside of your audit?

Mr. Michael Ferguson: I can't speak to what the department has done since we haven't done that audit. I think at the particular time we identified the number of staff who were trained to do the full audits at the department. They didn't have a lot of staff at that point in time that were trained to do the full audits.

We're very encouraged by the fact that the department has agreed with the weaknesses we have found, have agreed with the recommendations we have made, and has indicated they intend to fix these problems.

Mr. Malcolm Allen: I think now I'd go to Mr. Lévesque to give us an update on that.

But first of all in your testimony when you started in your report—what you actually went through—a number of things you said struck me. You talked about "doing" or "will get done."

Let me just refer you to your action plan, sir, at paragraph 7.70, where it says that the completion date will be the fall of 2014. Is that the human resource component we're talking about, sir, just so that it's clear to me?

• (1605)

Mr. Louis Lévesque: That's correct.

Mr. Malcolm Allen: Fair enough. I thought it was, and I didn't want to use your words in your opening statement to suggest maybe you weren't doing it because there were a couple of words that in the vernacular are fluffy. I thought maybe you might have said we have a completion date in your opening statement, but that's okay. It is referring to paragraph 7.70, right? Perfect.

How far along are you with that, sir? Are you near completion, because I recognize we still feel like we're in winter in this country, but the fall of 2014 will come. I assure everyone it will come. Whereabouts are you in that timeline?

Mr. Louis Lévesque: The first point I want to make is that the department is in line with meeting what has been promised in this action plan.

I just want to go back to the comments about the skills of the people in the department. The first thing I want to say on that is that priority number one is ensuring safety, doing the oversight of safety in the rail transportation system.

We have a traditional approach to oversight that is based on inspection. What SMS is about is saying that we want to take safety to a higher level by having more of our resources dedicated to the auditing of safety management systems and, notably, to garner the information that will help us direct and focus our inspections to areas of highest risk. This is not about closing shop, rearranging, and in the meantime not doing inspections. Clearly, we have fallen short on the speed of implementation of SMS. It's clear in the report. We do not have as many people as we should have at this point in time trained to do audits.

On the other side, I will say that last year we performed 30,000 inspections. It's all about ensuring that, as we move, it's to increase safety, but we're certainly not about to say that we're not going to do the inspections in order to prepare our people for it. We should be able to do both, I get that point, but the important point here is that safety is priority number one. We have an inspectorate force that is very versatile and conversant in the inspection activities. What we have to do is have more people who are able to perform audits and to meet the targets in our audit plans to ensure that we have the right coverage in our SMS.

The Chair: Sorry, we're way over time. Thank you very much.

We go back over to the government side and Mr. Woodworth.

This is your second time up. You have the floor, sir.

Mr. Stephen Woodworth: Thank you very much, Mr. Chair.

We'll go back to where we left off, Mr. Ferguson. I am going to get to the "however" in a moment, but, first of all, I just want to say that, from the evidence you gave me a few minutes ago, I see an arc of improvement from 2007 through to the time of your audit in 2011, with some significant advance being made almost every year.

Is that an unfair characterization on my part or is that fair?

Mr. Michael Ferguson: Again, we've outlined the overall time frame and when things have happened. Certainly in our timeline we have emphasized some of the things that have happened in recent years and acknowledged that those things have happened in recent years. Overall, our concern, when we looked at that whole time frame, was that things seemed to be moving too slowly.

Mr. Stephen Woodworth: Right.

This is where I want to say that I thank your office for contributing to that arc of improvement. The next step, then, having done the review beginning in 2007, having come up with recommendations in 2008, having dedicated \$71 million to it in 2009, having then

published the *Rail Safety Management System Guide* in 2010, your office then came along in 2011 and did your usual thorough gap analysis, if I can call it that, to point out the areas that still needed improvement. Correct?

• (1610)

Mr. Michael Ferguson: I think that's a fair characterization.

Mr. Stephen Woodworth: Right.

Your report then was completed in June of 2013, and that was your contribution to this—what I'm going to call—arc of improvement. Correct?

Mr. Michael Ferguson: Again, I think that we identified that things were moving too slowly. Yes, things were happening. Certainly I think that the report is also helping to move things along even more quickly. There were activities, there were things that were going on, but even those I think were probably happening a little too slowly.

Mr. Stephen Woodworth: Right.

In fact, then, your report having been delivered in June of 2013, the department accepted your recommendations. Correct?

Mr. Michael Ferguson: That's correct.

Mr. Stephen Woodworth: There was no undue delay there, was there?

Mr. Michael Ferguson: No. They accepted them. They agreed with our recommendations and....

Mr. Stephen Woodworth: In fact, then, the department delivered its action plan in response to your June 2013 report. The department delivered its action plan within about six months, in January 2014. Correct?

Mr. Michael Ferguson: That sounds about right, yes.

Mr. Stephen Woodworth: That didn't seem to me to be unduly slow. Am I wrong about that? That seemed like a reasonable time to come up with an action plan.

Mr. Michael Ferguson: I think as I've said, we're quite encouraged by the response we've gotten from the department to this report.

Mr. Stephen Woodworth: Right. And that to me just continues the arc of improvement that I've been observing.

I'm going to switch now to Monsieur Lévesque, if I may. Because as I understand it, then, to continue that arc of improvement, Monsieur Lévesque, Transport Canada has already pre-published two proposed regulations in *Canada Gazette*, one on grade-crossing regulations in February of this year, and one on railway operating certificate regulations in March. Is that correct?

Mr. Louis Lévesque: That is correct.

Mr. Stephen Woodworth: And indeed, as I understand it, Transport Canada has a plan to pre-publish further proposed regulations of top priority before the end of June 2014. Is that correct?

Mr. Louis Lévesque: That is correct.

Mr. Stephen Woodworth: Can you tell me how these regulations that you are acting on will continue that arc of improvement in safety management systems that I've been observing in the evidence to this point?

Mr. Louis Lévesque: First, the grade-crossing regulations are an obvious longstanding issue that is finally moving to resolution, so that is obviously progress.

The regulations on the railway operating certificate are a complement to the coming into force of the new Railway Safety Act in the spring of 2013. In the same vein, they will basically give the minister the ability to revoke the operations of a railway, say, in the case of failure to meet safety standards.

We also have regulations regarding improvements to the SMS regulations, again aligned with the coming into force of the Railway Safety Act last spring. We have administrative monetary penalty regulations, which will finally give the department graduated enforcement tools in the railway safety area, as opposed basically to a system of fining.

We also have the regulations regarding our ability to mandate the collection of data from the railways to populate the data systems that are required to implement and to complete the risk assessments and the other elements that are underpinning some of the recommendations of the Auditor General.

The Chair: Thank you both very much.

And moving along, Monsieur Giguère, you have the floor, sir.

[*Translation*]

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): I thank the witnesses for being here, specifically Mr. Ferguson, who is going through some trying times. My condolences to you on the passing of your mother. I trust that all the members of the committee will join me in offering you our condolences.

In section 7.48 of your report, you describe the methodology used by Transport Canada to determine the number of inspections. This methodology has been in place since 1994, so for 20 years. The Department of Transport is always quick to accept all the recommendations. The fact is that, 20 years later, it has reduced its level of incompetence. However, with an inspection rate of 26%, its performance is still a long way from being acceptable.

Can you explain the methodology being used since 1994 and why it is not more up to date?

• (1615)

[*English*]

Mr. Michael Ferguson: Yes, Mr. Chair, and what we are describing in paragraph 7.48 is the fact that the department is still doing inspections, but when we did this audit we found that the methodology that was being used for the inspections was the same methodology that has been around since 1994.

As we described in the paragraph, a number of things have changed since then that have not been taken into account in the methodology. So our observation was that the methodology had not been updated since that last significant change in 1994.

[*Translation*]

Mr. Alain Giguère: Along the same lines, in section 7.52, you describe the method used by the inspectors. You noted the deficiencies identified by the inspectors in the eight files that your office reviewed. The eight reports that you audited did not comply with the application of the basic rules of doing a good job.

Federal railways omitted key elements from their safety management system. We have since learned that the department was not even able to determine the exact number of incidents caused by railway companies.

Could you describe to the committee the reaction of the department to these shortcomings? If that has happened in the past, how did the department deal with private railway companies? Will it finally rectify the situation after 20 years? Twenty years is a long time. If this keeps up, officials will have worked 35 years at the Department of Transport without ever correcting the deficiencies observed.

[*English*]

Mr. Michael Ferguson: Thank you, Mr. Chair.

Again, throughout this audit, we identified or found shortcomings in a number of the practices the department was undertaking in this area, whether how they were implementing the audit or of how they were doing the inspections.

I think our primary concern was that while they had identified these issues many years ago, it was taking quite a while to resolve them. That whole issue of the length of time was one of the things that concerned us very much about how the department was implementing this change.

[*Translation*]

Mr. Alain Giguère: In sections 7.54, 7.55 and 7.56 of your report, you point out that inspection and audit documentation on the safety management system was missing elements, particularly in terms of follow-up on deficiencies. On that note, let me draw your attention to the fact that, if a company is responsible for the death of about 50 people, one can only conclude that it has never been inspected properly.

The deputy minister said that it is important to ensure that a safety culture is instilled in railway companies. However, in a case where there is no safety culture, the Department of Transport was not even able to review or rectify the situation.

Could you describe the deficiencies and the lack of follow-up observed? We were able to see the consequences for ourselves.

[English]

Mr. Michael Ferguson: I think that everybody understands the importance of this whole process. It's one thing to have good regulations and to identify the practices that need to be done. What's important is to make sure that all of the inspections that are necessary, the audits that are necessary, all of the monitoring to make sure that the regulations are complied with, are at least as important as having the regulations themselves in place.

Again, there's no question that this is an important area that deals with safety and security, so making sure that those inspections and audits are done and are done appropriately is very important.

• (1620)

The Chair: Very good. The time has expired.

Merci Monsieur.

Over now to Mr. Albas. You have the floor, sir.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Chair.

I want to thank all of our witnesses here today for your testimony. Obviously, we do appreciate your expertise, particularly on this file.

I'd like to ask Mr. Lévesque a series of questions, if you wouldn't mind, Mr. Chair.

Could we start with your please explaining the difference between an inspection and an audit in respect to railways?

Mr. Louis Lévesque: I'll give you the general review, and I'll turn to Laureen or Luc to supplement because they're really the experts.

The fundamental concept of inspections are typically inspections of either tracks or specific operational procedures. They're inspections of activities or assets to note whether they're compliant with regulatory requirements, and in the rail case, regulatory requirements take the form of either regulations we impose or rules that the companies develop themselves and that have the same statutory status in terms of regulation.

This is a traditional method of surveillance of safety. SMS is about saying it's not good enough to just look at the activities and the assets, because we will never have enough people to look everywhere all the time. We need to ensure the operators take charge of security. It's not about removing the regulatory scheme and inspection, in addition to that; it's about building a new system of safety management systems, putting the responsibility on the operators, and then it becomes the role of the department to audit those systems to see whether the systems have been established as adequate and whether they're implemented adequately by the operators.

In the process of gathering data that's also helpful in directing the inspection program to areas of highest risk. We take in stride the basic message, not being fast enough in fully implementing this additional element of safety in our surveillance regime. We're obviously very committed to the timelines we've described, putting in place the framework that will ensure, or give us a level of quality assurance, that we are putting that in place on a systematic basis. The report notes a significant progress, a number of steps have been taken. You cannot say that you have on a nationally consistent basis,

on a systematic basis, all the data and evidence that shows you have fully implemented that. That's what this action plan is about.

Ms. Laureen Kinney (Associate Assistant Deputy Minister, Safety and Security Group, Department of Transport): The focus on the inspections is on those very specific regulations that require a concrete activity, a concrete action, some kind of management check or provision of training, etc.

The categories of inspections break down into equipment, operations, engineering, and the very concrete activities that the railway company carries out every day. That is a form of cross-checking or guidance that can be aligned against the results of the audits, or some place that you can go additionally, as the deputy said, after you've looked across the company on a systemic level and an audit that will point you to some areas where you can look for regulatory compliance to either confirm or not confirm the initial assumptions you may be seeing. The two are very linked, but they are very different.

Mr. Dan Albas: Thank you, Mr. Chair.

I think Mr. Lévesque said earlier that safety is the number one priority, and I'm sure that's obviously the number one priority of the government but also for the railway companies themselves, and obviously we want to see that in every facet.

A key criticism that I believe is in the report is that too much effort has been spent on performing inspections and not enough on auditing the safety management systems that are in place.

One of the items that was pointed out was the lack of training for those auditors and managers. Would you agree with that? Is it fair to say that has been an issue highlighted in the Auditor General's report, and what progress specifically has been made in the area of training to make sure that safety as our number one priority can be executed?

• (1625)

Mr. Louis Lévesque: There's no question it's not acceptable to have performed only 26% of the planned audits, and it's not acceptable not to have trained a sufficient number of people to deliver on those audits. That's what the action plan is about. We're making steady progress.

Ms. Laureen Kinney: To continue with the deputy's point, we only have five remaining staff who have not yet been trained. I believe the majority of those are because of their availability, other things going on. They are scheduled, and they will be completed very quickly.

If I can just go back to the balance question between inspection and audits, that was a very interesting observation and it is something that we've taken on board. We accepted the recommendation to look at this more thoroughly and we obviously need to look at the areas of risk that you find, both with audits and inspections, and look at which areas you should do more of one versus more of the other in an analytical way.

We're in the process of doing that and we will come up with a new system of balancing the two. It isn't a matter of one or the other, it's a matter of picking the right proportion that addresses the risks and that provides the cross-checks this system allows us.

The Chair: Thank you.

Your time has expired. I'm sorry.

Madam Jones, you have the floor.

Ms. Yvonne Jones (Labrador, Lib.): Thank you.

Thank you very much for your presentations today.

I'd like to start by saying that while we recognize there have been some investments, I think Canadians also recognize that there needs to be change. I'm pleased to hear you say today that the department has accepted the recommendations of the Auditor General, and I'm also pleased to hear you say that many of the things that were pointed out here are not acceptable and have to change.

I'd like to start with the inspection piece. When I look at the report, I'm not seeing too many inspections or too much emphasis on doing them. What I'm seeing is too little. The Auditor General's report, in paragraph 7.11, says there were 101 quality inspectors responsible for conducting inspections in audits on the rail lines in Canada.

Also in your report under paragraph 7.1, you said that Canada has about 44,000 kilometres of railway across the country. This works out to about one inspector for every 440 kilometres, the distance, for example, between Toronto and Ottawa.

Assuming that each one of those inspectors works alone and doesn't take any vacation, doesn't take any sick days, and doesn't have any delays due to weather, and that there are no delays due to heavy usage on the tracks and so on, I have to ask whether having one inspector to cover such a large section of track is adequate. So I would like to start there.

Secondly, while you've indicated in your report that you're going to update the inspection procedure by 2015 and that you're also going to look at your staffing requirements, does a gap exist right now, and is that gap being filled in the interim? Or are we going to wait until 2015, until we can have more study or analysis done on it?

Mr. Louis Lévesque: I'm assuming the question is directed to me.

Ms. Yvonne Jones: It's to both of you.

Mr. Louis Lévesque: On the question of resources and inspections, we are doing a record number of inspections. I don't think looking at this per number of miles or whatever is a good indicator, because what we need to focus on is having the data to measure where the highest risks are. The department has been using all the resources, and new resources have been provided as was explained in the context of the Railway Safety Act review a number of years ago. We have over 100 inspectors. The instructions to staff are to fill all the positions. It's all about having the inspection plans and delivering on the inspection plans.

What the report of the Auditor General points to is that we have not done a good job of meeting our quota on the audit side of the SMS system. But certainly this was about ensuring that we target our resources to the areas of highest risk. We have operational plans in each region, where people identify, in their view, what the highest

risks are. It's the job of Laureen and Luc to ensure that the resources that are needed to deliver on those expansion plans are there. They are there.

The Auditor General's report points to the fact that we need to take this to a higher level by fully implementing SMS, delivering on the audit plan, and training our people to do the audits, and then we will be in a better position to identify exactly where all the risks are on a data and evidence-driven national basis and to deploy our resources across the country and wherever the highest risks are.

But as of today, I have confidence that the people on the ground have been doing this work for many, many years. They are, on a systematic basis, following operational plans. We're being told that we need to up our game. We need to increase our connectivity to have better data. We need to modernize our approaches and have a more systematic approach. My basic point is that along with the people on the ground, we're doing that, improving at the same time as we're delivering on the inspection program. It's not one or the other. We're doing both.

• (1630)

The Chair: Thank you. Your time has expired.

Moving along, Mr. Carmichael, you have the floor, sir.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for joining us this afternoon.

Mr. Lévesque, in the report the Auditor General, Mr. Ferguson, has said that Transport Canada will never have enough resources to ensure that every federal railway company complies with all aspects of the safety regulatory framework at all times; therefore, it must use risk management—mitigation I guess—techniques to choose what to oversee, when, and how often. I hear you on that. I understand that and I applaud you. I agree with the comments from my colleague, Mr. Woodworth, on the improvement arc, as he's termed it, as you've moved the safety management system along to implementation.

However, you also said that we've fallen short on SMS. I've got to tell you, we're here for Canadians to ensure that Transport Canada and our rail system is safe. I don't think, as one Canadian, that our falling short, the government falling short, or Transport Canada falling short is acceptable.

I look at the comment with regards to recommendation 7.70, where the Auditor General has acknowledged that you have 10 auditors, four of whom are slated for retirement or expected to retire some time soon. That takes you to six. You have a need for 20. I wonder if you could just bring us up to speed, and incidentally, I do appreciate the action plan and its comments. But where are we at on it? You're talking about fall 2014 implementation. Are you going to have 20 auditors in place fully trained and ready to go? How can we give confidence to Canadians that Transport Canada is delivering on this aspect in the rail system?

Mr. Louis Lévesque: As a general point, you're absolutely right in saying that falling short is not acceptable. It's about what you do about it. I tried to be very clear that where we've fallen short is on full implementation of SMS and having the audit capacity to back this up.

As a deputy minister, what I can do, and we've already done, is to secure resources in the areas under question to ensure that the people have the resources, the financial resources, to do that. We've done that. I have also given very clear signals that this is a priority area, notably in terms of the staffing. I've been very explicit to people that the positions need to be staffed on an ongoing basis to ensure continuity in staffing levels. It's normal to have people who retire. A particular retirement is maybe unplanned, but the fact that people do retire is planned.

Mr. John Carmichael: I don't mean to cut you off, sir, but in the interest of time, where are we at? I agree with you. I hear you on your comment.

Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport): I just want to clarify an issue. We were kind of surprised when we saw the 10, and I talked to the Auditor General, who gave us some precision. That is actually a number, a figure, that was provided by our people, and those were the ones who had SMS as a designation on their card. The number of people qualified for SMS was about 77% of our inspectors, who did follow proper training. As Laureen mentioned earlier, as we talk today, we only have five remaining that have not had the training to be auditors.

•(1635)

Mr. John Carmichael: So that will take you to how many fully trained auditors?

Mr. Luc Bourdon: That would bring our entire inspection force—because it's moving, as you mentioned, we're retiring, we're gaining—to about 105 right now, which means that 105 will have the training by June. There are five remaining, which includes some inspectors as well as some managers. So we'll have basically all of our inspectors plus about 10 managers trained to conduct audits at the end of June of this year.

Mr. John Carmichael: So you need 20 audits on the go at any time in a three-year cycle.

Mr. Luc Bourdon: That's about it, yes.

Mr. John Carmichael: Did the three-year cycle adjust at all?

Mr. Luc Bourdon: It's probably going to go to five.

Mr. John Carmichael: It will go to five.

Mr. Luc Bourdon: Yes. So, to answer your question, 100% of our people will be fully trained to do audits by the end of June.

Mr. John Carmichael: Just to be really clear, this is an HR issue. This isn't a budget issue; this isn't a fiscal issue. This is a strictly HR management issue. Is that correct?

Mr. Louis Lévesque: Absolutely, in terms of that. Resources at the department level are geared to having the training since it became an issue of staffing first, ensuring you have the people and then delivering them the proper training.

Mr. John Carmichael: A criticism of Transport Canada in the report is that the full audits of the SMS have not been performed, and I wonder if you can explain how many man-hours does it take to

conduct a full SMS at CN or CP, as an example. Do you have any idea?

Mr. Luc Bourdon: It would depend on the scope of the audit.

Mr. John Carmichael: Are we talking several days or months?

Mr. Luc Bourdon: It's several weeks, easily, because you do have to sample, for instance, mechanical shops throughout the country. You'll have to pick at least two or three of them, and it's the same thing with engineering and operations.

The Chair: Sorry, Mr. Carmichael. It's just as you were taking a breath, I know, but time has expired.

Moving along, colleagues, we go back over to Mr. Allen, who now has the floor again.

Mr. Malcolm Allen: Thank you, Chair. I want to thank my colleague, Mr. Carmichael, for the question about how many auditors there are, because that was my next question on paragraph 7.42, how many there are and how there's a lot to go.

I believe, Ms. Kinney, you said that in June there will be the last five and that it will be 105, is that correct? Does that include the 10 managers?

Mr. Luc Bourdon: Yes. That's including everyone.

Mr. Malcolm Allen: So roughly, not to suggest that managers won't be inspecting from time to time, but it would give you 95 basically who would be, for the most part, if they're not assigned somewhere else, fully engaged in SMS? Would that be fair to say? That's the majority of the time, I'm not suggesting every day of the week, but the majority of the time?

Ms. Laureen Kinney: I think in general it's close, but we do have a number of different categories of people who perform inspections and as to whether they all do the SMS audit part, there's a little bit of variation in that, but fundamentally....

Mr. Malcolm Allen: Because they are inspectors.

Ms. Laureen Kinney: Exactly.

Mr. Malcolm Allen: I have another life in this world up here in the agricultural field. We have CVS, compliance verification system, which is very similar to SMS. It simply looks at other things that usually aren't living, actually, but that's for another day. They are inspectors also, so there's a dual capacity. I get what you're saying.

I think we are all in agreement here. I think even my colleagues across the way acknowledge the fact that the Auditor General's report has highlighted some things. The Auditor General has clearly said he appreciates the work that your department has done, but he's indicated a number of times in his testimony today—and I think it's apparent in his report—that up until now it was slow. Things are moving far too slowly.

Let me indicate why I think it's so important, what that means when you're slow. The SMS is supposed to be an audit procedure to show that the inspectors—even though they're dual purpose individuals, it might be the same person, clearly not auditing themselves obviously—are auditing an inspection regime to make sure that the inspections were carried out correctly, and that the things that were meant to be done were meant to be done. That's why audit it.

Let me take you to paragraph 7.40 on page 21 of the auditor's report, which talks about planning and methodology. Let me read it to you:

The Department has a methodology for planning its oversight activities of federal railways. However, we found that Transport Canada's methodology does not require the use of uniform risk and performance indicators to help staff identify areas of railway operations that might be more likely not to comply with the regulatory safety framework.

That's a big gap. Because even though you're saying, and Mr. Lévesque said earlier, that we clearly are getting the inspections done, we're being slow to get to the SMS, we only did 26%, we acknowledge that as a department, and you're taking corrective actions to get more done, the reality is, when it isn't being audited appropriately, the methodology was such, and that's still in the fixing stages as well according to your action plan, it had the potential—and I use the word carefully, the potential because I'm not suggesting it's carelessness—for safety risks because of the methodology being used. Is that a fair assessment of what paragraph 7.40 is telling me? And I'll ask Mr. Lévesque first, and then I'll ask Mr. Ferguson after to look at 7.40 as well.

Mr. Lévesque.

• (1640)

Mr. Louis Lévesque: I would phrase that differently. Because it's critical to remember that the preface to this report says it's not commenting on safety risks, and it's not commenting on safety in the transportation system, per se.

For me the issue is how do I best deploy resources of the surveillance system to maximize the impact in mitigating—

Mr. Malcolm Allen: I hate to interrupt, but let me just read the words to you again word for word, verbatim, because you're going to try to take me down a different road, or a different track. Pun intended.

It said: “railway operations that might be more likely not”—I'll emphasize the word, sir, not—“to comply with the regulatory safety framework”.

Sir, that says to me that if you do not comply with the regulatory safety framework, the potential for something unsafe to happen is then apparent. Does it not say that? I don't want to box you in yes or no, but does it not say that?

Mr. Louis Lévesque: It says that if you don't have a uniform methodology—

Mr. Malcolm Allen: Which you didn't—

Mr. Louis Lévesque: Okay.

Mr. Malcolm Allen: The audit says you didn't.

Mr. Louis Lévesque: We didn't have a uniform methodology to both assess risk and deploy the resources. We are not in such a good position, not having that, because if we had that we would be deploying our resources to maximum effect to reduce the risk.

Mr. Malcolm Allen: I hate to cut you off again, sir, but you prefer one word. I prefer to actually use the word that's there, which is “not”—“not to comply”.

I'm a guy from Welland and in Welland when you say “not”, that's a negative. I don't know how else to put that.

Have I run out of time, Chair?

The Chair: You have, sir. Thank you, Mr. Allen.

Over to Mr. Hayes, who now has the floor, sir.

Mr. Bryan Hayes (Sault Ste. Marie, CPC): Thank you, Mr. Chair.

Mr. Ferguson, you mentioned that the guidance and tools provided to inspectors for assessing federal railways' safety management systems are missing many key elements.

You basically told us of one. You said:

For example, they contain few requirements to help inspectors plan, conduct, and conclude on audits and inspections, and for following up on findings.

You've mentioned one key element. What I want to know is if you have provided to officials some advice and guidance in terms of what else is missing.

The reason I ask that is because I want to make sure officials actually understand your line of thinking in terms of what is missing in their ability to assess NSMS. If they don't clearly understand what's required from your perspective, the next audit may come around and they will have been missing something that you think they should have. So I want to understand whether you have provided them information in terms of what they were missing, outside of the one specific item you identified in your report.

Mr. Michael Ferguson: Actually, I think in paragraph 7.64 we talk about some of the areas where the methodology didn't contain requirements. There are a number of bullets there, including on preparing a sampling plan and so on. There are a number of items listed there. I could read them all out if you want—

Mr. Bryan Hayes: You don't have to.

Mr. Michael Ferguson: —but they're listed in paragraph 64.

Mr. Bryan Hayes: I have the same question to you, Mr. Lévesque, with respect to the Auditor General's statement. Can you give me a level of confidence that you understand what guidance and tools need to be provided to your inspectors, and that this concern of the Auditor General has been addressed?

As well, the Auditor General talked about audits and inspections and he had them all within the same sentence. It's a little disconcerting that you've mentioned that...I think you did 30,000 audits, did I hear you say?

Mr. Louis Lévesque: Inspections.

• (1645)

Mr. Bryan Hayes: Inspections, right.

This would lead me to believe that your inspectors don't have the guidance and tools to understand how to do an inspection. I need a level of assurance that your auditors know how to conduct an audit, and that your inspectors know how to conduct an inspection.

Mr. Louis Lévesque: For us, the basic message from the Auditor General is to have uniform, clear, and systematic documentation and instructions to our staff in the field in order that we maximize the consistency and the effectiveness and efficiency. That message is heard loud and clear.

As professional auditors, their job is to look to see if you have the proof, the documentation that your activities follow that consistency. We are not there yet, but we have a plan to get there.

Mr. Bryan Hayes: Okay.

Next, I wonder if you could define for the committee the attributes of a high-risk versus a low-risk railway. With respect to safety risk management, how do they differ and do you actually take into consideration what is a high-risk versus a low-risk railway and put more emphasis on a high-risk railway? I want to understand that whole concept of high risk versus low risk.

Mr. Louis Lévesque: There is a number of factors, including the types of operations, where they go through, the size of the operation, the nature of what they transport. All of that is taken into account.

Lauren and Luc have 50 years of experience.

Ms. Lauren Kinney: Perhaps I can just start with the way that the inspection process is looked at. We do look at factors. There are three basic components.

One component is proactive, functional program inspections where we look at the sampling process and go out to sample and surveil across the industry to see where we're finding some non-compliance issues that may indicate a higher risk. We do that sampling on a regular basis all through the year as part of the elements of what we plan to inspect.

The second part is responses. That's where you get a complaint, you get an issue raised. We have very good relationships with the unions as well as the companies themselves, so we will get information through that. We'll get information from the U.S., etc. So that is built in as part of the plan to do inspections, to address those issues.

Then, finally, there are the actual emerging issues that arise from an incident or an accident and something that needs to be addressed.

So all of those things feed in. That tells you where we should focus, where the higher risk inspection priority should be. There are other factors that come in from the regional inspectors, such as if there's a major change in the company, if there's a major change in the operation, in the way that they operate, the area where they operate, they're going into new territory, those kinds of things. There are many factors like that.

Mr. Bryan Hayes: What's my time?

The Chair: Out. Perfect, actually, right on cue.

Now over to Madam Jones again. You have the floor.

Ms. Yvonne Jones: Thank you.

I'd like to follow up on the question that Mr. Allen was asking, because I think it's really important to get clarification. Maybe I could ask the Auditor General to respond to this question because it was, as was stated in his report, under paragraph 7.40. It says that

The Department has a methodology for planning its oversight activities of federal railways. However, we found that Transport Canada's methodology does not require the use of uniform risk and performance indicators to help staff identify areas of railway operations that might be more likely not to comply with the regulatory safety framework.

That's the issue that my colleague and the committee was raising. If you go back to paragraph 7.36, when you talked about the fact that

...the Department was missing other important risk and performance data to supplement inspectors' knowledge gained from previous inspections. Missing were:

the federal railways' risks assessments,

information on the sections of track used in transporting dangerous goods,

information on the condition of railway bridges, and

There are others as well.

I'd like to ask the Auditor General to explain to us what he was indicating when he was writing this in the report. And is this one of the pieces that the department is taking seriously and taking responsibility for at this particular stage? Has the fact that these reports have not been done and this information has not been reported on appropriately, impacted on any of the accidents that we have seen with regard to railway operations in the country?

• (1650)

Mr. Michael Ferguson: I think probably the best way for me to explain it is, when we were looking at how this work was being done, and we talked about it in paragraph 7.40, we found that what was done in one region was not necessarily the same thing that was done in another region. We found that the way that risks were being assessed and risks were being used was different across the country. We feel it's important, of course, that there be a uniform methodology so all of the inspectors understand what types of things they're supposed to consider when they're considering risk, and how they're then supposed to build that into either their inspection or their audit plans.

What we found was that this wasn't consistent. Understanding the risks, as we say, in that paragraph is what allows the inspectors to understand what things they should be zeroing in on when they're doing either their inspections or their audits. So they need to assess the risks so they know what to look at, but there needs to be a consistent way of doing that that is used by all inspectors in all regions.

Ms. Yvonne Jones: Okay.

Did you want to respond?

Mr. Louis Lévesque: I agree 100%.

Ms. Yvonne Jones: Do I have time for another question?

The Chair: You have a minute and a bit.

Ms. Yvonne Jones: Thank you.

Under paragraph 7.25, you mentioned that three recommendations made by the Standing Committee on Transport, Infrastructure and Communities in 2009 were not implemented because the committee was dissolved before the department was able to report. Can you tell us what those recommendations were, if the department ever revisited those recommendations, or if they were put in place afterward?

Mr. Michael Ferguson: I'll ask Monsieur Chouinard to respond to that.

Mr. Régent Chouinard (Principal, Office of the Auditor General of Canada): The reason for those two recommendations that the department could not address was that the committee was dissolved. There were two recommendations to report back to the committee, but because it was dissolved, the department was unable to report back, and we accepted that as a fact.

Ms. Yvonne Jones: Okay.

The Chair: You have 10 seconds.

Ms. Yvonne Jones: No, that's fine.

The Chair: You're good? Very well. Thank you. In fact, any question would have taken us over, so I appreciate that.

Now we'll go over to Mr. Watson, who's here with us today.

I hope you're enjoying your time with us, sir. You now have the floor.

Mr. Jeff Watson (Essex, CPC): Very much so. It's a *Smokey and the Bandit* moment: we have a long way to go and a short time to get there.

I want to thank our witnesses, of course, for appearing.

Mr. Ferguson, let me thank you for the important work you've done with respect to chapter 7. I understand, as we've heard here today from Transport Canada officials, that they have accepted all of the recommendations and have developed an action plan in response.

I just want to establish a few basics of the audit, or some of them already have.... The work itself was for fiscal year 2011 and 2012. Is that correct?

Mr. Michael Ferguson: That's correct.

Mr. Jeff Watson: The field work was completed in June of 2013, correct?

Mr. Michael Ferguson: That's correct.

Mr. Jeff Watson: Okay. So this is a snapshot in time.

When was Transport Canada given a draft copy of the report? In June of 2013 or in July? When would that have been?

Mr. Michael Ferguson: I believe June would have been the first time that we provided them with a draft.

Mr. Jeff Watson: June? Okay.

Its responses that are included in the report were submitted to the Office of the Auditor General when?

Mr. Lévesque, if you remember, or either one of you....

Mr. Michael Ferguson: It would have been much later than that, probably in September or October or something like that.

Mr. Jeff Watson: Thank you very much.

As a backdrop to the fiscal year audit of 2011-12, I have the Transportation Safety Board's statistics on railway safety with me here. In 2011, the number of railway accidents was down by 5% versus 2010, and down 10% versus the five-year average—I'm quoting from the Transportation Safety Board, not from the report, actually—and the number of accidents involving transportation of dangerous goods was down 16% versus 2010 and down 25% over the five-year average.

For the year 2012, according to the Transportation Safety Board, the number of railway accidents was down slightly again versus 2011. They were down 10% from the five-year average. Also, the number of accidents involving the transportation of dangerous goods was unchanged versus 2011 and down 20% over the five-year average.

So railway safety has been improving, including during the time of the audit itself.

Mr. Ferguson, you appeared at the Standing Committee on Transport, Infrastructure and Communities on December 4 of 2013 in relation to the report we're currently talking about. At the time, you said you'd received Transport Canada's action plan, I think in the last week in November 2013, as you testified, but at the time of December 4, you hadn't yet reviewed Transport Canada's action plan. Have you since and do you care to comment briefly on its contents?

• (1655)

Mr. Michael Ferguson: I think as I said in my opening statement, Transport Canada had shared its action plan with us, and it includes actions for each of our recommendations, so we are again encouraged to see that the department has accepted our recommendations and has put together an action plan, and that action plan talks about each of the recommendations we made. But I can't give you any information about whether those actions will be sufficient or not, because we haven't audited them.

Mr. Jeff Watson: Fair enough.

Let's examine some of Transport Canada's accomplishments at the time of the completion of your audit until now, in chronological order, according to Transport Canada's action plan.

In April of 2013 when your workers were still in the field, Transport Canada says it put in place an annual schedule for SMS audit training of its inspectors and plans to complete training by the spring of this year. Were you aware of that annual training schedule, as it was put in place during your team's ongoing fieldwork? Is it assessed in your report? It is in part addressing recommendation 7.74, but can you answer as to when you were aware of it at the time while your workers were in the field?

Mr. Michael Ferguson: I think certainly at the time we were aware that they were undertaking certain training activities. I will ask Monsieur Chouinard, though, to talk about the specifics of your question.

Mr. Régent Chouinard: Yes, I know at the time of our audit—we don't have that in our report, but at the time of audit when we asked the question they put together some information for us to be able to answer our queries.

Mr. Jeff Watson: Okay. In the summer of 2013 Transport Canada says that it addressed recommendation 7.76 to ensure the independence and objectivity of its inspectors in the field. This would have been during a period when Transport Canada was submitting responses to your draft report.

Were you aware of that progress, Mr. Ferguson, and do you consider this recommendation satisfies your recommendation?

Mr. Michael Ferguson: Again, we haven't audited any aspect of the action plan, so I can't go back and say it is going to fulfill what—

Mr. Jeff Watson: Were you aware of that progress, though?

Mr. Michael Ferguson: I'll ask Monsieur Chouinard to respond to that.

Mr. Régent Chouinard: As we stated in our report, we were aware of some progress, but I think there has been progress since.

The Chair: I'm sorry, but your time has expired, Mr. Watson. I know it flies when you're having fun.

Swinging over to Monsieur Giguère. You have the floor again, sir. *[Translation]*

Mr. Alain Giguère: Thank you.

My question is for the official from the Department of Transport who indicated a few moments ago that his department's objective was to develop a safety culture and to determine what areas were high-risk in order to rectify the situation.

Please note that the Auditor General indicated the following in section 7.57:

...However, in almost all the files that we reviewed, inspectors did not follow up to verify that the railway had implemented adequate corrective actions. We recognize that it may not be practical to follow up on some findings. However, the Department did not document the rationale for not following up on findings and did not analyze the risks of not doing so.

In your answer, you said that you will have measures in place to correct the situation by mid-June 2014. However, how do you explain that there has been no follow-up mechanism to date to ensure that the companies have taken the necessary corrective actions?

For instance, according to your representative, MMA received 10 letters with concerns from your department stating that there was a problem. You established that the company posed a risk because it carried hazardous materials. That risk was clearly established.

More than that, you said earlier that you communicated with an American representative from the Federal Railway Administration, who also recognized that this company posed a risk, and that he also took action ensuring there was follow-up and imposing 28 fines amounting to \$150,000.

The difference between the two countries is clearly attributable to Transport Canada's failure to follow up on irregularities. You say that you are going to determine the risks. However, what happened when you knew about the risks? You let 50 people burn alive. That does not work; there is a major problem.

Voices: Oh, oh!

Mr. Alain Giguère: Well, you identified a problem, you recognized that some cars were defective and that one company posed a risk. You knew all that. Your American colleagues told you they had enforced 28 fines. In addition, you sent out 10 letters with the items that needed to be fixed.

Unfortunately, an accident happened because you did not follow up. Section 7.57 clearly indicates that the follow-up was not done.

After the Lac-Mégantic tragedy and other tragedies in other parts of Canada, how can Canadians trust your system of self-regulation?

• (1700)

[English]

The Chair: Mr. Giguère, I have a point of order.

Mr. Watson.

Mr. Jeff Watson: Mr. Chair, this is about the Auditor General's report. I think the Auditor General is clear that this is not about an investigation into the potential causes of the tragedy in Lac-Mégantic. I hear a lot of the preamble there is trying to get to the particular causes or is attributing causes to Lac-Mégantic while the TSB hasn't even reported yet.

It is not the scope of this committee, which should be examining this report, to speculate on that.

The Chair: I appreciate that, Mr. Watson. I'm sure it's the same on most committees. Colleagues are given as much latitude as possible. There's a lot more of it than we have in the House, and that's set out in the rules and it's purposeful.

I'm listening very carefully, Mr. Giguère. I would ask you to please choose your words very carefully and not cross over into language that I would have to deem unparliamentary.

But I do think that his comments and questions to this point are still germane and to the point.

Mr. Giguère, you continue to have the floor.

[Translation]

Mr. Alain Giguère: So let me go back to what I was saying.

A risk was detected. You say that you accept all the recommendations. You have been accepting them since 1994. However, when you detect a risk, there is no follow-up. That is not an interpretation; it says so in section 7.57. There is a problem.

The failure to follow-up on inspections does not help build a safety culture. It is quite the contrary. Letting things slide leads to unsafe situations. If there are weaknesses but no consequences, companies are encouraged to ignore safety regulations.

How can Canadians trust you if you are not able to ensure follow-up once you have determined that a company is at fault?

Mr. Louis Lévesque: As the report of the Auditor General of Canada indicates, deficiencies were found in the documentation on the follow-up of inspection activities. Our action plan includes specific measures for that. My colleagues Ms. Kinney and Mr. Bourdon will be able to give you more information on that.

However, since this was mentioned a number of times, I cannot comment on anything related to the ongoing investigations into the Lac-Mégantic incident.

Ms. Lauren Kinney: We have a process. Mr. Bourdon will be able to explain it better than I can.

Mr. Luc Bourdon: According to our follow-up process, if we issue notices and orders, which is what we did in the case of MMA, those cannot be withdrawn unless the company sends us a reply.

We followed up on all those files. Notices and orders have been sent out since 2004-2006. Notices were served to MMA. The operational restrictions can be withdrawn only when the company provides us with an answer in writing. Otherwise, the same measures continue to apply.

• (1705)

[English]

The Chair: Thank you. Time has expired.

Over to our last speaker, but certainly not least, Mr. Falk.

You have the floor, sir.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

Thank you, witnesses, for attending here today, and thank you, Auditor General, for this important work you are doing.

Mr. Lévesque, could you very briefly tell me the difference between a safety program and a safety management system?

Mr. Louis Lévesque: I'm not quite sure in terms of the terminology. My reaction when I hear that is most companies typically have in these programs elements that target specific areas of safety, and that's been a traditional approach in companies.

SMS was about ensuring that all aspects of operations are looked at for purposes and in the name of maximizing safety and making safety not an element that you look at from this area, that area, another area, and have a program for those areas, but to look at the whole operation of the company in order to ask how you ensure the operations are safe.

That would be my best interpretation of your question, and Luc has more.

Mr. Luc Bourdon: The safety management system is a regulation that has 12 elements, so in order to be in compliance with the safety management system the railway will develop everything in place, the proper procedures and the program, in order to meet those 12 elements. But the company can also have its own safety program that could have 20 or 25 elements. That's the difference between the two. One is what is required by regulation. The other one you can expand.

Mr. Ted Falk: Typically a railway safety program would be in compliance and run in tandem, or parallel, or even congruent with the safety management system.

Your officials who attended the House Standing Committee on Transport, Infrastructure and Communities suggested they had made an error in using a three-year cycle for conducting the audit and were suggesting that maybe a five-year cycle would have been more appropriate. Is that still the opinion of the department?

Mr. Louis Lévesque: I'll turn to Luc on that one.

Mr. Luc Bourdon: Yes, three years was maybe a bit ambitious, especially now with the amendment to the act whereby we're getting 46 more key elements in the system, so now we've gone up to 76. With the amount of inspections we conduct on a yearly basis, that provides us with a lot of information on the railway. So we could have more distance between the audits as long as we still conduct our inspections on a regular basis to get information and the compliance profile of that railway.

Mr. Ted Falk: Okay. Yes, I would suggest maybe five years. In my other life, the heavy construction business, there's a national program called COR certification. My company gets audited every three years from an external audit, but we perform our own internal audits on a yearly basis.

I would hope that a five-year cycle isn't something the railways would be striving for outside of yearly audits. But you're telling me that they do have yearly inspections, which is a lesser—

Mr. Luc Bourdon: It's part of the safety management system regulation that they have to perform audits of their own system.

Mr. Ted Falk: In light of that, do you think a five-year cycle is appropriate?

Mr. Luc Bourdon: It's not five years for them; it's for us. For them, they will do it on a regular basis.

Mr. Ted Falk: I can appreciate that. Thank you.

Mr. Ferguson, on page 6 of your report there is a table outlining the total number of accidents dating back from 2002 to 2012, part of which was the term of your audit. To me there has been what looks like a steady decline in the number of total accidents throughout that period. The information we have received is that there was a significant increase in the volume of freight that was moved throughout that same period.

What this doesn't tell me is on a percentage basis, in terms of the kilometres travelled or the amount of freight moved, what the accident rate has been. Do you have any information that would help us with that?

Mr. Michael Ferguson: I certainly don't have that information, no. I'm sure the department would have that type of information.

Mr. Ted Falk: I think it's something that would be very relevant. It would be another way in which we could identify whether or not the safety management system employed and utilized by the railways is effective.

To me, it looks like it is effective. Given the general understanding that there has been an increase in volume and traffic and the total number of accidents has been going down, I would suggest to you that something that the railways are doing is effective. It would be nice to know what that is. We would see it clearly if we were able to identify the percentage or a ratio.

• (1710)

Ms. Lauren Kinney: The Transportation Safety Board collects reports of all types of occurrences and accidents. They provide on their website a significant amount of data on the rate of accidents in particular segments of the industry. That's the same data we use for our analysis.

The Chair: Thank you. Your has expired.

Mr. Ted Falk: Just like that.

The Chair: Just like that; it's just the way life goes.

Colleagues, that exhausts our usual rotation.

Thank you to our guests for being here today.

Mr. Ferguson, as always, we appreciate the work you do on behalf of the Canadian people.

To Monsieur Lévesque and your staff, thank you very much for your forthright answers. We appreciate your being here.

Colleagues, unless there is an intervention to the contrary, I bring this meeting to a conclusion.

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

SPEAKER'S PERMISSION

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

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

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

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

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

PERMISSION DU PRÉSIDENT

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

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

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

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