Lac Mégantic Conference, December 8, 2016;

Panel 3: Changes to the rail regulatory system since the Lac Mégantic: Have the fundamental causes of regulatory failure been remedied? Have the necessary improvements been made?

Summary: Semie Sama, Faculty of Law student, University of Ottawa

Moderator: Mike de Souza, National Observer

Noted the crucial role that journalists play in gathering hard facts and keeping the country updated about the Lac Megantic tragedy.

Noted also Le Carré Bleu Lac-Mégantic, a website and a citizen’s group pushing for more transparency surrounding the reconstruction efforts in Lac-Mégantic.

Panelist 1: Brian Stevens, National Rail Director, Unifor

Brian Stevens stood in for panellist Christine Collins (National President, Union of Canadian Transportation Employees) who was unable to participate due to illness. He contends that the status quo in terms of railway operations has not changed since the Lac-Mégantic disaster. It seems not to have had any deterrent effect in North America, in general. The railway tycoons—those associated with rail transport in Canada—continue to drive the railway system: train accidents continue and safety is jeopardized. The rail barons continue write the rules and get them approved by Transport Canada. They should not be allowed to write railoperating rules. Local communities should participate in the review of the Railway Safety Act; they need to install automatic braking systems to slow or stop train when a signal is missed (positive train control).

Panelist 2: York University —Mark Winfield

Professor Winfield questioned why there has never been any public inquiry to assess the scale and implications of the Lac-Mégantic train disaster for the environment, economy and communities. Like Brian Stevens, Mark’s analysis of the current regime indicates that the rules that were in place prior to the Lac-Mégantic disaster (Safety Management Systems) have not changed. He criticized the government for replacing a culture of safety with a culture of risk (in other words, the current system is more reactive than proactive). To Professor Winfield, the lack of behavioral change and capacity (on the part of Transport Canada) to adequately implement railway Safety Management System (SMS), and accountability gaps and performance failure remain the missing pieces in the rail safety puzzle. Professor Winfield emphasized the need: for courts to pierce the corporate veil (rail officers and directors, shareholders should be held liable for train accidents); for train companies to establish environmental management systems; and for railway safety reform.
He further stressed the need to replace SMS from the current regulatory regime with a statutory duty on part of railway company officers and directors to take all reasonable care to prevent violations of the Railway Safety Act.

**Panelist 3: Jasmine van Schouwen U of Ottawa, J.D. student**

Ms. Schouwen, compared the regulatory failures behind the 2013 Lac-Mégantic disaster and the 2011 Fukushima Daiichi nuclear disaster. Three common regulatory failures were identified in both cases: (1) vague operating rules which left discretion to operators; (2) lack of inspections and enforcement; and (3) regulatory capture—encouraged by (a) powerful lobbying and weak regulators and (b) “revolving doors” and “dissents from heaven.” Ms. Schouwen’s presentation found only minor changes in the wake of both disasters. In dealing with regulatory capture in Canada, she recommends among other things the need to strengthen the whistleblower rights of railroad workers and strengthen the ability of the regulator to set and enforce rail safety regulations.

**Panelist 4: Ian Naish, former Director of Rail and Pipeline Investigations, Transportation Safety Board.**

Mr. Naish outlined the history of Canada’s rail safety regulation. He concluded his presentation with a criticism of Canadian railway companies for focusing more on economic over safety, and working tirelessly to slow regulatory change. He made the following observations in the led up to the disaster: Montreal, Maine and Atlantic Railway (MMA)’s track, equipment, training and certification of crews were all very substandard: Transport Canada was extremely slow to introduce new regulations. After the accident he noted: the minimum operating crew requirement for trains carrying dangerous goods now two crew members; TC-117 is the new design standard; Safety Management System regulations modifications; grade crossing regulations in effect. After lac-Mégantic, runaway trains have increased, derailments of TDG trains have decreased; administrative monetary penalties and sec 31 orders in place (effectiveness?). Recommendations include: regulators should take off railway company hats, increased enforcement and attention to safety, more transparency. Unresolved issues: regulatory capture and corporate accountability, braking system, causes of regulatory failure not fully remedied, underlying issues remain.

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**Discussion**

- Why was a public inquiry ignored?
- Compared to a public inquiry, the TSB was not adequately equipped to ask critical questions that could have allowed for significant reforms
• Is there a political will to adequately resource the regulator
• The current regulatory model (SMS) should be fundamentally rethought, and suspended if adequate resources for conventional oversight not forthcoming.
• Should anyone at Transport Canada face charges in Lac Megantic train derailment?