

**PRESENTATION BY
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UNION OF CANADIAN TRANSPORTATION EMPLOYEES (UCTE)**



**TO THE
STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND
COMMUNITIES (SCOTIC)**

**4:30 P.M., THURSDAY, FEBRUARY 17, 2011
ON BILL C-33, RAILWAY SAFETY ACT AMENDMENTS**

The Union of Canadian Transportation Employees (UCTE) is the national union for rail, aviation, marine and road safety inspectors. All our inspector members are Transport Canada and Transportation Safety Board employees. We do not represent airline pilots that work as air flight operations inspectors at Transport Canada.

For the past 4 years, UCTE has been making the case to Transport Canada, to SCOTIC and to other interested parties that as we increasingly move into a Safety Management System (SMS) world, to as great an extent as possible, we require a consistent set of principles that apply for all modes of transport. We need this so that everyone can better understand that the idea of having transport companies managing safety is a good thing and not a bad thing. A public understanding and confidence in the transportation safety system is critical for all modes, and especially for rail given the rail safety performance over the past few years.

The UCTE prescription for an enhanced public confidence in transportation safety, as we increasingly move towards SMS, involves the following principles:

Firstly, in all Transportation Safety Statutes, the Government and the Minister of Transport are legally responsible and this responsibility does not leave despite the delegation powers in Transportation Statutes. Therefore, any Ministerial delegations should be very carefully applied and applied with considerable restraint. We recommend:

- Only fully trained government inspectors should be responsible for legislative and regulatory compliance and oversight and this inspection and compliance layer should be present and required in all SMS Statutes;

- Any delegations to non-government workers and organizations should be governed by a conflict of interest provision and conflicts and perceived conflicts should never exist;
- Inspectors responsible for SMS certification and SMS operations should be different than those responsible for regulatory compliance and oversight.

Secondly, there should be clear whistleblower protections and provisions for reporting to third parties in all Transportation Safety statutes. These protections should also apply and be available to the Government Inspectorate.

Thirdly, the Transportation Statutes, including Bill C-33, should require the regulator to maintain the “highest level of safety” and this level should be clearly and unambiguously defined in either legislation or regulations or both.

UCTE has an excellent relationship with Luc Bourdon, Director General, and his staff at Rail Safety. We support Bill C-33 in principle and like the other unions that you have had before you, we have some specific suggestions for change.

Let's face it - rail is a bit different than aviation or marine. There are fewer operators; SMS is not being certified and then handed off to the private sector; SMS is being implemented with regulations approved by Governor in Council; the delegations in Bill C-33 are much more restrained than they are with either aviation or marine.

So, on balance we are much more pleased with the rail safety regime than we are with either aviation or marine.

We do have some amendments to propose and comments on each.

1. Require that Railway Safety Inspectors, Enforcement Officers and Screening Officers be federal employees with appropriate certifications and training.

It is not explicit in the Bill that these positions be government positions. While there is a requirement that government inspectors be responsible for the oversight of federal-provincial agreements, there is no such clarification for the three positions specified in the Bill. The Bill seems to imply that the Minister could delegate these powers to any individual. We would recommend that the Statute specify that the people in these positions must be government employees.

We should put these delegation and responsibility issues in context. Look what is happening in aviation and marine. A recent BC Supreme Court decision has extended Transport Canada liability to the delegation of Ministerial authority to a private contractor who was certifying the airworthiness of aircraft. Leaving aside the issue of the performance of that contractor, the contractor appeared to be in a clear conflict of interest. People lost their lives because of it. We should never allow this happen.

In the last year, on the basis of interventions by UCTE and others and a number of reports of the Transportation Safety Board, the Minister of Transport removed the Ministerial delegations for the Canadian Business Aviation Association. Again, leaving

aside the performance of the Association, how possibly could a trade association be effective at regulatory oversight and compliance for its own members?

We have a similar problem developing in marine where there are proposals to delegate Ministerial powers to organizations that are suppliers to the very companies they would be responsible to regulate. How could this possibly work in real life?

We should never allow these same situations to arise with rail even if that is not the government's intent at the time legislation is introduced and passed. When statutory delegations are not restrained, there is a tendency for regulators to broadly delegate in the interests of cost savings. We believe this is wrong and is not supported by the will of Parliament or in the interest of the travelling public.

If Bill C-33 requires that the inspection positions be government employees then this problem cannot exist.

2. Require a Definition and Standard for “Highest level of Safety” and make the system responsible to meet this standard.

We are pleased that the Bill makes reference to highest level of safety in clause 47(a)

11. The reference is to risk management analysis and remedial actions only.

Unfortunately the term is not defined nor does it apply across the Board. We think it needs to, in the same manner and phrase as was proposed in the SCOTIC-amended *Aeronautics Act* that died on the Order Paper two elections ago. Simply make the

whole Railway Safety System accountable to the “highest level of safety” and require that this be defined in the accompanying regulations.

3. Require Third Party Whistleblower Protections

The U.S. experience and whistleblower remedies are ones that we should all study. The United States Aviation Safety Statute provides for an independent office for whistleblowers, both government inspectors and private sector employees. The fact is that even government inspectors are concerned about punitive actions that can be taken by government and private sector management, should those inspectors take a hard line against an operator. With today’s fast paced world, the pressures to operate quickly and on-time are so great that many safety infractions can be overlooked for fear of the extra costs and reprisals associated with safety enforcement. We recommend that you put the complaint process out to a third party that is completely independent of commercial and political pressures.

4. Other measures

Like Teamsters that appeared before you on February 10, we support the appeal to SCOTIC provision that was inserted into the *Aeronautics Act*. We also support the explicit reference to the *Canada Labour Code* in the Statute. We would like to see these provisions added here.

In conclusion, like our brothers and sisters in other unions, we would not want this Bill to die on the Order Paper and not be reintroduced. We need to give Transport Canada Rail Safety the tools that this bill gives them to do their job better. We are not asking for significant and difficult changes to the Bill. You could make these changes and still get this Bill through the House and Senate quickly. We sincerely hope you will do this.