

# **Recommendations on Bill C-6 to amend the Aeronautics Safety Act**

**Prepared by the Canada Safety Council for the House of Commons  
Standing Committee on Transport, Infrastructure and Communities (SCOTIC)**

The Canada Safety Council is concerned that two forces are combining to undermine safety for the flying public:

- Transport Canada's withdrawal from aviation safety oversight; and
- Bill C-6 and the Safety Management System (SMS) it authorizes, which allows aviation companies to regulate themselves, weaken the Minister's ability to protect aviation safety and maintain public confidence, and introduce unwelcome secrecy provisions that could allow the industry to hide critical safety information from the public.

## **1. Funding for Safety Oversight**

Transport Canada is giving up its safety oversight role and dismantling the system of checks and balances that have led to the very good aviation safety record Canada has today. SMS is replacing key safety oversight programs that have been cancelled. In December 2005, Transport Canada handed off enforcement and investigation to the airlines (Civil Aviation Directive Number 39). In March 2006, it cancelled the National Audit Program on the basis of a flawed risk assessment, replacing it with only a minimal program. Then in October 2006, enforcement investigations into safety violations were closed as long as the airline had a SMS or was working on developing one.

Nothing in Bill C-6 forced these changes. Rather, Transport Canada made them quietly and below the radar of Parliament in the absence of legislative requirements to maintain effective safety oversight.

We urge SCOTIC to correct this legislative silence by amending Bill C-6. This amendment must bind the government to the fiscal allocations required to ensure effective regulatory oversight is appropriately funded.

## **2. Determination of Acceptable Risks**

*"There must also be a willingness on the part of the regulator to step back from involvement in the day-to-day activities of the company in favour of allowing organizations to manage their activities and related hazards and risks themselves". [Marc Grégoire, ADM Safety and Security, Transport Canada, Canadian Aviation Safety Seminar, April 25, 2006]*

If Bill C-6 becomes law without amendment, Canadians will be shocked to learn the degree to which the Government of Canada has reneged on its responsibility for aviation safety.

Canadians rightly expect the Minister and the Government of Canada to take responsibility for aviation safety. The public assumes that safety is the responsibility of an independent regulator making decisions in the public interest – not a self-interested industry association or company, whose decisions may dilute safety with profit motivation.

Please recall the words of Justice Moshansky who testified before SCOTIC on February 28, 2007:

*“It is extremely naive to think that under SMS a financially strapped operator is, on its own initiative, going to place necessary safety expenditures ahead of economic survival. The historical record hardly inspires faith in the voluntary implementation of safety measures by some such carriers, especially in the absence of strong regulatory oversight.”*  
(p. 2)

Private sector aviation executives have already been given authority to set the tolerable level of risk exposure for their passengers.

Canadian Aviation Regulations give the air operator responsibility for “evaluating and managing the associated risks” based on its own conception of “the tolerable level of risk” it is willing to accept – without Transport Canada’s approval.

Transport Canada’s role has already been reduced to merely accepting that the Industry has set criteria for evaluating risk and the tolerable level of risk the Industry is willing to accept, *not* the actual level of tolerable risk. It is not at all clear that Transport Canada can set the “acceptable” level of safety for the organization’s goals, or the level of “tolerable risk.” The end result is that Canada’s new SMS regulations explicitly transfer the determination of the level of safety to the air operator who will decide how to manage risks, including the level of risk they are willing to accept in their operations, and impose on air travellers.

This new tolerable risk threshold set by the industry will not necessarily be as demanding as a risk threshold set by Transport Canada.

Transport Canada insists that SMS is not a deregulation of safety. However, transferring the determination of risk levels from Transport Canada to the airlines is in effect precisely that.

### **3. Delegation to Industry Associations**

Provisions in Bill C-6 that allow Transport Canada to delegate safety oversight to industry associations further weaken government responsibility for aviation safety.

This practice is already well established. The deregulation of aviation safety rule-setting to the Canadian Business Aircraft Association (CBAA) in November 2005 was done without Parliamentary scrutiny or approval.

Canadian Aviation Regulations give the CBAA safety oversight authority. This model will next remove Transport Canada from oversight of the helicopter industry.

Representatives of Canada's airports have testified to SCOTIC that the same could happen for airport authorities.

The Canada Safety Council believes Bill C-6 should be amended to remove the wholesale power to delegate, or to tightly restrict its application and prevent its widespread expansion. Further, the Council recommends that Canadian Aviation Regulations that allow deregulation of safety oversight to the CBAA should be changed to restore Transport Canada's regulatory oversight of this sector.

#### **4. Secrecy of Safety Information**

Bill C-6 will allow Transport Canada and the aviation industry to hide key safety data from the public. The Canada Safety Council finds this unacceptable and urges the government, with its strong commitment to greater transparency, to remove these sections.

Clause 43 of Bill C-6 adds more provisions of the *Aeronautics Act* to Schedule II of the *Access to Information Act*. These newly designated provisions, among others, include:

- Section 5.392(1) for any information, including contraventions, provided to the Minister.
- Section 5.397(2) for any information, including contraventions, provided to the yet-to-be-created national safety body.

As a result, this important safety information will be beyond the reach of the Access to Information program and unavailable to Canadian travellers.

The hallmark of airline deregulation is informed consumer choice of airlines based on full knowledge of prices, service, safety records, etc. The heightened secrecy provisions of Bill C-6 will make this impossible.

The Canada Safety Council recommends that these two sections be deleted from the list of provisions to be included under Schedule II of the *Access to Information Act*.

#### **5. Whistleblower Protection**

There is a total lack of protection for employees of aviation companies who report safety violations to Transport Canada. This omission has the potential to be the fatally weak link of the safety reporting system Bill C-6 sets out to establish.

Bill C-6 prohibits employees from by-passing their company's SMS. If that company has already accepted the complaint as a tolerable level of risk nothing can be done and Transport Canada will never know about it.

Justice Moshansky described this shortcoming as the potential Achilles Heel of SMS. The Canada Safety Council agrees and recommends the SCOTIC amend Bill C-6 to incorporate whistleblower protections modeled on the US Federal Aviation Administration's *Whistleblower Protection Program* established in April 2000.

## **6. Warning from Parallel Situations**

The philosophy behind the proposed amendments to Bill C-6 brings to mind cogent examples of tragic outcomes which resulted from the erosion in the function and authority of the government regulator.

A public enquiry found that budgetary cuts, along with industry deregulation, were the major causes of the crash of an Air Ontario plane in Dryden, Ontario back in 1989. The context of that air disaster is eerily reminiscent of Bill C-6: budgetary cuts resulting in fewer inspectors, coupled with less regulatory enforcement.

Increasing safety problems in the rail industry after eight years of SMS is currently a major concern to all Canadians. Minister Cannon, to his credit, has struck a high level review of the Railway Safety Act in light of numerous serious incidents and crashes in that industry which have led to fatalities, injuries, damage to the environment and serious economic losses.

Like aviation, rail SMS was introduced together with a reduction in regulatory oversight. Fewer rail safety inspectors resulted in an erosion of the authority and function of the regulator, and the end of spot audits, which had historically been regarded as fail-safe procedures in efforts to maximize safety in that industry.

The combination of less public oversight, a weakening of regulatory authority and oversight capability, and an aviation SMS which explicitly transfers risk determination to the airlines, is eerily reminiscent to the rail record. Based on the railways' poor safety record since SMS was introduced, the Canada Safety Council fears a similar approach will have similar results in aviation safety.

Another preventable situation blamed on lack of regulatory oversight is the Walkerton, Ontario water tragedy.

*Submitted by the Canada Safety Council  
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