Legislative Change Proposal

Submitted by

Canadian Federal Pilots Association (CFPA)

To the

Standing Committee on Transport, Infrastructure and Communities

Regarding

Bill C-6, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts

11 May, 2007

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INTRODUCTION

1. A Sovereign State's responsibility for ensuring the safety of aviation simply cannot be delegated to the private providers of air services. It is not merely that such delegation or devolution runs contrary to international law, but it also runs contrary to the long-established practices of States with major aviation industries (including, up to now, Canada). Most importantly, it runs contrary to the best interests of the air-traveling public because it potentially puts their lives at risk.

2. The level of air safety achieved in commercial aviation is in no small part the result of adding levels of redundancy. The delegation or devolution proposals of Bill C-6 go directly against this principle of redundancy. By effectively removing existing regulatory oversight, you remove a fall-back position should SMS fail to achieve its goals, for whatever reason. The elimination of regulatory oversight is short-sighted and could lead to unwanted consequences.

3. Safety Management Systems (SMS) only add an additional level of redundancy to the air safety environment providing that they are harmonized and standardized by government regulations. Regulations set specific rules for managing safety and risks, minimum standards which must be met in all areas of safety and risk management. The goal must be the ongoing improvement of aviation safety towards zero risk with a full panoply of regulatory, compliance and enforcement tools.

4. Transport Canada's own documents admit that the level of air safety has not substantially improved during the past 10 years. This is a reversal of the past history of commercial aviation where safety records were consistently improving.

5. Studies have shown that the European community has an enviable aviation safety record, yet Europe has not and is not delegating or devolving its safety responsibilities to "private" designated organizations. Instead it is creating a pan-European level of oversight with the European Aviation Safety Agency (EASA).

6. The United States, which was the first to engage in economic deregulation, is not deregulating safety.

7. After Enron, Hollinger, Norshield and WorldCom, governments are strengthening their regulation and enforcement of corporate governance. If you cannot rely on corporate directors and their audit committees to regulate financial activities where shareholders' money rather than the public's lives, are at stake, how can you count on the boards of directors of private aviation concerns, whose legal duties are to shareholders, to take over full accountability for previously regulated areas of passenger safety?

THE BASIC ISSUES

8. The dramatic change in direction proposed in Bill C-6 should not come about without an independent and expert inquiry pursuant to the *Inquiries Act.*

9. At a minimum, all areas that affect commercial air services, as defined in the *Aeronautics Act* and Bill C-6, should be totally excluded from the delegation or devolution provisions of Bill C-6 and, in particular, clause 12 and articles 5.31 and following, and effective whistle-blower legislation should be included to counterbalance voluntarism.

10. No organization involved in commercial air services, whether it is an individual airline, or an association of airlines, air operators, aerodromes or other industry association, should have any rule making, licensing, certification or enforcement function, with the possible exception of the limited, task related role, of certain employees such as designated company check pilots, insofar as their role is fully compatible with International Civil Aviation Organization (ICAO) standards and recommended practices.

11. Allowing persons and organizations being regulated to enact, implement and enforce the regulations is tantamount to abandoning any real regulation of safety and leads to conflicts of interest on the face of the proposal.

12. The Canadian Union of Public Employees (CUPE) has brought to the Committee a number of important issues pertaining to *The Canada Labour Code*.

13. Air carriers, as well as aerodrome operators, air navigation service providers, aeronautical product manufacturers, and other players operate under labour legislation which mandates collective bargaining and collective agreements. Key to any collective agreement is the grievance procedure to deal with disciplinary or enforcement actions.

14. How will an employer of employees, or an industry association representing an employer of employees, deal with enforcement actions which may be grieved by the employees? Employees can even grieve the enactment of "management rules" which they claim to be in violation of their collective agreement rights. The "rule making function" will be arbitrable.

15. Only an independent regulatory entity can enact, implement, enforce and sanction the violation of regulations independently, in the sole interest of the public. Anyone else is beholden to shareholders, private members, trade unions and even liability insurers.

BEST VS ACCEPTABLE LEVEL OF SAFETY

16. There is and can be but one goal in aviation safety: The best and highest possible level of safety.

17. Euphemisms such as "risk management", "best practicable level of safety", and "commensurate with costs effectiveness", are merely Management 101 double talk for downgrading that goal.

18. The following quotes from Transport Canada's "Flight 2010" publication are cause for great concern:

"Flight 2010 – A Strategic Plan for Civil Aviation – TP 14469

- "For this, the second century of flight, aviation has become a business of managing risks (…)"

- "(…) integrating risk management systems and business practices (…)"

- "rules that are more focused on results with fewer interventions (…)"

- "standards (…) set and achieved in a cooperative and cost effective manner".

- "This program has everything to do with finding the most cost effective way to achieve the required safety performance."

- "Coincidentally, future demographics also indicate that the current safety framework, with its emphasis on safety oversight at the day to day operating levels, may not be sustainable due to the limited and varying labour market availability of technical personnel in the industry in the future. This can translate into a shortage of qualified personnel able to oversee the current system from a regulatory perspective." ***(A self-fulfilling prophecy if adequate funds are withheld.)***

- "The global accident rate remained relatively unchanged in the last 10 years. This current accident rate, applied to a growing industry, may – by some estimations – **result in one major accident per week**. This, in turn, will reduce public confidence in the system and put Civil Aviation at a **greater financial risk**. Civil Aviation must be able to manage this increased exposure to risk."

(One major accident per week is first and foremost a risk of human tragedy not a financial risk. Civil aviation's role is not to manage financial risks but rather to minimize safety risks.)

- "(…) observable and measurable results within progressively reduced budgets."

- "(…) flexibility to meet safety requirements in the most cost-effective manner"

- "(…) Transport Canada Civil Aviation (TCCA) **defines safety** as the conditions where **risks** are managed to acceptable levels (…)"

> "An acceptable level of risk is determined on a case by case basis, through a sophisticated risk assessment process."

(Is it not startling how this definition differs from Justice Dubin's definition of safety as "<u>freedom from danger or risk</u>".)

- "Reconcile safety requirements with the need for a **<u>sustainable</u>** transportation system."

19. In his Report as Commissioner of the 1979 *Commission of Inquiry on Aviation Safety*, Mr. Justice Charles L. Dubin (later Chief Justice of Ontario) defines safety at page 252 of Volume 1:

> "(…) Safety is defined as "freedom from danger or risk". The responsibility for the aviation safety system is that of the Air Administration"

20. Transport Canada now defines safety as managing risks to acceptable levels.

21. Does Transport Canada believe Justice Dubin got it wrong? If so, is it not time for another independent inquiry pursuant to the *Inquiries Act*?

22. The Commissions of Inquiry of Justices Dubin and Moshansky resulted in the Transportation Safety Board of Canada, the Civil Aviation Tribunal, responsible aviation safety managers and many other initiatives which are affected by Bill C-6. Justice Moshansky's reservations are well-known to the Committee.

23. Aviation organizations **<u>cannot</u>** be allowed free reign to independently establish their acceptable level of safety or their acceptable level of tolerable risk.

24. Any Safety Management System which allows an operator or group of operators or designated organization to establish its own acceptable level of risk inherently means that any level, including **<u>no</u>** level, is acceptable, except perhaps when the risk becomes the reality of an accident.

INTERNATIONAL OBLIGATIONS

25. In our view, the delegation of authority to "designated organizations" is incompatible with Canada's obligations under the *Chicago Convention* and the standards and recommended practices contained in its numerous annexes.

26. Article 12 of the *Chicago Convention* is very clear to the effect that regulatory and compliance functions belong to the State.

> "Article 12 - Rules of the Air
>
> Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable."

27. The ICAO Safety Oversight Manual states that it:

> "(…) outlines the duties and responsibilities of ICAO contracting states with respect to aviation safety oversight."

28. Chapter 2 of that Manual is entitled:

> "Safety Oversight: An Obligation"

and states:

> "2.3.1 Nature of Contracting State responsibilities
> 2.3.1.1 A State's responsibility under the Convention and its Annexes includes:
> - the licensing of operational personnel;
> - certification of aircraft, air operators and aerodromes;

- the control and supervision of licensed personnel, certified products, and approved organizations;
- the provision of air navigation services (inclusive of meteorological services, aeronautical telecommunications, search and rescue services, charts and the distribution of information); and
- aircraft accident and incident investigation.

Ensuring that this responsibility is carried out in the most effective manner is fundamental to the health of aircraft operations across borders and throughout the world."

29. ICAO is cognizant of the fact that operators and service providers share safety responsibilities with the State. The Organization clearly warns, however, against States taking a passive rather than a pro-active role. Crucial to the consideration of the delegation provisions of Bill C-6 is the following statement in the Safety Oversight Manual:

> "2.4.6 States need to carefully consider the public interest when establishing the various safety oversight functions and to ensure that a proper system of checks and balances is maintained. The State should retain effective control of important inspection functions. Such functions cannot be delegated; otherwise, aviation personnel, maintenance organizations, general aviation, commercial operators, aviation service providers, aerodrome operators, etc. will in effect be regulating themselves and will not be effectively monitored by CAA[1] inspectors."

30. Is it not common sense that the regulated should not be regulating themselves?

31. Canada has already been called to task by ICAO in respect of the time extension between pilot proficiency checks. Part of the answer was that Canada would file a difference.

32. How many differences will Canada have to file as a result of Bill C-6?

33. One of the main purposes for which ICAO was established and one of the main goals of any national or multi-national aviation authority including the European Aviation Safety

[1] CAA refers to the Civil Aviation Authority for a State. Transport Canada is the Civil Aviation Authority in Canada

Agency (EASA), is to harmonize standards. The non-harmonization of standards is a recipe for disaster.

34. At the time of Justice Dubin's Inquiry, Air Canada was still a Crown Corporation and, as such, enjoyed a certain special status vis-à-vis the Canadian Air Transportation Administration (CATA). Mr. Justice Dubin examined this special relationship at pages 457 and following of Volume 2 of his Report.

35. Justice Dubin concludes at page 472:

> "It is unique to suggest that a carrier against which a violation is alleged should have a role in determining whether it should be prosecuted. As Mr. Black pointed out in his memorandum of March 19, the determination not to prosecute in this case disclosed two standards of enforcement, one for Air Canada and one for all others. Nothing could be more destructive of an effective enforcement policy."

36. Although Safety Management Systems per se may be a welcome addition to a robust independent regulatory system, safety managements system that are self-regulating could give rise to different standards for different systems. To delegate regulatory and compliance powers to various "designated organizations" is to abrogate Canada's legal and public responsibility for standardization and harmonization.

THE REST OF THE WORLD

37. Why is Canada trying to take the lead in a dubious move to deregulate and delegate aviation safety?

38. Worldwide, all previous exercises in aviation deregulation in its financial, commercial or competitive aspects were always accompanied by the strong caveat that safety would remain the responsibility of the State.

39. When then Minister of Transport the Honourable Donald Mazankowski issued his white paper on economic deregulation of aviation, "Freedom to Move", he stated in the opening statement:

> "I would like to indicate unequivocally that the government will neither propose nor permit any economic regulatory reform that might be detrimental to safety standards"

40. The Federal Aviation Administration in the United States has not enacted provisions similar to Clause 12 of Bill C-6.

41. The European Union and its member states have also not done so and indeed are strengthening independent oversight and adding rather than subtracting a level of redundancy through EASA.

42. Justice Virgil P. Moshansky eloquently bore witness to the fact that Australia was not moving in this direction.

43. There are a few developing nations, well-known in aviation circles, which offer the equivalent of "flags of convenience" to bargain basement charter and cargo operators. The responsible aviation community wants to put them out of business, not hold them up as shining examples.

44. The European Aviation Safety Agency has set up an European Community Safety Assessment of Foreign Aircraft (SAFA) program which it describes in the following terms:

> "**WHAT IS THE EC SAFA PROGRAMME?**
>
> The principles of the programme are simple: in each EU Member State and those States who have entered into a specific 'SAFA' Working Arrangement with EASA, third country aircraft may be inspected. These inspections follow a procedure common to all Member States and are then reported on using a common format. If an inspection identifies significant irregularities, these will be

> taken up with the airline and the oversight authority. Where irregularities have an immediate impact on safety, inspectors can demand corrective action before they allow the aircraft to leave.
> (…)
> It has to be stressed that SAFA inspections are limited to on-the-spot assessments and cannot substitute for proper regulatory oversight.
> (…)
>
> **WHICH AIRCRAFT AND OPERATORS ARE CHECKED AND HOW OFTEN?**
>
> Oversight authorities of the Member States in the EC SAFA Programme choose which aircraft to inspect. Some authorities carry out random inspections while others try to target aircraft or airlines that they suspect may not comply with ICAO standards.
> (…)"

45. This clearly confirms the expectation of other States that national aviation authorities have full monitoring responsibilities.

SELF-REGULATION IN OTHER AREAS

46. We mentioned in the introduction the financial markets sector where the danger was not loss of life but loss of money.

47. Is there anyone who will argue that self-governance by boards of directors of public companies owned by private shareholders is working? Why are Canada, the United States and Europe strengthening their oversight of financial markets? Even the heavy civil liabilities facing independent directors and audit committees have not prevented serious abuses and even criminal activities. Why would we want to confer on the directors of airlines, aircraft manufacturers and their private industry associations the responsibility not only for their shareholders' or members' money but also for the lives of the air traveling public?

48. It is indeed telling to review the list of the members of the boards of directors of 3 main air carriers in Canada. Only two persons appear to have operational experience[2]. The rest are lawyers, accountants and financiers.

49. A review of the websites of Air Canada, Air Transat and Westjet indicates that of the 30 remaining directors, 8 are from banking and investment, 4 are chartered accountants, at least 3 are lawyers, 2 are in oil and gas, one in real estate and the remainder have business backgrounds without hands-on technical experience.

THE 1979 COMMISSION OF INQUIRY ON AVIATION SAFETY

(THE DUBIN COMMISSION AND THE DUBIN REPORT)

50. In 1979 Justice of Appeal Charles L. Dubin (subsequently Chief Justice of Ontario) was appointed as Commissioner, pursuant to the *Inquiries Act*, to conduct an Inquiry on Aviation Safety.

51. One of CFPA's recommendations, initially formulated to the Committee by Justice Virgil P. Moshansky, also a Commissioner appointed under the *Inquiries Act* to inquire into aviation safety matters, is that Canada now requires another independent, expert, safety review.

52. At page 252 of Volume 1 of the "*Dubin Report*":

> "(…) Safety is defined as "freedom from danger or risk". The responsibility for the aviation safety system is that of the Air Administration, (…)"

53. And further:

> "(…) No aviation safety system can achieve safety in absolute terms, yet the objective of the Air Administration must be to seek such a goal."

[2] Clive Beddoe of Westjet who is or has been a pilot and James Homeiuk also of Westjet who is an Aircraft Maintenance Engineer

54. Such lofty goals should never be downgraded to those of managing **acceptable levels of risk**.

55. With respect to enforcement, Justice Dubin saw the need for more, not less, direct enforcement by the regulator as well as the elimination of conflicts of interest which could arise by the direct involvement of regulated parties in the enforcement role. It is telling that his recommendation 11 at page 501 of Volume 2 of the "*Dubin Report*" states:

> "11. The CATA (Canadian Air Transport Administration)/Air Canada Liaison Committee should cease to play a role in pending enforcement proceedings against Air Canada."

56. 25 years ago an eminent jurist recommended removing a regulated party from any role in the enforcement process, even if only in the capacity of liaison. In the introduction to his chapter on enforcement, found at page 271 of Volume 2 of his Report, Justice Dubin states:

> "The role of government in the regulation of air safety standards has been generally accepted for many years. There are some who still argue that those who operate commercial air carriers should be self-regulated, and that the responsibility for deciding and enforcing safety standards should be left to the individual airlines or to the airlines collectively. The theory of those who espouse this point of view is that in the end competitive forces will prevail, and the unsafe carrier will lose its customers and give way to the safe operator."

57. Justice Dubin quickly dismissed this notion of self-regulation at pages 272 and 273 of Volume 2 of his Report. He states:

> "In the Report of the Committee of Inquiry (U.K.) into Civil Air Transport headed by Professor Sir Ronald Edwards, delivered in May of 1969, which committee inquired into the economic and financial situation and prospects of the British Civil Air Transport Industry amongst other matters, the proposition that the responsibility for safety for commercial air carriers should be left with the industry was dealt with as follows:

> "…at the outset, however, we shall say very briefly that the complete devolution of responsibility for deciding and enforcing safety standards onto the individual airlines or to the airlines collectively would not be acceptable.
>
> The view is very widely held that market forces alone could not be expected to elicit from all airlines at all times a sufficiently high and consistent degree of attention to air safety standards. It is true that in the long run a good accident record would serve an airline well commercially, but it would be unthinkable to most people that government should abandon the principle of prevention based on regulation and certification and wait for an airline to disqualify itself through its accident record from the confidence of it customers."

Justice Dubin futher states:

> "In a Special Review of The Safety Performance of United Kingdom Airline Operators in 1968, the following conclusion as to the responsibility of government was stated as follows:
>
> > "In general it can be said that it is the duty of the State to regulate air navigation and it is the responsibility of the operator and the aircraft commander to comply with the statutory requirements and to ensure good operating practice and thereby flight safety. The State, however, has an over-riding responsibility to see that the operator discharges his responsibilities adequately."
>
> It is, therefore, clear, I think, that government has the duty to enact safety regulations with a view to promoting aviation safety, and it follows that it is the responsibility of government to see that such safety standards are complied with."

58. At page 292 of Volume 2 of his Report Justice Dubin states:

> "(…) These officials prefer to work with the air carriers to try to obtain compliance and, therefore, many serious infractions never come to the attention of the Enforcement Section. The inspections are frequently limited to the examination of documents. The practice of the air carrier inspectors and the airworthiness inspectors is to give advance notice to those being investigated who, forewarned in this manner, have ample opportunity to cover up any deficiencies."

59. In the Conclusions section of his report (page 491 and following of Volume 2) Justice Dubin espouses a vigorous enforcement policy.

60. Justice Dubin quotes at length from a 1977 study of aviation safety in Northern Ontario undertaken by Mr. R.W. Slaughter, then a Civil Aviation Inspector with Transport Canada.

61. Tellingly, the Slaughter study stated as follows:

> "COMMERCIAL AIR OPERATIONS – MANAGEMENT FACTOR
>
> Management Priorities
>
> Economics more than any other factor dictates management priorities. For example, if the operation is making money, and is financially secure, management interest may be directed towards expansion, sales and marketing, equipment conditions or crew training, etc. However, if the financial considerations are reversed, management priorities revert to cost reductions and corner-cutting in attempts to make existing resources stretch as far as possible and return as much revenue as possible. Competition between carriers becomes very keen, to the point of being cut-throat. In conditions such as this, aircraft maintenance may be reduced and, in many reported instances, simply not done; pilots are intimidated into making as many flights as physically possible, aircraft overloading is routine, and pilots are pushed, directly or indirectly to fly in unsafe weather conditions. Other violations of safe operating procedures and basic regulations appear to have become normal. Numerous examples of these management pressures can be found through the Annexed interviews.
>
> In Northern Ontario, many of the commercial operations are heavily financed, operating costs are high and revenue is competitive. As a result, the adverse management influence to cut corners seems to prevail throughout the area.
>
> (…) As a result, the management of those operations is subjected to constant pressure to cut costs from financial backers, some of whom are familiar with airline operations and cost-cutting manoeuvres. (…)"

62. Are we to believe that human nature has changed in 30 years? As seen in paragraph 49 above, the boards of directors of three major air operators in Canada are clearly representative of financial rather than operational interests.

63. In discussing airworthiness, Justice Dubin states at page 589 of Volume 2 of his Report:

> "In the area of continuing airworthiness, something more is required than accepting the mere verbal assurances that everything is in hand. No matter how well intended the carriers and owners of aircraft may be when verbal assurances are given, they cannot help but be influenced by the economic impact of Service Bulletins and Airworthiness Directives and by the losses which would be incurred by the grounding of aircraft."

THE 1989 COMMISSION OF INQUIRY INTO THE AIR ONTARIO CRASH AT DRYDEN, ONTARIO

(THE MOSHANSKY COMMISSION AND THE MOSHANSKY REPORT)

64. In 1989, Justice Virgil P. Moshansky was appointed, pursuant to the *Inquiries Act,* as Commissioner to inquire into the Air Ontario air crash at Dryden, Ontario which had taken place on March 10, 1989.

65. Since Justice Moshansky testified at length before the Committee, testimony which CFPA considers to be amongst the most important presented to the Committee, CFPA assumes that the Committee is familiar with Justice Moshansky's Report and will only comment on a limited number of passages.

66. At page 872 (Volume 3), Justice Moshansky quotes, as we do in paragraph 39 above, the opening statement of then Minister of Transport Donald Mazankowsky in "Freedom To Move":

> "I would like to indicate unequivocally that the government will neither propose nor permit any economic regulatory reform that might be detrimental to safety standards"

67. The CFPA believes that this commitment has not been carried out and that Bill C-6 is the last nail in its coffin;

68. At page 906 and 907 of Volume 3 of his Report, Justice Moshansky states:

> "Having heard all of the evidence, and not in any way discounting the value of audits, I am convinced that a properly executed in-flight inspection provides the best opportunity to view all components of an air carrier's operating system in a day to day operation. Mr. Brayman described such inspections as "mini audits". Surely if properly conducted there can be no better way to monitor a flight operation."

69. Justice Moshansky's testimony before the Committee on February 28th, 2007 clearly reflects his reservations regarding the delegation of regulatory powers found in clause 12, and in particular proposed Article 5.31 and require no further comment, other than support, on our part.

WHY?

70. Why is "Transport Canada" proposing to delegate or devolve regulatory and compliance functions in aviation to the private sector?

71. Is the Canadian public or the Canadian air-traveling public requesting it? Of course not.

72. Is Canada's air safety record so good that we can afford to be complacent? If, on the one hand, it is so good, then we should go on doing it right. If it is not the best and improving, then we should strive to improve it and make it the best and not engage in change for change's sake. What empirical studies have shown that safety will improve with delegation? Instead of aiming at increasing the level of safety, Transport Canada's documents are replete with buzz words such as "maintaining" safety, and "as safe as practicable"…, etc.

73. Some of the real reasons for this proposed change clearly appear from the emphasis on the corporate bottom line and cost effectiveness, while others are likely the result of the industry lobbying for deregulation.

74. To say that proposed Article 5.31 does not involve deregulation or delegation of regulatory authority is disingenuous at best.

75. "Designated organizations" will have the power to establish standards for the certification of persons, as well as the certification itself.

76. "Standards" have a very specific meaning in aviation. A basic regulatory responsibility is the establishment of "standards". If various "designated organizations" are permitted to establish their own standards, these so called standards will be so only for the particular organization establishing them. Other designated organizations may, and likely will, implement different standards. In the arena of aviation safety, different standards violate the basic principle of the harmonization of standards.

77. How far will the "certification" of persons go? Will licensed or certified personnel or aircraft no longer hold a Canadian government license or certification but rather hold a certification from a private entity? How will such certificate holders or aircraft be regarded in other countries?

78. Under the Bill C-6 initiative, a designated organization will also be able to establish rules governing prescribed aeronautical activities. Is not the very definition of regulation the establishment of rules? How will the rules of the various designated organizations be harmonized and standardized?

79. Moreover, a sovereign state's regulatory responsibility involves more than the establishment of rules and standards. It involves compliance with and the enforcement of such rules and standards. Here again, the designated organization will have all the powers necessary to monitor compliance as well as suspend or cancel certifications, approvals or authorizations. This is obviously the essence of compliance and enforcement, and, even worse, it entails a huge conflict of interest.

80. Let us be clear about this. Bill C-6 proposes to ask the regulated not only to make their own rules but to monitor their own compliance with their own rules and to impose penalties for non-compliance. What else is a suspension or cancellation if not a penalty?

81. Although a person whose certificate is suspended or cancelled may appeal to the Transportation Appeal Tribunal of Canada, what recourse is there where compliance or enforcement action, which should have been taken, is not taken by the designated organization, or is clearly inadequate?

82. Limited "focused audits" are simply not a solution and Safety Management Systems, as worthy as they may be in fostering a safety culture within the industry, are simply not a replacement for any of the normal accepted functions of a national aeronautical authority.

PROTECTION OF PERSONS PROVIDING SAFETY INFORMATION

83. "The only thing necessary for the triumph of evil is for good men to do nothing" said British Statesman Edmund Burke.

84. Recent Canadian history is unfortunately replete with instances where public scrutiny, up to and including public inquiries, have belatedly uncovered the existence of information, but for the knowledge of which, unfortunate events, indeed, tragedies, might have been averted.

85. It is also replete with examples of the intimidation of persons who seek to come forward with valuable safety related information. We need not only look at the reaction to CFPA's National Chairman when he "dared" mention pressure from above, but go back nearly 30 years to the Dubin Report where it is stated at page 7 of Volume 1:

> "During the course of the Inquiry it was brought to my attention that two witnesses who had given testimony before the Commission were the subject of harassment consequent upon such attendance, and I found it necessary to publicly reprimand the officials responsible for such harassment. As a result of the public

assurances to that effect which you gave when this matter was brought to your attention as well as similar assurances given by the Administrator, I am confident that none of the witnesses who testified before the Commission will be prejudiced in any way in their future with the Department by reason of their having given evidence before the Commission."

86. It is obvious that Canada must have strong whistle-blower protections.

87. Accordingly, CFPA recommends adding, at the end of clause 12.1 of Bill C-6, the following provision:

The Act will be amended to include the following Article after Article 5.398:

"Protection of persons providing air safety information"

5.399 1) No person or organization who provides any air safety related information to his employer, the government of Canada or any of its agencies, or makes public any such information, or has filed, caused to be filed or is about to file or cause to be filed, any complaint or proceeding in relation to air safety or testifies or is about to testify in any proceeding in relation to air safety or assists or participates or is about to assist or participate in any proceeding related to air safety, shall be subject to any retaliation, penalty, dismissal, disciplinary action, discrimination, financial penalty, restriction with respect to compensation, terms, conditions or privileges of employment or other financial penalties, including the imposition of damages, as a result of the provision of such information.

2) Anyone who violates subsection 1 of this Article is guilty of an offence punishable on summary conviction."

BILL C-6

88. Is CFPA against everything in Bill C-6?

89. Of course not. Some of it is editorial, some of it is innocuous, and some of it is possibly advisable.

90. Even the concept of broadening the use of Safety Management Systems (SMS) to cover more of the industry and the operators, can be positive but **only** if it provides an additional level of redundancy and does not replace any existing regulatory powers, oversight, enforcement and compliance by the regulator over the regulated.

91. Such a sea change merits, indeed requires, a public inquiry into the "vital signs of aviation in Canada".

RECOMMENDATIONS

92. To make the matter as simple and basic as possible, and since the consideration of this legislation is unfortunately well-advanced, we put forward only 5 recommendations.

93. It is difficult to be thorough in reactive submissions to a Committee such as the Standing Committee on Transport, Infrastructure and Communities.

1) Such far reaching changes as proposed in Bill C-6 deserve an in-depth expert independent review.

   For this reason our first recommendation is to fully support and indeed adopt as our own the recommendation made by the Honourable Virgil P. Moshansky before this Committee on February 28th, 2007, that a system wide inquiry, under the Inquiries Act, be held in Canada to test the aviation system's vital signs.

2) To ensure that the government mandates the highest rather than an acceptable level of safety, the CFPA recommends that Article 3.1 of the proposed amended *Aeronautics Act* be itself amended with the addition of a new subsection (a) and that the proposed Article 5.39 subsection (a) be amended as follows:

   Amend Article 3.1 of the proposed amended *Aeronautics Act* to include **a new subsection (a)**:

"(a) ensuring that Canada achieve the highest level of safety of aeronautical activities;"

and that the current subsections (a) to (e) be re-lettered (b) to (f),

And,

Amend the proposed Article 5.39 subsection (a) adding the words "**highest level of**":

"(a) the establishment and implementation of management systems by holders of Canadian aviation documents to provide for the **highest level of** safety of aeronautical activities and compliance with this Part;"

3) To prevent the erosion and dismantling of aviation regulatory oversight programs the CFPA recommends that the proposed amended *Aeronautics Act* be further amended with the addition of a new Article 3.2 as follows:

"3.2 The Governor in Council shall provide the Minister with adequate resources to ensure the safety of aeronautical activities. Accordingly, the Minister shall establish and maintain adequate safety oversight and surveillance programmes in order to ensure the safety of aeronautical activities."

4) Should Bill C-6 nevertheless go forward without a system–wide inquiry as recommended above, at the very least, commercial air services, and related aerodromes, air navigation services, and aeronautical products should be excluded from consideration for delegated regulatory authority. We thus recommend that:

Article 5.31 of the proposed amended *Aeronautics Act* be itself amended to include the words at the beginning of said Article 5.31:

"Except for commercial air services, and aerodromes, air navigation services and aeronautical products relating to commercial air services, (…)"

5) Finally, to provide protection for those who would bring forward safety information we recommend that Bill C-6 be amended to include the following provision:

The Act will be amended to include the following Article after Article 5.398:

"Protection of persons providing air safety information"

5.399 1) No person or organization who provides any air safety related information to his employer, the government of Canada or any of its agencies, or makes public any such information, or has filed, caused to be filed or is about to file or cause to be filed, any complaint or proceeding in relation to air safety or testifies or is about to testify in any proceeding in relation to air safety or assists or participates or is about to assist or participate in any proceeding related to air safety, shall be subject to any retaliation, penalty, dismissal, disciplinary action, discrimination, financial penalty, restriction with respect to compensation, terms, conditions or privileges of employment or other financial penalties, including the imposition of damages, as a result of the provision of such information.

2) Anyone who violates subsection 1 of this Article is guilty of an offence punishable on summary conviction.

CONCLUSION

94. No conclusion of ours can be as apposite as to quote again section 2.4.6 of the 2006 ICAO Safety Oversight Manual.

"2.4.6) States need to carefully consider the public interest when establishing the various safety oversight functions and to ensure that a proper system of checks and balances is maintained. The State should retain effective control of important inspection

> functions. Such functions cannot be delegated; otherwise, aviation personnel, maintenance organizations, general aviation, commercial operators, aviation service providers, aerodrome operators, etc. will in effect be regulating themselves and will not be effectively monitored by CAA inspectors."

95. If this goes for inspection functions, then all the more reason that it should, without qualification, apply to regulatory, compliance and enforcement functions.