



Railway Association
of Canada

Association des chemins
de fer du Canada

Presentation to the Senate Committee on Legal and Constitutional Affairs

*Bill C-46 – An Act to amend the Criminal Code
(offences relating to conveyances)*

*Remarks by Gérald Gauthier, Acting President,
Railway Association of Canada*

May 2, 2018



- Monsieur le président, membres du comité.
- I am the acting president of the Railway Association of Canada, which represents more than 50 rail operators, consisting of six class I freight carriers, 40 local and regional railways, as well as many passenger rail operators. With me today is Simon-Pierre Paquette, legal counsel at CN. C'est avec plaisir que nous répondrons à vos questions dans la langue officielle de votre choix.
- Canada's rail network operates every day, year-round, through all our major population and economic centres and goes over some 30,000 road crossings. Our sector employs approximately 30,000 people, many of whom hold safety-critical positions. This includes employees who operate our trains or work in rail traffic control.
- Our freight railways carry the goods that sustain Canada's economy and its people, including many dangerous goods.
- We are committed to running the safest rail network possible. A key part of this is ensuring that railway employees are fit to work. Our industry is concerned that legalization of marijuana will contribute to further normalize its use, and will increase at-risk behaviour in the workplace.
- In its November 2016 final report, the task force on the legalization of cannabis highlighted the importance of addressing the safety implications of workplace impairment arising from the consumption of marijuana in safety-sensitive settings such as transportation. However, workplace impairment has not been addressed in either Bills relating to marijuana legalization.
- The continued absence of a regulatory structure to proactively screen for employee impairment can compromise safety in Canada.
- By introducing Bill C-46, the government was primarily seeking to ensure that people who consume marijuana and alcohol do not get behind the wheel and drive. This reflects a shared apprehension on the part of the Government that legalization will increase at-risk behaviour, in a way that must be addressed by Parliament.
- However, the absence of any proactive measures to secure safety-sensitive workplaces from increased at-risk behaviours is a notable omission.
- The inability to pre-emptively detect if a train operator is impaired, such as through random testing, can compromise rail safety. This is particularly the case in a context where marijuana, a substance that negatively affects vigilance, depth perception and reaction times, would become freely available for recreational consumption by anyone in Canada's workforce.



- Implementing measures to determine if workers in safety-critical positions are impaired would be a major step in improving railway safety. To accomplish this, we need a common framework established by Parliament, an established impairment level along with a government-mandated standard for instruments to detect impairment. Introducing these, with increased employee education and research on impairment, would help create a more robust safety regime to help improve workplace safety.
- US rail safety legislation not only permits random testing, but indeed statutorily requires it from anyone operating trains on US soil, including maintenance of way employees. Canadian railway employees crossing into the US are also subject to such regulations, including random testing. This is a well-accepted safety standard, and we see no reason why Canadian and US regulations on such a critical issue should continue to differ.
- In a recent report on the 2015 crash of a Carson Air aircraft in British Columbia, the Transportation Safety Board has identified the lack of such a drug and alcohol testing framework in Canada's transportation sector, and in particular the lack of random testing, as posing risks to public safety.
- The Toronto Transit Commission, from which you heard earlier today, has had random drug testing in place for safety-sensitive employees since April 2017, after the Ontario Superior Court of Justice found that any brief inconvenience resulting from undergoing a routine test was far outweighed by the need to safeguard the safety of employees and the public. The TTC's efforts to implement random testing have been subject to legal challenge since 2011, and this case is currently being appealed.
- There is also a regulatory precedent for this in the federal government. In 2017, the Canadian Nuclear Safety Commission introduced alcohol and drug testing regulations to ensure that workers are not impaired on nuclear sites. In doing so, the government has clearly recognized the need to take measures to proactively ensure that employees operating safety-sensitive infrastructure are not impaired.
- We must protect our critical transportation networks. Public safety, employee safety, and the safety of our communities and environment depend upon it. That is why we are here today requesting that measures aimed at proactively securing Canada's transportation infrastructure from increased risk of impairment be put in place to accompany marijuana legislation.
- We strongly believe that these steps are necessary to help ensure we can maintain our commitment to running the safest rail network possible.
- Merci.