



Railway Association  
of Canada

Association des chemins  
de fer du Canada

# Submission to the Senate Standing Committee on Legal and Constitutional Affairs

*Bills C-45 and C-46 and railway safety*

February 27, 2018



## Introduction

The Railway Association of Canada (RAC) represents more than 50 passenger and freight railway companies that transport more than 84 million passengers and more than \$280 billion worth of goods across our country each year. RAC also counts a growing number of industrial railways and railway supply companies in its associate membership. As part of the fifth largest rail network in the world, RAC members are the backbone of Canada's transportation system.

The RAC is providing this brief for consideration as part of the Senate Standing Committee on Legal and Constitutional Affairs' study of Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts.

Safety is a top priority for the railway industry, and we know that parliamentarians share our commitment to transportation safety. However, Bills C-45 and C-46, currently before the Senate chamber, have the potential to undermine the work done by successive governments to enhance transportation safety in recent years.

Our industry is concerned that if changes are not made, marijuana legislation might have serious impacts to railway safety and public safety. Bill C-45 seeks to legalize recreational marijuana, while Bill C-46 seeks to ensure that people who are consuming marijuana and alcohol do not get behind the wheel and drive. However, transportation safety has not been adequately considered so far. For example, a single driver can be randomly tested and penalized for being impaired, but it is unlikely that under the proposed legislation an individual driving a train carrying hundreds of passengers, or carrying dangerous goods through a populated area, would be. Drug testing would, in most cases, only occur after an accident. From a safety point of view, this is a critical oversight.

It is essential that the federal government develop sound, evidence-based legislation and regulations to ensure cannabis legalization has no negative impact on transportation safety. Our industry strongly believes that it is important for the federal government to demonstrate leadership on this file so that provinces can emulate legislation and regulations. We urge you to address this significant—but resolvable—gap by ensuring the marijuana legislation addresses transportation safety.

## Background

The government has stated it wishes to see recreational marijuana legalized in 2018. However, there is currently a significant gap in the legislation with respect to transportation. The potential increased use of marijuana by employees who serve in safety-sensitive positions after legalization is a concern. Evidence from jurisdictions where marijuana has been legalized demonstrates **increased consumption**:

*“According to the National Survey on Drug Use and Health, administered by the Substance Abuse and Mental Health Services Administration, the current prevalence rates for marijuana usage in the past 30 days have increased significantly for young adults (18 to 25 years old), from 21% in 2006 (pre-commercialization) to 31% in 2014 (post-commercialization). Reported current marijuana use by adults (26 years or older) increased significantly, from 5% in 2006 to 12% in 2014.” - Marijuana Legalization in Colorado: Early Findings. March 2016. Colorado Department of Public Safety*

**Marijuana can impair the critical abilities necessary for safe driving.** These skills—such as quick reaction times, the ability to respond to unexpected events, and sound decision-making—are similar to those needed for the safe operation of railways. In fact, the Government of Canada itself has acknowledged that cannabis can impact these abilities:



*“...it is well known that exposure to (cannabis) impairs psychomotor performance and patients must be warned not to drive or operate complex machinery after smoking or eating cannabis or consuming psychoactive cannabinoid medications.” (S. 7.7.2) - Information for Health Care Professionals: Cannabis (marihuana, marijuana) and the cannabinoids. Health Canada, 2013.*

Marijuana is known to stay in a person’s blood stream for days, but its effects and ability to alter judgment are not well understood. This needs to be addressed through increased research and improved science. While the vast majority of transportation employees make public safety their top priority, testing by the Toronto Transit Commission found 2% of its randomly tested employees were under the influence of alcohol and drugs. A leading cause of non-compliance in these tests were employees having 10 or more nanograms of THC per millilitre in their blood.

*“TTC introduced random testing on May 8 of this year, and in less than five months has had 16 positive drug tests—over 50% of these were for marijuana—five positive alcohol tests, and two refusals. This is in addition to safety sensitive flags and alcohol violation. These results have surprised us by being higher than even we anticipated.” - Megan MacRae Executive Director, Human Resources, Toronto Transit Commission. Testimony to the House of Commons Standing Committee on Justice and Human Rights on September 27, 2017*

Marijuana legalization has the potential to increase use amongst the general public, including those who work in safety-sensitive positions in our industry and others. It is critical that the government address the potential impacts that marijuana legalization will have on rail and transportation safety--before they occur. Finally, Bill C-46 creates an infraction for having a certain quantity of nanograms of THC per millilitre in the body, but does not state that such a level is the one at which an individual ceases being fit to work safely.

A conviction under the Criminal Code might prevent an employee from continuing to occupy a safety-sensitive position, but does nothing to allow an employer to detect that an employee is no longer fit to operate a vehicle or other safety sensitive machinery. In order to preserve safe operations, it is imperative that employers are able to determine impairment before such a violation of the Criminal Code occurs--or worse--before an accident occurs.

## **Solutions**

In order to close the safety gaps that currently exist within the legislation, the RAC recommends the federal government to undertake the following:

- Increase research on the impact of drug and alcohol impairment on those working in transportation;
- Target funding to educate employees in transportation safety-sensitive industries on the dangers of working while under the influence of drugs and alcohol;
- Develop evidence-based acceptable levels of marijuana in humans, and in particular those working in transportation safety positions;
- Develop an acceptable standard for instruments used to collect trace amounts of marijuana in the human body (the equivalent of the Breathalyzer).
- Develop policy, regulatory and legislative tools that will help us to enforce our zero-tolerance impairment policies when it comes to marijuana, based on evidence-based safe levels;
- Develop of sound, evidence-based federal regulations and leadership so that provinces can emulate these regulations, which is often the approach when it comes to transportation safety.



This set of measures has the potential to help ensure that possible negative impacts of marijuana legalization on the transportation industry are minimized. The RAC urges your committee, and the senate, to enact these measures to help preserve railway safety in Canada.