



Railway Association  
of Canada

Association des chemins  
de fer du Canada

# Submission to the Senate Standing Committee on Social Affairs, Science and Technology

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

April 27, 2018



The Railway Association of Canada (RAC) is pleased to provide this brief for consideration to the Senate Standing Committee on Social Affairs, Science and Technology as it considers Bill C-45, the *Cannabis Act*.

The RAC represents more than 50 passenger and freight railway companies that transport over 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.

Freight railways carry the goods that sustain Canada's economy and its people, including many dangerous goods, such as gasoline, diesel fuel, liquefied natural gas, butane, anhydrous ammonia, ammonium nitrate, chlorine, and hydrochloric acid. Thousands of people take our commuter trains in Canadian cities daily to go to work, while others travel for business or pleasure on our intercity and tourist railways.

Canada's railways operate every day, year-round, through all our major population and economic centres and travel over some 30,000 federal and provincial road crossings as well as environmentally sensitive areas such as national parks. The movement of goods and passengers over rail requires strict adherence to the *Railway Safety Act* to minimize risk for the public, for employees, for the environment, and for private and public property. Safety is a top priority for the railway industry, and we know that parliamentarians share our commitment to transportation safety.

Our sector employs approximately 30,000 people, many of whom hold safety-critical positions—mainly anyone directly engaged in the operation of trains, in mainline or yard service, or in rail traffic control. Our employees play a critical role in maintaining and improving safe railway operations.

In its November 2016 final report, the Task Force on Cannabis Legalization and Regulation 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 of the Government's pieces of legislation relating to marijuana legalization. To date, workplace impairment due to drug or alcohol has also not been addressed through the Canada Labour Code (CLC), likely the best avenue by which the government could reinforce workplace safety. We feel that this is a critical oversight, especially within the context of the Task Force identifying an expected increase in marijuana consumption after its legalization.

In fact, evidence from Colorado, which legalized recreational cannabis in 2014, has shown a substantial increase in cannabis consumption:

*"Adult past-month marijuana use increased 71 percent in the three-year average (2013-2015) since Colorado legalized recreational marijuana compared to the three-year average prior to legalization (2010-2012)." - The Legalization of Marijuana in Colorado: The Impact, Volume 5 (October 2017), Rocky Mountain High Intensity Drug Trafficking Area*

This is cause for concern for companies, like our members, that have thousands of employees engaging in safety-sensitive work every day.

Canada's railways are committed to running the safest rail network possible. A key part of this is ensuring that our employees are fit to work, which is why railways have a zero-tolerance drug and alcohol impairment policy in place today. Unfortunately, the legislative and regulatory measures required for



employers to fully enforce such policy are not yet in place. The legalization of cannabis is an opportunity for the federal government to address this critical safety gap.

By introducing Bill C-46, the government is seeking to ensure that people who consume marijuana and alcohol do not get behind the wheel and drive. However, this legislation does not accomplish the same for employees in safety-sensitive positions in the transportation sector. For example, a single driver can be randomly tested and penalized for being impaired, but it is unlikely that a police officer would board a train to test a locomotive engineer for impairment. Without the ability to detect if a train operator is impaired, rail safety could be compromised.

In a speech in the Senate Chamber in December, Senator Claude Carignan pointed out that the Transportation Safety Board (TSB) has recently identified that the lack of drug and alcohol testing in transportation poses risks to public safety. In November 2017 the TSB tabled its report on the 2015 crash of an aircraft in British Columbia. It asserted that:

*“If there is no regulated drug- and alcohol-testing requirement in place to reduce the risk of impairment of persons while engaged in safety-sensitive functions, employees may undertake these duties while impaired, posing a risk to public safety.”*

Allowing the implementation of testing programs to determine if workers in safety-critical positions are impaired would be a major step forward in improving railway safety. To accomplish this, we need both an established impairment level along with an acceptable standard for instruments to detect impairment. Until such measures are adopted, our courts of law will continue to be reluctant to allow random testing and continue to prioritize privacy over safety. This is what is occurring today, with a patchwork of inconsistent legal decisions across the country.

Evidence from the U.S., which has legislated alcohol and drug testing in the federally regulated transportation sector for over 20 years, has also demonstrated that random testing can have a deterring effect on drug and alcohol consumption. Drug tests, including random tests, are required by law, and the U.S. Department of Transportation considers random testing an effective deterrent. In fact, U.S. law lists deterrence as the purpose of random testing.

Similar measures should be introduced in Part II of the CLC. As no modifications to the CLC were introduced to accompany C-45, we recommend that Bill C-46 be used to modify to the CLC, which would improve safety in workplaces. Further, we recommend that C-45 not come into force until the CLC has been so amended. Introducing these alongside increased employee education and research on impairment would help create a more robust safety regime and assist in improving workplace safety.

There is a precedent for drug testing program to be implemented in Canada: the Toronto Transit Commission has had random drug testing in place for some employees since April 2017. This program was enforced after an Ontario Superior Court of Justice found that the safety of both employees and the public outweighed the privacy concerns of those being tested. The judge in the case also pointed out that when your workplace is the City of Toronto, public safety must be taken into consideration.

There is also a precedent for this within the federal government. In late 2017, the Canadian Nuclear Safety Commission introduced alcohol and drug testing regulations within its *Fitness for Duty* program to ensure that workers are not impaired on nuclear sites in this country. In doing so, the Government has clearly recognized the need to ensure that employees operating critical and safety-sensitive infrastructure are not impaired.



Just as we must protect our nation's nuclear sites by ensuring employees are not impaired, we must also protect our critical transportation networks in the same way. Public safety, employee safety, and the safety of our communities and environment depend upon it. That is why we are asking for the development of policy regulations or legislation to help enforce a zero-tolerance policy, including random testing. To complement these measures, we feel it is critical that the federal government ensure the following measures are in place:

- Targeted education for employees in safety-sensitive industries on the danger of working under the influence of drugs and alcohol;
- Increased research on the impact of drug and alcohol impairment; and
- The development of an acceptable standard for instruments used to measure impairment (roadside detector type).

This set of measures has the potential to help ensure that possible negative impacts of marijuana legalization on the transportation industry are minimized. They could allow railways and other employers to detect impairment while also serving as a powerful deterrent to consumption. We urge your committee, and the senate, to enact these measures to help preserve railway safety in Canada.