

THE UNION OF CANADIAN TRANSPORTATION EMPLOYEES

Canada's Broken Transportation Oversight System

A Concerned Inspectorate Speaks:

Recommendations for Reforms to Canada's Transportation Safety Regime



The Union of Canadian Transportation Employees A Concerned Inspectorate: Recommendations for Reforms to Canada's Transportation Safety Regime

Executive Summary

The Union of Canadian Transportation Employees (UCTE) is the national union for most employees at Transport Canada, the Transportation Safety Board, the Canadian Transportation Agency and the Canadian Coast Guard. We also represent significant employee groups at Nav Canada and Canada's airports. We are a component of the Public Service Alliance of Canada (PSAC).

UCTE is the union for all Transport Canada inspectors with the exception of the airline pilot inspectors in the Civil Aviation Directorate. Inspectors are highly specialized and highly skilled professionals – in short, the experts in their fields. Over the last few years, we have seen changes implemented that have caused our experts great concerns. As a result, UCTE brings a distinct and important perspective to the federal government as it reforms transportation safety in Canada. We bring to you the perspective from the Inspectorate itself. The perspectives in this paper reflect the views of the over 1300 Transportation Inspectors at Transport Canada.

- Responsibility for Transportation of Dangerous Goods (TDG) inspection, oversight, compliance and enforcement should revert back to the transportation safety modes. A lead modal inspector should be responsible for all regulatory compliance for major carriers. The TDG Directorate should be responsible for TDG legislation, containment research, international coordination, training and standards.
- There should be one "Accountable Executive" for each mode at Transport Canada. This Accountable Executive should be the Director General of Safety for that mode. Currently, roles and accountabilities are confused by the regional and cross-modal structures imposed throughout the Department. These regional and cross modal responsibilities simply make it easier to blame someone else and for critical issues to fall through the cracks. These structures should be collapsed and the modal safety Director General should be accountable and responsible. Governance by inter-divisional MOUs and MOAs should end immediately.
- Safety Management Systems (SMS) is an additional layer of safety and is never a replacement for direct and unannounced inspections by Transport Canada inspectors with the powers to revoke licenses and impose monetary penalties. The primary means of transportation safety accountability and oversight must be direct and unannounced inspections by qualified Transport Canada inspectors.
- A SMS audit is completely different from an inspection. Audits and inspections (and the inspectors doing them) should be segregated within the modal safety divisions.
- UCTE agrees with multi-modal oversight principles and guidance. UCTE does not agree with multi-modal enforcement.

- There are many key multi-modal principles but the most important ones are: whistleblower protections in statutes and an independent office for this purpose; “highest level of safety” statutory obligations; and conflict of interest oversight provisions for any Ministerial delegations to the private sector. These types of provisions are key features of U.S. transportation safety statutes.
- UCTE opposes Ministerial delegations to the private sector. Ministerial delegations to private companies or associations that are accountable to the companies being regulated are an enormous conflict of interest and should not be allowed. If carefully regulated by Transport Canada, delegations for construction and retrofits may be appropriate.
- Total staff to inspector ratios by department and by mode is far too low. These ratios should be increased significantly.
- Incident reporting should be mandatory for all modes. There should be a searchable, on-line database accessible by the public.
- Transportation Safety Board (TSB) recommendations tend to languish on the record and it can take years and sometimes decades for Transport Canada to take action in support of these recommendations. UCTE believes this is too long. We recommend that Transport Canada set time limits for implementing TSB recommendations and that TSB implementation working groups include working-level inspectors.

1. People and Inspectors at Transport Canada

Transport Canada has a total staff complement of approximately 5350 FTE (Full Time Equivalents). Of this amount, approximately 1249 are inspectors and the rest (approximately 4100) are in management, policy and administrative functions. Transport Headquarters account for 3000 FTEs while the regions account for 2350 FTEs. The majority of the FTEs in the regions (70 regional offices) are involved in inspection or supporting inspection (1750 FTEs of the 2350).

The breakdown of inspectors in relation to total staff in Safety and Security and by mode is approximately:

Mode	Total staff	Inspectors	Inspector/total staff ratio
Civil Aviation	1300	800 ¹	61%
Rail Safety	175	101	58%
TDG	120	48 ²	40%
Marine Safety and Security	600	380	63%
Road Safety	110	20	18%

From a total staff complement at Transport Canada, only 25% of all TC employees are inspectors. On a modal and safety and security divisional basis, the ratio ranges from a low of 40% to a high of 63%. In both cases, we believe that the ratios are far too low. Transport Canada's people and financial resources should be more clearly dedicated to front line inspection roles.

A recent Transport Canada internal evaluation and survey of the inspectorate³ concluded that there were significant HR issues in the Inspectorate. It concluded:

“On Employee Performance Management, it was found that the Department is not providing sufficient direction for managers on the development of clear work objectives and performance measures for inspectors, resulting in a performance assessment process that is not effective at evaluating performance, recognizing good performance, or identifying performance gaps.

On Conflict Resolution, the review team found close to 1,200 open grievances in the Department as of late October 2012, almost all from Safety and Security employees stemming from the reorganization of Civil Aviation, and no TC Informal Conflict Management System aimed at resolving issues before they become grievances.

¹ Approximately 300 of this number are pilot inspectors. UCTE does not represent pilot inspectors.

² This includes 18 positions recently transferred from Civil Aviation.

³ See: <http://www.tc.gc.ca/eng/corporate-services/aas-audit-1080.html>

Clearly TC management spends more time and therefore resources, on formal than informal conflict resolution. “⁴

What this indicates is that there are some serious HR issues in the inspectorate, particularly in Civil Aviation. We believe these same problems could be applied to other modes. We will provide more details in our examination of the Civil Aviation Directorate.

2. Multi-Modal Principles, Policies and Procedures

Currently, Transport Canada is working on multi-modal concepts including Multi-Modal Guidelines for Oversight and Enforcement. While multi-modal oversight guidelines could be useful and important and we support this initiative, UCTE does not support multi-modal enforcement. UCTE believes that audit, inspection, TDG compliance and enforcement must be retained in the modal divisions.

For many years now, UCTE has been promoting the need for multi-modal policies and principles. Attached in Appendix 1 is a detailed series of recommendations to the Deputy Minister on June 9, 2010.

Here is a summary of UCTE positions that are Multi-Modal in Nature

- SMS must be an added layer of safety not a substitute for Direct and Unplanned Inspections.

UCTE is on record as supporting the concept of safety management systems and their application to the Canadian transportation industry.⁵ At the same time, UCTE has made it clear that SMS should never replace direct and unplanned inspections by qualified inspectors, nor should SMS audits (by inspectors) be as important as the direct and unplanned inspection function. SMS is important insofar as it brings safety culture and safety accountability to transportation companies, employees and management. At the same time, there is an inherent conflict of interest built into unbridled accountability to SMS as the *primary* means to ensure the safety of the travelling public. The fact is that transportation companies have a material self-interest in ensuring that goods and people move when they are supposed to- on time and on budget. Safety can sometimes get in the way of economy and self-interest. It is difficult and sometimes impossible for private, profit-maximizing corporations to effectively make these choices. This is why SMS must be an added layer and not a substitute. Our discussion on this issue with respect to each mode will show the difficulties associated with SMS as the *primary* means of safety accountability.

⁴ See report conclusions.

⁵ UCTE presentations to SCOTIC on the Aeronautics Act (2005-2006), Railway Safety Act Amendments (2010)

Direct and unplanned inspections (without pre-notification), by qualified inspectors, should be the primary means by which transportation companies are held accountable to Statutes and Regulations and the travelling public.

- SMS Auditors should be separate and distinct from Inspectors.

Currently, SMS audit functions within divisions is not separated from inspector functions. We believe this is wrong. First of all, SMS audits are paper check offs and may involve direct and collaborative interface or interaction with representatives of the SMS carrier or license holder. The skill sets required for these functions are somewhat different than those who do direct inspections. An inspector must have expert and technical knowledge and frequently must be licensed (e.g. Aircraft Mechanics and Maintenance for example). On the other hand, a SMS auditor may not have to have the same technical knowledge, industry experience or credentials. This difference is frankly recognized in TC recruiting where SMS auditors are recruited with different skill sets, lower levels of direct industry experience, more emphasis on communications skills, etc. Often these recruitments are at a lower TI (Technical Inspector) classification level as well.

The current situation is that without audit and inspection segregation, audits become a substitute for inspection. Many inspectors do not even inspect today. They don't go out of their offices and they check off industry paperwork. They do this because they are told to but also it is because there are insufficient resources and time available to do anything else. We believe this is wrong and needs to be corrected. Separating the two functions and setting standards for each will go a long way to rectify this problem.

- Inspection, Oversight, Responsibility for Transportation of Dangerous Goods (TDG) and Enforcement should be part of the modal safety divisions. There should always be one responsible head inspector for each major carrier.

UCTE believes that segregating inspection functions and roles from the modes is not in the public interest. This is why we oppose the current situation where TDG is on its own and where TDG modal functions are being removed and placed in TDG. We believe there should always be one responsible inspectorate by mode. Additionally, there should be one lead inspector per major operator. When an inspector inspects or an auditor audits (SMS), all aspects of safety for that mode and carrier should be examined. Otherwise, important functions will fall between the cracks or there will be different standards of accountability applied.

It is instructive to note that the MM&A train that derailed at Lac Mégantic was inspected by TC Rail Safety the day before the tragedy. The rail safety inspector had no oversight role for TDG and therefore no potential TDG compliance actions were taken.

- SMS principles can be defined, standardized and multi-modal in application. We think it makes sense for TC to set up common standards as much as possible. In this way, the whole department and the companies and people being regulated

have a common vocabulary and understanding of what is important. In this section, we articulate many of the most important principles we think should be part of the common vocabulary and understanding.

The Regional organizational model at Transport Canada should end. Currently, inspectors in the regions reports up through a Regional Director General (RDG). (There are five Regional Directors General.) The RDG then reports to a different Directorate than the modal safety Director-General in Ottawa. We believe this is wrong. All inspectors should report up to one modal Director General who should be the "Accountable Executive" for that mode.

- Direct and Unplanned inspections should be the priority for modal divisions.
- The ratio between inspectors/auditors and total staff should be as high as possible. The ratios today are far too low.
- “Highest level of Safety” benchmarking requirements should be written into each of the Transportation Safety Statutes and this same principle should be built into regulations, guidelines and policies.
- Whistleblower Protections for both transportation company staff and for Transport Canada employees should be written into all Transportation Safety Statutes. For years now, UCTE has been asking Transport Canada to establish an office for Whistleblower Protections - unfortunately to no avail. We are asking that the office guarantee access and protections for transportation company workers and for Transport Canada employees. The US has had a similar office for many years now and it has resulted in significant successes in the interests of enhanced transportation safety. With the advent of SMS and increasing reliance on company safety plans, UCTE believes this is a sensible and reasonable request. It should be noted that Railway Inspectors reported to us that they had concerns with the MM&A exemptions prior to the Lac Mégantic disaster. Had an office of whistleblower protections been available, inspectors could have reported these concerns to the Office without fear of reprisal.
- We oppose Ministerial delegations to industry or industry organizations or individuals representing industry (e.g. associations, classification societies). It is impossible to avoid conflicts of interest where delegated organizations also work for the companies they are purportedly regulating. Delegations may be appropriate for new vessel construction or repair and overall. Where Ministerial delegations are given, they must be accompanied by clear conflict of interest guidelines and accountability to regulations and government standards. Companies with delegated inspection powers and the transportation companies that are inspected or certified by these delegated organizations should be subject to the direct and unplanned inspections of well-trained and empowered Transport Canada inspectors.

- Incident reporting by Inspectors and company officials is not mandatory for all modes. UCTE believes it should be and that there should be a multi-modal incident reporting online database publicly available for review. The database should also report the actions that Transport Canada has taken to address the reported incident.
- TSB recommendations often spend years or even decades on the action item lists of the modal safety divisions. UCTE believes there should be TSB action time limits imposed and that working level inspectors should be members of the TSB recommendation working groups that are formed.

3. Transportation of Dangerous Goods (TDG)

In December 2011, the Environment Commissioner of the Office of the Auditor General issued a report on the Transportation of Dangerous Goods⁶. It was not a particularly positive report as it found that oversight was not risk-based, that companies were in non-compliance with regulations and that there was a lack of guidance for inspectors. One of the outcomes of this report is also structural. Transport Canada is now re-organizing TDG in a significant way. First of all, TDG inspectors that were part of the rail safety and aviation safety modes have been clawed into TDG. In the case of aviation safety the transfer of 18 positions is taking place this spring (2014). Despite what appears to be a department-wide policy to remove TDG from the modes, Marine Safety is not being changed and TDG inspections will continue to be made by marine safety inspectors.

To our knowledge and experience, TDG has not been an inspection-based directorate. Rather, they have been a paper based directorate. They seem to dedicate resources to research on means of containment and checking off corporate paper work. The fact that the division had, for years, only 28 inspectors of a total staff complement of 102 speaks to this prioritization of resources. While we understand that changes are coming, we still think that the organization is wrong.

Currently, relations and resources between the modal inspectorates and TDG are governed by a Memorandum of Understanding or Memorandum of Agreement between the divisions. We do not believe something as critical as TDG oversight within a specific mode should be governed by a MOU/MOA between two Director Generals in Ottawa.

UCTE believes that TDG should remain with the modes and should be a key part of the inspection tool kit assigned to highly trained, modal inspectors who are accountable to an inspection lead in the mode. As mentioned previously, the Lac Mégantic disaster might have been averted if Rail Safety had the TDG knowledge, experience and responsibility. For those that may argue that complex statutory delegations work against

⁶ See http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201112_01_e_36029.html.

modal oversight, we believe this is a red herring and that inspection teams can always manage multiple statutory oversight and enforcement powers and delegations.⁷

The failure at Lac Mégantic was partially a failure of inspection protocols that we believe will be addressed by putting TDG back to Rail Safety and holding one organization accountable for all oversight. The second failure at Lac Mégantic was regulatory. The Act and regulations themselves had not kept pace with the products in the tank car or the means of containment of those products.

By placing TDG responsibilities back to the modal safety divisions, TDG will not be a second cousin to all overall modal safety. TDG should be fully integrated into the modal inspection framework where there is an accountable inspection lead by carrier, and all the other principles articulated in Section 3 of this brief apply.

Additionally, as articulated earlier, the "Accountable Executive" should be the modal Director General should a carrier in that mode be carrying dangerous goods and regulated by both the Transportation of Dangerous Goods Act and the Modal Safety Acts.

TDG could still exist as a smaller division of the department. TDG could still be responsible for inspector training and standards, including regulatory and legislative oversight.

UCTE believes that it would not be inconsistent to have SMS applied to TDG by the modal regulations, guidelines and operations. In other words, there is no reason at all why SMS plans, responsibilities and accountabilities could not extend to TDG. With the appropriate guidance, it should be a relatively easy matter for companies to incorporate TDG SMS principles within corporate SMS plans. In turn, TC SMS auditors could audit to the TDG requirements within the SMS plans, regulations or other forms of SMS oversight.

To be fair to the government, the Minister of Transport, Transport Canada officials, TSB and the Canadian Transportation Agency have responded quickly and effectively to the Lac Mégantic disaster. The new rules and regulations introduced since the first TSB report have been, for the most part, comprehensive and effective. The issue of containment standards for volatile fuel products is something that must be negotiated on a bilateral basis given cross border movement and the rationalized petroleum refining market. But this is one remaining issue that must be resolved quickly. The railways themselves are asking for new standards and new containers and we believe this is something that needs to come to completion quickly. Additionally, one must consider whether or not the TDG regulations and the development of these regulations require some kind of monitoring system which will alert Transport Canada to the need for a better understanding of the products that are being carried by carriers and how regulations effectively ensure the safety and security of the travelling public. The fact

⁷ TDG enforcement powers are delegated from the Criminal Code while other powers are delegated from the modal safety statutes. In aviation and marine some delegations are international (e.g. ICAO, ISM).

that the system permitted Bakken fuel to be carried in the manner it did and for so long speaks to the need for a more responsive regulatory framework. A publicly available incident reporting system may help.

In mid-January 2014, new TDG regulations pertaining to rail shipments were introduced for consignor certification, as well as new requirements for classification and sampling of dangerous goods. Additionally safety requirements for tank cars were also introduced. As mentioned previously, the Minister and Transport Canada are moving as quickly as possible to close the regulatory gaps that currently exist.

4. Aviation Safety

As mentioned in the opening sections, grievances from Civil Aviation inspectors are many and significant. This is not a happy inspectorate. There are a number of reasons for this. First, there is a significant degree of wage discrimination in the division. The fact is that inspectors have virtually identical job descriptions and responsibilities, however, one class of inspector (pilot inspectors) are making up to \$25,000 more annually than other Inspectors with similar jobs and credentials. Fuelling this frustration is the fact that many of the Civil Aviation Inspector Team leads are not pilot inspectors and therefore the non-pilot TIs are overseeing pilot inspectors making considerably more money than the Team Lead. To be fair, Transport Canada has attempted to address this issue with Treasury Board. The closest solution that has been found to date is to increase terminable allowances for some of the TI inspectors; however, this increase is still not sufficient to achieve parity with the pilot inspectors. Hence, wage discrimination is one of the reasons why this division continues to be plagued with complaints and grievances.

The second reason for unhappiness is the fact that inspectors are no longer inspecting. Civil aviation Inspectors have become SMS auditors not inspectors. Many inspectors rarely leave the office and spend their time checking off SMS plans. When inspections are scheduled, the carrier is given weeks of advance notice. When inspections take place, the inspector is auditing SMS plans and they are rarely inspecting to regulations. Highly trained inspectors that have worked in industry and have significant certifications do not find it sufficient (or safe for that matter) to be spending all their time checking corporate SMS plans. Instead of solving this problem by asking inspectors to inspect, TC is moving to hire more SMS auditors with no technical or industry experience. TC Aviation has decided that a good way to reduce costs and solve the demographic problems in the Inspectorate (e.g. older inspectors close to retirement) is to hire non-experts who can be trained to audit SMS plans.

Leaving aside the personnel issues associated with an unhappy inspectorate, a complete focus on SMS audits is increasingly putting the travelling public at risk. The fact is that companies have an interest in flying on time and on budget and frequently the quest for profit conflicts with safety. This is particularly the case with smaller operators. There are many Transportation Safety Board (TSB) reports and conclusions that make this point time and time again. SMS can never be a substitute for direct inspections by highly trained government inspectors accountable to modal statutes and

the Criminal Code and with the power to hand out significant monetary and operating penalties.

The Aeronautics Act clearly states (as do all the other statutes) that the Minister of Transport is responsible for transportation safety. Only highly trained government inspectors with the power to enforce can truly give the Minister the assurance that her or his statutory obligations are met.

Over the past 8 years, Aviation Safety has been the subject of two Auditor General Reports. The major focus of the reports was Human Resources and the introduction of SMS into an inspection environment. The initial report was highly critical of a division having difficulties managing its people when introducing an additional layer of safety (SMS). The second report was a follow up report that was more complimentary but still concluded that HR issues were a problem for the division.

Attached in Appendix 2 is a January 2012 Access to Information request submitted by former NDP Transport Critic Olivia Chow and the Transport Canada response to that request. What the data shows is that the actual Civil Aviation inspections by year have declined from a high of over 20,000 in fiscal 2006/2007 to under 14,000 in 2010/2011 despite a dramatic increase in air traffic over this 5 year period.

Transport Canada will say something quite different however. Transport Canada will say that inspections have actually increased not decreased. What is true is that the total number of SMS audits and inspections together has increased not that the number of inspections has increased. Unlike the inspectorate itself, Transport Canada has changed its terminology by bundling SMS audits into the broader category of inspections.

It is the view of the Inspectorate that this is plain wrong. Audits are not a substitute for inspections nor are they the same thing. They are very different. SMS Audits may not even involve an inspector leaving his or her office. On site SMS audits are pre-notified whereby the company being audited has ample time to prepare the books in its favour.

Approximately 7 years ago, the government attempted to amend the Aeronautics Act in an attempt to modernize it, but also, to provide for the legislative framework that would delegate some inspection oversight to trade associations. The Bill also attempted to put a legislative framework around SMS- a framework that was mostly consistent with the ICAO (International Civil Aviation Organization) requirements. Other good measures within the Bill were modest whistleblower protections and an ability to appeal safety oversights directly to SCOTIC. The Bill never passed beyond report stage at Second Reading. We believe that part of the reason this happened is that the government in its wisdom realized that delegating oversight to lobby groups for the industry itself was a serious mistake. Talk about putting the fox in the henhouse. Thankfully, at least with Aviation Safety this move to delegate to trade associations appears to be behind us. At the same time, there were many positive features of the report stage bill that could stand to be re-introduced into a modernized Aeronautics Act.

Attached in Appendix 3 is the top line results of a survey of Pilot (AO classification), airworthiness and cabin safety (TI classification) inspectors. The survey methodology is explained in the preamble to the results. You will note that the survey results are entirely consistent with the comments in this paper, notably:

- SMS is increasingly not an “added layer of safety”. It is increasingly becoming a substitute for direct inspections;
- Aviation Inspectors are spending the vast majority of their time on SMS audits and SMS program validations⁸ and not direct inspections;
- Aviation Inspectors are increasingly worried about the dependency on SMS and the resulting safety of the travelling public;
- Most aviation inspectors would like to see SMS audits and direct inspections separated.

5. Rail Safety

Over the past 10 years, Rail Safety has been the subject of a Review Panel, a SCOTIC review of the panel report, TSB studies and an Auditor General report. Most the studies have related to increasing train derailments and the need to address these. The government has responded to these reports with an increase in the budget at Rail Safety and a modest increase in the number of inspectors hired. (Approximately 10%). As mentioned previously, in 2011-2012, Rail Safety has 173 people of which 101 are inspectors. In 2011-2012, Railway Safety conducted over 20,000 unplanned and direct inspections, while 14 SMS audits were performed.

In the past few years, the government introduced SMS into Rail Safety. This has been fairly recent, particularly compared to Civil Aviation. Unlike Civil Aviation and Marine, SMS is part of the Railway Safety regulations. When one combines the introduction of SMS regulations with the fact that the Railway Safety Act was significantly amended in the past 12 months, it is understandable that SMS may not have achieved the level of penetration and oversight as it has with other sectors.

In the fall of 2013 the Auditor General (AG)⁹ released a report on rail safety that was quite critical of the rail safety division. The heart of the criticism was that Rail Safety was performing too many inspections and not enough SMS audits. UCTE believes that the AG was wrong. All modal safety divisions should be modeling themselves after the Rail Safety division. The priority of Transport Canada safety divisions should be unplanned and unannounced direct inspections by highly trained Transport Canada inspectors with the powers to revoke licenses and impose fines. The AG made the mistake of concluding that SMS was more important than inspections and therefore the failure to achieve a higher range of SMS audits was a failure of the Rail Safety oversight system. We think this is wrong. SMS is not a panacea for all transportation safety. It is an additional layer of safety that promotes a safety culture within the private sector and

⁸ This paper combines SMS audits and SMS program validations into one term: SMS audits.

⁹ See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201311_07_e_38801.html

accountability to safety principles within operations. It is not a substitute for direct inspections and never should be.

Leaving aside the benefits of direct inspections and the relative strength of inspections in Rail Safety our members tell us that sometimes rail safety oversight tends to be overly secretive and discretionary. Exemptions to the regulations are sometimes granted and it is often difficult for inspectors to understand why a company receives an exemption in specific circumstances. In the case of MM&A railway, press reports show that the company received approval for sole engineer staffing based on a confidential risk assessment report. Certainly, whistleblower protections and an independent office of whistleblower protections could help so that inspectors and railway employees could feel comfortable reporting these issues and where these complaints could be investigated without fear of reprisal.

Incident reporting with rail safety is not mandatory, unlike in aviation. We believe it should be mandatory and that there should be a publicly available online searchable database.

On March 15, 2014, Transport Minister Raitt announced new regulations requiring all companies using federally regulated railways to have a valid Railway Operating Certificate. The holder of the certificate will be required to meet essential safety standards and maintain the highest level of safety as stipulated in the Railway Safety Act. Inspectors will have the power to revoke the Operating Certificate if standards are not maintained. We believe direct and unplanned inspections by highly trained railway safety inspectors are the best means to ensure compliance with the standards and the highest level of safety.

6. Marine Safety (TCMS)

Marine Safety is a complex area of review. Why? With a total vessel population in the tens of thousands, TCMS must prioritize limited resources in a rational way. Additionally, an increasing percentage of the TCMS budget is derived from user fees and there is a degree of organizational challenge that comes from the setting of fees for regulatory services.

From the inspector perspective and unlike Civil Aviation, TCMS has elected to focus its resource and prioritization challenges on delegations with a more secondary emphasis on SMS. Unlike Civil Aviation which attempted to delegate Ministerial authorities to industry lobby groups, Marine has had a long history of regulatory delegation to the international classification societies. The classification societies have performed the critical function of ensuring that common standards exist for marine construction and have performed this role for well over a hundred years or more. Obviously, marine vessels are in international commerce and there is a need to standardize internationally.

TCMS has partially responded to the inspection resource challenge by delegating certifications and compliance to the classification societies- but for large vessels only

(24 metres or above).¹⁰ TCMS did consider delegating oversight further to medium sized vessels but appears to have abandoned this plan. In our view, this plan to delegate further should be abandoned permanently.

Under International conventions and the Canada Shipping Act, passenger vessels certified to carry over 50 passengers, large vessels of over 500 gross tonnes or over 24 metres must have a SMS plan.¹¹ SMS plans are voluntary for other vessels. At the current time, the role of SMS in marine safety is less entrenched than in civil aviation. SMS compliance to international codes and enforcement for large vessels is largely the role of the classification societies and not Transport Canada inspectors. Should SMS be made mandatory for other than the large vessels, SMS audits and Inspections should be separated and treated differently by management and the Inspectorate?

One area of difficulty for TCMS is the delegation of large vessels that have not been built to class. The classification societies appear are unable to provide oversight services for these vessels. TCMS will continue to provide this oversight and additional inspection resources should be provided so that this oversight is robust and maintains marine safety.

Unplanned and non-pre-notified direct inspections by highly qualified inspectors with powers to revoke licenses and impose monetary penalties should be the main oversight function for Transport Canada Marine Safety and it should apply to all vessels including the large vessels under the DSIP Program (delegated inspection program to classification societies).

As is the case with all modes, TCMS requires sufficient inspection resources to inspect vessels in accordance with regulations.

In the Spring 2014 Canadian Marine Advisory Council (CMAC) meeting, the private sector unions were strongly critical of the Delegated Statutory Inspection Program (DSIP). Attached in Appendix 4 is the communiqué they delivered to the CMAC meeting, while union leaders were resigning their leadership positions on the various working groups. Given this position and the evidence that Classification Societies were issuing licenses and permitting passenger vessels to sail in violation of the Marine Safety regulations, UCTE has decided to withdraw its support for large vessels inspection delegations to the Classification societies. There is clearly too much room for abuse and too many conflicts of interest between ship-owners, classification societies, surveyors and related societies and the marine industry. Trained and qualified government inspectors must be responsible for marine safety oversight.

Given that Classification societies will always be responsible for oversight on vessel construction and retrofit to class, we would also recommend that conflict of interest

¹⁰ See: <http://www.tc.gc.ca/eng/marinesafety/tp-tp13585-policy-menu-3501.htm>

¹¹ See <http://www.tc.gc.ca/eng/marinesafety/dvro-4067.htm>

guidelines be developed and these guidelines be enforced by Transport Canada in respect of recognized classification societies that have been given Ministerial delegations. The fact is that classification societies derive fees from the marine carriers for inspection but also for other services that they provide. This creates a potential for conflict that must have some oversight by enforceable rules and by Transport Canada inspectors.

7. Road Safety

This is actually a misnomer. Transport Canada does not regulate road safety, the provinces do. Transport Canada regulates vehicle safety and does so with the assistance of contracted out testing facilities. The Road Safety Division is a relatively small division of Transport Canada. It should be noted that the inspector/total staff ratio is very low (18%) and reflects the fact that road safety inspectors have been significantly reduced over the past few years. The ratio should be higher because with the increasing number of recalls, vehicle safety is a critical issue today and more inspectors should be dedicated to it. Also, we believe it was a mistake to end the child car safety seat clinics that were so successful. Programs like this, which benefit Canadians directly, are an important part of the federal mandate for transportation safety.

Appendix 1

Letter to Transport Canada Deputy Minister Re: Security Management Systems Policy Framework





June 9, 2010

Ms. Yaprak Baltacioglu,
Deputy Minister
Transport Canada
Place de Ville
Ottawa, Ontario, K1A 0N8

**Re: Draft Safety and Security Management Systems (SMS)
Policy Framework**

Dear Ms. Baltacioglu:

Mr. Gregoire kindly sent me a copy of the draft SMS policy framework on March 24. In light of Mr. Gregoire's imminent departure and promotion (Congratulations Marc!), I have elected to send this letter to you.

We have taken the past few months to clarify our thinking in a few key areas and are now in a position to give you some views on the framework document and to suggest some approaches that we believe will make SMS more successful and effective.

1. We strongly support a multi-modal SMS policy framework

As expressed previously, in other documents and meetings, we are a very strong supporter of a framework which reaches across the modes and provides clarity and continuity for the thousands of stakeholders affected by SMS. While we understand that there are differences in the transportation industries involved, we do not believe that the core principles of successful SMS implementation should vary from mode to mode. In this respect, we are extremely pleased that you have created a working group to work on a cross-modal framework and that you are sharing a draft of that framework with us now.

We believe that a comprehensive department-wide and multi-modal SMS framework can go a long way to correct some of the misunderstandings and controversies surrounding SMS. It would be an approach that would facilitate more effective communications to the public, to political decision-makers, to the media and to others.

We commend you for beginning the task with the document you sent us.

2. The draft framework document

You and your team have created an excellent compendium of processes and behavioural guidelines on SMS. On balance, these guidelines are good and deserve to be part of a document to guide the cross modal SMS process. At the same time, we believe the document falls short of a meaningful policy framework. In fact, while the document says a great deal about process and behaviour, there is much less in it about policy.

There is little question that the individual SMS frameworks for aviation, marine and rail are well developed and becoming more so each and every day. There are many important principles in each modal framework that could be transposed to the multi-modal framework. We are concerned that each mode is developing its own policy framework and as a result each mode is not learning from the other. Additionally, "whole of government and whole of department thinking" is weak.

Good policy development is an iterative process and often involves key stakeholders in its development. In this respect our recommendations below are certainly not exhaustive and only through more conversations, consultations and dialogue will there be assurances that good policy will emerge. We would welcome further participation in this process.

As we mentioned earlier, a comprehensive multi-modal and whole of department framework could go a long way to improve communications. It would do this because it would codify principles that are critical to giving assurances that SMS is indeed better than non-SMS, giving assurances that legislative and regulatory accountability will be fully respected and giving assurances that transportation company employees and government inspectors can do their jobs and speak freely to correct safety problems without fear of reprisal.

3. SMS Broad Cross-Modal Policy Principles we would recommend

- **Segregate the regulator from the regulated**

We believe that there should be two policy frameworks- one for the SMS Certificate holders (including the process for certification) and one for Transport Canada as the regulator. While we acknowledge that SMS can involve closer cooperation and communication between the regulator and industry, we believe that policy separation is essential to regulatory and legislative accountability. It is also consistent with the frameworks espoused by international SMS oversight bodies.

Principles such as "Accountable Executive", documented policies, continuous improvement and other SMS principles for the SMS licensee should be fully developed in the framework for the regulated sectors. The policy framework for the regulator should be more dedicated to issues such as delegations, inspector roles and procedures, surveillance policy, defining SMS as an "added layer", etc...

- **Make a distinction between SMS-compliant certificate holders and non SMS compliant aviation companies.**

We believe that the oversight and inspection regimes need to be different for those transportation companies that have SMS certificates and those that do not. Non-SMS certified companies should be subject to different obligations and oversight than SMS licensees.

- **Conflict of Interest Needs to be Defined**

This is particularly important in respect of statutory and non-statutory delegations. It would be a conflict of interest for an association to have safety oversight delegations for its members. It would be a conflict of interest for marine survey companies to have safety oversight responsibilities and delegations for its customers. Certainly associations and suppliers to industry can create and lead training courses, set up SMS systems for the industry, promote SMS, etc... but they should never be given delegations for oversight. It is a clear conflict of interest.

Ministerial delegations of inspection power have no grounding in fact as the Minister will always be responsible regardless of the delegation powers provided. Delegations to industry without protections and oversight also give no assurances to the public that SMS will actually protect them. This is why conflict of interest needs to be clearly defined and rules written so that conflict of interest does not occur.

- **Separate direct inspections from SMS certification, licensing and validation**

The current practice integrates SMS certification and licensing with inspections. In practice, aviation SMS rates direct inspections as secondary activities to SMS certification and licensing. We are told that direct inspection can only take place once SMS oversight is complete. Given the workload, direct inspections do not take place. We believe that direct inspections should be segregated from SMS certification, licensing and validation. People, reporting accountability and budgets should be fully segregated. We believe this is recommended by international SMS oversight bodies and is the practice in other jurisdictions.

- **Recognize that small operators will always be a difficult sector to transition to SMS. Develop a cross-modal approach for small operators.**

We believe it is unrealistic to expect that SMS certifications will reach effectively to small operators. There needs to be an adjustment of expectations and a separate system of accountability developed for small operators in all modes.

- **There should be statutory protections for employees and for inspectors to report safety concerns.**

As stated previously, we recommend that Transport Canada follow the U.S. model and create an independent office for employee reporting, combined with independent protections for the employees.

- **Differentiate between SMS oversight for vessel, railcar and aircraft builds and retrofits from oversight from operations and maintenance**

We recognize that there are significant differences between oversight for construction and retrofits and oversight for operations and maintenance. These differences should be recognized in the policy framework.

- **The incident reporting structure and systems need to be better prioritized so that we don't run the risk of believing that reporting is a substitute for a remedy.**

This is of particular concern in the aviation sector. We have reached a point where aviation incident reporting volume is so great that there is a risk that effective remedies will not be taken. We believe there is a need to prioritize reporting in aviation and to extend this same model to other modes.

- **The Statutory and Regulatory frameworks for SMS implementation need to be more than simply a delegation clause in a statute. Highest level of safety, delegation principles and other key regulatory principles need to be defined in all the relevant Statutes.**

We still find it highly irregular to see such a massive shift in regulatory process being implemented with one or two statutory clauses. In some cases, the words in the delegation clauses even imply that they have been written for other purposes. We

believe this is simply wrong. There needs to be statutory accountability for such a major shift in government oversight and management.

- **Recognize that the transition to SMS needs to be effectively managed. By segregating direct inspections from SMS system certification and audit gives assurance that there are few risks to the transition.**

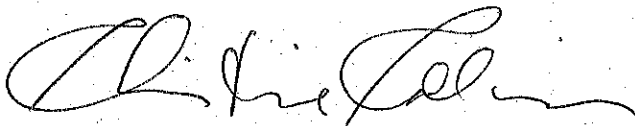
The idea that transition to SMS creates management challenges was a centerpiece of the Auditor General's report on Aviation SMS. It is indeed a valid concern when there is no separation of regulatory inspections and compliance from SMS certifications. The separation of inspectorate roles and responsibilities will eliminate the concerns that safety could be compromised during SMS transition.

As mentioned previously, our list above is far from comprehensive. With further dialogue and direct involvement of the Inspectorate community I am sure new approaches and ideas will emerge.

We congratulate you on the Policy Framework initiative. We would welcome an opportunity to participate further in this important initiative.

If you have any questions or concerns, please do not hesitate to contact me.

Yours sincerely,



Christine Collins
National President

c.c. Marc Gregoire, Assistant Deputy Minister
Gerard McDonald, Associate Assistant Deputy Minister

Appendix 2

Access to Information request by Olivia Chow, M.P. and
Transport Canada response



ORDER/ADDRESS OF THE HOUSE OF COMMONS
ORDRE/ADRESSE DE LA CHAMBRE DES COMMUNES

NO.-N° Q-432	BY / DE Ms. Chow (Trinity-Spadina)	DATE January 31, 2012 / 31 janvier 2012
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RETURN BY THE LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS
DÉPÔT DU LEADER DU GOUVERNEMENT À LA CHAMBRE DES COMMUNES

Signed by Mr. Tom Lukiwski

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

MAR 26 2012

(TABLED FORTHWITH / DÉPOSÉ AUSSITÔT)



**INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT**

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION
Q-432²

BY / DE
Ms. Chow (Trinity—Spadina)

DATE
January 31, 2012

REPLY BY THE MINISTER OF TRANSPORT,
INFRASTRUCTURE AND COMMUNITIES AND
MINISTER OF THE ECONOMIC DEVELOPMENT AGENCY
OF CANADA FOR THE REGIONS OF QUEBEC
RÉPONSE DU MINISTRE DES TRANSPORTS,
DE L'INFRASTRUCTURE ET DES COLLECTIVITÉS ET
MINISTRE DE L'AGENCE DE DÉVELOPPEMENT ÉCONOMIQUE
DU CANADA POUR LES RÉGIONS DU QUÉBEC

Signed by the Honourable Denis Lebel

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to air safety: (a) how many inspections were done each year from 2004 to 2011, broken down by (i) audits, (ii) traditional inspections, (iii) process validation inspections, (iv) companies; (b) how many employees are conducting such audits and what is their profession (e.g., pilots, mechanics, other technicians); (c) what is the number of companies found to be in violation of air safety regulations and the number of enforcement actions as a result, broken down by company; and (d) what is the number of enforcement actions from inspections abandoned following the introduction of the Safety Management System, broken down by company?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



Transport Canada

Question (a) (i), (ii), (iii) – please see the attached spreadsheet.

Question (a) (iv) – Information is not readily available in the requested format. An extensive manual search would be required. Therefore an answer cannot be provided within the allowed timeframe.

Question (b), (c), (d) - please see the attached spreadsheet.

Q-432 - Transport Canada

With regard to air safety: (a) how many inspections were done each year from 2004 to 2011, broken down by (i) audits, (ii) traditional inspections, (iii) process validation inspections, (iv) companies; (b) how many employees are conducting such audits and what is their profession (e.g., pilots, mechanics, other technicians); (c) what is the number of companies found to be in violation of air safety regulations and the number of enforcement actions as a result, broken down by company; and (d) what is the number of enforcement actions from inspections abandoned following the introduction of the Safety Management System, broken down by company?

(a) how many inspections were done each year from 2004 to 2011, broken down by					(b) how many employees are conducting such audits	and what is their profession (e.g., pilots, mechanics, other technicians)	(c) what is the number of companies found to be in violation of air safety regulations	and the number of enforcement actions as a result, broken down by company		(d) what is the number of enforcement actions from inspections abandoned following the introduction of the Safety Management System, broken down by company
	(i) audits	(ii) traditional inspections	(iii) process validation inspections	(iv) companies				Company	Number of enforcement actions	
2004/05*	802	9789	n/a		876	To deal with safety oversight from a company-wide approach, the Civil Aviation program requires inspectors with varying backgrounds (e.g. pilots, aircraft maintenance engineers, and expertise in related fields such as dangerous goods and cabin safety) to work together, in multi-disciplinary teams	For August 2010 to September 2011, the information is publically available and can be found on the Corporate Offenders website: http://www.tc.gc.ca/eng/civilaviation/standards-enforcement-publications-corporate-summary-2990.htm	For August 2010 to September 2011, the information is publically available and can be found on the Corporate Offenders website: http://www.tc.gc.ca/eng/civilaviation/standards-enforcement-publications-corporate-summary-2990.htm	For August 2010 to September 2011, the information is publically available and can be found on the Corporate Offenders website: http://www.tc.gc.ca/eng/civilaviation/standards-enforcement-publications-corporate-summary-2990.htm	
2005/06*	782	9659	n/a		873					
2006/07*	780	**20236	n/a		873					
2007/08*	605	19869	n/a		871					
2008/09*	485	17433		59	871					
2009/10*	236	13688		790	878					
2010/11*	198	13684		905	881					
2011/12*	Information is not yet available for the 2011/12				881					

*In 2006, Transport Canada started to take a more global approach to surveillance. The data represent activities conducted under the previous compliance-based approach and the new system-based approach. ** The Oversight Program is divided into two activities: surveillance and service. Both categories include inspection activities. In 2006/07, the department started tabulating its inspection data to include both categories.

Appendix 3

Civil Aviation Inspector Survey



100 Sparks St., Suite 1090
Ottawa, Ontario, Canada
K1P 5B7

Toll free: 1-888-757-1119

abacusdata.ca

CFPA/UCTE Membership Survey Safety Management Systems

To: Jim Thompson
From: David Coletto
Date: March 17, 2014
Re: Interview Schedule - Final Results

Methodology

The survey was conducted online with 284 members of the Canadian Federal Pilots Association (226) and members of the Union of Canadian Transportation Employees (58) in English and French using an internet survey programmed and collected by Abacus Data. The survey was completed from February 13 to March 14, 2014.

An email invitation was sent to CFPA members on February 13, with reminder emails sent to any member who did not complete the survey on February 24 and March 7. The response rate for CFPA member was 60.1%

An email invitation was sent to UCTE members on February 14, with reminder emails sent to any member who did not complete the survey on February 27 and March 4. The response rate for UCTE members was 23.1%.

For more information about the poll's methodology or the results, please contact David Coletto, CEO at david@abacusdata.ca or at 613-232-2806.

Questionnaire

If you wish to complete the survey in French, please click on the language bar in the top right hand corner of your screen and select "French". Thank you for taking the time to come to our secure website to fill out this brief survey, which should take no more than 5 minutes of your time. If you have any problems completing the survey, please contact us at info@abacusdata.ca. Thank you.

How many years have you worked in aviation?

(Please enter the number of years)

	AO	TI
Less than 16	9%	24%
16 to 25	25%	12%
26 to 40	55%	55%
Over 40	11%	9%

For which department do you work?

	AO	TI
Transport Canada	94%	100%
Transportation Safety Board	6%	

What is your classification?

AO	78%
TI	17%
Rather not say	-

How many years have you been an aviation inspector, investigator, pilot or maintenance engineer with the department?

(Please enter the number of years)

	AO	TI
Less than 16	70%	67%
16 to 25	20%	28%
26 to 40	9%	5%

Do you believe a properly implemented safety management systems (SMS) could improve aviation safety in Canada?

	AO	TI
Yes	81%	66%
No	15%	24%
Don't know	4%	10%

In your opinion, has the travelling public been exposed to more or less risk as a result of Transport Canada's reliance on SMS?

	AO	TI
More risk	85%	85%
Less risk	4%	3%
Risk levels remained unchanged by SMS	11%	12%

Why do you say that? (only those who selected more risk or unchanged)

(Please select top 2 reasons only) - % Selected in Top 2

	AO	TI
Regulatory resources and number of inspectors	71%	61%
Level of maturity in the industry	12%	20%
Level of integrity in the industry	21%	24%
Level of skill and knowledge among certificate holder managers	16%	28%
Level of skill and knowledge among certificate holder employees	14%	14%
Industry emphasis on costs	40%	26%
Other _____	25%	29%
Don't know	-	-

Given the new role of an inspector under Transport Canada's SMS to be more an overseer of certificate holder SMS systems, which of the following statements is closest to your own view as an inspector?

Transport Canada's SMS prevents me from addressing and correcting certificate holder safety problems in a timely fashion/before they happen

AO- 89%

TI - 88%

With Transport Canada's SMS, I am better able to address and correct certificate holder safety problems I encounter

AO- 11%

TI - 12%

In your experience, on a scale from not useful at all to very useful, is aviation SMS useful to you for pursuing and correcting safety problems in aviation?

	AO	TI
Not useful at all	20%	26%
Not that useful	39%	41%
Somewhat useful	35%	29%
Very useful	6%	3%

If the travelling public had your knowledge of Transport Canada's established SMS oversight system, do you think their level of confidence in the safety of Canada's aviation system would:

	AO	TI
Increase	3%	-
Decrease	86%	91%
Remain unchanged	6%	9%
Don't know	5%	-

How confident are you personally about air operators, airports, etc. regulating themselves through SMS when it comes to safety?

	AO	TI
Very confident	1%	3%
Somewhat confident	9%	6%
Not that confident	44%	41%
Not at all confident	43%	50%
Don't know	3%	-

In your view, what is Transport Canada's motivation for having introduced SMS?

(Please check as many as applicable)

	AO	TI
To improve the Canadian aviation safety record	16%	12%
To respond to dwindling resources at Transport Canada	81%	76%
To transfer legal liability for aviation accidents from Transport Canada to industry	64%	71%
To achieve higher levels of safety within Canadian aviation operations	16%	9%
Other _____	29%	31%
Don't know		

Given your knowledge and experience with the state of Canadian aviation system safety, in your opinion how likely is a major aviation accident or incident in Canada in the near future?

	AO	TI
Very likely	38%	40%
Somewhat likely	46%	45%
Somewhat unlikely	8%	5%
Very unlikely	4%	5%
Don't know	5%	5%

In your opinion, will Transport Canada's implementation of SMS

	AO	TI
Reduce the chance of a major aviation accident or incident	8%	5%
Increase the chance	67%	64%
Make no difference	16%	22%
Don't know	9%	9%

Do you spend any of your work time on SMS audits/program validations and related activities and/or time spent on the direct regulatory compliance oversight of aviation operations?

	AO	TI
Yes	65%	91%
No	35%	9%

When first introduced, Transport Canada promised that SMS would be an additional layer of safety in addition to direct regulatory compliance oversight of aviation operations.

Please quantify the split in your work time spent on SMS audits/program validations and related activities versus time spent on the direct regulatory compliance oversight of aviation operations.

		AO	TI
SMS audits/program validations	MEAN	67%	68%
	0 to 25%	16%	13%
	26 to 50%	13%	13%
	51 to 75%	14%	21%
	76% to 100%	57%	53%
Direct regulatory compliance oversight	MEAN	33%	32%
	0 to 25%	60%	57%
	26 to 50%	17%	25%
	51 to 75%	9%	6%
	76% to 100%	15%	13%

Which of the following do you believe is most likely to improve aviation safety?

	AO	TI
SMS alone	0.4%	-
Regulatory Compliance Audits and Inspections	19%	24%
Both SMS and Regulatory Compliance Audits and Inspections separate from each other	50%	43%
SMS and Regulatory Compliance Audits and Inspections blended all in one	31%	33%

Do you have a suggestion to improve Safety with respect to SMS?

This is an optional question. You may leave the comment box blank by click next below.

If SMS becomes mandatory for 703 and 704 operators, do you expect this would:

	AO	TI
Reduce the rate and accidents and fatalities	8%	5%
Increase the rate of accidents and fatalities	63%	66%
Make no difference	29%	29%
Increase direct oversight by TC inspectors	8%	2%
Reduce direct oversight by TC inspectors	83%	86%
Make no difference	9%	12%

Appendix 4

Presentation from Marine Union Executives on the Delegated Statutory Inspection Program (DSIP), Canadian Marine Advisory Council meeting, April 30, 201





The Delegated Statutory Inspection program allows some Recognized Organizations to perform functions previously entrusted to Transport Canada Marine Safety Inspectors. Transport Canada states on its website that the intention of the Delegated Statutory Inspection Program is to promote an efficient marine transportation system and to encourage the harmonization of marine practices. The website also states "*The result of the delegation program is that vessels will be subject to increased safety oversight*".

In theory, the goals and objectives of the DSIP look promising. Unfortunately, we came recently across an instance where a Recognized Organization allowed a ship to sail in an unseaworthy condition. We think it is our duty to bring this matter to the DVRO's attention so that it can be determined whether or not sufficient safeguards are in place to make the DSIP work as originally intended.

About 3 months ago, a large passenger sailed for two days with a non-functional emergency generator. Said vessel had been delegated to Class under the DSIP, and the relevant Recognized Organization was contacted by senior shipboard personnel to request permission to sail in that condition with passengers and vehicles onboard. Permission was reportedly granted until repairs to the emergency generator could be made.

When we became aware of the situation, we asked the Authorized Representative and ferry operator why they had sailed that vessel in contravention of Canadian Regulations and Standards (Marine Machinery Regulations, TP127, etc) and in a condition that was clearly unseaworthy. Their response was that

- Both the Company and the Recognized Organization had determined it was a tolerable risk as long as all three ships' service generators were in good working order.
- They had made considerations for both the likelihood of an event and the potential consequences
- The onboard team had adopted a higher level of awareness and vigilance to the operation of the technical systems.

We also reported the situation in detail to the Recognized Organization and we asked why one of their surveyors did allow a large passenger ferry to sail in that condition. The RO suggested that we should take this up with the Authorized Representative, who could contact them at any time if they needed further clarification from their side.

We contacted Transport Canada's Western Branch in Vancouver and reported the incident; first verbally and later in writing. A Transport Canada official acknowledged receipt of our report about one month after it was sent. He indicated that Transport Canada would investigate but also stated that our concerns should be addressed to the ferry operator (the Authorized Representative) for their review and response to us.

We met at a later date with the Authorized Representative during a risk assessment workshop they conducted involving sailing without a functional emergency generator. We stated that we

didn't think it was appropriate to risk-assess sailing in non-compliance with a Regulation. We got mixed messages during that workshop. While the majority of the Authorize Representative's envoys admitted either implicitly or explicitly that the ship should not have sailed in that condition, two Senior Chief Engineers offered a differing view. One of them stated he would have also sailed the ship with no emergency generator available, and the other one even questioned the need for an emergency generator and where did it say that the 3 fire pumps had to be available.

To put things into perspective, all 3 ships' service generators connect to the main switchboard in the vessel under discussion; and they have common cooling, starting and fuel systems. Clearly, a single point failure leading to a black-out would have completely disabled the vessel. In a nutshell, there would be no steering, to bilge pumping capability, propulsion would be lost, the controllable pitch propellers could not be operated, and out of the three fire pumps only the one that is diesel operated would have worked. Clearly, and regardless of any higher levels of awareness, there is little the ship's crews could have done during an emergency if the necessary equipment is non-functional.

From our perspective, a passenger ship with a disabled emergency generator is unseaworthy and should never be allowed to sail. Based in our experience, we are confident that Transport Canada Inspectors would have prevented the ship from sailing before the DSIP was in place. Therefore, we fail to understand why a RO allowed this situation to happen, when it is clearly against Canadian and International Regulations, Standards and even their own policies. The International Association of Classification Societies spells the Duties of Surveyors under Statutory Conventions and Codes in Recommendation #98. That document clearly states that "*Failure of proper operation of emergency generator, lighting, batteries, and switches*" is "detainable deficiency" under SOLAS. The same language can be found in IMO Resolution 1052, which was passed in 2011. Furthermore, the Paris MOU lists the ships being detained worldwide under Port State Control, as well as the reasons for the detention. A faulty emergency generator is not an uncommon cause for detention. It is important to note that, while non-Convention vessels are not under SOLAS, the relevant SOLAS language that makes a faulty emergency generator a detainable deficiency has been incorporated in the Marine Machinery regulations and TP127E, both of which are applicable to the Domestic Fleet.

All of the aforementioned brings a number of concerns and questions, including:

1. Are risk assessments now going to be used by the ROs under the DSIP as a means of circumventing existing Regulations and Standards? Not long ago, we worked under the assumption that Regulations and Standards were in place to be followed, and we would expect that any deviation or variance should be requested via the Marine Technical Review Board. We are no longer sure if that premise remains valid.
2. It would be fair to state that blackouts on ships are not uncommon, while fires are less common than blackouts, and a vessel sinking is much less common than fires. If based on a risk assessment a Recognized Organization has allowed a ship sail without a functional emergency generator in contravention to Canadian and International

Regulations and Standards, then what will be next? Allowing a ship to sail without functional fire equipment or without lifesaving equipment?

3. We are unsure of what is more worrisome: that a Recognized Organization authorized a ship to sail in an unseaworthy condition, or that a ship owner's representative asked for permission.
4. Many ships are being detained worldwide under the Paris MOU and other Port State Control agreements, and a common cause of detention is failure of proper operation of the emergency generator. Canada is a signatory of the Paris MOU, and it would seem inappropriate allowing on Canadian passenger ship to sail with a deficiency for which foreign vessels calling Canadian ports would face detention.
5. We have discussed a situation where a safety concern was brought to the attention of both the Recognized Organization and Transport Canada, but both bodies referred us back to the ship owner (the "Authorized representative?"). So the question is, what are we expected to do when we approach the Authorized Representative but their ships' representatives don't see anything wrong with sailing without appropriate emergency equipment? Is this the kind of "*increased safety oversight*" that was expected under the DSIP program?

We don't know if the aforesaid is just an isolated incident or it is actually the tip of the iceberg indicating a much larger problem. Similar incidents were unheard of when Transport Canada Inspectors were performing the same type of inspections. It would therefore appear that Transport Canada needs to have a closer look at Recognized Organizations' practices and perhaps exercise a tighter supervision so that incidents like the one in this presentation never reoccur.

Thank you for listening.