

**August 18, 2017.**

**Mr. Richard Paton  
Chair**

**Ms. Brenda Eaton,  
Vice-chair**

**Ms. Pauline Quinlan  
Vice-chair**

**Subject: Canadian Railway Safety Act - Review 2017/18 .**

Dear Richard, Brenda, and Pauline,

Thank you for the opportunity to contribute to the honourable Minister's review initiative, the subject CRSA. This will be my formal submission.

First, let me show how I am fully qualified to speak to some of challenges facing you.

I hired with Canadian National Railways in 1973 in Toronto as a Switchman, further promoted to Passenger Yardmaster Toronto in 1982, Locomotive Engineer in 1986, promoted to Trainmaster in 1987.

I performed roughly 400 accident and incident investigations spanning 18 years in a variety of management postings throughout the Great Lakes Region, including a 6 year posting as Assistant Superintendent GO Transit in Toronto.

I also held the title of “Engine Service Officer” wherever I went, which meant I was the designated “go to” guy for any matters pertaining to Locomotive Engineers, including field training. I qualified over 300 Engineers at GO and CN.

I was also a qualified rules instructor, giving classes and preparing GO Transit Engineers for their periodic exams.

In 2003 I transferred to Via Rail Canada and worked as Passenger Locomotive Engineer on southern Ontario class I lines.

In 2013 I made a formal presentation to Via Rail entitled “Underlying Causes to the Train 92 Accident of February 26<sup>th</sup>, 2012”.

In 2014 I gave the very same presentation to Senior Investigation Officers of the Transportation Board of Canada (TSB).

In 2015 I gave the very same presentation to Transportation officers of Via Rail, members of the Safety Committee and TCRC division 747 officers.

In 2017 I published a book entitled “Accident By Design”, a different perspective on the Train 92 accident from a former railway accident investigator.

On a special note, I was fortunate to be the operating engineer on the TSB's official simulation of the Train 92 accident, which provided me with a unique perspective into the true cause of the accident.

**On your website you asked contributors to consider six (6) questions. I was able to contribute to questions 1, 4, 5, and 6.**

I also used them as jumping-off points to talk about about issues which speak to a very dark side the nations railways, the federal regulator, and the federal investigator.

All of the questions of which I pose are rhetorical, and I mean no disrespect.

## **RSA Review**

### **Q & A's**

- 1) Do the various components of the Railway Safety Act (e.g. regulations, rules, Safety Management Systems, the compliance and enforcement regime) work as intended? What could be improved?**

My comments...

In my book, “Accident By Design”, I show a direct linkage between a flawed safety policy (RSA) and Canadian railway accidents; the example(s) being... the Train 92 accident, a flawed regulatory environment, a failed investigation, a condoned practice of rule violations, a federal investigative agency in denial, and an railway business culture which places profits ahead of investment in infrastructure and technology.

**Specifically, I propose amendments to:**

**Section 20 (2) (a) Consultation;** "add **"persons"** to have a voice in the consultation process.

**Section 30 (3) (b) Consultation;** ad **"persons"** to be able to voice objections.

**Section 21 (Note)...** Allowing different railway companies to opt out of, or adopt variations of operating rules which were once standard in the rail industry, has once again, placed undue stress on passenger train crews in the operating environment, when a mistake or misinterpretation can cost them their jobs, if not their lives.

Nearly 100 year ago, the “Uniform Code of Operating Rules” (UCOR) was created by a Canadian federal government which realized that allowing variations in operating rules between rail carriers contributed to cause in a number of serious accidents.

It is important to note that the airline industry has adopted “world-wide” standards which are a proven safety methodology in that industry. And the world-wide requirement of “English” in all communications was not an accident.

How is it that the Canadian federal regulator (TC) has failed to recognize the proven safety benefits of uniformity in the rail industry?

Transport Canada has since 1995 allowed railway companies to adopt their own versions of the CROR, and this has placed the National passenger train operation at risk. This trend away from uniformity coincided with “privatization” of the Canadian National Railways Co., and a decade of deregulation in the Canadian rail industry in the 1990's.

This radical departure from safety was never identified as a contributing factor in any accidents or incidents, largely due to the nature of accident investigations in the industry, and a system of discipline (the Brown system) which ensures that in most cases, the operating employees are blamed outright. (ref. “Accident By Design, copyright 2017.)

**Section 21 (6)** add "qualified persons" to be able to provide comments on amendments to rules. Also, define whom a qualified person may be.

**In general:**

Most Canadian railway workers do not have a voice which carries beyond their first level of supervision, their local safety committee, or their local union representative.

This would also include railway employees who are qualified to speak to the issues, but are unwilling to voice their concerns. Canadian railways have a history of mistreating employees who speak the truth.

The RSA in its present form only recognizes the input of "relevant organizations".

Who would they be? The Railway Association of Canada (RAC)? Operation Lifesaver? Transcaer? There's just not that many of them. And, if they are so relevant, how did Train 92 and Lac Megantic happen?

One could understand that in drafting the RSA, one may not have expected to hear objections or concerns from skilled persons who occupy the lower levels in the rail industry.

And there may well have been an expectation that safety concerns are normally resolved at the local level by local safety committees, and front line supervisors well before the applications are submitted for the Ministers approval.

But these mechanisms act more as "filters", and the railways and the unions filter out the messages which do not serve the interests of their masters.

And therefore you have situation where a flawed system of operating rules is imposed on a group of skilled individuals who not only do not have a voice in these matters, but are also keenly aware that a key component to their continued employment in the Canadian rail industry will be their "silence". (ref. "Accident By Design")

This disconnect between the best skilled people on the railways and the government of Canada has bred a culture of fear within the rail industry, and a regulatory environment which developed a self serving and protectionist culture for the benefit of the very industry it was created to police.

This disconnect is bolstered by a long standing “adversarial relationship” between the railways and their unions which goes back over 100 years.

I will quote verbatim the official response of the TSB to me, after my Train 92 accident presentation in January of 2014;... **"we cannot be prescriptive in doing anything which might slow the trains down"**.

So, when did “train speeds” become the concern of the Transportation Safety Board of Canada? It was never a part of their official mandate.

How easy to just throw that at me, and think that I had been properly dealt with!?

So, how do you legislate against the possibility of an accident?

Your problem is not legislation. Despite all that you've been told, it is a self serving and oppressive business culture which has only one mission, to the exclusion of all others, and that is to year over year, make more money.

You need to ask the right questions, and put them to the right people. For example... How did the RSA prevent the Train 92 accident?

And now you need to ask, **“why not”**?

**4) What key issues remain, that if successfully addressed, would result in a further strengthening of the railway safety and security regime?**

My comments ...

Implement PTC (positive train control) on all class 1 railways, and all railways with passenger and/or commuter operations.

Build dedicated passenger rail lines in the Quebec – Windsor corridor.

Install a new signaling system that is more responsive to the needs of a dedicated high speed passenger rail system.

Eliminate all level crossings at grade.

Ensure that the federal regulator (TC) and the federal investigative agency operate from a position of independence from railway, and governmental influences.

For nearly 100 years, the federal regulator successfully implemented a system of Rule revisions to overcome a near “zero” investment in plant and infrastructure in the rail industry.

You will recall in the late 1990's that Transport Canada issued several orders to CN and CP to ensure track maintenance standards were upheld, this after a series of spectacular accidents resulting in fires and chemical spills, and this after they had cut maintenance employees and maintenance budgets, all in the name of higher profits.

This was the “Americanization” of Canadian Railways.

There was no mystery when every rail accident following those federal safety orders was caused by a “broken wheel” or “employee failure”; **anything but track failure.**

**5) What recommendations do you have that will ensure progress on these issues?**

My comment...

Very simply, re nationalize the Canadian National Railway system and demand by legislation, and by enforcement, that it serve the interests of all Canadians, not just private investors.

Or, demand that Transport Canada and the TSB operate to their original mandates and demonstrate that they can operate independently, free from the influences of politicians, railways, railway investors, shippers, farmers, railway suppliers, and lobbyists.

You pick...

**6) Are the current roles played by Transport Canada, the railroads, provinces, municipalities and other stakeholders sufficient in keeping the railway transportation system safe and secure sufficient?**

They are not sufficient...

The Canadian federal regulator has demonstrated it is not about saving lives, but rather, saving dollars. There is no other meaningful equation in the rail industry.

**Dollars vs. safety...** therein lies the great disconnect. I pose a few questions which illustrate the problem...

Why would Transport Canada sanction “single-employee” train crews on the Maine Central Rwy? (ref. Lac Megantic accident)

Where did this initiative originate, and why?

Who signed off on this, and why?

What technology and innovations were invested by the railway to replace the missing crew members?

How did the federal regulator guarantee the safety of Canadians in that circumstance?

What were the consequences to the “decision-makers” in the aftermath of the Lac Megantic disaster?

When the TSB identified the failures of the federal regulator (TC) as the primary cause of the Lac Megantic rail disaster, how did the federal government hold them accountable?

Why was the lone railway engineer dragged from his home in handcuffs and jailed one Sunday afternoon?

How did the newspapers and television stations know to cover that event with such vigor?

Why was the sole owner of the company not prosecuted with the same zeal?

Do you realize that it was the local fire dept. that unwittingly released the train brakes?

Why were they not held accountable for their role in the accident? This one is really disturbing, because it appears that the fire-department's ignorance of the trains braking system became their "get out of jail free" card.

Why was the train routinely parked at the top of a hill?

Who directed that?

How were they held accountable?

How many hand brakes were required in that circumstance?

Have you ever tied on one hand brake?

Do you know the proper method to do so?

Do you know how to do it when a train is supplied with brake pipe air pressure?

Prior to the deregulation of the railways, trains were never routinely left unattended on "main track". Trains were always brought into yards which had staff, and derail devices to prevent unauthorized entry onto the mainline.

But the most significant feature of most of the old rail yards was that they were "bowled". They were engineered and graded high on the ends, and low in the middle, so that nothing could escape unattended.

The only circumstance where trains were left on main track was with a procedure called "doubling", where a train could not make the gradient, leaving a portion behind, taking it over the hill in two parts.

Under this circumstance, extraordinary measures were taken to secure the portion left behind, which included "dynamiting" the train (placing the train into emergency).

And, even under that circumstance, which included the application of a sufficient number of hand brakes, a member of the train crew was left in charge of that portion until the engines returned, and the brake pipe was left fully "vented".

It was never a normal operating circumstance that trains were left unattended on the main track.

Further, the notion that one would knowingly leave a train unattended on main track without any air brakes applied is complete insanity. And yet, the railways and the federal regulators later “required” it.

This is a direct result of the railways desire to reduce the number of operating employees, and to gain operational flexibility over what they considered to be archaic labour agreements. (It should be noted the railways were signatory to all of those labour agreements).

The regulator then approved “procedural changes” which allowed the railways to enjoy greater profits through the reduction of crew sizes (in the case of the MM&A, down to a single operating employee), and “regulatory approval” for changes in operating rules regarding train securement under what used to be extraordinary circumstances.

On April 28<sup>th</sup>, 2016, in a letter to the Globe and Mail, the RWU (Railroad Workers United) the TC and TSB's findings in the Lac Megantic train disaster, in particular the railways requirement to leave trains unattended on main track “without” an application of air-brakes.

The president of the RAC then dismissed the idea in an open letter.

The RWU president then offered to produce thousands of certified and licenced operating crews who believe that not using the automatic brake as a back up defense is dangerous and foolhardy.

I don't expect you to know the details of these things. But I expect that you will appreciate that an association with over 5,000 skilled railroaders staunchly disagreed with the findings of Canada's most trusted regulator, it's federal investigator, and the chief rules advisory group called the RAC.

Why would federal regulators require trains to be left without air-brakes applied, when it's most experienced rail workers advised against it?

Why would the RAC publicly defend the position of the regulator in the face of such overwhelming resistance from the North American rail force?

My point is this; that you cannot sit in armchairs and get a feel for the issues that are faced daily by train crews in an industry that is systematically reducing resources, while simultaneously unloading responsibilities on to the operating employees.

For over 100 years the Canadian federal government substituted “rules and revisions” for “dollar investments” in rail safety and rail infrastructure, and all the while, year after year telling the people of Canada that their national rail system is safer than ever.

Yet, Lac Megantic and Train 92 still happened. Why?

The day before the Train 92 accident was a Saturday. We all went about our lives in the belief that our passenger rail system was safe and in good hands, a product of nearly 100 years of technology, innovation, and experience, overseen by legislation in the form of the Canadian Transportation Act (which contains the CROR), and the Railway Safety Act.

How then do you explain that accident?

How then do you explain the TSB's failed investigation?

How then do you explain why nothing came of that accident?

How then do you explain the federal governments acceptance of that failed report?

**Now, tell me again how the Railway Safety Act protects Canadians?**

Via Rail was given nearly \$1 Billion dollars several years ago to refurbish locomotives, coaches, and stations. Not one single dollar had anything to do with rail safety.

This, after the Train 92 accident.

It sent an astounding message to 150 Via Rail passenger locomotive engineers in Toronto... **that their lives are worth nothing.**

And there is nothing new about these catastrophic events. I do not call them accidents because there is nothing “accidental” about them.

They are the result of a failed federal policy (RSA), a regulator (TC) which protects the business interests of the rail industry over safety issues, a federal investigative branch (TSB) which no longer functions independently, and a publicly traded rail industry which answers only to private investors.

Then there is the issue of Provincial governments which operate extensive rail and commuter lines which do not come under federal jurisdiction.

Did you know that the “rogue practices” which caused the Train 92 accident in 2012 actually originated with the Toronto GO commuter operation? (ref. “Accident By Design”)

Why would Transport Canada sanction practices which actually remove layers of safety that were originally “built in” to the operating rules (UCOR), and thereby place the operation of passenger trains at risk of a “single error” in the identification of a railway signal?

But that is exactly what caused the Train 92 accident.

Nobody was ever allowed to know the truth of that accident.

**The RSA is failed because these catastrophic events happened despite it's very existence**

These are the things which foster “mistrust” of authority, and if you are sensing a little bit of that from me, then I tell you that I have come by it honestly.

In the 26 years since the federal inquiry into the Hinton train disaster, the only significant change made to Canadian railways was in the money trail.

You have now read my submission, and my book. Do you still believe that the federal regulator has not been compromised?

If your answer to this is yes, then I say to you that your endeavour is already failed.

My recommendations, as follows:

**You must somehow find a way to detach investment in “railway safety” from “railway dollars”.**

**You must find a way to separate the competing interests, and require the regulator (TC) and the investigative agency (TSB) to both demonstrate complete independence from railway interests.**

**You must find a way to require the railways to invest a portion of their annual profits into technology and innovation that actually reduces risk, and that it is not simply used as a means to justify job cuts.**

Please note that my book “Accident By Design” also forms a part of this submission.

Thank you for this unique opportunity to contribute to the advancement of railway safety in Canada.

Yours truly,

Dave Berard