



November 9, 2011

Mr. Allen C. Harding
Senior Legal Counsel
Legal Services
Transportation Safety Board of Canada
Place du Centre
200 Promenade du Portage
Gatineau, Québec
K1A 1K8

**Re: Transportation Safety Board Regulations, Canada Gazette Part I, Vol. 145, No. 36
— September 3, 2011**

Dear Mr. Harding:

The Chamber of Marine Commerce is pleased to provide the following comments on the Government of Canada's proposed amendments to the Transportation Safety Board Regulations, as published in the Canada Gazette, Part I, on September 3, 2011.

About the Chamber of Marine Commerce

The Chamber of Marine Commerce (CMC) is a bi-national (Canada, U.S) marine transportation industry association, located in Ottawa, Canada, broadly representing the commercial marine industry. CMC's members are:

- Domestic and international ship owners and ship operators
- Canadian and U.S. ports
- Industrial shippers (esp. grain, iron ore, steel, cement, sugar, salt, coal, ...)
- Canadian and American Seaway corporations
- Terminals, elevators, and logistics companies
- Marine-related companies

The CMC's membership is comprised of over 150 companies that rely on marine transportation to deliver products and materiel that serve people all over the world. CMC's advocacy on marine and transportation issues extends to the Canadian and provincial governments and to U.S. federal and state governments and agencies. (Please see attached Membership List.)

In reviewing the proposed amendments to the regulations, CMC is generally concerned with serious issues surrounding the rights of witnesses that the proposed regulations seek to infringe.



The proposed regulations would grant TSB investigators the authority to approve or disapprove of a witness' representative to be present during an interview where a witness is compelled to answer questions before a TSB investigator. While we may not necessarily disagree with restrictions to the number of representatives or observers that might be permitted to attend an interview, primarily for reasons of sheer practicality, granting investigators the power to effectively decide who the interviewed subject can have accompany them during an interview is an unreasonable infringement on an individual's freedom of association and rights to professional counsel.

We would add that rationalizing the limitations on who a witness might have accompany them as "added for the protection of the witness" is a patronizing justification, especially given that the responsibility and resulting benefits of choosing representatives rests with the witness.

Further, rationalizing the limitations being proposed on witness representation as stemming from "concerns raised by investigators over the years that would make their job easier ..." is a very weak argument to justify curtailing individual rights during a quasi-legal proceeding where the person who is compelled to an interview is oftentimes under considerable emotional and physical stress, confined to very unfamiliar surroundings and proceedings to which they have little or no experience or objective knowledge of their rights and responsibilities. We would suggest that the goals of proposed changes to the regulations remain focused on seeking more efficient, up-to-date, yet effective investigative processes to uncover facts, regardless of matters of expediency for the benefit of investigators.

We would also point to the Federal Court of Canada decision in *Re Parrish* [1993] 2 F.C. 60, which held that persons compelled to attend a TSB interview have a right to legal counsel during the interview process. Mr. Justice Rouleau's rationale was that the purpose of a presence of legal counsel was for the protection of the witness. At paragraph 67 of the decision, Mr. Justice Rouleau stated:

"... I cannot accept the board's argument that the need for administrative expediency in the proceedings outweighs the necessity for the protection of a witness through the presence of counsel."

Section 9(3) of the proposed regulations states that "Unless permitted by the investigator, the person chosen to attend an interview shall not intervene at any time during the interview." We strongly suggest that such wording is completely contrary to the intent of the ruling of Mr. Justice Rouleau in *Re Parrish*.

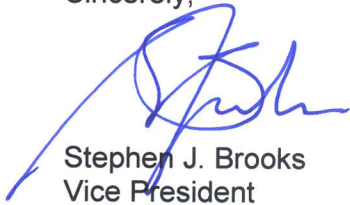
In conclusion, CMC does not accept proposed regulatory changes to the *Transportation Safety Board Regulations* that seek to impose unreasonable and unjust limitations on the rights of witnesses to determine who may accompany and advise them during interviews and when or how witnesses or their representatives can intervene during interviews.

Such limitations infringe on an individual's legal and civil rights and are certainly not justifiable in the name of expediency of proceedings.



The Chamber of Marine Commerce appreciates this opportunity to comment on the proposed regulatory amendments. We would be happy to further discuss our views or answer any questions you may have on the subject matter.

Sincerely,



Stephen J. Brooks
Vice President

cc. Hon. Denis Lebel, Minister of Transport, Infrastructure & Communities
Tim Meisner, Director General, Marine Policy, Transport Canada
Donald Roussel, Director General, Marine Safety, Transport Canada

