

**STAKEHOLDER CONSULTATION
ON PROPOSED REGULATIONS AMENDING
“THE COMMERCIAL VEHICLE DRIVERS
HOURS OF SERVICE REGULATIONS”
PER THE CANADA GAZETTE, PART I, MARCH 14, 2009 NOTICE**



**SUBMISSIONS OF
THE AMALGAMATED TRANSIT UNION, CANADIAN COUNCIL**

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Submissions of the Amalgamated Transit Union Canadian Council

INTRODUCTION

These are the submissions of the Amalgamated Transit Union, Canadian Council (“ATU”) in response to the Government’s request for submissions on the proposed “Regulations Amending the Commercial Vehicle Drivers Hours of Service Regulations”.

The Amalgamated Transit Union & The Canadian Council

Founded in 1892, the Amalgamated Transit Union is the largest labour union for transit workers in North America. Today the union has over 180,000 members in over 273 local unions in 46 states and 9 provinces. The ATU membership includes bus, subway, light rail and ferry operators, clerks, baggage handlers, mechanics and others in public transit, inter-city and school bus industries.

Established in 1982, the Amalgamated Transit Union, Canadian Council is the highest authority and voice in Canada for the ATU on all issues of Canadian interest, including legislation, political, educational, health and safety, cultural and social welfare matters.

PROPOSED AMENDMENT

The *Motor Vehicle Transport Act* is the enabling instrument that provides authority for the establishment of the *Commercial Vehicle Driver Hours of Service Regulations*. These regulations govern maximum driving and on-duty times and establish minimum off-duty times of commercial truck and bus drivers employed or otherwise engaged in extra-provincial transportation.

Municipal public transit operations have been exempt from such provisions as a result of extensive consultation and input from stakeholders at the time of introduction of the regulations in question. The Government is considering removing such longstanding exemption on the basis of a request by a single affected stakeholder.

Current Provision:

s. 2 (1) These Regulations apply to all commercial vehicles other than the following:

(d) a bus that is part of the public transit service that is provided in a municipality, in contiguous municipalities or within 25 km of the boundary of the municipality or contiguous municipalities in which the public transit service is provided;

Proposed Amendment:

Delete s. 2 (1) (d), thereby removing the exemption for municipal public transit and making it a legal requirement for transit authorities under federal jurisdiction to operate in compliance with the Regulations.

BACKGROUND

Responsibility to oversee safety of commercial vehicle operations in Canada is shared by the federal, provincial and municipal governments. The federal government only has jurisdiction over extra-provincial undertakings (i.e. motor carriers operating beyond provincial boundaries or international border). The provinces and territories have jurisdiction over intra-provincial undertakings (i.e. motor carriers operating within their respective boundaries). The provincial and territorial governments are responsible for enforcement as it applies to all motor carriers, including those falling under federal jurisdiction.

The vast majority of transit systems across Canada fall under provincial jurisdiction. In fact, of approximately 140 transit systems across the country, only three (3) operate under federal jurisdiction (Ottawa, Windsor and Outaouais). All provincial and territorial governments, with the exception of British Columbia, have exemptions for transit systems similar to the federal exemption at issue. Only the City of Ottawa has sought to remove the exemption for municipal public transit. Accordingly, excluding B.C., of approximately 140 transit systems across Canada, only three (3) would not enjoy the exemption which has long been in place.

Such differential treatment – where virtually every urban transit system across the country would be exempt from hours of service regulations except B.C and three federally regulated properties- is at odds with the mandate of the Canadian Council of Motor Transport Administrators (“CCMTA”) to promote consistent application of the rules governing the entire motor carrier industry.

Safety rules governing commercial motor vehicle operations are jointly developed under the auspices of the CCMTA, a non-profit organization composed of federal, provincial and territorial government representatives and regulated stakeholders and road safety organizations. CCMTA is charged with developing and maintaining the National Safety Code for Motor Carriers, standards governing all aspects of commercial vehicle, driver and motor carrier safety, regardless of whether the motor carrier falls under federal, provincial or territorial jurisdiction.

In 1988, when National Safety Code Hours of Service Standard No. 9 was established, municipal public transit was specifically exempted. The exemption was the result of extensive consultation and input from affected stakeholders.

One such stakeholder was the Canadian Urban Transit Association, who had done extensive research and produced evidence and submissions supporting a conclusion that public municipal transit was distinct from long haul trucking and bussing operations for which the regulations were designed. It should be noted that the City of Ottawa similarly

supported the position that public transit ought to be exempt. In fact, after exhaustive consultations with industry stakeholders, virtually all the stakeholders acknowledged, accepted and agreed that urban transit ought to be excluded.

After considering the submissions and evidence on the issue, CCMTA endorsed the exemption for public municipal transit. Similarly, regulators endorsed the exemption request. The Council of Ministers Responsible for Transportation and Highway Safety approved the request and the exemption was incorporated by the Government into the regulations in 1988 from the outset.

CURRENT SITUATION

Nothing has changed since the introduction of the Regulations and exemption of public municipal transit which would warrant undermining the decision reached by the CCMTA at that time. The conclusions reached are still valid. The rationale for the exemption is still as valid today as it was at the time. There is no evidence of any change such as would warrant a reversal of the informed decision made by the bodies charged with such. In fact, virtually all stakeholders except OC Transpo continue to agree that urban transit ought properly to be excluded from the regulations.

The only thing that has changed is the isolated request of OC Transpo, which has transparently been brought forward for improper purposes – to undermine the lawful bargaining rights of the Union and its members in the wake of a lengthy and difficult strike. It would be ill-advised to say the least for the Government to condone such bad faith bargaining. The Government's fast tracking of OC Transpo's request serves to interfere with the statutory labour relations process.

This apparent willingness to support OC Transpo's improper labour relations agenda is particularly troubling given this Government's earlier willingness to insert itself into the labour dispute through its unprecedented use of s. 87.4(7) of the *Canada Labour Code* as

a means to interfere with the system of free and fair collective bargaining, the lynchpin of the *Canada Labour Code* and a constitutionally guaranteed right and freedom.

It should go without saying that changes to important statutory instruments should never be driven by the collective bargaining agenda of a single municipality and the Government should never let itself be used for such improper purposes. In all the circumstances, it is clear that the purported stated rationale of safety concerns is disingenuous. There is no demonstrated need for a change to the regulations.

This is particularly so given that CCMTA has already stated its intention to review the issues related to hours of service exemptions later this year. It is inexplicable on what basis the Government would suddenly deem this a priority issue and undertake a significant regulatory amendment in the absence of appropriate consideration by the recognized body/bodies for such.

At best the proposed amendment is premature. At worst it is irresponsible. This is particularly so in light of the full consideration given the issue by all stakeholders at the time the decision to exempt transit was made and the fact that virtually all stakeholders (except OC Transpo) still share the view that transit ought to be excluded.

PURPORTED SAFETY CONCERN

As noted above, there is simply no demonstrated need for a change in the regulations. Further, the disingenuous nature of OC Transpo's purported stated safety concern becomes evident when one considers the following obvious contraindications.

- (1) OC Transpo – in fact, any employer – controls scheduling of its workforce.
Accordingly, the employer can control concerns re hours of service through the exercise of its inherent management rights.
- (2) An employer's inherent control over scheduling is reinforced by its obligations under the relevant health and safety legislation. OC Transpo, for example, already has the statutory tools necessary to address any purported safety concerns. In fact,

under Part II of the *Canada Labour Code*, the employer has a statutory obligation to ensure a safe workplace. To that end, it is empowered to take such steps as are necessary to avoid safety risks.

- (3) Notwithstanding the above, at no point in over 20 years since the introduction of the exemption in 1988 has OC Transpo raised a purported safety concern arising from hours of service with its health and safety committees or in any other forum. As the employer is well aware, had it done so, the Union would have been statutorily obligated to work with the City to address and resolve any such reasonably held concern.

COST

With respect, the suggestion that associated costs with the proposed amendment would be minimal is simply inaccurate. In fact, the Government's Analysis Statement position stating such is internally inconsistent. Therein, it is noted that even in 1988 it was accepted that failure to exempt urban transit systems "would add considerably to operational costs, estimated at \$300 million in extra payroll costs, and would create a service burden on transit users and funding agencies at the municipal and provincial levels".

It is also accepted in the Analysis Statement that the motor coach industry's required compliance with the regulations in question "has had a substantial economic impact on their industry" and that "it is unfair that they have to compete with public transit service that is exempt" from such rules.

Such acknowledgments are fundamentally inconsistent with the Analysis Statement position that reversing the exclusion would have "little economic impact". It is untenable that the Government would purport to accept OC Transpo's self-serving and patently inconsistent suggestion that it would achieve a cost savings by virtue of the repeal of the exemption. Such a statement flies in the face of the accepted objective evidence to the contrary.

CONCLUSION

For the reasons stated hereinbefore, the ATU strongly encourages the Government to maintain the status quo. There is no demonstrated need for a change in the regulations. It would be inappropriate and ill-advised for the Government to allow OC Transpo to use the legislative process as a means to circumvent and interfere with the collective bargaining process and to use the Government to effect such.

Maintaining the status quo is the only responsible course at this stage, at least until the issue is considered by the CCMTA as anticipated this year. It is imperative that full and appropriate meaningful consultation be undertaken, with input sought and properly considered by all affected stakeholders and bodies charged with consideration of these important issues.

Such appropriate consultation would allow for meaningful consideration of possible appropriate compromises which could achieve the legitimate stated objectives of all stakeholders in a responsible, informed manner.