

JG Balmer  
Whitehorse,  
Yukon

To: Hon. John Baird,  
Minister of Transport  
House of Commons  
Ottawa, Ontario  
K1A 0A6

April 6, 2009

Dear sir;

I am writing to raise some concerns with your enforcement program that first became evident to me back in 2000 when myself, and several other Peace Officers, were trained by your Department to enforce the Canadian Air Regulations. These concerns, primarily that Transport Canada operates outside the Canadian Charter of Rights and Freedoms, surfaced again recently while I was trying to decipher a letter from one of your Regional Managers to the flying public.

In a letter written on April 2, 2009 by one of your Regional Managers, Mr. Jamie Melo, he explains how a new audit program will be implemented and operated. He quotes Staff Instruction (SI) SUR-001 - *Safety Management System Assessment and Program Validation Inspection Procedures*, and the communications document; *Safety Management Systems Assessments and Inspections (MPS-635)*. He goes on in this letter to summarize a seven stage "PVI" inspection process that the public will be subjected to. (We have been told by your staff that in practice this inspection process will see several TC Inspectors going through company records for between 3 and 5 days).

The legal difficulty, and my concerns, appear in the last phase listed; "Post Inspection", only now will the file be "**reviewed by appropriate TC Managers to determine the necessity of any enforcement action.**" This statement reinforces an approach which I have witnessed already in practice by TC enforcement.

In practice when your inspectors do any legal activity, and if they encounter a violation, instead of notifying the person involved and providing any legal caution, they continue to demand information, review documents, and collect evidence that will. They usually even add to their list of alleged infractions, all without following any of the legal safeguards provided by the Charter.

As demonstrated in this letter it is only many days later at the conclusion of their search for evidence, that they consider it a legal matter, and even then only internally. It is common for the public to hear of noncompliant situations days later, long after the inspectors have left, and after forgoing any legal protections in law. The public is now faced with arbitrary assessments and penalties, which they can accept and continue in business, or a long period of bureaucratic arguments, legal costs, and potential reductions or loss of livelihood. The problem is only partly a lack of training and legal understanding by your staff.

Another source is in the legislation itself. In both the **Aeronautics Act** and the **Canadian Air Regulations**, unlike any other Federal Legislation that I am aware of, there is no clear enforcement authorities and responsibilities defined within the legislation. By relying on Section 4.3 of the Act to authorize any and all employees to enforce the legislation, and by using internal documents like policies and procedures to define appropriate enforcement activity, the environment for misunderstanding is inevitable.

For TC staff who might be poorly trained or inexperienced in Law Enforcement the difference between legislation and policy appears to them to be inconsequential. Many times this is the root of issues with Transport Canada enforcement program. With 30 years as a Peace Officer I find this unacceptable.

Those Canadians with legal understanding and who have followed thus far will point out that the Courts have recognized "Regulatory Enforcement" procedures are more liberal than purely "Criminal" offenses and I don't argue, assuming the Courts themselves are available to evaluate the circumstances, and weigh the facts at issue. But, here at Transport Canada a "Tribunal" of peers does the review in a "kangaroo court" where there are unique rules of evidence and procedure. Scrutiny by the courts is pre-empted except as a very expensive last resort as an appeal that will be years away. Let me again state that this situation is prone to misuse, or abuse, but not necessarily deliberately.

Please, the solution is to have the Aeronautics Act, and the subsequent Canadian Air Regulations, re-written with the involvement of the Department of Justice, to incorporate the Rights guaranteed by the charter. Enforcement staff need to be identified in legislation and their authorities and responsibilities spelled out. They need then to be trained in these authorities, and their subsequent legal responsibilities. This is status quo in the rest of the Federal Regulatory regime.

Only then will the law be understood and complied with, and the unacceptable mess of convoluted policies that currently substitutes for law be clarified for the public, and your staff.

Sincerely, in the interest of better compliance

J George Balmer.

cc. Larry Bagnel, MP Yukon

cci. Dept. of Justice

ccii. Canadian Owners and Pilots Association