

# CUTA Submission to the Senate Standing Committee on Legal and Constitutional Affairs

**Bill C-46: An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts**

**Prepared and submitted by: The Canadian Urban Transit Association (CUTA)**

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## **About CUTA**

The Canadian Urban Transit Association (CUTA) is a national member-based association representing public transit systems, manufacturers and suppliers to the industry, government agencies, individuals and related organizations in Canada. CUTA is the collective and influential voice of public transportation in Canada, dedicated to being at the centre of urban mobility issues with all orders of government, and delivering the highest value to its members and the communities they serve.

## **Public Safety**

On September 25, 2017, CUTA appeared before the House of Commons Standing Committee on Justice regarding bill C-46 and the legalization of recreational cannabis. Our testimony underscored the safety-sensitive nature of the public transit industry and the concerns of our members about the impacts of legalization.

The safety of our communities is closely linked to the safety of our transit systems. Each year in Canada our members provide over 2 billion trips, drive over 1 billion kilometers and are on the road for more than 53 million hours.

A few years ago, CUTA worked together with the government and Senators to successfully pass bill S-221 to amend the Criminal Code and make assaulting a transit operator an aggravating factor in the determination of the sentence.

About 2,000 assaults reported against operators each year, representing a small portion of total transit trips nationally. Despite the low rate that this occurs within a national context, parliamentarians agreed that assaulting a bus driver represented a serious public safety issue that needed to be addressed. It was a matter of public safety back then, and we're writing to you today with the exact same consideration in mind, public safety.

## **Workplace Safety**

There's no doubt that the vast majority of our transit operators would never drive a vehicle while impaired by drugs or alcohol, however, our philosophy is that one incident is too many.

Unfortunately, there are times when drivers and other employees carry out their safety-sensitive duties while under the influence of alcohol or drugs. We know this from American transit systems, where random testing is mandatory, and from a recent drug testing program introduced by the Toronto Transit Commission (TTC), which found employees in safety sensitive roles test positive for drug use.

To be clear, drug testing of these employees can take place 'post-incident' in Canada or with reasonable cause. Post-incident testing is insufficient as it is not preventative and can only be used in narrow circumstances.

Although drug-related instances in these positions are the exception and not the rule, those very few cases in which a safety-sensitive employees' faculties are impaired by alcohol or drugs pose a risk to transit riders, transit system employees and the public at large.

Operator impairment is not the only risk. When riders use public transportation, their safety also depends on the work of mechanics, supervisors, inspectors, engineers and managers, all of whom play a part in ensuring the safety of public transit operations.

In addition to public safety, this issue is also a matter of workplace safety. It's management's responsibility to ensure transit employees are safe at all times and employers are worried that legalizing recreational cannabis will significantly change the nature of alcohol and drug management in the workplace.

Transit systems involve heavy duty machinery, safety-sensitive duties and no shortage of ways in which an impaired person could put their fellow workers at risk.

Transit is and will remain a safe mode of transportation for Canadians. However, it is our duty to prevent and mitigate potential risks to the safety of our employees and customers. Legalizing cannabis will aggravate a situation that Canadian employers have been ill equipped to manage due to competing case law and lack of clarity posing yet another threat to workplace safety. The existing framework is not ready to face these challenges. Therefore, employers are seeking clearer government direction on drug testing in the form of legislation requiring various forms of testing, including random testing.

### **Federal leadership**

While transit operations, for the most part, sit outside of the federal government's purview, the government does have a role to play in providing clear leadership and unambiguous direction on safety-related issues surrounding the legalization of cannabis, such as those recommended by the Task Force on Cannabis Legalization and Regulation.

In addition to establishing clear mechanisms to allow for random alcohol and drug testing for safety-sensitive positions under federal jurisdiction, the government needs to work with Provinces and Territories to ensure the approach to public safety, as it relates to the use of cannabis and impairment in the workplace, is consistent from Coast-to-Coast-to-Coast.

### **C-46 and beyond**

CUTA understands the government is moving forward with the legalization of cannabis. With this in mind, we want to mitigate the public safety risks for Canadians. CUTA believes Bill C-46 provides the foundations for a comprehensive regulatory framework on drug impairment. Our goal is to build on this bill through the development of random drug testing requirements for those in safety sensitive positions.

There's a need for clear government direction on this issue and federal leadership will be vital in establishing clear guidelines for provincial regulations. We thank the committee for giving us the opportunity to share our concerns and recommendations.