

## Submission by HAC, NATA, ATAC and CBAA to the Co-Chairs of the Fatigue Working Group

March 9 2011

HAC, NATA, ATAC and CBAA have been participating in the Fatigue Working Group since its inception.

The work of the group has been predicated on the assumption that both large and small operator-representatives would stay in plenary and discuss the foundational elements of the regulations which captured the needs of flight crews at all levels of the commercial aviation community, and only then proceed to break-out groups when those discussions had been exhausted. The intent was also to avoid forcing large carriers to endure a discussion of heli-logging and to avoid forcing fixed-wing Air Taxi operators to endure a discussion of long range operations, for example.

It was also agreed that the group would focus on the science as the cornerstone of our discussions – but only on science that was first vetted by Dr. Belenky. In Toronto, the group voted on this issue, and it was decided that this would avoid the “dueling scientist” problems that previous working groups on this subject have encountered. What’s more, there was agreement that since Dr. Belenky was in a position to evaluate credible research in the fatigue domain, he could ensure that the group only considered science, rather than science fiction on this subject.

There is a misconception by some members of the Working Group that it should fall to working group members who support the status quo on one or more elements of the existing CARs, that they must produce science in support of those rules – otherwise they should fall in favour of new rules. The signatory associations disagree with this proposition. We believe that if there IS credible science which suggests that the rules are outdated or do not reflect the current state of scientific research, the onus must be on the Working Group member(s) to present that science - only then should there be discussion of alternatives to the status quo. In the absence of any credible science to support a change, the rules must remain as they currently exist unless the group can otherwise find consensus to make a particular change. The Working Group Chairs need to provide clear direction to the Working Group on this subject.

The Working Group decided to use the EASA document as a “template” for a new regulatory structure for the CARs. *Because* the report was a set of *recommendations-only* from the European community, *and because* the report ONLY related to fixed-wing Airline carriers there was agreement NOT to use the numbers or even the concepts contained in the report without independent support from the scientific literature. Furthermore, there was also agreement to

use the concepts contained therein only insofar as they were supported by the science endorsed by *Dr. Belenky*.

The signatory associations believe that the Working Group has strayed well beyond its stated objectives.

The foundational or common elements of the regulations which can apply across all industry-segments *and supported by the science* extend only to a very few areas of our regulatory structure under discussion. The Working Group in plenary has strayed beyond the accepted science or beyond the elements of the regulations which apply to all segments of the regulated community, or both. It is the opinion of the signatory associations, that there are a very few issues under discussion by the group so-far which meeting this criteria. They are:

1. Minimum Rest
2. Intrusions on the WOCL
3. Split Duty and the recuperative benefits of less than four hours rest during a Duty Period
4. The fatiguing effect (or lack thereof) of Stand-by or Reserve Duty
5. The recuperative effect of a few days off as it relates to “zeroing” accumulated flight time-related fatigue
6. The need for a minimum addition to the minimum rest period of eight hours to contemplate meals, personal hygiene, etc. (by consensus)
7. The ability of flight crews to work multiple consecutive duty-days without erosion of the minimum rest, and without any attendant erosion of performance (McCauley)
8. Operations involving disruptions of the circadian rhythm

Issues that are unsupported by the science can only be discussed on the basis of operational experience. The signatory Associations have no objection to the discussion of these issues on this basis but the Working Group members should acknowledge that these discussions should be industry segment-specific and that they will hinge on soft science and “horse trading” and can only proceed on the basis of a consensus. Discussions by the group of issues falling in to this class will naturally rely on industry-specific anecdotal and operational experience that does not easily translate to other industry segments. The signatory Associations challenge the Working Group Chairs to ensure that each recommendation for change in the Working Group report is supported by approved science (and cited) or by the consensus of all affected segments of the commercial aviation community (Unions and Operators).

There are a number of issues under discussion in plenary by the Working Group currently which are either *unsupported* by science, or they do *not* straddle all industry segments, or both:

- a. Sector-limits (inapplicable to helicopters and unsupported by the science)

- b. Cumulative Duty Hours (unsupported by the science)
- c. The concept of “cumulative fatigue” (unsupported by the science) except insofar as regular intrusions on the 8 hours minimum rest period are concerned
- d. Changes to the maximum 14-hour Duty Day under circumstances where the flight crew member has a normal opportunity to obtain 8 hours rest (unsupported by the science)

CBAA, HAC, NATA and ATAC have waited for six meetings for the opportunity to discuss fatigue-related issues as they relate to CAR 702, 703, 604 and Unscheduled or VFR 704 Operations and to all helicopters. We are concerned as our deadline looms that we are going to have to compress those discussions in to a small portion of the remaining few WG meetings and furthermore, that we may be prevented from discussing those issues which have already been canvassed in plenary outside the science or without regard to specific industry circumstances, including items a. through d., above.

We need the opportunity to discuss the applicability of these issues to the CAR 702, 703, 604 and Unscheduled or VFR 704 Operations and to all helicopters and to find a solution that fits our industry segments. Our industry simply cannot accommodate airline-type solutions to the issues that are under discussion in the scheduled CAR 705 sub-group, and we should have an opportunity to discuss these issues in the context of our Canadian business model.

The signatory associations also agree that the driving force for the formation of the Working Group were issues relating to the scheduled airlines and in some ways the other included segments of the aviation community were caught in the vortex of this issue. Both the EASA Report and the FAA NPRM started out with similar intentions to capture large and small commercial operations in their discussions and ultimately arrived at the conclusion that is a complex issue and the solutions are necessarily industry segment-specific. Both reports only contemplate airline-type operations. Even ICAO's Standards deal only with international scheduled operations.

The CAR 705 sub-group and their unions appear to be making good progress on the issues under discussion there, but the signatory associations object to many of the solutions under discussion being forced on other industry segments where they simply do not fit and many of them are the product of negotiations and are simply inconsistent with the established science. If the solutions that are under discussion in that group are driven to other segments of the industry, they will have a catastrophic effect on our operations without any enhancement to the fatigue-related issues facing *our* flight crews.

Transport Canada should focus on the scheduled airline segment of the community and return to deal with other stakeholders when it has the time and inclination to deal with our issues in a meaningful way. Two other regulatory

jurisdictions have come to this conclusion and the signatory associations urge the same strategy on Transport Canada. Other members of the working group including NACC have supported this proposition. The views of the signatory associations as they relate to CAR 702, 703, 604 and Unscheduled or VFR 704 Operations and to all helicopters serve only to obstruct and delay discussions relating to airline operations on what is already a very tight time-line for the completion of the Working Group report.

The signatory Associations believe that if Transport Canada *insists* on proceeding with discussions which affect CAR 702, 703, 604 and Unscheduled or VFR 704 Operations and to all helicopters, then in plenary the WG needs to have a discussion of the sub-groups and how they should be constituted, including Terms of Reference and a clear definition of who will be captured by those discussions. A CAR 704/705 sub-committee for example simply cannot deal with the diversity and complexity of operations in the Canadian industry and one-size-does-not-fit-all.

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