SENATE TRANSPORT AND COMMUNICATIONS COMMITTEE

Bill S-2, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act

Presentation by the Automobile Protection Association (APA)

George Iny, Executive Director
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The Automobile Protection Association (APA) is a non-profit public interest organisation that promotes the consumer interest in the marketplace for automobiles and their related products and services. The APA was founded in 1969 by two people who had been at Ralph Nader’s public interest group in Washington D.C. The Association has offices in Montreal and Toronto with public information hotlines and a website; we are a clearing house and advocate for consumers with auto related questions and complaints. The APA has counsel on retainer and is active as a plaintiff or in support of consumers in small claims courts and class actions. The APA also performs unique field audits of vehicle retailers to evaluate regulatory compliance and their general business practices. The APA is a small group that punches above its weight. To do this, the Association leverages its resources thanks to formal and informal arrangements with auto industry experts, many of whom help the Association discreetly and with no compensation.

For more than three decades, the APA has acted as an initial contact for safety-related complaints forwarded to Transport Canada. And for more than two decades, Transport Canada has referred complaints that fall outside its jurisdiction (non-safety) to the APA. Before the advent of the web, the APA’s contribution played a vital role in the collection of incident reports to support Transport Canada investigations, and contributed to many recalls. Today the APA still refers about the same number of incidents to Transport Canada, but the Web has more than doubled the organic volume of safety complaints received by Transport Canada. Furthermore, the higher visibility of complaints made possible by the Internet has contributed to a doubling in the annual number of auto manufacturer and importer recalls in Canada, from about 300 annually to over 600 last year. This makes the proposed amendments in Bill S-2 timely and important.
The APA strongly supports the following amendments to the Act:

Clause 7 Section 10.3: Make information available (Realtime recall lookup capability)
-To require an auto manufacturer or importer to maintain a publicly-available database of vehicles with open recalls accessible via the Transport Canada main page for safety recalls

- Transport Canada currently provides this service partially on its website, at the pleasure of some, but not all, auto manufacturers and importers. A similar service is mandatory in the United States.
- Transport Canada must be able to set minimum standards for recall lookups to reduce the incidence of False Negatives. (Is the vehicle included?/Was it fixed yet?) Privacy is not a significant concern -- a vehicle is not a person.
- This is an important pre-condition for buy-in from retailers of used vehicles and provincial regulators
- Emissions recalls must be included (there are about 30 annually)

Clause 15: Regulation 16.1 Administrative Monetary Penalties
-A more expedited enforcement tool than using the courts to support enforcement

- Fines should start low enough so the penalties can be used regularly; the "name and shame" value likely outweighs the weight of the potential monetary penalty.
- Transport Canada has no culture of using its enforcement powers to fine automakers; it will have to develop and fund this new capability. The APA has found that high minimum fines can lead to the Law of Unintended Consequences with companies opposing all enforcement efforts (the OMVIC experience).

16.22 (3) Amounts received deemed public money

- Some or all proceeds of the Administrative Monetary Penalties should be set aside for public interest research on road safety. There are good models for this sort of research program at Canada's Research Councils and other Ministries.

Clause 10.5: Power to order correction of defect or non-compliance (the Recall power)
-Long overdue, this clause will impact about one percent of the 600 recalls currently undertaken annually.

- 99% of recall repair activity is already happening voluntarily. Almost no one would be satisfied with compliance limited to the Notice of Defect remedy currently in the Act (a letter sent by mail with no repair obligation). This amendment covers a small number of potential recalls (3-6 a year) where more robust intervention is needed. Examples include the Toyota Unintended Acceleration recalls, GM faulty ignition switch recall, and currently the Ford F-150 power braking, Ford Fiesta transmission, and Ford Explorer suspension investigations.
- Canadian auto companies know they can sit on their hands if a recall is not a priority in the United States. Transport Canada ends up looking and acting flat-footed because it
doesn't have the tools. The objective is to bring Canada’s vehicle safety legislation up to standards applicable to other sectors like food, pharmaceuticals, general public health and safety, and current best practice.

**The APA supports amendments that would support the following activities:**

**Recall completion rates**
-To empower the Minister to order an automaker to step up its performance on a recall by sending a new notice, and other outreach and remediation activities.

- Quarterly statistics on recall completion rates are already required in the Motor Vehicle Safety Act; these numbers should become public.
- Completion rates vary widely; recall difficulty varies; the potential risk of un repaired vehicles varies; and auto company motivation varies -- there is currently little accountability, as a low completion rate is not connected to any sanction or consequence

**Power to appoint a monitor**
-Transport Canada needs a new and visionary tool to encourage non-compliant automakers to effect a turnaround in their safety culture.

- Embedding a safety czar at General Motors in the United States has worked wonders
- Focus on building compliance rather than punishing non-compliance

**Varia**

- **Interference with seized property** Require insurance companies to report potential safety defects, and retain evidence if it is material to an investigation under the Act.
- **Investigation-collisions** Improve definition of who is an inspector/collision investigator
- **Clause 5 Analytical Aids**
- **Clause 8.1: Power to order tests**
- **Duty to inform the consumer** where to complain (owner's manual or website), is there one?

**The APA believes the following amendment may need reconsideration**

**Clause 10.61): Power to prohibit offering for sale...**
-To ensure that any defect... is corrected before the vehicle is offered for sale

- Not currently a significant problem; industry practice around "precalled" vehicles is sound, and there are few vehicles involved
- As drafted, there is a risk the section will be interpreted by the industry to limit federal authority over vehicles after their first sale. Currently the Act does not specifically limit Transport Canada's authority this way.
- The corresponding amendment in Bill C63 was clearer.