

LEGAL PROTECTION OF SAFETY SENSITIVE INFORMATION AND ITS SOURCES – IN AVIATION

OBJECTIVE OF THIS PRESENTATION

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OBJECTIVE

- To confirm need for protection
- To identify mode of such protection
- Annex 13
- Annex 19
- Risk Management
- Heightened aviation safety

NEED FOR INFORMATION

- SAFE OUTLET FOR FEEDBACK-
REACTIONS, CONCERNS, COMMENTS

NEED FOR INFORMATION

- Meeting States' international obligations as well as the country's administrative and regulatory obligations to the Civil Aviation Industry within its jurisdiction

NEED FOR INFORMATION

- Seeking out and identifying causes of operational errors
- Curtail and mitigate probable resulting hazards
- to prevent the attendant risks becoming mature and bearing fruit of accidents or incidents

NEED FOR INFORMATION

Generally, effective operational error reporting and objective and neutral hazard reporting together make for effective safety reporting – and enhanced safety.

NEED FOR INFORMATION

“Quality safety data
are
the lifeblood
of
safety management”

per doc 9859

JUST CULTURE

JUST CULTURE

In this context, the term 'safety culture' is synonymous:

The need is for a *CONTEXT* which actively promotes processes procedures and policies which together inspire and encourage safety.

JUST CULTURE

It is anticipated that the result of healthy non-punitive reporting i.e. effective allowance for the passing of information about errors and hazards into the appropriate pool, will be the helpful enhancement of safety levels

JUST CULTURE

PHILOSOPHY BASED ON THE
RECOGNITION THAT, IN ORDER TO
PROVIDE THE SERVICE EMBRACED BY
SOCIETY, PROFESSIONALS OF
SEVERAL KINDS ARE REQUIRED BY
SOCIETY TO MAKE CERTAIN
JUDGEMENT CALLS BASED ON
INFORMATION AVAILABLE

JUST CULTURE

- SUCH PROFESSIONALS ARE TRAINED AND CERTIFIED TO MAKE SUCH JUDGEMENTS AND SOME SITUATIONS WILL NOT BE 'USUAL' AND MAY HAVE UNFORESEEN RESULTS – SOME OF WHICH MAY BE UNDESIRABLE
- BUT THAT DOES NOT MEAN THEY SHOULD BE PUNISHED AS THAT WILL DRY UP THE EFFORTS

HOW PROTECTION HELPS

FROM REGULATORS'
VIEWPOINT

HOW PROTECTION HELPS

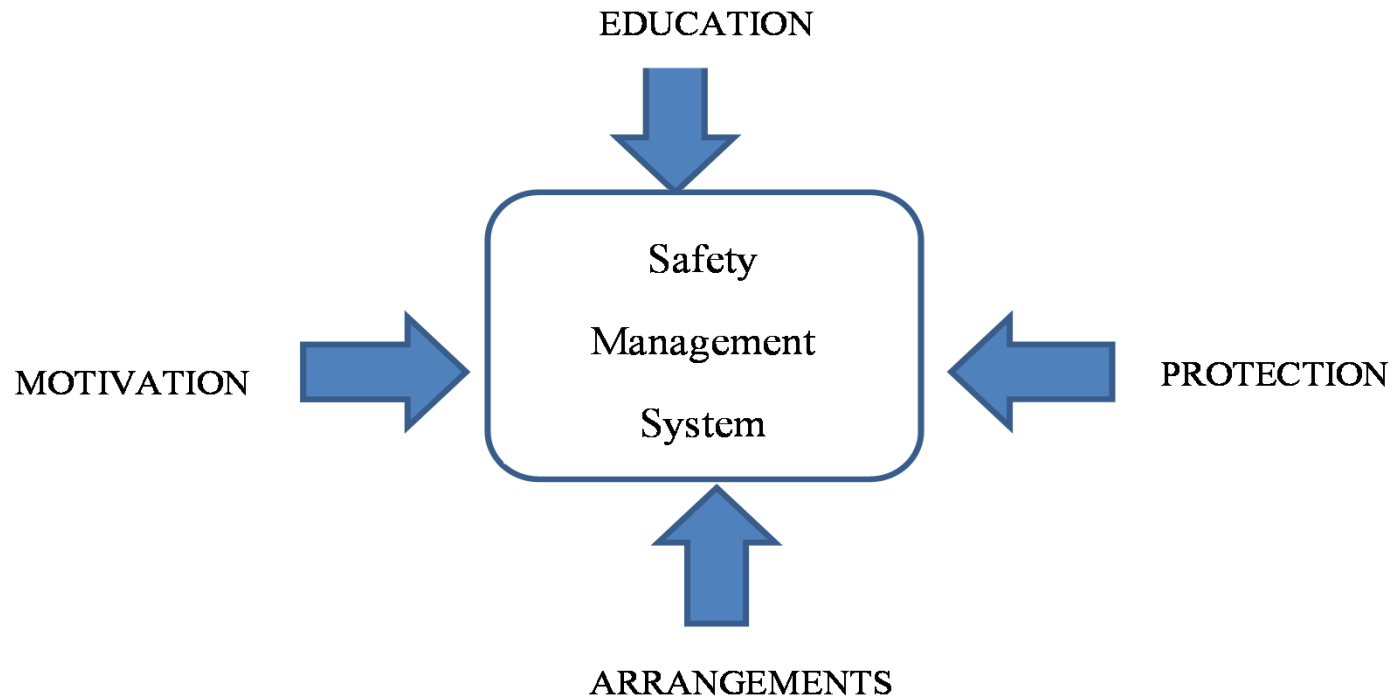
- TO PROVIDE COMFORT TO EACH PERSON IN THE INDUSTRY THAT THEIR CONTRIBUTION IS TAKEN SERIOUSLY IS VALUABLE AND WILL NOT BE USED 'AGAINST' ANY ONE OR ANYTHING
 - ACCIDENT AND INCIDENT INVESTIGATION
 - REGULATORY DEVELOPMENT
 - EARLIER RECOGNITION OF HAZARDS AND RISKS
 - OPPORTUNITIES FOR PRE-EMPTION
 - OPPORTUNITIES FOR PROACTIVITY

HOW PROTECTION HELPS

It is one line in the fork of support which also includes:

- Motivation and Encouragement
- Effective arrangements in place to collect and use the reported information
- Education

Support for SMS



LEGAL PROTECTION

MODEL PROTECTIVE PROVISIONS

LEGAL PROTECTION

- “safety management system” means
- a documented process, developed collaboratively, which actively supports the management of risks to aviation safety; it integrates all parts of a business – operational and technical systems with the administration and management of financial, legal and human resources. Its aim is to reduce risks to the lowest possible level and make continuous improvement to aviation safety and the safety of the public

LEGAL PROTECTION

information gathered or resulting from an SMS [aviation activity] shall be for the sole purpose of promoting aviation safety.

LEGAL PROTECTION

Safety sensitive information reported and collected shall not be admissible in evidence (2 broad headings)

1. Any administrative proceedings relating to the capacity, competence, performance or discipline of certain employees

(such as air traffic controllers, flight and cabin crew members, flight dispatchers, staff of airport operators, aircraft mechanics, flight data processors)

LEGAL PROTECTION

2. In any proceedings “whether to apportion blame or liability” or for any other reason whether civil or criminal or quasi-criminal, before a court or tribunal, UNLESS it is determined by a court that the benefit of such admission into evidence would outweigh any adverse domestic or international impact which such admission might have on the future continued production, reporting or other availability of such safety sensitive information.

LEGAL PROTECTION

- PROVISIONS SHALL BE MADE FOR :

the involvement of employees and/or their bargaining agents in the development, implementation and ongoing operation of the Safety Management System

LEGAL PROTECTION

PROVISION SHALL BE MADE FOR

- the keeping and preservation and eventual destruction of records, documents and information obtained through the SMS
- the provision to the relevant persons of data and results derived from such records, documents and information

LEGAL PROTECTION

WHERE an employer has an SMS which requires or encourages its employees to disclose to it any thing or circumstance that could present a risk to the safety of aviation activities, including the fact that there has been breach of a provision of the civil aviation Law then any information disclosed under such SMS is confidential and shall not be disclosed or made available except in certain circumstances - 3 follows

LEGAL PROTECTION

1. the information is disclosed or made available in a form that prevents it from being related to an identifiable person, organisation, facility or activity; (*but see SMALL CLOSE SOCIETIES OR INDUSTRY*)
2. A court by order compels the production or discovery of such information
3. The information collector considers that disclosing the information is necessary to ensure safety even where that may lead to suspension, cancellation, or refusal to renew of a certificate or licence

LEGAL PROTECTION

INFORMATION may not be used in the taking of any measure, or in any proceedings for a breach of the civil aviation Law, against the service provider or the employee who disclosed it, or the person about whom the information was passed

[previously mentioned 3 exceptions]

LEGAL PROTECTION

Provided that the information has first been disclosed in good faith under an SMS, an employer shall not take any reprisal action against any employee - including any measure that adversely affects an employee's continued employment, working conditions, remuneration, chances for promotion, performance evaluation – because the employee disclosed such information.

LEGAL PROTECTION

An aviation service provider/employer may not use information collected under an SMS in the taking of any disciplinary proceeding against any of its employees, except in accordance with any conditions that are established in relation to that process

LEGAL PROTECTION

For the purpose of promoting aviation safety, the Regulator may sign an agreement with an aircraft operator – in respect to the collection, analysis, use and disclosure of information derived from a flight data recorder. However, before entering into such agreement, the Regulator shall consult with any person (such as the operator's employees) who would be affected by such agreement.

LEGAL PROTECTION

Information disclosed to the Regulator under such an agreement is confidential and shall not knowingly be disclosed or made available except in accordance with the terms of such an agreement - unless a court by order compels the production or discovery of such information.

LEGAL PROTECTION

Information disclosed to the Regulator under such an agreement may not be used in the taking of any measure, or in any proceedings against, or in the prosecution for a breach of the operator, the operator's crew members or other persons employed or engaged by the operator.

LEGAL PROTECTION

If a person reports his/her breach of a civil aviation Law into an SMS collection programme which had been established by the Regulator to promote aviation safety, such person shall not be found guilty of such breach in any proceedings under the Law, except in certain specified circumstances,

LEGAL PROTECTION

The Circumstances allowing use of that information to prosecute are that:

- Mandatory reporting was required
- The breach was wilful (negligent, reckless)
- The same breach occurred within a short time before (say 2 years)
- There was no disclosure into an available SMS

LEGAL PROTECTION

Except in any proceedings before a Coroner, or when a Court makes an Order, the Reporter or Collector or Analyst of information reported under an SMS, shall not be called as a witness in any proceedings before a court or tribunal. The Court will only make such an order if it is satisfied that the non-appearance of such person as a witness would undermine the interests of justice.

LEGAL PROTECTION

Under the SMS, information reported is confidential and, where such information could identify a person or situation, it shall not be knowingly disclosed or made available.

LEGAL PROTECTION

In respect to reported information, no person shall be required to give evidence of such information or to make any oral or written statement containing such information - for any disciplinary, prosecution, or liability proceedings.

LEGAL PROTECTION

Information reported under the programme / SMS may not be used against anyone (e.g. reporter or reported) in any legal, disciplinary, administrative or other proceedings.

LEGAL PROTECTION

ENFORCEMENT, SUPPORTED BY
PENALTIES, WILL BE BUILT INTO THE LAW
FOR PERSONS CONVICTED OF BREACHES
OF THESE PROTECTIVE PROVISIONS OF
THE LAW OF THE LAND

STATE SAFETY PROGRAMME

FRAMEWORK FOR
HOSTING AND
SUPPORT OF THE
SMSs

PROTECTIVE SYSTEM

1. The State shall establish a State Safety Programme
2. Within the SSP – identify and establish an acceptable level of safety (ALoS) in civil aviation
3. Within the SSP require service providers and their partners to implement a Safety Management System that
 - a. Identifies safety hazards and risks
 - b. Pursues remedial action towards maintaining safety
 - c. Employs continuous monitoring and regular assessment of safety performance
 - d. Seeks continuous improvement of itself

STATE SAFETY PROGRAMME

- LAW
- ENSURE SYSTEMS ESTABLISHMENT
- TRAINING
- CERTIFICATION
- SURVEILLANCE
- COLLECTION, STORAGE, ANALYSIS, SHARING, CHANGES
- ALoS
- SPUR CULTURAL CHANGE TO INFORMATION-SHARING

OTHER GENERAL PROPOSED PROVISIONS

ESTABLISHMENT OF
SYSTEM



PROPOSED PROVISIONS

CONSULTATIONS:

- GENERAL PRINCIPLE THAT PERSONS WHO MAY BE AFFECTED SHOULD BE PERMITTED AND ENCOURAGED TO PARTICIPATE IN THE DEVELOPMENT OF THE SYSTEM /PROGRAMME

PROPOSED PROVISIONS

The Minister is Responsible for the development and regulation of civil aviation and the supervision of all matters connected therewith, and has the Duty to require that civil aviation activities be performed at all times in a manner that meets the highest safety and security standards.

PROPOSED PROVISIONS

In the discharge of those responsibilities and that duty, the Minister may establish and provide facilities and services for the collection, publication or dissemination of information relating to safety in civil aviation and may also enter into agreements with any person or branch of government for the collection, publication and dissemination of that information.

Benefits of Safety Management to the Regulator.

The long term benefits for the Regulator of supporting the adoption of SMS in industry through education, promotion and regulation include

- Reduction in of the regulatory burden
- Reduction in government's liability
- Reduction in resources required for oversight
- Reduction in accidents / incidents

ORGANIZATIONAL CULTURE will determine....how :

- a) juniors will relate to their seniors;
- b) information is shared;
- c) authority is exercised

CULTURE...

d) and how organizations react to operational errors (punish offenders or learn from experience);

e) training is developed and delivered;

CULTURE...

- f) work assignments are made;
- g) different work groups will relate; and
- h) management and unions will relate.

CULTURE - change

Without change in culture to have people accepting of and engaged by the reporting requirements, with understanding of the ultimate aim, the required reporting might still not take place.

Sources of Information

Book JUST CULTURE, Balancing Safety and Accountability by *Sidney Dekker*, 2007

Civil Aviation Act, Jamaica 1966 as amended 2004

Bill C-7 An Act to Amend the Aeronautics Act and to make consequential amendments to other Acts with regard to all sections, particularly the provisions enabling safety management systems, Canada, October 29 2007

ICAO Annex 13

ICAO Annex 19

ICAO Doc 9859 Safety Management Manual, 2nd Edn 2009