

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)

**An Independent AGENCY of the
UNITED STATES OF AMERICA**

AND THE

THE TRANSPORTATION SAFETY BOARD OF CANADA (TSB)

An Independent AGENCY of CANADA

WHEREAS, the National Transportation Safety Board (hereafter called the “NTSB”), an Independent Agency of the United States of America, and the Transportation Safety Board of Canada (hereafter called the “TSB”), an independent agency of Canada, were both created to advance transportation safety through the investigation of occurrences in the aviation and other modes of transportation; and

WHEREAS, pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act* (hereafter called the “*CTAISB Act*”), the TSB has the responsibility to advance transportation safety; its responsibility being carried out by conducting independent investigations, and if necessary, public inquiries into transportation occurrences to make findings as to their causes and contributing factors and by making recommendations to eliminate or reduce safety deficiencies as evidenced by those investigations; and

WHEREAS, the *CTAISB Act* applies to aviation occurrences in or over any other place if Canada is requested to investigate the aviation occurrence by an appropriate authority; and

WHEREAS, the NTSB and the TSB have been in contact regarding a mid-air collision in the United States between two general aviation aircraft, a Piper PA-28-140 (N23SC), registered to a employee of the U.S. Federal Aviation Administration, and a Beechcraft BE-35B (N6658R), registered to an NTSB employee, which resulted in injury to the PA-28 pilot and the death of two occupants of the BE-35 (hereafter called the “accident”); and

WHEREAS, given the unique circumstances surrounding the ownership of the accident aircraft, The Chairman of the NTSB has given the Transportation Safety Board of Canada (TSB) full delegation of the investigation in accordance with paragraph 5.1 of *Annex 13 to the Convention on International Civil Aviation* (The Chicago Convention) (see appendix A); and

WHEREAS, the TSB has accepted the full delegation of the investigation into this accident (see appendix B);

NOW THEREFORE, the NTSB and the TSB, individually referred to as a “Party” and collectively referred to as the “Parties”, mutually agree and intend the following:

ARTICLE I -- PURPOSE

This Memorandum of Understanding (hereafter called the “MOU”) sets forth the intention of the Parties for the TSB to conduct an investigation into this accident in order to make findings as to the causes and contributing factors, and identify safety deficiencies as described herein.

ARTICLE II -- AUTHORITIES

It is recognized that the respective governments of the Parties are parties to the *Convention on International Civil Aviation* and that the respective agencies are, therefore, bound by the Standards contained in *Annex 13 — Aircraft Accident and Incident Investigation* to the Chicago Convention (hereafter called *Annex 13*) concerning accident and serious incident investigation.

It is further recognized by both Parties that the NTSB’s full delegation of the investigation to the TSB is accepted on the basis that the investigation will be conducted in accordance with the *CTAISB Act*. Both Parties also acknowledge that upon execution of this MOU, it will be included in the public record.

ARTICLE III -- UNDERTAKINGS OF THE TSB

The TSB will conduct a detailed independent investigation (TSB file # A12H0001) into this occurrence in order to make findings as to its causes and contributing factors, and identify safety deficiencies.

The investigation will be conducted in accordance with the provisions of *Annex 13*, the *CTAISB Act*, the *TSB Regulations*, as well as TSB standard operating policies and practices.

The TSB will appoint a qualified Investigator-in-Charge (IIC) who will lead the investigation team. Mr. Jon Lee, TSB Regional Manager, will serve as the Investigator-in-Charge. The IIC will be assisted by other TSB investigators and specialists as may be required during the course of the investigation. The TSB will notify the NTSB if it subsequently appoints a different IIC for this investigation.

In accordance with ICAO standards, the TSB will take all the necessary measures to ensure the safety, integrity, and confidentiality of the information collected in the course of the investigation.

The TSB will consult with the NTSB before releasing any information obtained from the NTSB on a confidential basis.

Upon completion of the draft investigation report, the TSB will, on a confidential basis, send a copy of its draft report to any person or organization, who in the opinion of the TSB has a direct interest in its findings, and will provide these persons and organizations a reasonable opportunity to make representations with respect to the draft report before the final report is prepared. As underlying principles, the TSB will ensure that fairness, accuracy, confidentiality, international commitments, and legal obligations as outlined in the CTAISB Act, are taken into account when making its determinations in this regard.

After due consideration of all comments received, the TSB will complete a final report containing its findings. The investigation report will be made public and published on the TSB web site.

The TSB may, at its discretion and in accordance with its standard business practices, make recommendations designed to eliminate or reduce any safety deficiencies identified.

ARTICLE IV -- UNDERTAKINGS OF THE NTSB

The NTSB will appoint an Accredited Representative for the United States to the TSB investigation in accordance with chapter 5 of *Annex 13* and consistent with paragraph 23(2)(c) of the *CTAISB Act*. Senior NTSB investigator, Mr. Paul Cox, will serve as the Accredited Representative for the United States. The NTSB will notify the TSB if it subsequently appoints a different Accredited Representative for this investigation.

The NTSB recognizes that its Accredited Representative will be the sole point of contact between the NTSB and the TSB for the purposes of this investigation. Other NTSB personnel and NTSB Board Members will not be involved in any aspects of the investigation other than providing information requested by the IIC through the designated Accredited Representative.

The NTSB will not disseminate any information supplied to the Accredited Representative by the TSB without obtaining the prior consent of the TSB.

The NTSB will ensure that the FAA and any NTSB advisors appointed under paragraph 5.19 of *Annex 13* are aware that this investigation is being conducted under the provisions of the *CTAISB Act*. The FAA and the NTSB advisors should therefore not disseminate any information pertaining to this investigation without obtaining the prior consent of the TSB.

The NTSB will ensure that confidential information supplied to the TSB through the Accredited Representative is clearly identified as such in order to assist the TSB in identifying confidential information which should not be disclosed outside the TSB.

ARTICLE V -- COMMUNICATIONS/MEDIA RELATIONS

Both Parties acknowledge that the TSB will be the official spokesperson regarding the investigation of the accident and any findings in relation thereto. Each Party may however respond to requests for information from the media concerning its own mandate and activities.

Each Party will provide notice and details to the other Party in advance of the release of formal communiqués or press releases.

The TSB will provide the NTSB with advanced notification of the release date of the final report.

ARTICLE VI -- LIABILITY

The MOU indicates the intentions of the Parties hereto but does not create a contractual or legal relationship between them. Each Party intends to pay its own expenses.

ARTICLE VII -- IMPLEMENTATION

The designated principal contacts for coordination and management of this Agreement are as follows:

NTSB: David Mayer
Managing Director
490 L'Enfant Plaza East, S.W.
6th floor
Washington, DC, 20594
Tel: (202) 314-6000
E-mail: david.mayer@ntsb.gov

TSB: Jean L. Laporte
Chief Operating Officer
200 Promenade du Portage
4th Floor
Gatineau, QC, K1A 1K8
Tel: (819) 994-8004
E-mail: jean.laporte@bst-tsb.gc.ca

ARTICLE VIII -- AMENDMENTS

This MOU may be amended by mutual consent of the Parties. The details of any such amendment shall be made by written agreement signed by both Parties. The Parties may from time to time add annexes, appendixes or amendments to this MOU as they deem appropriate.

ARTICLE IX -- RESOLUTION OF DISAGREEMENTS

Any disagreement regarding the interpretation or application of this MOU shall be resolved by consultation between the Parties and shall not be referred to any international tribunal or third party for settlement. In the event of a dispute arising from the interpretation or operation of this MOU, efforts to resolve it shall first be made between the IIC and the Accredited Representative. Issues which cannot be resolved at the working level will be referred to the Chief Operating Officer of the TSB and the Managing Director of the NTSB, who will use their best efforts to resolve the matter amicably. If such discussions fail, the issue will be referred to the Chair of the TSB and the Chairman of the NTSB for final resolution.

ARTICLE X -- TERMINATION

Considering that pursuant to the *CTAISB Act*, the TSB is obligated to report publicly on all its investigations, this MOU may not be terminated by either Party before the TSB final report on its investigation is made public.

ARTICLE XI -- TERM OF AGREEMENT

This MOU shall be in effect on the date of the last signature and shall remain in force until thirty (30) calendar days after the date of publication of the TSB final report on its investigation.

ARTICLE XII -- DISCLAIMER

Nothing in this Agreement is intended to contravene the rights, obligations, requirements, or restrictions placed upon a party by its national laws and regulations. This Agreement does not limit the authority of either Party under its governing domestic laws and regulations.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by their duly authorized officers

APPROVED:



Deborah A. P. Hersman
Chairman
National Transportation Safety Board



Date



Wendy A. Tadros
Chair
Transportation Safety Board of Canada



Date

Appendix A



National Transportation Safety Board

Washington, D.C. 20594

May 29, 2012

Wendy A. Tadros
Chair, Transportation Safety Board of Canada
Place du Centre
200 Promenade du Portage, 4th Floor
Gatineau, Quebec K1A 1K8

Dear Chair Tadros:

I am writing in further reference to our earlier discussions regarding a mid-air collision in the United States between two general aviation aircraft, a Piper PA-28 (owned and piloted by an employee of the Federal Aviation Administration) and a Beechcraft BE-35 (owned and likely piloted by a National Transportation Safety Board (NTSB) employee), that occurred on Monday, May 28, 2012, near Sumerduck, Virginia.

Given the unique circumstances surrounding this accident, I request that the Transportation Safety Board of Canada consent to a full delegation of the investigation in accordance with paragraph 5.1 of Annex 13 to the Convention on International Civil Aviation. We believe this delegation serves the public interest in maintaining the high level of confidence currently afforded both of our organizations' international and domestic aviation accident investigation efforts.

Senior NTSB investigator Paul Cox initially responded to the accident and upon your acceptance of delegation of the investigation, he will serve as the Accredited Representative for the United States. I look forward to your acceptance of this delegation request.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A.P. Hersman". The signature is stylized and includes a long horizontal flourish extending to the right.

Deborah A.P. Hersman
Chairman

Appendix B

Transportation Safety Board
of Canada



Chair

Bureau de la sécurité des transports
du Canada

Présidente

200 Promenade du Portage
4th Floor
Gatineau, Quebec
K1A 1K8

May 31, 2012

Deborah A. P. Hersman
Chairman
National Transportation Safety Board
490 L'Enfant Plaza East, S.W.
6th floor
Washington, DC, 20594

Dear *Debbie* Chairman Hersman :

I am writing to acknowledge receipt of your letter dated May 29, 2012 and to confirm the acceptance by the Transportation Safety Board of Canada (TSB) of the full delegation of the investigation into the general aviation aircraft accident that occurred on May 28, 2012 near Sumerduck, Virginia.

The TSB will undertake an investigation into this accident in accordance with the provisions of Annex 13 to the Convention on International Civil Aviation and the Canadian Transportation Accident Investigation and Safety Board Act.

A Memorandum of Understanding will be established between our respective agencies in order to layout in further details the terms and conditions governing the conduct of this investigation.

In closing, I would like to personally convey my condolences to you *Debbie* and to the NTSB for the loss of Dr. James Duncan.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wendy".
Wendy A. Tadros

Canada