

# Appendix 2

## Legislative Context

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### **Organization of *Canada Transportation Act* of 1996**

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#### **Introductory Section**

National Transportation Policy

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#### **Part I Administration**

Organization, powers and operation of Canadian Transportation Agency, including:

- power to award costs
- substantial commercial harm test on granting of relief
- time limit for making decisions
- provisions for appeals to the Federal Court of Appeal

Powers to Governor in Council to

- issue policy directions,
- approve Agency regulations
- deal with extraordinary disruptions in the transportation system
- review Agency decisions
- enter into support agreements
- make regulations respecting transportation information

Powers and responsibility of the Minister of Transport to

- direct the Agency to inquire into matters and report
  - conduct an annual industry review
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#### **Part II Air Transportation**

- Definition of ‘Canadian’ for licensing purposes
- Review of air transport undertaking mergers by Governor in Council
- Licensing of domestic, international scheduled and non-scheduled air services
- Consumer protection measures:
  - prohibition on ticket sales before licensing
  - discontinuation of air service provisions
  - unreasonable rates and terms and conditions reviewable
  - requirement that licensees have insurance and hold operating authority from Transport Canada
  - financial fitness requirements for new licensees
  - Air Travel Complaints Commissioner
- Designation of Agency as Aeronautical Authority for certain purposes

### **Part III Railway Transportation**

#### Construction and Operation of Railways:

- federal railways eligible for Certificate of Fitness upon proof of insurability
- powers of a railway company holding a Certificate of Fitness
- approval required to construct new railway lines
- regulation of Highway/Railway crossings

#### Financial Transactions of Railway Companies:

- filing of railway financial instruments for registration purposes
- insolvency reorganization scheme for railways

#### Rates, Tariffs and Services:

- rates and terms and conditions set by the Agency must be commercially fair and reasonable
- level of service prescribed for railway companies
- rates charged by a railway must be in a tariff or a confidential contract
- railway must quote a rate to a shipper on request
- where more than one railway company involved they must agree on joint rates
- confidential contracts between railways and shippers permitted
- regulated rates for interswitching
- competitive line rates
- rules on limitation of liability by a railway

#### Running Rights and Joint Track Use

- another railway may apply for running rights
- Governor in Council may require joint track use if more efficient

#### Transfer and Discontinuance of the Operation of Railway Lines

- provides for notice of impending line discontinuance
- facilitates commercial sale of lines
- permits government to purchase lines where no commercial sale feasible

#### Transportation of Western Grain

- limits the amount of revenue CN and CP can earn from the transportation of grain

#### Administrative Provisions

- Agency may prescribe uniform classification of accounts for railways
- rules for railway costing
- Minister of Transport has power to enter into agreements with provinces regarding railway safety, accident investigation and railway crossings on provincial railways

#### Railway Police

- railways permitted to have police forces

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**Part IV Final Offer Arbitration**

- Allows arbitrator(s) to select between final offer of a shipper and that of the carrier
  - Applies to
    - carriage of goods by air
    - carriage of goods by rail with certain expectations
    - northern marine re-supply in some circumstances
    - commuter rail
    - passenger rail provided by a railway company
  - Must be completed in 60 days
  - Simple, shorter process available for arbitrations under \$750,000
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**Part V Transportation of Persons with Disabilities**

- Undue obstacles to the mobility of persons with disabilities in the transportation network can be eliminated by Agency regulation
  - Agency can determine, on complaint, whether there is an undue obstacle to the mobility of a person with a disability.
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**Part VI General**

- Enforcement
  - Administrative monetary penalties
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**Part VII Repeals, Transitional Provisions, Consequential and Conditional Amendments and Coming into Force**

- Repeal of *National Transportation Act, 1987, Railway Act* for most purposes, *Government Railways Act, Passenger Tickets Act*
- Transitional provisions
- Consequential amendments
- Coming into force

## **Significant Legislative Changes since the *National Transportation Act, 1987***

Several significant legislative changes marked the shift from the *National Transportation Act, 1987* to the *Canada Transportation Act* of 1996. This was followed by further legislative amendments in 2000.

### ***The Agency and Cabinet***

Besides changing the name of the National Transportation Agency to the Canadian Transportation Agency, the Act introduced other more significant changes in the way government exercises regulatory control over transportation, including

- a statutory time limit of 120 days to deal with most matters before the Agency,
- a new requirement for Governor in Council approval of Agency regulations, and
- a new power to the Governor in Council to act in circumstances of extraordinary disruptions in the national transportation system.

The latter provision was exercised in 1999 to suspend competition laws during airline restructuring.

The Agency was also given the power to award costs in cases before it.

### ***Substantial Commercial Harm Test***

The substantial commercial harm test introduced in 1996 requires that before the Agency grants a remedy to a shipper, it must be satisfied that without the remedy the shipper would suffer substantial commercial harm. While not limited to railway remedies, the substantial commercial harm test is widely considered to have its most significant impact on rail shippers.

### ***Airline Regulation***

The Act changed several provisions dealing with airline regulation. Consumer protection measures were introduced to deal with problems that arise when an under-capitalized air carrier enters the market. The measures responded to a number of start-up failures that left consumers with nowhere to go; they included a prohibition on ticket sales before licensing and a requirement for new carriers to meet a minimal financial fitness test. On the deregulatory

front, the more rigorous licensing requirements of NTA 1987 for air carriers operating in the North were eliminated.

New, tougher provisions dealing with market exit, fare levels, and terms and conditions of carriage were added to the Act in 2000 to deal with airline restructuring. Also added was a power to review airline acquisitions and mergers. Finally, the 2000 amendments established the Air Travel Complaints Commissioner at the Agency.

### ***Railways***

The most significant change from NTA 1987 was the introduction of railway line sale and discontinuance provisions. These new provisions significantly reduced the regulatory burden on Canadian railways and allowed them to rationalize their networks more easily than had been case under NTA 1987. Other changes included allowing market entry by railways on proof of insurability and the requirement that rates and conditions set by the Agency be fair and reasonable.

The 2000 amendments to the Act stemmed from the review of the grain handling and transportation system by the Honourable Willard Estey and the subsequent work by Mr. Arthur Kroeger as grain handling and transportation facilitator. Most significantly, these changes included repeal of the rate cap on western grain rates and its replacement with a railway grain revenue cap. Other changes were designed to make it easier for community-based interests to acquire grain-dependent branch lines. Among other things, a line must now appear on a railway company's three-year plan for twelve months, instead of just two months, before it can be advertised for sale.

### ***Final Offer Arbitration***

The 1996 changes to the final offer arbitration provisions included a reduction in the 90-day period allotted for arbitration to 60 days and an extension of the provisions to northern marine re-supply and commuter and passenger rail operators. The restriction that had precluded FOA on grain rates was eliminated.

Changes in final offer arbitration as part the 2000 reforms dealing with grain handling and transportation included introduction of a simpler process for transactions under \$750,000.

### ***Access for Persons with Disabilities***

The NTA 1987 provisions applicable to persons with disabilities were limited to transportation modes governed by the Act. In 1996, the Agency's jurisdiction was extended to all transportation undertakings within the legislative authority of Parliament.

### ***Inquiries***

The Agency's power to initiate inquiries on its own motion was eliminated.

### ***Public Interest Rate Appeal Provisions***

NTA 1987 allowed a complaint to be brought before the Agency that rates and terms and conditions of transportation were against the public interest. These provisions were repealed in 1996.

### ***Elimination of Merger Review Process***

The Agency's power to review mergers and acquisitions of transportation undertakings was eliminated in 1996, based on the view that this duplicated the work of the Commissioner of Competition. In the 2000 amendments, the Governor in Council gained a new power to review airline mergers. The duplication issue was resolved by substituting a responsibility to provide advice to the government for the Competition Bureau's review power.

### ***Northern Marine Re-supply Provisions***

The Act eliminated provisions in the NTA 1987 regulating northern marine re-supply. However, rates and terms and conditions of service would now be eligible for final offer arbitration.

The major changes since NTA 1987, introduced by the *Canada Transportation Act* and the 2000 amendments to it, are set out in the next table.

### Significant Legislative Changes Since the *National Transportation Act, 1987*

Section	Subject and nature of change
1	New name: <i>Canada Transportation Act</i>
3	Scope: Application of Act expanded
4	Things done under the Act do not affect the operation of the <i>Competition Act</i>
5	National Transportation Policy of NTA 1987 continued with minor amendments
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<b>Part I</b>	<b>Administration</b>
7-8	National Transportation Agency continued as Canadian Transportation Agency; number of members reduced
18	Residency requirements for members dropped
25.1	Agency granted power to award costs in any proceeding before it
27 (2), (3) & (5)	Limitation on Agency to grant relief only in circumstances where a shipper would suffer substantial commercial harm; provision not applicable to final offer arbitration
28	Power to make <i>ex parte</i> orders removed
29	Agency required to make decisions within 120 days
36	Governor in Council approval of Agency regulations required
37	Power to inquire on own motion removed
42	Annual report of Agency required to assess the operation of the Act and report any difficulties in administration observed
47	Governor in Council given power to take steps to stabilize national transportation system in circumstances of extraordinary disruption
50-51	Powers to gather and keep confidential transportation information
52	Require the Minister of Transport report annually on the state of transportation
53	Require review of the Act after four years

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**Part II Air Transportation**

- 56.1-56.7 Provide power to review mergers involving air transportation undertakings (2000)
- 59 Prohibit sale of air services unless the carrier holds an appropriate licence  
Special provisions for Northern air service eliminated
- 61, 69, 73 New financial fitness requirements for domestic and international licence holders
- 64-65 Notice of discontinuance of air service strengthened (2000)
- 66-67.2 Power to deal with unreasonable air fares and compliance with tariffs strengthened (2000)
- 85.1 Office of Air Travel Complaints Commissioner created (2000)

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**Part III Railway Transportation**

- 90-94 Certificates of fitness to permit market entry for new railways granted on proof on insurability
- 112 Rates and terms and conditions of carriage established by the Agency must be fair and reasonable  
Requirement that rates be compensatory eliminated
- 140-146.1 New provisions dealing transfer and discontinuance of railway lines
- 147-152 Regulated grain rate cap repealed and replaced with grain revenue cap (2000)

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**Part IV Final Offer Arbitration**

- 159-169 90-day period for final offer arbitration reduced to 60 days; FOA extended to commuter and passenger rail operations, northern marine re-supply and grain; simplified process for smaller transactions established (2000)

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**Part V Transportation of Persons with Disabilities**

- 170-172 Jurisdiction of Agency extended to all parts of the transportation network under the legislative authority of Parliament; power to inquire into obstacles on own motion removed

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**Part VI General**

- 177-181 Improved administrative monetary penalty scheme

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**Part VII Repeals, Transitional Provisions, Consequential Amendments and Coming into Force**

- Railway Act* repealed except for certain provisions that apply only in respect of Special Act companies
- Jurisdiction over commodity pipelines transferred from Agency to National Energy Board
- Provision for railways to expropriate under the *Expropriation Act*
- Repeal of public interest rate investigations
- Jurisdiction of Agency over transportation mergers repealed

## Public and Private Acts Affecting Transportation

As described in Chapter 18, the Minister of Transport has responsibility for administering a large number of transportation-related laws, in addition to the *Canada Transportation Act*. In addition, some acts of Parliament with implications for transportation are the responsibility of ministers other than the Minister of Transport. All these pieces of legislation are set out in the next table.

<b>Public Acts (in addition to the <i>Canada Transportation Act</i>) for which the Minister of Transport is responsible</b>	
Airport Transfer (Miscellaneous Matters) Act	<i>Inter alia</i> , provides that no income tax is paid by airport authorities; authorizes seizure of aircraft for unpaid fees
Bills of Lading Act	Rules governing bills of lading
Blue Water Bridge Authority Act	One of two public acts dealing with bridges that are the responsibility of the Minister of Transport; amending Bill S-5 introduced January 31, 2001
Buffalo and Fort Erie Public Bridge Company Act	One of two public acts dealing with bridges that are the responsibility of the Minister of Transport
Canada Marine Act	Review of port fees for unjust discrimination; review of certain fees established by Seaway
Canada Shipping Act (Minister of Fisheries and Oceans also has responsibilities — Bill C-14, introduced March 1, 2001)	<i>Inter alia</i> , registration of ships
Carriage by Air Act	Establishes rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons in international air carriage
Carriage of Goods by Water Act	Sets out the rules regarding marine cargo liability on international traffic
Civil Air Navigation Services Commercialization Act	Appeal of air navigation charges to Agency
CN Commercialization Act	<i>Inter alia</i> , restricts CN's share ownership
Coasting Trade Act	Protection of Canadian shipping from competition by foreign vessels
Department of Transport Act	Regulation of canal tolls and use
Marine Insurance Act	Regulates marine insurance
Motor Vehicle Transport Act (Bill S-3, introduced January 31, 2001)	Licensing

National Energy Board Act (ss. 108-111)	Construction of pipelines over navigable waters
Navigable Waters Protection Act	Approval required before interference with a navigable water
Northumberland Strait Crossing Act	Permits government to enter agreement
Pilotage Act	Mandatory user-pay marine navigation services
Railway Relocation and Crossing Act	Approval of urban transportation schemes involving railways
Railway Safety Act	Apportionment of costs of certain works between railways and others
Shipping Conferences Exemption Act (Bill C-14, introduced March 1, 2001)	Regulates international marine shipping rates; allows carriers to agree on rates
United States Wreckers Act	Exception to coasting trade provisions

### **Public Acts Affecting Transportation but not the responsibility of the Minister of Transport**

Air Canada Public Participation Act	Recently amended as a result of airline restructuring
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Bridge-related legislation:  
 Responsibility of Minister of Public Works and Government Services (except Fort-Falls Bridge Authority, Blue Water Bridge Authority, and Buffalo and Fort Erie Public Bridge Company)  
 Boucherville Islands Bridge and Tunnel  
 Campobello-Lubec Bridge  
 Fort-Falls Bridge Authority  
 LaSalle-Caughnawaga Bridge  
 Milltown Bridge  
 Pigeon River Bridge  
 Quebec Bridge and Railway  
 Queenston Bridge  
 Saint John Bridge and Railway Extension Company  
 Ste-Foy-St-Nicolas Bridge  
 Second Narrows Bridge, Burrard Inlet, B.C.  
 Valleyfield, Bridge over St. Lawrence  
 Van Buren Bridge Co. Agreement with H.M.

Canada Grain Act	Carriage of grain
Canadian Transportation Accident Investigation and Safety Board Act	
Canadian Wheat Board Act	Carriage of grain
Competition Act	
Canada Business Corporations Act	Provisions dealing with Special Act railway companies
Dry Docks Subsidies Act	
Expropriation Act	Powers of federal railways to expropriate land
Heritage Railway Stations Protection Act	
Oceans Act	Facilitates marine navigation
<b>Private Acts related to Transportation</b>	
Hundreds of Private or Special Acts creating bridge, railway bridge and tunnel and railway companies	These Acts provide powers of these entities to construct and finance the entity and in some cases call for regulatory intervention regarding tolls and service.