

SPEECH TO THE CANADIAN INDUSTRIAL TRANSPORTATION ASSOCIATION

**Mr. Jean Patenaude, Vice-Chair
Canada Transportation Act Review Panel
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Introduction

I welcome the opportunity to speak to you this morning. However, I fear that the description in the conference program of what I have to say may be somewhat ambitious.

It is in a little less than four months that the Review Panel will be making recommendations to the Minister about the *Canada Transportation Act*. But I cannot today tell you what they are going to be. In the first place, on many items the Panel simply has not yet reached a conclusion. But there's an even larger obstacle: telling you what the panel has determined would be a decidedly bad career move on my part; it would also be against the law.

Our final report will be a public document. Thirty sitting days after receiving it, the Minister is to table it in the House of Commons.

However, also according to the Act, the Minister of Transport gets to read it by himself before anyone else. I am mindful of that particular stricture in the Act and I am also aware that according to your programme Mr. Collenette will be speaking to you today. With all these considerations in mind, I intend to be on my best behaviour this morning.

What I can talk about this morning is not without interest, however—particularly to an audience such as this. As I will describe in more detail later on, the Panel has devoted considerable effort to a cluster of issues surrounding freight transport over the rail system. Just last week, my colleagues and I attended a two-day symposium in Winnipeg devoted exclusively to rail transportation issues.

Before moving on to any detailed discussion of rail transportation issues, however, I believe it would be useful to set the work of the Panel in context, to describe what we have accomplished to date and to provide a bit of information on issues other than rail which the Panel needs to consider.

Context

A panel of persons to review the *Canada Transportation Act* is not an impulse of the government. It is a creation of the Act itself. Section 53 of the Act directs that four years after the Act comes into force, the Minister must appoint one or more persons to assess the Act to determine whether it is providing Canadians with (4 magic words) “an efficient, effective, flexible, and affordable transportation system” and where necessary, recommend amendments to it.

Last July, five persons were appointed to a Panel and given one year to complete the review:

Brian Flemming, educator, public policy advisor, and corporate director from Halifax is Chair.

The other members are Glen Findlay, farmer and former Manitoba Minister of Highways and Transportation; the Honorable Bob Rae who needs no introduction in this city; and Dr. Bill Waters, economist and former director of Transportation Studies at the University of British Columbia.

I serve as Vice-Chair and prior to this assignment was Vice-Chair of the Canadian Transportation Agency.

Accomplished to date

From the outset my colleagues and I were in no doubt as to the magnitude of the task before us. Our terms of reference encompassed all modes of transport essential to the national economy—air, road, rail and marine.

From the beginning we directed the staff to engage two *apparently contradicting* challenges simultaneously.

Firstly: With limited time, if the Panel was to make a significant contribution, we needed to identify, prioritize and bear down on the core issues before us. The danger inherent to reviewing nearly everything is that you can end up understanding very little.

Secondly: At the same time we could not lose sight of the larger picture. This could not be just a narrow public policy exercise to assess outcomes of the last four years of the Act. Canadians expected and deserved critical insight into how their transportation system – with all its disparate parts – would ensure the wealth of the country and enhance the well-being of all its citizens.

These are high-minded notions to be sure, but no less valid because of it.

Eight months into our twelve, I believe the Review is well positioned to meet both of these goals.

- consultations and public meetings have been held in ten provinces and the Territory of Nunavut, with the two remaining territories to be visited later this month;
- the Review panel has received over 150 formal submissions;
- and some 40 research papers have been commissioned by the Panel in order to fill important gaps in our knowledge of how the transportation system works and serves Canadians.

Summary of Issues

Rail is not the only area which the Panel is looking at. A number of other issues are set out in some detail in a paper entitled *Issues under Consideration* released in January. I would like to touch on them briefly and then come back to rail issues in a few moments:

Emerging Industry Structures

- Aviation Industry

The Panel will examine the structure of the domestic airline industry and assess barriers to entry. Various proposals have been made to enhance domestic airline competition such as allowing foreign entry either through cabotage or the easing of restrictions on foreign ownership of domestic carriers. The panel will review these proposals and assess their effect on competition and efficiency in the airline sector.

- other modes

While the Panel members have devoted considerable time and attention to emerging industry structures issues in the air and rail modes we will be looking at similar issues in other modes including ship and truck transport. The focus of our examination here will be whether the existing legislation and policies impede or distort market forces in ways that are harmful and, if so, whether there are practical solutions.

In the rail sector, there are two main issues: in the US, mergers have reduced the number of carriers to a handful while the two class I Canadian railways are increasingly continental in scope and outlook. Here as well, pressure for further market restructuring on both national and continental scales is the subject of speculation in the media.

Sustainability of Capital Investment

Transportation infrastructure is necessarily capital intensive. The Review Panel is concerned to ensure that in the first decades of the 21st century, regulation and policy provide for capital investments sufficient to maintain the effectiveness of Canada's transportation system, as well as to take advantage of new innovations.

The issue arises both in areas where government invests directly – such as roads and urban transit – and where private capital investment prevails. In the latter category we immediately think of railways and airlines as examples but we must also remember the newly commercialized facilities like airports and the currently burgeoning sector of short-line railways.

For investors, owners and users there is ongoing concern that the different modes of transport are treated differently when it comes to incentives, taxation and commercialization.

In respect of newly commercialized transportation infrastructure providers such as airports, ports, the St-Lawrence Seaway and NavCanada, the Panel will be examining whether the rules governing the management and accountability of these entities need to be strengthened.

Sustainable Development and the Environment

Sustainable development and the reduction nationally of green-house gas emissions are part of federal policy. The reduction of green-house gase emissions is an international treaty obligation. It is therefore important that transportation policy be coherent on the issue.

The Panel will consider recommendations about how federal transportation policy can promote the development of sustainable transportation systems and how such a policy fits with provincial/municipal goals in the area of mass transit, road use and national environmental policy.

An associated issue is that of urban mass transit corridors. Municipalities have expressed concern to the panel that sufficient mechanisms should be in place to ensure that rail lines about to be abandoned in urban areas are preserved for use by transit authorities, and that these assets be made available at reasonable cost.

The Panel is analysing the issue with a view to determining whether new arrangements need to be put into place that give local authorities access to abandoned corridors while ensuring current owners are appropriately compensated.

Electronic business and global logistics are changing the way all companies do business. Some estimates are that by 2004 business-to-business e-commerce will account for almost a third of all transactions. No sector is likely to be more affected by this fundamental change in technological environment than transportation, and transportation is the backbone of Canada's status as a global trading nation.

The Panel's recommendations will want to ensure that legislation and policy do not hinder the transportation sector in adopting e-business practices. In addition we are assessing future capital requirements, both private and public.

I would like to stress that while we have interpreted our mandate broadly and have initiated research in a number of areas, we are mindful that some legislative changes have been implemented rather recently and that it may be too soon to provide any kind of assessment. Furthermore, some legislation such as the *Canada Marine Act* have their own review mechanism. Finally, it may be that in some areas identified in the **Issues Under Consideration** document our research will not provide sufficient information to allow us to make a specific recommendation to the Minister. I am raising this caveat only to warn that we may not be in a position to have recommendations on all of the issues identified in the document. In some instances it may be more appropriate to outline our considerations or to identify areas where further research or data collection is required.

Rail Issues

The final large category of issues to be addressed by the Panel that I will speak of today is of course, rail issues. Competitive rail access was specifically the subject of our interim report – released by the Minister in January. As we stated then, the issues are controversial, of long-standing, and historically have proven particularly intractable.

I address this particular cluster of problems in some greater detail than the others for three reasons: This is an audience of shippers – using all the modes of transportation of course – but rail surely looms large for many of you. *As an aside – I should note that one of the tools that the Panel has used to obtain information is a survey of shippers encompassing all modes – I don't have detailed information but I understand that we have had very good response rate.*

Second, because the course of the Panel's work in this area while not leading to a breakthrough, will I believe move the yard stick down the field in ways not seen previously.

And third, because this progress – if it turns out to be progress – illustrates the utility of genuine consultation to the public policy process.

As I noted earlier, last week the Panel attended a two-day symposium on Rail Transportation issues in Winnipeg. The event brought together shippers, resource extractors, railways large and small, farmers, city officials, economists, and associations of all kinds in a packed hotel conference room. Hugh Segal, head of the IRPP acted as chair and moderator.

This was hardly the first time the Panel had heard from the various parties to the Rail debate. But, unlike the earlier consultations we had held, the competing interests were in the same room together for two days. I can assure you that the moderator came in very handy as a referee.

The two day symposium dealt with three rail issues:

- competitive rail access: both in terms of physical access and rate access
- emerging market structures, and
- capital expenditure sustainability

I am happy to report that more than heat was generated during these two days. This exchange and others have served to further clarify the issues on which the Panel is required to report. A number of points have been made by participants on all sides of the issues which could form the basis for the development of a few key principles that could guide any modifications to existing legislation aimed at ensuring a competitive and effective rail transport sector.

While I have not had the opportunity to re-read all the papers and review all the presentations that were made, I would like to underline some of the comments that were made which I found significant based on the notes that I took.

First – While using different language, participants from competing interests seemed to be of one mind on some issues. For example, everyone believe that our Canadian railways are quite efficient, some said among the most efficient in the world. The rail transportation system is in pretty good shape, and works well for most users, most of the time. It seems that Canada has successfully made the transition to a commercially viable, efficient rail system.

Virtually, **all** said that they preferred commercially-based solutions.

On this basis, some said caution should be exercised in imposing broad regulatory remedies across sectors where the problems appear to be few.

Others, mainly shippers believed that the system needed to be tweaked. Oxford Dictionary defines ``tweak` as meaning to make fine adjustments. This accords with what we heard in all our consultations that there is very little basis in any quarter for broad re-regulation.

Second – In light of the success of the previous deregulation policies pursued by the government, the railways suggested that further deregulation should be pursued. They accepted the possible need for specific remedies for shippers without alternative transportation means but suggested that such remedies should not be broad brushed remedies, made available to all shippers regardless of need.

Shippers, for their part were almost unanimous in saying that they are not interested in pursuing costly regulatory remedies if other effective transportation means were available to them.

In summing up the symposium, Barry Prentice, Director of the Transport Institute at the University of Manitoba pointed out that Canada does not have a single rail system but at least four fairly distinct markets or models: Two of these rail markets—grain transportation and producer supply, and the raw materials/extractive industries—have specific problems related mostly to captive shippers that need to be addressed. The other two, intermodal long-haul from the ports, and the southern Ontario-Quebec axis, pose no similar difficulties.

To an outside observer, the insight provided by these comments may seem to point to the need for surgically targeted not broad-based measures.

Third – through the use of the words “emerging industry structures” contained in its mandate, the Panel is charged with considering the related issue of rail mergers and continental integration, and more specifically, whether the existing regulatory regime is adequate to the task. In the Competition Bureau, Canada already has a robust and credible mechanism for evaluating the impact of mergers on competition. In the Canadian Transport Agency, we have a competent and professional regulatory body.

For the Panel a significant test will be whether the rail industry is sufficiently unique to warrant special rules or new mechanisms. Whatever shape our recommendation in this area takes, the merger review process should, to the extent possible, be open and accountable.

Fourth – There are problems—serious, sometimes heart-rending ones— which changes in transportation legislation and regulations may not necessarily solve . The crisis of Prairie farm income is not the only one but is certainly one of the most obvious of these. There is continued debate as to the role grain transportation costs play in reduced farm income, but there is little doubt that grain transportation rates are but one factor.

The Panel members clearly recognized this situation when it stated in its Interim Report...“There is no question that there are major transformations taking place in the Prairie economy, which are resulting in difficult circumstances. It must be recognized, however, that these challenges cannot be addressed through the resolution of transportation issues alone.”

In conclusion

The Winnipeg symposium was something of a milestone for the Panel. We will now retreat to our offices to draft and redraft. The next time you hear from us will probably be in the form of a final report to the Minister. In the meantime I invite you to visit our website where you will find the submissions we've received and updates as to our progress. We will also use our website to post summaries of working papers on areas of research to which we invite comments.

By way of conclusion, I want to stress again the Panel's determination not just to address specific issues of this or that transport sector, but to help articulate a coherent vision that will serve as a reliable guide to policy makers. In order to meet the challenges of a global economy, rapidly evolving technologies and market structures, Canada's transportation system will need to be at once robust, flexible and efficient. Only then can it also be most effective for all Canadians.