

The CTA Review:
Searching for Balance-
Can It Be Done?

By

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I welcome this opportunity to speak to you today.

The Canadian Transportation Research Forum (CTRF) has been the premier gathering place for Canada's transportation professionals for more than 35 years. Over that time - and again this week - the Forum has promoted excellence in research on a wide range of transportation issues. I trust our work of one year will be up to those high standards.

In less than seven weeks, the distinguished Panel which I am honoured to lead, will deliver our report to the Minister of Transport. Soon after that, I expect the report and its recommendations will become public.

While I cannot scoop the Minister by telling you what our detailed recommendations will be. I think it would be useful to give you some of my reflections on the last 10 months of intensive work—of our reflections, actually since there are five of us on the Panel and three of us - a quorum - are here today. I will touch on how we interpreted our mandate and what we heard and learned along the way to June 30, 2001.

First, some background reminders. The appointment of the Panel to review the Canada Transportation Act was neither a governmental nor a ministerial whim.

Parliament itself required our appointment when it mandated a periodic review through Section 53 of the CTA that says, four years after the Act comes into force, the Minister of Transport must appoint people to assess the Act to determine whether it is providing Canadians with “an efficient, effective, flexible, and affordable transportation system”. My co-chairman Jean Patenaude calls these “les quatre mots magiques”, the four magic words.

The current Act came into force in 1996, to ours is the first review of it.

Last July, five persons were appointed to a Panel by the Minister of Transport.

- In addition to myself as Chairman, Jean Patenaude serves as Vice-Chairman. Prior to this assignment he was Vice-Chairman of the Canadian Transportation Agency. Jean is a distinguished transportation lawyer whom many of you know and respect.
- Dr. Glen Findlay once held a number of cabinet positions in the Government of Manitoba, including Transportation for seven years. When he is not working on the Panel, he farms 5000 acres at Shoal Lake in Western Manitoba.
- The Honourable Robert Rae is the former Premier of Ontario, and is currently a partner at the law firm Goodman, Phillips & Vineberg. Most recently, Mr. Rae has been in the news doing a splendid job battling for Canada's softwood lumber producers..
- And finally your Vice President of CTRF, Dr. Bill Waters, distinguished economist and former director of Transportation Studies at the University of British Columbia is someone who hardly needs and introduction to this Forum. Bill has been a tower of intellectual strength and gentle discipline throughout CTAR's existence. Our report will be immensely better because of his presence on the panel.

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—ships, trucks, trains and aircraft.

As well as—wait for it because it's a mouthful—"any other Act of Parliament for which the Minister is responsible that pertains to the economic regulation of a mode of transportation and transportation activities under the legislative authority of Parliament".

We did some checking early on and found that there were no fewer than 50 such pieces of legislation. But our job went even beyond those acts of Parliament.

On top of everything, in the Panel’s terms of reference, Minister Collenette as is his right and responsibility—suggested half a dozen extra issues of special interest to the Government that we were asked to look into. And he asked the Panel to deliver a written report half way through our mandate on one of the most challenging issues of them all, the “Godzilla” of Canadian transportation policy—competitive rail access.

Needless to say, we had our work cut out for us, and unlike a Royal Commission with years to waste, we had only 12 months to do it.

There were many potential pitfalls associated with such an ambitious mandate but I believe we’ve managed to avoid most of them.

A more insidious risk, however—especially working together with so many intelligent and experienced people on such a compelling and vital subject—is that we might study everything but wind up being too superficial. At the beginning of our work, my colleagues and I determined that we could only make a significant and useful contribution if we identified the core challenges and deployed our resources accordingly. I believe we have succeeded in meeting that challenge but you will be the final judge of that.

The competing imperatives were obvious: Transportation is an intensely practical subject with many livelihoods, communities and investments at stake. Narcissistic musings on public policy that failed to come to grips with the tough issues would simply not do.

We decided our report had to be more than a laundry list, or litany list, of outcomes, good and bad, from five years of living with the CTA. Canadians expected, and deserved, critical insights into how their transportation system can and should serve them in the years ahead, and how public policy could best be structured to help make that happen. High minded notions to be sure, but no less valid because of that.

I trust we have found the appropriate balance in our report. Balance is a theme I will return to shortly.

Even before our report is released—indeed, we are still drafting it—I can tell you that one of the accomplishments of which I am most proud is how we consulted with Canadians. These consultations were sustained, intense,

multi-dimensional and highly constructive. Not only did Panel members and staff learn an enormous amount from the process, I trust, so did the participants. This mutual learning experience was especially important in the area of competitive railway access.

We held formal and informal meetings with groups and individuals, often more than once, in every province and territory. In January, we even visited Iqaluit the capital of Nunavut - Canada's newest Territory.

We took every advantage to engage individuals and groups and to encourage dialogue amongst some groups that were not used to civilized discourse with one another.

Interest groups, companies, associations, producers, shippers, consumers of every kind submitted briefs - more than one hundred and seventy of them - Panel Members have read thousands and thousands of papers of material in getting up to speed.

We were not shy about seeking outside help. We engaged two prominent non-partisan policy research bodies—WESTAC of Vancouver and the IRPP of Montreal—to assist us in casting the widest possible net for information and analyses.

The Panel did its own intellectual homework too. We commissioned forty studies in an attempt to fill important gaps in our knowledge about how this country's transportation system functions. By the way, all of this information is already available in one form or another on our web site.

I mentioned earlier the need to identify core issues. We tried to do this early in a public document we released in January entitled - Issues Under Discussion. This document has since proved extremely valuable for focusing our own efforts and those of the many stakeholders with views to convey to us.

I am going to touch on each of these core issues briefly.

1) Emerging Industry Structures

Then Panel weighed thoroughly the implications for competition and efficiency in the air and rail sectors of newly - emerging industry structures - which is economist's jargon for mergers and corporate concentration.

In passenger aviation the focus was on the structure of the domestic airline industry and an assessment of current and future barriers to entry of new participants.

For rail there were two related concerns: looking across an increasingly porous transportation border with the United States, where mergers have reduced the number of rail carriers to a handful. Simultaneously at home, the two class-A Canadian railways have transformed themselves into fully North American operations where half their revenues now come from customers in the lower 48 states.

The Panel's task was to determine whether the existing legislation and policies impede or distort market forces in ways that are harmful and, if so, whether there are practical solutions.

2) Sustainability of Capital Investment

Transportation infrastructure as we all know is hugely expensive, and likely to become more so as technologies of ever greater sophistication are required to stay competitive. The Panel wanted to ensure that, in the first decades of the 21st century, Canada's public policies and regulatory system created an environment conducive to capital formation and investment.

This issues arises both in areas where governments invests directly - such as roads and urban transit - and in areas where private capital investment prevails, railways being in prime example.

3) Sustainable Development and the Environment

While sustainable development and the reduction of green-house gas emissions are part of overall federal policy, transportation policies have not been coherent on the issue.

Here, the Panel weighed options for promoting the development of sustainable transportation systems, and tried to meld those efforts with provinces and cities, especially in the areas of mass transit and roads.

4) Preservation of Urban Rail Corridors

An association concern is the need to preserve urban rights-of-way for future mass transit use. The policy dilemma here was how to make sure urban jurisdictions get access to these assets at reasonable cost, while at the same time compensating current owners appropriately.

5) E-business and Global Logistics

I don't need to tell anybody in this room about how electronic business and global logistics are changing the way all companies do business. No sector is likely to be more affected by this fundamental change on technological environment than transportation, and transportation in turn is a major key to Canada's status as a global trading nation. The equation is startlingly simple.

The Panel's recommendations here will be aimed at ensuring that legislation and policy do not hinder the transportation sector in adopting e-business practices.

6) A National Transportation Vision

The Canada Transportation Act specifically mandates the Panel to examine overall transportation policy. Over the course of our review stakeholders made it abundantly clear that in addition to their specific concerns, they wanted CTAR's recommendations to help bring a new coherence to transportation policies overall. The principles the Panel will articulate in its final report are aimed at meeting this concern, serving we hope as innovative guideposts for federal policy makers and legislators.

While on this subject, I should mention that my colleagues and I were heartened to note that even before they've been delivered, our recommendations are impacting the Government's overall transportation strategy.

Three weeks ago, in Victoria, Transport Minister David Collette launched a process to create a national transportation "blueprint" by Spring 2002. He singled out the Review Panel's consultation process and said our report would be an essential step along the way to creating this new transportation strategy.

7) Competitive Rail Access

It is no secret that the Review Panel has devoted a significant proportion of its time and resources to rail access issues. Our interim report dealt solely with that one question, and it will take up a lot of space in our final report.

I believe our efforts in this area were both necessary and appropriate. Rail access issues are contentious, of long-standing and both technically and economically complex. While I cannot claim the results of our inquiries will constitute a revolutionary breakthrough, my colleagues and I are convinced that there is now a clear convergence emerging among interested parties on what the important issues really are, and where to focus problem-solving efforts.

The appear to us to be four main points of convergence:

First, that the rail transportation system works well for most users most of time. The basic elements of a competitive and efficient rail transportation system are in place.

Second, virtually all stakeholders stated a preference for commercial solutions over regulatory ones.

Third, there are problems - very serious issues of community development and income - that transportation policies cannot solve. The crisis in Prairie

farm income is not the only one but certainly is the most widely known of these ongoing difficulties.

Fourth, that Canada's transportation markets are sufficiently diverse so as to make "one size fits all" regulatory solutions potentially problematic. Any change to legislation and regulation must be structured so as not to solve a problem in one area and create five new ones somewhere else - all at the cost of overall efficiency and effectiveness.

"So, go on, tell us what you recommend" you say seductively. Well, that I cannot do that today. It would be impolitic, impolite and, not incidentally, against the law. The Minister of Transport gets first dibs on reading our report before it becomes public.

But I can tell you some of the essential principles that underlie virtually every element of what is shaping up to be a complex and comprehensive document. In no particular order of importance here they are:

Transparency: Information is essential for both government accountability and corporate competitiveness. Citizens are both taxpayers and consumers. The more they know the better. Hoarders of data must, like the proverbial dogs in the manger be encouraged to disgorge data—but always in a commercially responsible way.

Flexibility and Adaptability: The life cycle of legislation and regulation is measured in years and decades while markets, technologies and people are changing ever more rapidly. The regulatory environment for transportation needs to avoid the straitjackets of one size-fits-all and instant obsolescence. As the speed of change accelerates, conventional solutions may no longer work.

Self-executing Policies and Regulations: Legislation should be designed to encourage parties as much as possible to mediate their own disputes and police their own problems. It should discourage the requirement for costly appeals and regulatory oversight.

Regulated Competition As Last Resort: Competition is best fostered through commercial means. As far as possible, regulation should be the last resort employed in order to solve any market failure.

Most important, there is the search for balance: The need to balance competing “goods” has emerged as a constant theme, in large ways and small:

- There are worthy private transportation interest as well as public ones.
- The efficiencies of large-scale enterprise are self-evident, but so are the dangers of concentration of market power.
- Remote communities surely deserve access but costs too must be weighed.
- Consumers want low prices as low as possible, but operators need revenues sufficient to satisfy shareholders and keep running.
- Grain handling could be done more efficiently but at what cost to communities.

The Panel believes that the role of public policy and legislation is not to decide the correct balance in any of these situations. Rather we must help create commercial, civil, legal, and regulatory environments where these balances can be conceived and reached according to circumstances by those most concerned.

Thank you for giving me this opportunity today to present this truncated of “report card” on the Review Panel’s travels, both intellectual and corporeal. With such a short time to go before we report to the Minister I doubt you’ll hear from any of us on the subject until after the document is made public then. We await your reviews.

In the meantime, CTAR, the five-stringed policy panel, will finish its composition, one that will, I trust, be both melodic and harmonic—in other words, balanced.