# CANADA TRANSPORTATION ACT REVIEW

Metrolinx (GO Transit division); l'Agence Métropolitaine de Transport ("AMT"); and TransLink (through British Columbia Rapid Transit Company Ltd. and West Coast Express Limited), appreciate the opportunity to provide input on the statutory Review of the *Canada Transportation Act*. Particularly, we welcome the opportunity to share our perspective and experience as urban transit authorities.

## BACKGROUND

We are three major Canadian "Urban Transit Authorities", representing commuters in the greater metropolitan areas of Toronto, Montreal and Vancouver. Metrolinx operates the GO Transit commuter service, as well as the soon-to-open UP Express service, throughout the Greater Toronto and Hamilton region. AMT operates commuter trains and plans and coordinates public transportation services across the Greater Montreal region. In addition to Translink's marine, bus and roads and bridges responsibilities, the rail network comprises three Skytrain lines (with a fourth extension coming on stream in 2016) in Metro Vancouver as well as the West Coast Express commuter rail service.

Together, we operate more than 205 million passenger trips per year.

We are each publicly funded transit agencies, established under provincial legislation.

We have local and regional mandates and accountability.

Our operations are a vital part of the economies in our respective regions, and a critical element to ensuring that our cities remain competitive.

We are committed to safe operations and our safety record and investments show this.

We are building for the future, and our infrastructure investments benefit the economy and the broader transportation system.

Increasingly, we are also owners of rail corridors.

Recognizing our evolving role, we are working to more clearly define our rights as urban transit authorities AND rail corridor owners.

We offer input on four main areas for the Review Panel's consideration:

1. Safety and Transparency
2. Fair Contract Terms
3. Access to Enhanced Funding Mechanisms for Rail Infrastructure Improvements
4. Protection of Rail Corridors

## SAFETY AND TRANSPARENCY

### *Transportation of Dangerous Goods*

As of March 31, 2015, Metrolinx, AMT and Translink collectively own more than 50% of the rail corridors over which they operate. Through 'grandfathering' provisions in rail corridor purchase contracts, or through grants of running rights and other contractual arrangements, federally-governed railway companies may operate over the rail corridors and through rail facilities owned by Urban Transit Authorities. These running rights include freight movements that include the transport of dangerous goods over our corridors.

As owners, we are able to enhance infrastructure, increase service and more effectively control the safety of our operations. As owners, we have rights and responsibilities over our own rail corridors, and assert the right to establish the terms and conditions for any party's use of such tracks, subject to our constituting legislation. In order to do this, we need information on federal freight movements and incidents.

Without this information, we are at risk whenever there may be inadequate route planning of hazardous commodities, or insufficient information sharing and collaboration in risk management, product containment or security, or other rail freight safety measures. Our concerns echo municipal concerns with the ongoing movement of dangerous goods on rail corridors spanning (in particular) built-up metropolitan areas, and issues of transparency, information sharing and route planning. While the tragedy of Lac-Mégantic is still fresh in our minds, our memories also include the CPR derailment in suburban Mississauga November 10, 1979 when more than 200,000 people were evacuated. These and other recent incidents buttress the call we make for the legislative and regulatory tools to enable us to ensure the safety of our passengers and property.

Urban Transit Authorities should be notified where a federally governed freight railway:

- has violated federal operating practices and/or requirements in areas over which the Urban Transit Authority operates;
- has failed, on any trackage whose use is shared with an Urban Transit Authority, to comply with the regulations governing the movement of hazardous commodities;
- has suffered on any trackage whose use is shared with an Urban Transit Authority, the release or leakage of any dangerous goods it is carrying; or
- has otherwise departed from safe practices while on any of its trackage whose use is shared with an Urban Transit Authority.

Such notification should also be provided where freight traffic is on routes approaching and conventionally crossing onto our rail corridors and tracks. To effect this, we recommend that federal Transportation Safety Board Regulations (SOR/2014-37, particularly Section 5), should be amended to provide that *in addition to* reporting rail occurrences to the Transportation Safety Board, federal railway companies should be required to simultaneously provide complete disclosure and a copy of the reporting to the TSB forthwith to the Urban Transit Authorities within the region of the occurrence.

The sufficiency and timeliness of disclosure of the nature and quantity of dangerous goods moving through urban areas is also challenged. Insofar as some of these movements now are being made by federal freight railway companies over rail corridors now owned by the Urban Transit Authorities, we submit that risk management and security officials of the Urban Transit Authorities should also be entitled to receive disclosure of what dangerous goods are being moved, when and in what quantity. The federal transportation information provisions first announced by Directive November 20, 2013 should

now be extended to require disclosure to responsible officials of the Urban Transit Authorities in whose region or on whose tracks such goods may move.

**We recommend:**

- **That the federal Transportation Safety Board Regulations (SOR/2014-37, particularly section 5) be amended to provide that, in addition to reporting rail occurrences to the Transportation Safety Board, federal railway companies be required to provide complete disclosure and a copy of the reporting simultaneously to the Urban Transit Authorities within the region of the occurrence.**

- **That risk management and security officials of the Urban Transit Authorities should be entitled to receive disclosure of what dangerous goods are being moved over their respective corridors, when and in what quantity.**

***State of Good Repair on Federally Regulated Track***

We also operate on federally regulated host lines owned by federally regulated freight railway companies. Where and to the extent that an Urban Transit Authority does so, the *Canada Transportation Act* now provides that we are "local railway companies" that are subject to federal regulatory oversight. We have also formed contracts with those host federal freight railway companies to ensure safe management. These agreements require us as Urban Transit Authorities to undertake extensive and onerous responsibilities - and to incur substantial liabilities for and risk to our passenger operations. These include the acquisition of insurance coverage as required by the host railways, which have in turn agreed to maintain their lines in conformity with existing federal laws and prevailing standards. They must offer us a safe railway upon which to operate.

However, we Urban Transit Authorities have no legislative authority over the host railways to inspect the lines over which we must operate, nor do we have any power to audit their adherence to even minimum regulatory safety standards.

And we add: we are liable to host railway demands for indemnification and hold-harmless obligations if an incident causes loss or damage and our transit operation is involved, even where fault can be traced to the host railways' own negligence – or that of a freight rail shipper doing business with the freight railway.

As the mechanisms are in place to ensure the safety of our operations over federally-regulated track, we now seek the tools to give us the timely and documented assurance that federally-regulated track over which we operate is safe and efficient.

Federal regulation of track, under the Transport Canada Rules Respecting Track Safety [TC E-54], already provides for mandatory inspection and, where faulty track is identified, the designation of such faulty segments as "excepted track". The risk of track in disrepair is illustrated by the Rules' existing restrictions on movements over such "excepted track" segments, which include slow orders and restrictions on the carriage of passenger train movements. Such interim safety measures can, in practice, too easily solve the underlying issue, but undermine the urgency to bring the track up to speed for commuter service in a timely manner. Given their safety and operating impacts, slow orders and other restrictions are only short-term "fixes" while the host railway works to bring the track into compliance in the shortest time possible.

Requiring prompt notice and remedial action where trackage is shared with an Urban Transit Authority, as we recommend, is consistent with both ensuring such a 'proactive' maintenance and upgrade of infrastructure, and with safe, timely commuter rail operations on federally regulated track. It fits the National Transportation Policy objectives set out in the *Canada Transportation Act*, as well. An Urban Transit Authority should not be at risk of having its passengers put at risk, or slowed or interrupted to a point where its service is made unreliable; enforceable provisions as we recommend provide some remedy in relation to our operating on federally regulated track of host railway companies – if reliable regulatory oversight and prompt intervention is in place in the federal rail sector.

**We recommend:**

- **That the existing rules be expanded to include an obligation to expeditiously advise any relevant Urban Transit Authority –without delay, not just within 10 days - of any track disrepair that requires remedial action to provide for safe operations over the track.**

- **That host railway companies should be compelled to "immediately ...bring the line of track into compliance" [as per Rule 6.2(a)], and not simply be enabled to just direct speed reductions as an alternative 'fix'.**

**FAIR CONTRACT TERMS**

During the 2005 CTA review process, the Urban Transit Authorities advocated for equal status to freight shippers and access to the Canadian Transportation Agency's dispute resolution process for commercial and service level disputes. Our voices were heard, resulting in the introduction of Section 152.1 of the *Canada Transportation Act* and enhanced rights for "public passenger service providers". Section 152.1 of the *Canada Transportation Act* provides Urban Transit Authorities a remedy in respect of the negotiation of agreements concerning use of a federal railway company's "railway, land, equipment, facilities or services" or concerning the conditions for such use or the rates to pay, when the parties are unable to agree.

In keeping with the National Transportation Policy, Subsection 152.1(1) provides Urban Transit Authorities access to regulatory relief where a positive commercial outcome cannot be achieved satisfactorily through negotiation alone. Subsection 152.1(2) provides both Urban Transit Authorities and railways access to regulatory relief if the implementation of any matter previously decided by the Agency cannot, after reasonable efforts to resolve the matter, be resolved. Where agreed service levels and priorities are not respected, Urban Transit Authorities need to obtain relief immediately, which is not possible given the timelines for proceedings before the Agency. The same problem obtains with resort to private contract arbitration remedies, since they do not ensure any timely relief for commuters facing delays or unpredictable service not matching the intended schedule. In order to prevent cessation or immediate service interruptions of service while pursuing remedies, Urban Transit Authorities need the ability to obtain timely relief.

We ask the Panel to recognize and consider the unique and highly sensitive nature of our service – and the impacts that even minor service interruptions can have on both the economy and the everyday lives of our customers and taxpayers. Enhancing the Agency's power to respond expeditiously to commercial disputes that threaten to disrupt existing commuter service, will enable the Agency and the Urban Transit Authorities to respond to the needs of our passengers – who need to get to work, to daycare, to appointments, and home - and help achieve the urban mobility and service reliability that commuter rail is expected to deliver.

**We recommend:**

- **That the scope of Section 152.1 of the *Canada Transportation Act* be extended to require the Agency to issue an *ex parte* order continuing commuter rail operations to prevent service disruptions pending the determination of any application made pursuant to subsection 152.1."**

The *Canada Transportation Act* also provides a right for persons to complain to the Agency that a federal railway is not complying with its level of service obligations under the Act. To dispel any argument that this remedy is not available to an Urban Transit Authority, we recommend that the *Canada Transportation Act* be amended to specifically provide that the provisions of Sections 113-116 are available to Urban Transit Authorities.

In keeping with the need to ensure uninterrupted service to respond to the needs of our passengers, we also recommend that the Agency be required to act immediately to ensure continuation of service pending any such dispute.

**We recommend:**

- **That the *Canada Transportation Act* be amended (either at s.116 or by addition of the remedy as an adjustment to s.152.1) to make it clear that "any person" entitled to complain about service level breaches includes an Urban Transit Authority.**

- **That, where the complainant is an Urban Transit Authority, Section 152.1 of the *Canada Transportation Act* provide for an immediate, expedited decision-making process – resulting in, at a minimum, interim *ex parte* relief and directions to a host railway company to require respect for any service obligation or undertaking whose apparent violation is affecting the timely and consistent provision of commuter rail services.**

**ENHANCED MECHANISMS FOR FUNDING OF RAIL INFRASTRUCTURE IMPROVEMENTS**

***Access to Funding***

In keeping with National Transportation Policy, we are building efficient, safe and sustainable regional transportation systems in each Canada's largest urban areas, which will advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Recognizing the contribution we are making to the national economy and well-being of all Canadians, Urban Transit Authorities should be declared to have access to and be entitled to receive Transport Canada funding as referred to in the *Canada Transportation Act* and in the *Railway Safety Act* – or any program funding available through federal railway or other infrastructure legislation – in respect of *any* of the conventional rail traffic corridors and tracks, structures, works and facilities an Urban Transit Authority may use, including its own acquired corridors. This is in the interest of fulfilment of the National Transportation Policy and for the promotion of better and faster implementation of rail safety and related infrastructure works throughout the rail corridors used by Urban Transit Authorities. National goals are best achieved by enabling funding access for rail works nationally, and not piece-meal.

**We recommend:**

- **That Urban Transit Authorities have access to and be entitled to receive any program funding available through federal railway or other infrastructure legislation.**

***Assistance in Managing Crossing Disputes***

Further to this, we would like to clarify our ability to use and access the Agency's dispute resolution process to resolve issues with respect to crossings and grade separations. Our projects often involve negotiations with road authorities or utilities. We have each encountered issues with utilities whose pipes have previously been permitted to access and cross railway corridors, or with road authorities who dispute the cost of or terms applicable to the construction of a grade separation. Prolonged disputes, location by location, adversely affect the timeliness and costs of the necessary infrastructure improvements and additions. Currently, no adequate dispute resolution process is in place.

The Agency has already been granted legislative authority to address noise & vibration complaints as they apply to Urban Transit Authorities. Specifically, Section 95.4 of the *Canada Transportation Act* "apply, with any modifications that are necessary, to public passenger service providers". In Metrolinx's case, this provision works in tandem with Section 41 of the *Metrolinx Act*, which confirms the Agency's authority. This model could be used again, in relation to crossing disputes.

In a similar way to the noise & vibration provisions, we recommend that the Agency be empowered to assist Urban Transit Authorities and, if required, adjudicate disputes at the request of Urban Transit Authorities regarding the allocation of costs and responsibilities relating to the construction of grade separations or the relocation of utilities. Providing Urban Transit Authorities access to a similar regime for crossing agreements and disputes would have multiple benefits to both the Urban Transit Authorities and the broader community:

- access for all parties to a clear and established regime, applying proven principles developed and tested over many years;
- clarity and consistency for all crossings, grade separations and utility relocations;
- access to an expert adjudicative body with specialized knowledge; and
- timely resolution of disputes.

More specifically, in relation to the federal Standards Respecting Pipeline Crossings under Railways and comparable provision for other forms of utility crossings, we recommend the addition or restoration of provisions in Agency directives or federal regulations which shall ensure that utility owners should be responsible for the burden of costs for any relocation required within any railway right of way property by the construction or implementation of any railway works by or for an Urban Transit Authority. These Standards are silent on the burden of a pipe owner to either share in or absorb the cost of utility relocations required as a result of construction, and they do not include the general non-interference or cost-of-construction provisions of earlier regulations, and of many early agreements with utilities. Clarity of priorities and of cost allocation should be restored.

**We recommend:**

- **That the Agency be empowered to assist Urban Transit Authorities and, if required, adjudicate disputes regarding the allocation of costs and responsibilities relating to the construction of grade separations or the relocation of utilities.**

- **The addition or restoration of provisions in Agency directives or federal regulations which shall ensure that the pipe owner/utility should be responsible for the burden of costs for any relocation of its pipe required within any railway right of way property by the construction or implementation of any railway works by or for an Urban Transit Authority.**

**PROTECTION OF RAILWAY CORRIDORS**

The Urban Transit Authorities also echo and endorse the Canadian Urban Transit Association CUTA's December 2014 submission as to protection of railway corridors, with continued priority for Urban Transit Authorities' rights of acquisition to preserve and protect strategic transportation networks for future development, at a fair valuation as a transportation corridor. Building on the principles of National Transportation Policy, the *Canada Transportation Act* could more expansively protect Canada's transportation network by defining a clear and fair process for the valuation of railway corridor lands. Furthermore, the amount paid by Urban Transit Authorities for railway lands must fairly reflect the fact that they were, in the first place, gifted to the railways by the Government of Canada. A fair valuation must adjust for this, and reflect only the investments made in the lands by the railway itself.

**We therefore reiterate CUTA's recommendation:**

- **That "the *Canada Transportation Act* recognize the strategic value of urban rail corridor investments to support growth, and require the sale of railway corridors to be established on their fair market value as transportation corridors. The appropriate prices for acquiring the lines should either be calculated on the property tax level that was paid in previous years by the freight rail operators, or calculated on the property value assessed by the transportation usage level. In any case, the lesser value of these two options should determine the fair market value of the railway corridor."**

- **And that, if railway corridors are on the discontinuance list, and if those railway corridors were previously gifted to the railway by any level of government, such lands must be provided back to the government – being the Urban Transit Authorities – for only an amount equal to the fair value of any investment made by the railway.**

**CONCLUSION**

Metrolinx, AMT and TransLink thank the Review Panel for their consideration of these submissions, and urge the adoption of the recommendations made herein.

Respectfully submitted,

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