

**Review of *Railway Safety Act* Authorities
and
Oversight Provisions**

Prepared for the Railway Association of Canada

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I – Introduction

The *Railway Safety Act* (the “RSA”) came into force on January 1, 1989. The main objectives of the Act at the time were to i) transfer responsibility for railway safety matters from the Canadian Transport Commission to the Minister of Transport, ii) streamline the regulation-making and approval process, iii) provide greater freedom for railway companies to manage their operations efficiently and safely and iv) generally advance rail safety in Canada. The RSA effected a move away from the previous detailed prescriptive regulation approach to one that recognized railway companies’ responsibility for the safety of their operations.

The RSA was the subject of two statutory reviews since its enactment.

The first review’s report entitled *On Track*¹ was issued in December 1994. The three-member review committee (“the panel”) made a number of recommendations designed to further improve railway safety but it confirmed that the objectives and principles of the RSA remained valid. The panel concluded “that Railways in Canada are safe in comparison with competing modes of transportation and railways of other countries.” One of the panel’s main recommendations involved the establishment of a new framework for regulating safety, namely, the requirement for railway companies to propose performance standards and comprehensive safety plans combined with a new role for government, that of auditing such safety plans and programs. This recommendation was the precursor to the Safety Management System requirements that were incorporated in the RSA in 1999.

The second review’s report entitled *Stronger Ties*² was issued in November 2007. This panel also confirmed that the RSA approach and its underlying principles are fundamentally sound. A number of areas for improvement were identified but the panel specifically indicated its support for the SMS approach to manage railway safety. More generally, the panel expressed the view that the “safety record of Canada’s major railways is among the best in North America”³. As with the previous review report, most of the panel’s recommendations eventually made their way into the RSA.

¹ *On Track: The Future of Railway Safety in Canada*, December 1994, ISBN 0-662-21713-6.

² *Stronger Ties: A Shared Commitment to Railway Safety*, November 2007, http://publications.gc.ca/collections/collection_2010/tc/T33-16-2008-eng.pdf.

³ *Ibid*, p. 7.

Even prior to the tragic accident of July 2013 in Lac-Mégantic, some commentators had suggested that the approach fostered by the RSA is basically one where railway companies self-regulate and that the Regulator⁴ is left with insufficient oversight authority over rail safety matters. The Lac-Mégantic accident brought a renewed focus on railway safety in general and on the adequacy of the RSA and SMS approaches in particular.

The purpose of this paper is to review the regulatory authorities and the oversight and enforcement powers available to the Regulator in the RSA in light of some of the comments formulated. The paper also discusses areas where the Regulator's jurisdiction should be further exercised.

II – Review of RSA Regulatory Authorities and Oversight Provisions

The RSA addresses regulation of railway safety in four parts dealing respectively with i) the construction of the railway; ii) its operation and maintenance; iii) matters outside of the railway that could affect the safety of the railway (i.e. building adjacent to railway); and iv) the enforcement of the RSA. This section reviews the authorities and oversight and enforcement powers available to the Regulator. Matters outside of the railway affecting the safety of the railway are discussed in section III where areas are identified for further action.

A. Regulatory and Administrative Oversight:

The sections of the RSA that are most likely to feed the perception of industry self-regulation are Parts I and II dealing respectively with the engineering standards governing the construction of railways and with the rules regulating the operation and maintenance of railway works and equipment. These two Parts provide the ability for the railway industry to write the standards and the rules in question. A detailed review of the regulatory framework in these two Parts is therefore necessary in order to fully understand the controls and accountability measures provided for in the RSA in the establishment of such standards and rules.

Regulations, rules and standards:

⁴ The word Regulator is used in a generic sense and includes the Minister, the Rail Safety Inspector and the Governor in Council as the case may be.

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The RSA establishes a hierarchy of instruments available to the Regulator for the establishment of engineering standards and rules for the operation and maintenance of railway lines. The instruments, hierarchy and process are similar for both the construction standards and rules for the operations and maintenance of railways.

As a first level in this hierarchy, the Governor in Council (GiC) can make regulations establishing the engineering standards to be applied in the construction of railway works. In the same manner, the GiC can make regulations on essentially any matter relating to the operation and maintenance of the railway and railway equipment and the training, licensing and work/rest periods of railway persons in positions critical to safe railway operations.

Regulation-making is a formal delegated legislative process. The process is governed by the *Statutory Instruments Act* and the Cabinet Directive on Regulatory Management. As with any legislative process, regulation-making is a long process requiring extensive and formal consultations, an assessment of the impact of the regulatory proposal and an analysis of the benefits and cost of the proposal. The draft regulations must then be published in the Canada Gazette, Part I, to allow for a public comment period and for those comments to be addressed. The standard comment period is 30 days but can be longer depending on a number of considerations. A 16 to 24 month period is not unusual for the establishment of a regulation. More complicated matters can even exceed this time period.

Rather than proceeding by way of regulations, the Minister may require railway companies to prepare and file engineering standards or rules on any of the matters on which a regulation could be made⁵. In establishing a rule, the railway company is required to consult with relevant associations or organizations designated by the Minister (e.g. labour) and to include a copy of any objection that may be made by such organization on the grounds of safety. In considering the proposed rule, the Minister is required to have regard to the views of such organizations.

If satisfied that the standards or rules filed by the railway company are conducive to safe railway operations, the Minister may approve the rules as filed or impose terms and conditions. If not satisfied, the Minister may refuse to approve the rules and specify the reasons. In such a case, the railway company may file new rules that address the Minister's reason for refusal.

⁵ This does not include crossing matters; these are covered in a separate section and discussed on page 5.

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In the event the railway company refuses to file engineering standards or rules or where the Minister has refused to approve the standards or rules filed by a company, the Minister may choose to establish the standards or rules.

Finally, railway companies may file any engineering standards or rules on their own initiatives for approval by the Minister.

Where reasonable and practicable, the Minister may require that the rules be uniform across the industry. As a practical matter, engineering standards and rules are often developed on an Industry-wide basis, using the best expertise available from many railway companies. In such cases, the Railway Association of Canada submits the proposed standard or rule to the Minister on behalf of its members. In the development of such rules and standards, the industry will consult regularly with the Regulator to ensure that they are aligned with the Regulator's expectations.⁶

The rule-making process is a more nimble process; as a result, rules can be established much faster than regulations. It allows the Regulator and the industry to better respond to developing situations.⁷ Where rules have been developed by a railway company and approved by the Minister, they have the same effect as a regulation and are binding on a railway company.⁸

Consistent with the established hierarchy, regulations override rules dealing with the same subject matter to the extent of the inconsistency.

Not all areas of railway operations are considered appropriate for industry-initiated standards or rules. Matters related to the construction and alteration of road crossings have been reserved for government regulations. This is understandably so; contrary to railway construction and operations which mainly involves the railway company and its employees, road-rail crossings involves two parties, the railway and the road authority⁹, hence the need for the more formal regulatory process.

The RSA is clear; while rules may be written by the railway industry, it is the Minister that has ultimate authority over railway safety matter. If not satisfied that the proposed rules

⁶ A number of industry-wide rules and standards have been established in this manner, e.g. the Canadian Rail Operating Rules, the Track Safety Rules, the Grade Crossing Standards, etc.

⁷ As example, following the Lac-Mégantic accident, the Minister issued an Emergency Directive to immediately protect safety accompanied by an order under section 19 RSA requiring railway companies to formulate rules dealing with key trains. The RSA rule-making process allowed for quick industry response followed by Ministerial approval.

⁸ Numerous rules have been developed by the rail industry and approved by the Minister in accordance with this process including the *Canadian Railway Operating Rules*, the *Locomotive Safety and Inspection Rules*, the *Freight Car Safety Rules*, etc.

⁹ It could also include a private landowner in the case of a private crossing.

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are conducive to safe railway operations, the Minister can refuse approval, return the draft for amendments or require specific matters to be satisfactorily addressed. In the absence of cooperation by the industry or by a railway company in particular, the Minister has the option of establishing the rule on his own motion or of proceeding by way of regulation. Finally, once established, rules have the force of law and are subject to the enforcement authorities specified in Part IV. The detailed approval process and control afforded to the Minister should dispel any suggestion that the development of rules by the rail industry constitutes self-regulation. Such a suggestion is clearly misguided¹⁰ and indeed inaccurate.

The Regulator retains control over industry-developed rules; as such, industry-developed rules cannot reasonably be termed “self-regulation”.

The advantages of the RSA’s innovative approach to rule-making were noted by the previous statutory reviews. The 1994 RSA review panel observed that “... the major railway companies are the main repository of rail safety expertise. [...] Most often, rail-related design standards are developed by railway associations or railway engineering associations. Typically, government regulators approve, rather than develop such standards.”¹¹ Consistent with this view, most rail construction standards in effect have been developed and filed by the rail industry and approved by the Minister.

In respect of the rule-making regime that was introduced by the RSA, the 1994 panel stated: “The *RS Act* includes an innovative scheme for making rules, which have the effect of law. [...] This *RS Act* innovation allows for a faster response to changing circumstances and would appear to be an efficient replacement for regulations.”¹²

In the same manner, the 2007 RSA review panel concluded that “... the rule-making provisions of the Act are fundamentally sound and should be retained.”¹³

The comments made by both the 1999 and the 2007 RSA review panels are consistent with the rationale for the regulatory framework established by the RSA – an effective,

¹⁰ The 2007 RSA Review panel, specifically rejected any notion that industry initiated rules under the RSA could amount to “self-regulation”. The panel rather considered the RSA approach as a form of collaboration. Cf. *Stronger Ties, op.cit.*, p.50

¹¹ *On Track, op.cit.*, p. 43.

¹² *Ibid*, p. 44.

¹³ *Stronger Ties, op.cit.* p.50.

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flexible and efficient process for rail safety regulation. Industry established rules make the best use of railway expertise and experience. Consultation with labour during the development of the rules leads to greater clarity and understanding by those who will actually be working with and implementing the rules.

Other oversight authorities:

In addition to the regulatory and oversight authorities discussed above, the RSA provides additional oversight authorities in relation to rail construction standards and railway operating rules. Four are discussed below:

Notice of Railway Works:

The Minister has authority to approve or reject the proposed construction of certain kinds of railway works even if such works are in accordance with previously approved engineering standards. Railway companies are required to give a 60-day public notice of certain kinds of work including the construction of new railway lines, construction or alteration of certain bridges and tunnels in a municipality, road crossings or railway line works that could affect drainage on adjoining lands.

Persons to whom the notice is given may file an objection with the Minister if they consider that the proposed railway work could prejudice their safety or the safety of the public. In such a case, the railway company may not proceed with the proposed work without the approval of the Minister who may decide to approve or not approve the construction of the works or to approve it subject to certain conditions.

Safety Management Systems (SMS):

SMS requirements were first introduced in the RSA in 1999.

SMS is defined as a “formal framework for integrating safety into day-to-day railway operations”.¹⁴ SMS is designed to support and supplement the existing legislative framework. By establishing processes to identify risks, potential safety hazards are addressed before they escalate into a problem. Annual reports and periodic internal audits to evaluate the effectiveness of its SMS promote continuous improvement to the program. While the SMS requires the designation of an executive accountable for safety management within the company, it is the assignment of responsibility and accountability

¹⁴ RSA section 4.

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for safety at all levels of the organization that fosters the development of a corporate culture of safety.

Aside from its inherent benefit to rail safety, SMS is also another source of extensive oversight authority of railway safety for the Regulator.

During the development of the first *Railway Safety Management System Regulations* in 2000, railway companies and railway unions both expressed support for the regulations. Commenting on one submission received at the time that questioned the ability of the rail industry to self-regulate, Transport Canada stated that it did not “see industry becoming self-regulated through the adoption of this Regulation – indeed, this requirement does not replace any existing rail safety regulations, rules or standards.”¹⁵

The RSA Review 2007 and the 2008 report of the Standing Committee on Transport, Infrastructure and Communities (SCOTIC) both made a number of recommendations to further improve the implementation of SMS in the rail industry. As a result, the RSA was further amended in 2012 and the SMS Regulations underwent a major revision in 2015. The revised SMS regulations provide not only more detail and clarity but also enhanced compliance and enforceability measures. They are now also applicable to local railways while operating on federally regulated railways.

Of particular relevance to the review of the regulatory oversight authority is the requirement of the SMS Regulations for a railway company to provide to the Regulator, upon request, a copy of

- all the processes it is required to develop to implement its SMS including processes for accountability, safety policy, ensuring compliance with rules and regulations, risk assessments, remedial actions, etc.;
- the report it is required to prepare annually on the results of its continuous monitoring of the implementation of its SMS;
- the reports of the audits it is required to perform every three years to evaluate the extent to which its processes and methods are effective in improving the level of safety of its railway operations.

¹⁵ Regulatory Impact Analysis Statement, Canada Gazette Part II, Vol. 135, No. 3.

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This detailed reporting requirement provides the Regulator with the necessary information to develop and support its own auditing and inspection program.

SMS cannot reasonably be termed “self-regulation; the requirement for each railway to have a functioning and effective SMS is, itself, a regulation formulated and imposed by the Regulator.

Railway Operating Certificates (ROC):

ROC requirements were introduced in the RSA in 2012. The Minister may issue an ROC authorizing a railway company to commence operation if the Minister is satisfied that the company meets all of the prescribed conditions. These conditions are set out in the *Railway Operating Certificate Regulations* and includes, for example, an attestation from the railway company’s CEO that the company has the human and financial resources to operate the railway and will have an SMS consistent with the SMS Regulations.

In issuing an ROC, the Minister may impose terms and conditions. The Minister may also suspend or cancel a company’s ROC if the company ceases to meet the conditions or contravenes a provision of the RSA or of any rule, regulation or other prescribed requirement.

Authority over Local Railway Companies:

The RSA was amended in 2012 to directly extend its application to local railway companies (non-federally regulated railway entities) while they operate on federally regulated railways. As a result, these entities are now required to obtain a RIC and to file rules and comply with federal regulations. Direct jurisdiction over local railways enhances the Regulator’s authority and oversight powers over these entities. The amendment dispels any doubt as to the application of federal rules and regulations to such entities while operating on federal railways. Prior to the amendment, the Regulator relied on federal railway companies to ensure that local railways complied with federal rules and obligations while on their railway.

B. Enforcement Authorities:

Aside from the regulatory and oversight authorities discussed above in respect of the construction, operation and maintenance of railway works and equipment, the RSA provides numerous levels of enforcement authorities to ensure compliance with established requirements.

Railway Safety Inspectors:

The first level of enforcement authority is with Railway Safety Inspectors (RSI) appointed by the Minister. The RSI has extensive powers, including the power to enter any place where railway operations or maintenance activities are carried out, to require the production of documents, to question people and to seize property that can provide evidence of an offence committed under the RSA.

An RSI may issue a notice to a railway company if he is of the opinion that a situation exists that constitutes a threat to the safety of railway operations or the safety of persons or property. If the RSI considers the threat to be immediate, he may issue an order to the company to take specified measures to mitigate the threat including requiring the railway company not to use railway works or equipment or to use them subject to specified conditions. The order remains in effect until revoked by the RSI or by the Minister as described below.

The RSI order may be appealed to the Transportation Appeal Tribunal of Canada (TATC) but such appeal does not stay the order. The TATC may confirm the order or refer the matter to the Minister – the TATC may not revoke or amend the RSI order. Only the Minister may do so. The Minister's order may be made an order of the Court.

RSI notices and orders are company- and case-specific.

Ministerial Orders:

Sections 32 and 32.01 RSA provide the Minister with extensive enforcement authority in respect of railway works and railway operations. The Minister may issue orders requiring a railway company to remove or modify a railway work if he is of the opinion that the work has not been constructed or maintained in accordance with the requirements of the RSA. In the same manner, the Minister may order a railway company to take corrective measures if he considers that the company's SMS is deficient or that its railway operations pose a threat to the safety of persons or the environment.

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These ministerial orders may be appealed to the TATC but the TATC may only confirm the order or refer it back to the Minister for reconsideration. Ministerial orders may be made an order of a Court and enforced as such.

As with RSI notices and orders, ministerial orders, by their scope, tend to be company and case-specific.

Ministerial Emergency Directives:

If the Minister considers that there is an immediate threat to safe railway operations, he may issue an emergency directive to stop using specified railway works or equipment or maintenance or operating practice. Such a directive may be issued even if the railway work or equipment or the maintenance or operating practice in question are in accordance with existing rules and regulations.

The Minister's authority under this section is extremely broad as emergency directives prevail over GiC regulations; the directive can remain in effect for a period of six months and can be renewed.

Like ministerial orders, emergency directives can be made an order of the Court and enforced as such.

Unlike RSI notices and orders and ministerial orders, emergency directives would typically be of broader scope and application.

Prosecution and Administrative Monetary Penalty:

The RSA provides for two additional means of enforcement for contraventions of the act: the traditional prosecution through Courts and the more recent administrative monetary penalties (AMPS) regime introduced in the 2012 amendments to the RSA.¹⁶ While not the primary enforcement tool¹⁷, AMPS provide the Regulator with an additional and more efficient enforcement tool especially in cases of persistent non-compliance situations. In the words of the 2007 RSA Panel "An administrative monetary penalty scheme is a more efficient and less costly means of enforcing legislative requirement than prosecution, since it uses administrative, rather than judicial processes."¹⁸

¹⁶ The *Railway Safety Administrative Monetary Penalties Regulations* came into effect in 2015.

¹⁷ The main enforcement tool remains the RSI Notices and Orders as confirmed by its frequency of use.

¹⁸ *Stronger Ties, op.cit.* p.60.

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Use of enforcement tools:

The RSI notices and orders, being the first level of enforcement, are the most commonly used means of enforcement as would be expected. According to Transport Canada's website, 19 Notices and Orders were issued in 2014, 16 in 2015 and 26 in 2016.

By their nature, ministerial orders and emergency directives, while important tools, are used on a more exceptional basis. Based on Transport Canada's website, only one ministerial order issued under section 32.01 RSA remains in force. It was issued in 2016 to deal with a problem with reset safety controls on certain locomotives identified by the Transportation Safety Board in the context of an accident investigation. All other ministerial orders or directives have either been replaced by rules filed as previously described or have lapsed when the action required to be taken was implemented by the railway company. For example, the emergency directive dealing with key trains issued under section 33 RSA, was accompanied by an order under section 19 RSA requiring the rail industry to develop rules to address the matter. The rules developed by the railway industry, once approved by the Minister, replaced the directive. The same process applied with the emergency directive that dealt with the matter of train securement.

According to Transport Canada's website, 11 AMPS were issued in 2016 and 6 to date in 2017. There were eight prosecutions concluded from 1997 to 2010. It is not clear from TC's website whether these numbers only include the prosecutions that were successfully completed or all prosecutions undertaken. In any event, the numbers suggest that the administrative process by way of AMPS is being favoured over the judicial prosecution process as was intended.

As highlighted in the above review, the RSA establishes a robust and flexible regulatory framework for rail safety. The regulatory and oversight authorities and enforcement powers available to the Regulator under the RSA are broad, varied and extensive. Based on the need at hand, the Regulator can proceed by way of regulations, rules, orders and directives; these tools are available in respect of all types of construction, maintenance and operation of railway works and equipment. The current RSA provides the Regulator with tools that are flexible and adaptable to the various and evolving situations in the rail industry. The numerous and complex issues raised by the Lac-Mégantic accident tested the Regulator's authority to take action. While there may be questions in respect of the oversight activities prior to the accident, there have been no suggestions that the Regulator lacked legal authority to take the necessary action. Indeed, all action taken by the Regulator were anchored in existing RSA and dangerous goods legislative authorities.

III – Areas Identified for Action

There are two areas identified by past RSA reviews where further action remains to be taken: grade crossings and proximity issues arising from residential and commercial development in proximity to railway operations. Both are discussed below.

Grade Crossings:

The 1999 RSA review panel considered that the Regulator should place a higher priority on prevention and education activities in respect of grade crossings and that greater resources be directed to such programs. The panel also recommended that the Regulator establish safety standards for all types of crossings.¹⁹

In their 2007 RSA Report, the panel acknowledged that new crossings must sometimes be constructed, but strongly expressed the view that ‘efforts should be made to limit their numbers, and that grade separation, such as bridges and underpasses, should be considered as an alternative.’²⁰ According to the panel, the best way to reduce the number of accidents at grade crossings was to reduce the number of crossings. They recommended that the Regulator develop a program to identify where crossings can be closed, limit the number of new crossings and improve safety at existing crossings. Finally, the panel recommended an increase in government funding for grade crossing improvements.

According to an internal evaluation of the Grade Crossing Closure Program, fully 46% of the funds allocated for crossing closures during the period from 2003 to 2013 lapsed.²¹ Despite a previous recommendation that Transport Canada play a more active role in the promotion of the program, the evaluation noted that active outreach has not been central to the closure program.

Aside from limited outreach activities by Transport Canada, the level of the grant may be a contributing factor in the lack of uptake by beneficiaries of the crossing. The current Rail Safety Improvement Program provides maximum grants in the amount of \$25,000 for the closure of a public crossing and \$6,000 for the closure of a private crossing. The 2007 RSA Report referred to a TDC study on safety at private crossings that noted that “existing crossing closure programs seem to offer little incentive for private crossing owners to

¹⁹ The *Grade Crossing Regulations* and the *Grade Crossing Standards* applicable to public and private crossings were issued in 2014.

²⁰ *Stronger Ties, op.cit.* p. 113.

²¹ Evaluation of the Grade Crossing Closure Program, Transport Canada, Evaluation and Advisory Services, June 2013, www.tc.gc.ca/media/documents/corporate-services/Grade_Crossing_Closure_Program_Report_eng.pdf

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close their crossings, and almost no flexibility for multiple stakeholders to work together to develop alternative access strategies.”²²

Finally, the amount of the grant does not appear to vary with the risk level associated with the specific crossing contemplated for closure. Increased program outreach activities by Transport Canada together with an increase in the amount of the grant available for closure of higher risk crossings would likely result in the closing not only of more crossings but the closing of higher risk crossings.

As pointed out by the 2007 RSA Review, the Agency, as an economic regulator, will determine the responsibilities in respect of the cost of constructing or maintaining a crossing but will not make determinations in respect of the suitability of the crossings. Such determinations are within Transport Canada’s domain. Essentially, proposed crossings meeting the requirements of the *Grade Crossing Regulations* and the *Grade Crossing Standards* will be considered suitable and will generally be granted.

This approach, however, does not address the more fundamental question of whether there are alternatives to the proposed crossing. There is nothing in the current legislation, either in the *Canada Transportation Act* or in the RSA, directing or suggesting that the number of new grade crossings should be minimized. Unless such direction is provided in the legislation, the Regulator will continue to grant requests for grade crossings without a proper analysis of available alternatives. Such an approach appears inconsistent with Canadian and international evidence that grade crossings are, by their nature, inherently dangerous.²³

Proximity issues:

As discussed above under the section *Notice of Railway Works*, the RSA requires railway companies to give notice of proposed railway works to adjacent landowners and municipalities prior to proceeding with the work. The reverse is not true – adjacent landowners and municipalities are not required by the RSA to give notice to railway companies of proposed development adjacent to railway lines.

Some provincial and local authorities do require such notice and provide an opportunity for rail operators to identify proximity issues with proposed developments and for the parties to address the matter before problems arise. The notice requirement and the

²² TDC study quoted in *Stronger Ties*, p. 111.

²³ Evaluation of the Grade Crossing Closure Program, Transport Canada, Evaluation and Advisory Services, June 2013, www.tc.gc.ca/media/documents/corporate-services/Grade_Crossing_Closure_Program_Report_eng.pdf

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process to deal with potential incompatible land uses, however, vary greatly from one jurisdiction to the other.

The RAC and the Federation of Canadian Municipalities have developed proximity guidelines and proposed mitigation measures, including setback distances for construction next to railway lines, with a view to address proximity issues. While this is a positive development, these guidelines remain voluntary and depend on being adopted and implemented by each local authority.

The need to incorporate rail transportation issues in land use planning was recognized by the 2007 RSA Review. The panel recommended that the RSA be “amended to require the developer and municipalities to engage in a process of consultation with railway companies prior to any decision respecting land use that may affect railway safety”.²⁴ No action was taken on this recommendation.

Constitutional jurisdiction over land use in respect of lands adjacent to railway lines is generally advanced as the reason for not proceeding with such an amendment to the RSA. Yet, such jurisdiction has already been exercised by the federal government.

Part III of the RSA deals with non-railway operations affecting railway safety including activities on lands adjoining the land on which a line of railway is situated. The RSA has provided the GiC with authority to make regulations controlling or prohibiting the construction of buildings or structures or any activity on lands adjoining railway lands that could constitute a threat to safe railway operations.

In the same manner, the *Mining Near Lines of Railways Regulations* specifically deal with land use adjacent to rail lines. They prohibit the construction or operation of ‘non-railway works’ below or on land adjoining a line of railway without first providing at least 60 days’ notice to the railway company. The expression ‘non-railway works’ is defined as a ‘mine or an oil or gas well’ but the regulations could be redefined to include other activities where notice should be given to the railway company.

Recognizing the sensitivity associated with regulating non-railway land use, the ability to make such regulations could be conditioned in a manner similar to the zoning authority provided in the *Aeronautics Act*.²⁵ For example, a regulation requiring third party notice

²⁴ *Stronger Ties*, *op.cit.* p. 107.

²⁵ Subsection 5.4 (3) of the *Aeronautics Act* provides as follows:

“The Governor in Council shall not make a zoning regulation under paragraph (2)(a) unless

(a) the Minister, after making a reasonable attempt to do so, has been unable to reach an agreement with the government of the province in which the lands to which

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of development on land adjacent to railway lines could only proceed if there has first been an attempt to reach agreement with the province on the matter. Such regulations would not apply in respect of jurisdictions that already have such a notice requirement and a process to deal with potential incompatible land uses including minimum setback distances for construction next to railway lines.

Summary:

The RSA provides a robust regulatory framework for rail safety. It provides the Regulator with broad and extensive regulatory and oversight authority and enforcement powers. The RSA includes processes and tools for establishing engineering standards and rules for railway operations and maintenance that are innovative and flexible and make the best use of available expertise. At the same time, the controls and approval requirements in the RSA ensure that the Minister has ultimate authority over railway safety matters. Recent experience has shown that the Regulator has ample and sufficient authority to take swift and all necessary action to deal with arising safety issues.

There remains two areas where further action should be taken consistent with previous RSA review recommendations.

Further efforts should be deployed to reduce the number of existing crossings and to limit the establishment of new crossings.

In the same manner as railways are required to provide notice to municipalities and adjacent landowners prior to constructing or expanding railway operations, adjacent landowners and municipalities should be required to provide notice to railway companies of proposed commercial or residential developments next to railway lines. This would allow for potential land use incompatibilities to be addressed or mitigated prior to problems arising.

the zoning regulation applies are situated providing for the use or development of the lands in a manner that is compatible with the operation of an airport; or

- (b) in the opinion of the Minister, it is necessary to immediately prevent the use or development of the lands to which the zoning regulation applies in a manner that is incompatible with the operation of an airport.