

October 27, 2015

Canada Transportation Act Review Secretariat  
350 Albert Street, Suite 330  
Ottawa, ON K1A 0N5

Dear Sirs/Madam:

On behalf of the City of Vancouver, enclosed is the City's Submission to the *Canada Transportation Act Review*.

Yours truly,



Sadhu A. Johnston, LEED AP  
Acting City Manager  
453 W 12<sup>th</sup> Avenue, Vancouver, BC V5Y 1V4  
Tel: 604.873.7627  
Fax: 604.873.7641  
[Sadhu.johnston@vancouver.ca](mailto:Sadhu.johnston@vancouver.ca)

Enclosure



**Submission to the *Canada Transportation Act* Review**

**CITY OF VANCOUVER**

**October 22, 2015**



**INDEX**

**I. Vancouver..... 2**

**II. Transportation policy and railways ..... 3**

**III. Harmonizing the interests of federal railways and Canadian municipalities ..... 4**

**IV. Encouraging the efficient use of urban railway corridors for transportation purposes ..... 6**

**V. Prioritizing the safety of urban residents with respect to ongoing rail operations..... 12**

**VI. Ensuring that the Canadian Transportation Agency has the power to achieve these goals efficiently and in keeping with the National Transportation Policy..... 14**

The City of Vancouver appreciates the opportunity to provide this submission as part of the federal *Canada Transportation Act* (“CTA”) Review.

Transportation is about the effective movement of goods, services and people from one location to another. As such, it is an integral part of economic growth and sustainability. Cities are fundamentally shaped and connected to transportation networks because they are concentrated centers of population. In fact, roughly 80% of Canadians live in urban areas,<sup>1</sup> and almost two-thirds live in the 27 largest cities. Naturally, these dense urban environments facilitate and generate high flows of goods, services and people. As a result, the major airports are attached to the major municipalities. So too are the largest ports located in Canada’s coastal cities. Railways and the national highway network run through municipalities and link them together. Cities are where most of Canada’s GDP is created, and that includes much of what is directly created through the federally regulated transportation sector.

### ***I. Vancouver***

Vancouver is, perhaps more than any other city in Canada, a model example of a city shaped by the transportation sector. It is located on one of the largest rivers in Canada, is situated on the border with the U.S., and is Canada’s hub for Asia-Pacific trade and travel. Vancouver is not only a point along the Trans Canada Highway but also provides critical connection to Vancouver Island through a robust ferry network, is a terminal point for numerous national and international rail lines, is home to several international deep water ports and is supported by an international airport.

Vancouver has a current estimated population of approximately 622,000, and the population of Metro Vancouver more broadly is approximately 2,500,000. Bordered on three sides by water, in a region hemmed in by ocean and mountains and at the heart of a network of growing municipalities struggling with similar geographic constraints, Vancouver becomes more and more dense as its population continues to grow. Over the next 25 years, it is expected that Vancouver’s population will grow by roughly 150,000, and Metro Vancouver’s by much more.

---

<sup>1</sup> Statistics Canada: <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015004-eng.htm>.

As a result, Vancouver must make the most efficient use of space available to it to address the various needs of its community.

As with most municipalities, improved public transportation is a pressing need for Vancouver. Like most Canadian cities experiencing large population increases, Vancouver's existing road networks and other transportation systems are extremely taxed. Of course, one of the challenges is finding space to address and accommodate these transportation needs. In an already extraordinarily competitive property market, the ability to acquire property for the creation or expansion of transportation networks is limited. For that reason, Vancouver is committed to preserving and repurposing viable corridors to address transportation needs. A prime example of trying to maximize the efficiency of existing transportation corridors is Vancouver's interest in resuscitating rail corridors that are no longer active into essential and much needed urban transportation thoroughfares.

## ***II. Transportation policy and railways***

Railways in particular have a deep history and intensive relationship with Canadian municipalities. Many of the cities in the west are located where they are precisely because the Canadian Pacific Railway placed its stops there (although of course CPR often did so because the location was naturally advantageous, such as with Vancouver's deepwater and protected port). For many Canadian cities, railway lines have run through them since or soon after their founding, and the cities have built up around them. Areas within cities that were once sparsely populated or were industrial zones are now densely urbanized and bear little resemblance to when the railway line was first laid out. In some cases, these railway lines continue to be active and productive transportation routes and the cities have been shaped in response to those transportation arteries. In some other cases, however, the railway lines have become unproductive or obsolete. These latter scenarios provide opportunities to reinvigorate these transportation corridors. Although rail operations in certain urban corridors may cease to be economically viable, the corridor itself does not lose its transportation value and can be repurposed, with great effect, to address urban mobility needs.

The *CTA* recognizes the potential importance of these discontinued rail corridors to the public by expressly providing a mechanism whereby, if a railway decides to discontinue a line and is not

able to sell its interest for the purpose of continued rail operation, the railway must either continue operating the line or offer to transfer its interest in the railway line to government and urban transit authorities (in a prescribed order of precedence) at no more than the railway's net salvage value. However, as discussed further below, there are deficiencies in this mechanism.

Where railway lines within municipal boundaries continue to thrive and generate rail traffic, safety also remains a paramount concern. It is critical for railways to adjust their infrastructure and practices to ensure safety standards are being met and adequately enforced as the urban landscape and the use of that landscape changes around them.

Municipalities – and, therefore, the large majority of Canadians that are living in them – are highly impacted – in both positive and negative ways – by rail transportation. As a consequence, it is essential that the regulation of railways take the interests of municipalities into account. With that in mind, the City of Vancouver recommends that the following goals should inform the Chair's review of the *CTA*.

### ***III. Harmonizing the interests of federal railways and Canadian municipalities***

The *CTA* contains a statement of Canada's National Transportation Policy, which guides the operation of the legislation. The policy statement provides (underlining added):

5. It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when:

...

- (a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;

(b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;

...

(e) governments and the private sector work together for an integrated transportation system.

In spite of the express wording recognizing the need for an integrated transportation system, the current regulatory regime is not sufficiently sensitive to municipal concerns. Likely this is a function of the division of jurisdiction with respect to railways and municipalities. It is natural that the federal regulation of railways would not prioritize municipal concerns, which fall within provincial jurisdiction.

Nonetheless, in the City of Vancouver's view there is a clear need to build into the federal regulatory regime more sensitivity to issues raised by transportation within urban settings. Inter-urban transportation is an overlooked part of the national transportation system. Efficient mobility within cities complements and enhances broader transportation objectives. The overall thrust of Vancouver's submission is that the federal regulation of railways should be more responsive to the impacts of railways on municipalities and their residents. This is in keeping with and demonstrative of the excerpts of the National Transportation Policy set out above.

The City of Vancouver is particularly interested in promoting enhanced understanding of the role cities play in maintaining the health and prosperity of the Canadian transportation industry. This engages not only concerns about integration between regions but also integration between industries, government and transportation stakeholders. In the City's view, this broad concept of integration is essential to promoting the efficiency necessary to maintain a competitive and responsive transportation system that benefits all Canadians. The recommendations discussed below are consistent with and in furtherance of this overarching goal.



***IV. Encouraging the efficient use of urban railway corridors for transportation purposes***

Urban railway lines offer unique potential for the expansion of urban transportation systems, but the cost of assembling transportation corridors within urban areas can be truly prohibitive.<sup>2</sup> At the same time, some urban railway lines have been virtually or entirely abandoned as the industries that they served have relocated as a result of urbanization or shrunk in importance with changes to the economy. If such lines are not being used – and have no reasonable prospect of being used – for economically reasonable rail operations, then they need to be made available to local governments for other forms of transportation.

Part III, Division V of the *CTA*, alluded to above, does provide for an avenue by which local governments may acquire railway lines that a railway company wishes to abandon. Briefly put, a railway company wishing to discontinue service on a railway line must list that line on its Three-Year Plan for at least a year (s. 142(2)), and then must advertise the availability of the line for continued operations and must negotiate in good faith with any parties that express interest (ss. 143 and 144). If helpful, the parties may call upon the Canadian Transportation Agency (the “Agency”) to determine the net salvage value of the line (s. 144(3.1)). If no agreement to transfer for continued operations is reached and the company still does not wish to continue operations, then it must make an offer to transfer the line at net salvage value to certain specified governments for use for any purpose (s. 145). Again, the parties may call upon the Agency to determine the net salvage value of the line (ss. 145(5) and 146.3). If none of the governments choose to take up the offer, then the railway company may choose to file a notice of discontinuance, after which their statutory obligations with respect to the operation of the line cease (s. 146(1)).

The discontinuation provisions of the *CTA* are intended to allow railway companies, as common carriers, to be relieved of their statutory service obligations where railway operations are no longer economical or otherwise desirable for them. In the great boom of railway construction in

---

<sup>2</sup> See, for example, the evidence of David Jeanes, President of Transport Action Canada, before the Standing Committee on Transport, Infrastructure and Communities, October 5, 2011, 1530-1540:  
<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5159308&Language=E&Mode=1&Parl=41&Ses=1>.

the late nineteenth and early twentieth century, railway lines quickly proliferated. Many of these lines became unnecessary and uneconomic in later decades, and the orderly process of discontinuance was intended to allow railway companies to rationalize their lines in order to increase productivity and competitiveness.

But while the *CTA* recognized the need for railway companies to be able to discontinue uneconomic lines, it also recognized the importance of allowing certain other parties first opportunities to acquire those lines, before they were put on the open market. The first such parties are so-called “short-line operators” who, in contrast to national railways like CN and CP, operate short, local railways serving specific interests. Section 143 was enacted to give these operators a right of first refusal because Parliament recognized that it was in the national interest to facilitate the growth of a viable short-line rail industry.

Section 145 was amended in 2007 in recognition that railway corridors constitute very important opportunities to advance the public interest in transportation, particularly in urban contexts. As the 2001 *CTA* Review Report stated, “[i]n the city cores, rail corridors are one of the few options for expanding urban transit or developing it where it does not yet exist.”<sup>3</sup> The report also recommended that urban transit authorities be added as a listed government entity entitled to accept an offer under s. 145 “so that corridors can be maintained for urban transportation purposes where required”.<sup>4</sup> The legislation was subsequently amended in 2007 to make that change.

However, at least two obstacles reduce the *CTA*’s utility in preserving railway corridors for public transportation – particularly in the urban context, where it is needed most. These distinct concerns and the City of Vancouver’s associated recommendations are outlined below.

---

<sup>3</sup> See p. 232.

<sup>4</sup> See p. 238.

**1. The current legislation does not sufficiently motivate railway companies to proceed with discontinuance where there is no longer a business case for maintaining operations**

The implied bargain struck in the *CTA* is that railway companies are obliged to offer service on their lines so long as they remain within federal jurisdiction. Where demand exists but is low, the costs of maintaining the lines in good repair to meet this obligation may often outweigh the value of the rail operations. As a result, the legislation allows railways to seek to discontinue the line. Provided there is not another interested operator, this process allows governments and transit authorities the opportunity to acquire interests in defunct rail corridors.

Where demand for service stops entirely, however, despite s. 142 (which requires a railway company to comply with Division V before discontinuing operating a rail line), there is not a sufficiently clear enforcement mechanism to motivate the company to initiate or follow through with the process of discontinuance. As a result, where there is no apparent value in a rail line as a railway, a railway company may decide that the most economic approach is simply to do nothing and allow the line to lie dormant. The regulatory regime does not adequately incentivize railway companies to discontinue those railway lines and allow for the corridors' productive repurposing.

The result is the waste of critical transportation potential at the expense of local populations. This outcome is inconsistent with the National Transportation Policy that underlies the *CTA* in that it is not efficient or economic and does not make the best use of all modes of transportation at the lowest total cost to serve the needs of Canadians. The legislation should contain better tools to achieve the National Transportation Policy's stated objective of providing an efficient and economic transportation system for all Canadians. This goal is consistent with all the tenets of the National Transportation Policy.

**Recommendation:** The *CTA* should provide a clear mechanism whereby a railway company must engage the discontinuance process if a railway line ceases to demonstrate a commercially reasonable level of service. The City of Vancouver

recommends that the *CTA* be amended to clearly allow governments and urban transit authorities to apply to the Agency for an order that the discontinuance process be initiated for rail lines that appear to be inoperative or on which there is no reasonable prospect of economic rail operations in the future. Within that application process, the onus should be on the railway company to demonstrate that the rail line in question is fulfilling an operational purpose that justifies its continuance as a rail corridor. The process should also consider the interests of the applicant, including any safety issues and the public interest in seeing the railway corridor used for other public purposes.

Such an assessment is well within the Agency's expertise and is consistent with other regulatory mechanisms contained within the *CTA*. For instance:

- Section 98, which governs the construction of new railway corridors, requires the Agency to consider whether “the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the line”.
- Section 144(6) allows the Agency to order a railway company to enter into an agreement for transfer of a railway line for continued operations if the Agency determines that the railway company was not negotiating in good faith and that the sale on terms specified by the Agency “would be commercially fair and reasonable to the parties”.

**2. “Net salvage value” for the purpose of transferring interests to governments or urban transit authorities in an urban context should be clearly stated to reflect the economic value of the corridor as it will be used.**

Division V entitles railway companies to the “net salvage value” for their discontinued lines. That term is not defined and is little understood. Railway companies often interpret it as entitling them to the “across the fence” (ATF) value of the line – meaning, the value as assessed by comparison to adjacent properties – plus an assemblage premium.

Such an approach is unjustifiable on a number of grounds. First, while in Canada railway companies do typically own the land on which the rights-of-way are situated, they also generally acquired that land many decades ago for free from the Crown, when the land was worth little. Railway companies have always been viewed as an instrument of nation building and tremendous public subsidies and other supports (including statutory powers) have been granted to them for that purpose. It would be entirely consistent with the history of the establishment of railways in Canada and their relationships with government for discontinued railway corridors to be appraised on a basis that would allow them to serve further important public transportation objectives.

Second, generally railway companies have paid very low property taxes, as the value of the railway corridor lands for taxation purposes has been assessed based on their transportation values. It would be unjust to allow the railway companies to benefit from such low valuations for so many years while denying the same benefit to governments seeking to serve the public interest.

Third, in an urban context, a full ATF valuation would clearly be inconsistent with the purposes to which the railway corridor will actually be put. It will almost never be the case that a discontinued railway corridor in an urban area that is purchased by governments or urban transit authorities will be used for the same purposes as the adjacent properties. Rather, local governments will typically acquire such corridors for public transportation purposes, and the valuation of the corridors should reflect that use.

Fourth, in dense urban areas – those very areas that are most in need of additional corridors for public transportation – valuing discontinued railways on an ATF basis would put the cost of the lands entirely out of reach of governments, as the intended use of the lands could never justify such prices, even allowing for generous public subsidy. The clear reality is that, unless railways offered under s. 145 are valued based on their use as a transportation corridor, the *CTA's* policy of preserving railway

corridors for public transportation purposes will be defeated, particularly in urban areas, where that objective is most pressing.

The 2001 *CTA* Review Report did consider somewhat the question of valuation methodology. It rejected the railway company's submission that they should be entitled to an assemblage premium, but it also did accept their submission that the ATF values of railway lands are the appropriate starting point. Respectfully, that conclusion is misguided, for the reasons just set out. Moreover, the 2001 Panel appears to have based its recommendation on the valuation methodology in part on its recommendation that federal funding be made available for the acquisition of urban rail corridors.<sup>5</sup> There is no evidence that that recommendation has been put into effect in any meaningful way so as to allow railway corridors to be preserved for public transportation purposes. Vancouver's experience is that no such funding is available.

For these reasons, the City of Vancouver requests that this Panel revisit this issue and adopt the following recommendation.

**Recommendation:** The Canadian Urban Transit Association has made this recommendation to the Panel: "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."

The City of Vancouver agrees with and adopts this recommendation.

The Urban Transit Authorities (Metrolinx, l'Agence Métropolitaine de Transport, and TransLink) add a further recommendation: "that, if railway corridors are on the

---

<sup>5</sup> See Recommendation 13.6 at p. 241.

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.” Vancouver also supports this recommendation, with the caveat that local municipalities must also be provided the opportunity to purchase the corridors at that price, pursuant to s. 145.

***V. Prioritizing the safety of urban residents with respect to ongoing rail operations***

In its submission, the Federation of Canadian Municipalities (FCM) urges the Commission to recommend certain measures with respect to the transportation of dangerous goods through urban communities and with respect to minimizing the impact of blocked grade crossings on safety and productivity. The City of Vancouver supports FCM’s submissions in these regards and adds these further comments.

**1. Transporting dangerous substances through urban communities**

In its submissions, FCM notes that, following the disaster in Lac Mégantic, Transport Canada has taken important steps to implement enhanced tank car standards and to phase out all DOT-111 tank cars that fail to meet the TP14877 standard by no later than May 1, 2017. FCM also observes that Transport Canada now requires that railways provide municipalities, on a confidential basis, with information regarding dangerous good shipments, although it observes that there is also a need for the provision of more public information. These are important actions, and the City of Vancouver agrees with FCM’s comments.

However, there is also a need for ongoing discussion between federal authorities, municipalities, regional districts, railway companies and potentially other parties (such as port authorities and shippers) with respect to the transportation of dangerous goods through urban communities, in order to determine whether there other measures in addition to tank car safety and emergency response that should be examined. Questions such as the routing of dangerous goods transportation must also be seriously examined. It should not be assumed that transportation of dangerous goods should be conducted on the same routes as are used for ordinary goods.

Rather, rail transportation of dangerous goods through dense urban areas raises obvious and very substantial safety risks, and there needs to be a serious dialogue among key stakeholders with respect to how such risks can be mitigated or avoided, including through rerouting.

**Recommendation:** The Panel should recommend that the *CTA* or the *Railway Safety Act* be amended to (1) provide for regular meetings among federal authorities, municipalities, regional districts, railway companies and other stakeholders with respect to the transportation of dangerous goods through urban communities; and (2) provide powers to Transport Canada and/or the Canadian Transportation Agency to order that measures – including rerouting – be taken to address the risks of the transportation of dangerous goods through urban communities.

## 2. Blocked grade crossings

In its submission, FCM observes that, while the Grade Crossing Regulations prohibit railways from stopping trains or engaging in switching operations where they would have the effect of blocking a grade crossing for more than five minutes, there is no limitation on trains blocking such crossings so long as they are moving. This is a very significant gap in the regulation, which should be remedied, as FCM urges.

However, Vancouver also urges the Chair to go further. At-grade rail operations through urban areas can pose very serious threats to the safety of local residents. Such rail operations may be entirely compliant with all regulations but, given their urban context, may still raise risks that are, or should be, unacceptable. Vancouver's view is that, properly interpreted, the *Railway Safety Act* does provide the Ministry with powers to intervene in such situations, but the focus of that legislation is on the question of whether the rail *infrastructure* is maintained in a manner that complies with all regulatory requirements.

**Recommendation:** The *Railway Safety Act* should be amended to more clearly empower the Ministry to intervene to prevent or reduce unacceptable safety risks where such arise from a railway's operational context, including in an urban setting.



One way of achieving this would be to incorporate into the *Railway Safety Act*, the ability of a municipality to apply to the Minister to vary the terms and conditions of an operating certificate issued under Part II of that Act to address specified safety concerns.

***VI. Ensuring that the Canadian Transportation Agency has the power to achieve these goals efficiently and in keeping with the National Transportation Policy***

The Canadian Transportation Agency has far-reaching powers akin to a court to address issues arising under the *CTA* and other Acts within its purview. However, in some cases, this may lead to cumbersome and prolonged proceedings involving disputes about the Agency's power and jurisdiction. In some cases, where for instance significant safety issues are raised, the Agency might benefit from express powers to suspend or cancel rail operations to meet the objectives of the legislation. Similarly, where there is a demonstrated contravention of the legislation by a railway company, an express ability to suspend or discontinue rail operations would encourage compliance in a way that more general powers to hear and determine applications may not.

**Recommendation:** Section 98 of the *CTA* should be amended to empower the Canadian Transportation Agency to suspend rail operations where they are unreasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the line or where there are pressing safety concerns.

