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November 1, 2017

Mr. Richard Paton
Chair
Railway Safety Act Review 2017-18
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Email: Richard.paton@tc.gc.ca

Dear Mr. Paton:

As rail safety remains very important to the Government of New Brunswick, I would like to provide you with a few comments regarding the review of the federal *Rail Safety Act* that is being conducted under your leadership. I understand that I will have additional opportunities to provide input on the review at a later date through the Council of Ministers Responsible for Transportation and Highway Safety. In the meantime, I would like to convey a few general thoughts to you following a conversation with my Director of Policy and Legislative Affairs, Mr. Shannon Sanford, who accepted your invitation and participated in a roundtable session organized by the Review Panel in Halifax on October 13, 2017.

First and foremost, I commend the federal government for implementing several initiatives since 2013 to improve rail safety. I feel that these measures significantly contribute to mitigating rail risks and help to reassure the public of the federal government's commitment to addressing the safety issues that led to the Lac Mégantic tragedy. It is to be expected that new risks will continue to emerge and there needs to be a continuous commitment to fully understanding these risks, developing and implementing measures to mitigate these risks, and maintaining a versatile legislative and regulatory framework that can maximize the benefits of research and technology to address rail safety risks. For these reasons, I feel that a comprehensive review that includes consultations with stakeholders from across the country is a very worthwhile undertaking.

Generally speaking, I feel that the *Rail Safety Act* and the *Canada Transportation Act* and their supporting regulations combine to provide a very robust rail safety regime in Canada. However, I would encourage the Review Panel to consider the empirical evidence and experiences of other jurisdictions when dealing with controversial measures such as random drug testing when preparing for new risk factors such as the legalization of cannabis.

Given the correlation between proximity and safety, I would like the Review Panel to be aware of New Brunswick's progress in addressing a longstanding issue associated with land development occurring in close proximity to railways.



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New Brunswick recognizes these safety issues and addressed them, in part, through provisions included in the new *Community Planning Act*, which is anticipated to come into force on January 1, 2018. The new *Community Planning Act* includes a notice provision which requires a development officer, in situations where the land associated with a proposed subdivision plan is within 300 m of a railway line, to forward a copy of the tentative subdivision plan to the company operating the railway. There may also be an opportunity in future to address railway proximity issues through a Statement of Provincial Interest under the new *Community Planning Act*. ✓

As full adherence to the *Guidelines for New Development in Proximity to Railway Operations*, a document published jointly in 2013 by the Federation of Canadian Municipalities and the Railway Association of Canada, will help ensure compatibility between land use and safe railway operations, I recommend that more outreach be done to encourage voluntary adoption by those responsible for community planning.

Finally, I would like to comment on the rail liability and insurance regime which came into effect under the *Canada Transportation Act* in June 2016. In summary, this legislation was guided by the polluter pays principle which is applied to other modes of transportation, and requires federally regulated railways and shippers to assume the full liability for any personal or collateral damages as a result of a derailment involving petroleum products. A key feature of this regime is an oil shipper-financed compensation fund that serves as a backstop in the event that there is an incident that exhausts the federally regulated railway's liability insurance. Several provinces share concerns that provincially regulated railways cannot access the compensation fund even though they are carrying the crude for the shipper paying into the fund. While a committee under the Council of Ministers Responsible for Transportation and Highway Safety was established to identify potential options to resolve the issue, the committee reached a stalemate and was unable to reach a consensus on a solution. The provinces on the committee felt strongly that since the compensation fund was being financed by shippers, it was unfair to limit eligibility to only incidents occurring on federally regulated rail lines. I would therefore urge the Review Panel to recommend to the federal government that a new model be devised that would make the compensation fund accessible to both federally and provincially regulated railways, subject to the railways possessing minimum insurance levels that reflect a risk profile that considers potential damages, speed and distance travelled. ? ✓

Thank you for your commitment to this important review. I would be pleased to meet with you should you wish to have clarification or further discussion on any of my points.

Sincerely,



Bill Fraser
Minister

c.c. Hon. Serge Rousselle, Minister of Environment and Local Government
Mr. Shannon Sanford, Director of Policy and Legislative Affairs – Department of
Transportation and Infrastructure