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## **CANDO RAILWAY SERVICES SUBMISSION TO THE RAILWAY SAFETY ACT REVIEW**

On behalf of Cando Rail Services and its subsidiary the Central Manitoba Railway, thank you for the opportunity to provide our opinions on rail safety in Canada.

Cando Rail Services is a Canadian company headquartered in Brandon Manitoba with operations in Ontario, all four western Canadian provinces, and in several US states. Started in 1978, we have approximately 500 employees. Our company's role in the rail sector is to facilitate industry's connection to the North American railway network. As a first mile/last mile service provider, our services optimize the local while complimenting the connecting railway's network driven operations, benefiting the whole system's overall efficiency and effectiveness.

Business line activities we undertake include short line railways (we own one in Manitoba (CEMR), and operate two small community-owned railways in Ontario); operation of industrial railways contracted to industry (which in our case often entails a running rights component on class one track); material handling and site logistics; transload and terminal operations; track engineering, construction and maintenance; railcar staging, storage, cleaning and repair; and location, design, build, finance and operation of turn-key rail facilities and terminals.

Sectors we serve include agriculture; fertilizer and potash; forestry products; petroleum and refined products; automotive and manufacturing; and the transportation sector. Our customers include the likes of JRI, Toyota, Magna, Mosaic, Potash Corporation of Saskatchewan, Agrium, Resolute Forrest Products, Domtar, West Fraser; Imperial Oil, Shell, Federated Cooperative; CN and CP along with many others.

Focusing specifically on the railway operations side of our business, we handle on average 1300 loaded railway cars every day at 28 railway operating locations. While we are a very small part of the whole

system, we touch approximately \$20 Billion of product annually. Our operations are typically small. It is not uncommon for a Cando operation to have a dozen employees and a couple of locomotives.

Cando's submission to the Railway Safety Act review falls under three broad themes: Railway-public interface; Infrastructure and modal shift; and Issues arising under the administration and application of Transport Canada powers under government acts and regulations.

Cando has been active participants in the development of the Railway Association of Canada's submission to the panel. Our comments are intended to support and supplement the RAC's submission with our particular perspective.

Our thoughts are as follows:

## **RAILWAY - PUBLIC INTERFACE**

### **Land Use Planning**

Recognizing the obvious inertial physics of trains (they don't stop quickly, they cause noise and vibration), the best means of mitigating public safety related risk and proximity nuisance issues associated with transporting goods and materials by rail is to physically separate railways from the public to the extent practical, recognizing options are limited by cost economics, physical/geographic constraints and historical physical integration of railways and communities.

While it can be prohibitive in most cases to change what is already in place, it is certainly possible to influence new development and construction to mitigate railway/public interface issues going ahead. We suggest that changes to land use planning to more adequately consider best practices in managing the railway/public interface are required. Specifically:

- Adopt as a national minimum standard the FCM/RAC proximity guidelines for development adjacent to railway tracks. Review and update the standards every 5 years.
- Where practical promote the zoning of land adjacent to railway corridors and yards to a non-residential application to create (or retain) a "proximity buffer" between residents and railways.
- Recognizing their national strategic importance, designate and protect through regulation and planning oversight national transportation corridors from incompatible local planning and development practices.

Our observation is there often doesn't appear to be adequate consideration or appreciation of railway realities in local planning and development regulation. We suggest that standards, best practices, and training of land use planners to guide decision makers by a senior level of government is necessary. This is a difficult multi-jurisdictional issue that would benefit from a senior level of government leadership.

## **Level Crossings**

While main track derailments gather media attention, statistically the most significant public safety risk is railway crossings. With thousands of active crossings many of which were developed and approved many years ago under much different circumstances than those that exist today, it is time to substantively review the regulatory approach to managing this key rail/public interface. Railway crossings safety can be a complex and technical issue, but our contribution to the discussion is straightforward:

We recommend a national initiative to reduce the number of railway crossings.

Realization of this recommendation could include the following initiatives:

- More stringent review of new crossings that including alternative analysis and minimum justification criteria
- A well-funded program to promote the closure of existing crossings
- Changes to highway and road design planning practices to encourage routing of roads to limit the number of crossings and to concentrate traffic at optimal designed crossings (or even better grade separations). Highway planners restrict interchange points on major highways and major city thoroughfares. Why not plan for rail crossings the same way?

## **INFRASTRUCTURE AND MODAL SHIFT**

### **Transportation System Approach to Rail Safety**

The mandate of the Rail Safety Act Review is to focus on the rail system specifically. Our observation is that a broader view of the transportation system is necessary to best evaluate changes to regulation and government policy on public safety.

We suggest that any proposal for rail policy and regulatory change should consider the impact on modal competitiveness. Changes intended to make rail “safer” that as an unintended consequence facilitate a modal shift to a less statistically safe mode (i.e. trucking) should be avoided or otherwise mitigated. Higher costs, operational restrictions, and regulatory complexity inherent in regulatory expansion change how the marketplace make its decisions on how to ship. This is particularly true for first/last mile operations like short lines which directly compete with a government-subsidized alternative (trucking on public roads and highways).

In that we contend that government policy (and resulting regulation and funding) is a determinant in modal allocation, we encourage a broad approach to policy that manages to the most beneficial transportation system safety outcomes.

## Shortline Railway Infrastructure

Shortline railway infrastructure renewal is an issue for virtually all Canadian short line railways including those owned or operated by Cando Rail Services. Competing with government-sponsored roads and highways and in many cases constrained by fixed revenue models adopted with asset acquisition from the class one railways, short lines often don't have the revenue generating capacity to support the business case for capital infrastructure investment and renewal.

The implications are:

- Regulations that adversely impact a short line railway's cost of operations further deteriorate the business case and funds available for reinvestment in track infrastructure. This in effect restricts the railway's ability to direct funds to the area of greatest need.
- While a consistently well-managed issue in all of Cando's operations, older track infrastructure has inherent risks and limitations that are relevant to the safety management risk envelope of our operations, especially those involved in the movement of dangerous goods.
- Safety/maintenance cost related restrictions applied by short lines to manage capital infrastructure shortcomings have implications to capacity (ex 263,000 pound loading vs. 286,000 pound loading) and impact the efficiency of the entire rail transportation system.
- Even in well-maintained operations, at some point capital infrastructure wears out. As this happens, some short lines will be in crisis possibly ceasing operations. Their possible closure will threaten the viability of industry located on their lines and most certainly would shift a large amount of traffic to trucking, further deteriorating and congesting public highway infrastructure with related safety implications and increasing greenhouse gas emissions.

The short line railway industry has made a strong sustainability, safety, environmental, congestion, capacity and economic competitiveness arguments for government supported short line infrastructure support programs not dissimilar to those used in the United States. Our arguments were validated by the Emerson CTA review report and would benefit from support from the RSA review.

## **ISSUES IN APPLICATION OF REGULATION**

### **Multi-Jurisdictional Issues**

Cando Rail Services operates in multiple jurisdictions in Canada and the US. Concerning railway safety, our operations fall under a number of regulatory regimes that are sometimes similar and sometimes disparate. Occupational Health and Safety Regulations aside (Cando is governed by provincial regulations), provincial railway regulations are specific to our operations in each province. Since 85% of our operations run on both provincial and federal track, these operations fall under both provincial and federal railway safety regulations. Each province has an Act equitable to the federal Railway Safety Act and subsequent regulations to support that Act.

In order to be compliant with all regulators and their specific regulations and requirements, Cando has had to file numerous Safety Management Systems/ Plans with Transport Canada, British Columbia, Alberta, Saskatchewan and Manitoba. While the intent of the plans is similar, the content required by regulators is not, thus creating multiple SMS to meet specific regulations. This has become onerous and confusing for our managers, supervisors and employees as their operations can be passing through different regulatory regimes many times during one shift.

Cando Rail Services has developed a specific, consistent, Safety Management System that all its locations follow to ensure the highest degree of safety is practiced. It goes above meeting the minimum regulatory standards; however, it may vary slightly from location to location to meet the specific requirements of that jurisdiction.

As mentioned above, Cando holds two Federal Railway Operating Certificates, one for Cando Rail Services operations that are considered Local Railway Companies and one for its Central Manitoba Railway Operations. A similar document is required provincially In BC, Alberta, Saskatchewan, Manitoba, and Ontario. Each province has different requirements and expiration periods for these certificates, but all except Ontario, have a requirement to file a Safety Management System to receive an Operating Authority Certificate which allows railway operations in that jurisdiction.

As indicated, keeping numerous, different, Safety Management Systems for each location has become an onerous task. The bottom line within our company is to achieve the highest degree of safety and apply it across the board to all our locations. Often, we are required to change the way we try to consistently apply safety to our operations to meet the requirements of one regulator or the other.

The RSA review panel should study the feasibility of incorporating a consistent railway SMS, and other consistent railway safety regulations throughout railway operations in Canada, be it federal or provincially regulated. The goal should be to apply a consistent set of regulations for all railway

operations to follow. This would further allow, for consistent measuring and application of these regulations.

### **Consistent Application of Railway Safety Management System Regulations**

The importance of safety or safety systems within the rail industry is paramount based on the risks associated with the operations. This holds true for Cando Rail Services as well. In fact due to the unique structure of our business model, safety, efficiency and quality are necessary to ensure continued business existence. As all our contracts are a term (5 year, 10 year, etc.) it is important to ensure the service we offer our customers is performed within their guidelines and parameters, which always have a strong emphasis on safety. In fact, 90% of our customers employ third-party organizations to review and report on our safety performance on a monthly, quarterly and annual basis. If we fail to meet the specific criteria that are required, our contract could then become tenuous and/or terminated. In fact, prior to bidding on contracts or tendering a Request for Proposal (RFP), there are certain safety criteria to be met. If not met, then RFP's are not permitted to be tendered. The more we get safety right, the more we get everything right.

With that in mind, Cando Rail Services has a very robust safety system in place that focuses on initiatives aimed at continuous improvement. With the amended introduction of the federal Railway SMS (April 2015), we were required to adapt the way we were applying safety to ensure that it was compliant to not only the federal Railway SMS but also to the many provincial adaptations of the same principles (as discussed above). Cando has adapted their safety processes to meet the federal and provincial requirements but look at those requirements as minimum standards. Our safety initiatives in place go far beyond the requirements of the federal Railway SMS, yet from a regulatory perspective when some of those safety initiatives may not have been fulfilled, for a multitude of reasons, the organization will be found in non-compliance, non-conformance or receive "observations" when audited. In the meantime, the basic components of the regulated SMS have been met. In analogy to a learning institution, it is like being penalized for trying to get extra marks.

As the current SMS regulations are relatively new, there has been an emphasis from Transport Canada inspectors to focus on adherence to the regulation as it is written as opposed to the actual substance of a company's SMS. Emphasizing process over risk reduction.

Currently, the federal Railway SMS is not being applied consistently through different parts of Canada. As Transport Canada is broken up into different regions of the country, so are its inspectors that apply the SMS regulations. There has been a noted discrepancy as to compliant behavior and non-compliant behaviour within different parts of the country, with an organization that is applying the same consistent SMS throughout all its operations. There have also been noted variances between inspectors within the same region. With these disparities comes confusion within organizations to meet the SMS requirements

or to amend their SMS to the minimum standards so that they do meet compliance. This could lead to an alarming trend.

There needs to be more understanding of exactly what Transport Canada will be auditing on a regular basis. The term “Safety Management System” is more of an administrative title to organizations safety initiatives. Employees may not recognize that title when asked through verification audits with Transport Canada inspectors. The finding from inspectors then is that certain components of the SMS are not being applied based on employees not recognizing the name of the program. In fact, Cando classifies all its initiatives in a program called TrackSmart that we roll out to all employees. It is essentially our SMS re-titled with a name that has instant employee recognition and acceptance. With the recent addition of a large number of non-railway trained SMS inspectors within Transport Canada, understanding of the application and audit procedures of the federal SMS is crucial for all railways, but more specifically to the smaller Local Railway Companies.

### **Human Factors**

It is a well-documented fact that 90% of industrial incidents are due to sub-standard acts. The other 10% are due to sub-standard conditions. Technological innovations within the last 30 years have resulted in tremendous progress within the transportation business with respect to not only efficiencies but safety as well, resulting in a huge decline of incidents related to sub-standard conditions. However, the issues surrounding sub-standard acts continue to be a constant.

While most Railway Companies and some Local Railway Companies, including Cando Rail Services, have been addressing the issue of Human Factors, there is still work to be done from a regulatory perspective with respect to funding and revisions to existing legislation.

The “Safety Culture” of an organization is crucial and directly related to its incidents rate. A more “positive” safety culture will lead to a lower incident rate as opposed to a “negative” safety culture within an organization. While management structure has an influence on the safety culture within an organization, so do programs and practices aimed at promoting the “right” safety culture.

While the federal Railway SMS was designed to promote a positive safety culture, the implementation of the current SMS is trending away from that and is focusing more on the administrative aspects of the program. More can be done to assist organizations with respect to enabling railway companies to complete Safety Culture Assessments and to promote funding for Research and Development to develop tools and guidance material to promote improvements to safety cultures within railway industry operations. Cando Rail Services has spent considerable resources over the last 2 years through education, training and departmental structuring to further improve safety culture and hence overall safety performance. This is not done through a specific program but rather is embedded in our ongoing

corporate strategy. The key to this strategy is to continue to understand the evolving issues surrounding human performance.

There are a number of regulatory limitations that exist that can be of use when studying or reviewing that human performance. Legislative hurdles currently exist regarding implementation and utilization of Locomotive Video and Voice Recordings (LVVR). Much like current Efficiency Test processes are used to observe and mentor employees in real time, LVVR could also be used in this way identifying trends or behaviours that can be addressed before an incident occurs. This is an important element of the SMS that allows an organization to improve continuously. Random drug and alcohol testing can also be of great importance to ensuring impairment is absent within the workplace. Further, there are very serious concerns with respect to the legalization of marijuana and its effects on those in Safety Critical Positions, from immediate effects, lingering effects and long-term effects.

From a punitive perspective regarding legislation, the recent implementation of the Railway Safety Administrative Monetary Penalties Regulations (AMP) clearly outlines penalties to corporations and individuals. The concept of vicarious liability remains an issue with respect to the application of this legislation and should be addressed when applying the AMP regulations. The AMP regulations were addressed to apply to corporations and individuals for various violations of the Railway Safety Act and some of its Regulations.

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