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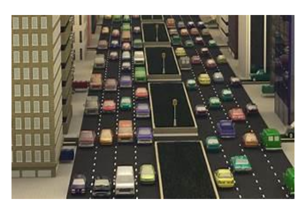

FOREWORD

CTRF is a broadly based network of transportation professionals with an interest in research and commentary on public policy issues. Membership is open to anyone in any aspect of transportation.

CTRF's objectives are: to encourage transportation research in those disciplines which address themselves to the economic, managerial, technical, political and social aspects of transportation; to provide a common meeting ground to exchange ideas and research results; to provide a forum for presenting and discussing transportation issues to bring together persons involved with Canada's transportation system.

In 2024, the Canadian Transportation Research Forum decided to launch its Research Papers to further encourage and stimulate interest in transportation.

The Research papers provide the views of the author or authors and are not necessarily those of the Canadian Transportation Research.

From time to time, CTRF may choose to showcase a research paper, prepared by its members, on its website. Such papers are presented for discussion purposes and do not necessarily represent the position of the organization or its members. Criteria for showcasing is broad, however, papers will be generally considered that provide evidence and insight on the Canadian transportation system, regulation and policy, or provide some historical record and inventory that could be a resource for the Canadian transportation industry.

Le GRTC est un groupe de professionnels (les) en transport intéressés (ées) à la recherche et aux questions de politiques publiques. Etre membre du GRTC convient à quiconque s'intéresse aux transports.

Les objectifs de GRTC sont d'encourager la recherche dans les domaines suivants liés aux transports: économie, gestion, technologie, politique et aspect social; de fournir un lieu de rencontre pour échanger idées et résultats de recherche; de créer un forum pour présenter et discuter de questions de transport; de réunir les personnes intéressées au système canadien de transport.

En 2024, le groupe de recherches sur les transports au Canada a décidé de lancer ses documents de recherche pour encourager et stimuler davantage l'intérêt pour les transports.

Les documents de recherche expriment les points de vue de l'auteur ou des auteurs et ne sont pas nécessairement ceux du le groupe de recherches sur les transports au Canada.

De temps à autre, le CTRF peut décider de présenter sur son site Web un document de recherche préparé par ses membres. Ces documents sont présentés à des fins de discussion et ne représentent pas nécessairement la position de l'organisation ou de ses membres. Les critères de présentation sont larges, mais seront généralement pris en considération les documents qui fournissent des preuves et des informations sur le système de transport canadien, la réglementation et la politique, ou qui fournissent des données historiques et un inventaire qui pourraient constituer une ressource pour l'industrie canadienne des transports.

CTRF President

GRTC Président

THE IMPORTANT REGULATORY DEVELOPMENTS IN CANADIAN TRANSPORTATION 2004 TO 2024

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INTRODUCTION

This paper on Canadian regulatory developments between 2004 and 2024 was motivated after two publications in the CTRF Proceedings covering the last four years on regulatory developments in Canadian transportation. Initially the period chosen for review was 2014 to 2024, but the question arose why should the starting point be 2014, a ten year review. So it was decided to go back to 2004 just a couple of years after the fifteen year review and report of Canada's major transportation act that required a fifteen year review. The regulatory developments over this period have largely been the results of deregulation which resulted in commercialization and privatization, the unforeseen developments due to accidents in transportation of dangerous goods (Exxon Valdez, Lac-Mégantic, etc.), terrorist threats (9/11), Covid-19 and environmental concerns.

After completing an examination of this period, it was felt that this review only partially told the story of major regulatory changes in Canada that began after deregulation in the mid 1980s. But going that far back in time when there was no Internet would be a major problem as the information in detail on all the regulatory changes was not easily available on the web or from my work. So it was decided to write a brief background that provided a review of the major regulatory developments since deregulation. This information is largely based on my papers on each of the transportation sectors that were published and presented at various CTRF Conference Proceedings and updated in my book on transportation. This should give readers a greater continuity of events that occurred over fifty years.

This review has its shortcomings. It does not cover the regulatory changes before the period examined in great detail nor does it provide a history of each regulation which often raises questions as to continuity. Further, this review also does not do justice to the regulatory developments in road transportation that occur in Canadian Provinces which is under the jurisdiction of the Provinces. However, an attempt has been made to cover major events that have appeared in the news. It should also be pointed, that this review is a description of the major regulatory developments (excluding policy statements) that have occurred and not a critical examination of the regulatory changes that have occurred. It does not provide any analytical or theoretical reasons why transportation laws and regulations were made. Occasional comments on the regulatory changes have been made that have been voiced by interested groups.

I would like to thank Grace Castelino for reading the paper and doing the linking.

THE IMPORTANT REGULATORY DEVELOPMENTS IN CANADIAN TRANSPORTATION 2004 TO 2024

The purpose of this paper is to cover the regulatory developments in Canadian transportation over the years from 2004 to 2024. The regulatory developments will be examined by sector: I. Air Transportation; II. Rail Transportation; III. Water Transportation; and IV. Road Transportation. The Conclusion suggests areas that deserve further consideration.

Regulatory developments usually occur because of: **a.** reviews required under the laws which lead to reports (such as the 1993 National Transportation Act Review Commission Report; 2001 Visions and Balance: Report of the Canada Transportation Act Review Panel; and 2015 Report by Emerson - Pathways: Connecting Canada's Transportation System to the World); independent studies and reviews; etc.[i] and **b.** Weather, accidents, international events etc. In other words or in economists' terminology by endogenous factors that result from changes within the industry which are largely covered under a. and are typically captured in the ten or fifteen year reviews; and exogenous factors that cannot be predicted such as unusual rainfall that results in washing away of rail and roadways, Lac-Mégantic and other train or air or road accidents, Covid – 19, and long run technological changes that cannot be foreseen that fall under b.

In each sector, the description of these regulatory developments has been classified under various headings that are not as neat and clear cut as one would like and may overlap. In addition, discontinuities occur that often results because governments have changed over the time period examined i.e. from Liberals to Conservatives and then to Liberals. The year 2004 was chosen as the starting point because it was just a couple of years after the 2001 review of Canada's transportation laws giving the government time to consider the recommendations in that review and to prepare drafting regulatory changes it saw fit.

To get a better appreciation of the regulatory developments over 2004-2024, a brief background has been added on the regulatory developments before this period.

Air Transportation[ii]

Background*

In the period from 1985-2003, the major events that governed regulatory developments in air transportation can be classified under the following: **A. Regulations before Deregulation. B. Regulations after Deregulation. C. Other Acts that affect Competition in Air Transportation.**

A. Regulations before Deregulation

The era of economic regulation commenced with the passage of the *Trans Canada Airlines Act in 1937* which provided for the creation and preservation of a virtual monopoly for Trans Canada Airlines in transcontinental and domestic areas. From then onwards to the mid 1980s, economic regulation increased and was basically governed by the *Aeronautics Act*, the *Air Carrier Regulations* and the *National Transportation Act* of 1967.

At this period in time (i.e., the mid 1980s just before deregulation was introduced), the major facets of **economic** regulation in the airline industry were: 1. Entry control of carriers by regulating licence applications and nature of services through restriction on class of aircraft, area of operation, type of service, etc., and 2. Tariff filing and its control in the event of complaints (i.e. tariffs were unjust and unreasonable, unduly discriminatory, or tariffs that give undue or unreasonable preference, etc.). Other

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* Based on information contained in the Articles in the Bibliography and in the Endnotes.

types of economic regulation that were applicable to the air industry were acquisitions by air companies of an interest in other transportation companies and appeal of air rates. More specifically:

*control of entry through the issuance of a licence (public convenience and necessity test) to operate a commercial air service were contained in subsections 16(1) and 16(3) of the *Aeronautics Act*;
*prescription of routes and licence restrictions were contained in subsection 16(6) of the *Aeronautics Act*;
*cancellation or amendment of licences were contained in subsection 16(8) of the *Aeronautics Act*;
*regulations pertaining to tariffs and tolls, base protection and positioning charges were contained in section 14 of the *Aeronautics Act*, Part VI and Schedule XIV of the *Air Carriers Regulations* (i.e., ACR), Part II of the ACR;
*suspension or disallowance of tariffs were contained in sections 112-114 of the ACR;
*appeal of freight rates were contained in section 23 of the *National Transportation Act;*
*acquisition of a transport undertaking was contained in section 27 of the *National Transportation Act* and section 22.1 of the ACR; and
*provision for an appeal mechanism was contained in section 63 of the *National Transportation Act*.

In addition, the *National Transportation Act* also provided for subsidy of essential services that are not financially viable. Besides subsidies at the federal level some subsides were also available from the provincial governments.

At that time, the primary motivation for economic regulation of air transport in Canada was a perceived public interest in the provision of reliable and affordable air transport service in a geographically large and sparsely populated country. Other reasons provided were the need for service to remote locations in Canada, the need to cross-subsidize unprofitable routes with profitable routes and the need to prevent destructive competition as the markets were not big enough to support more than one air carrier.

B. Regulations after Deregulation

The era of deregulation of air transportation began from the mid to late 1980s. It evolved to meet the changing needs of the public and the industry. It was gradual, beginning with changes to regulations governing the domestic advance booking charter market and then with changes to the domestic market through the Ministerial statement on the ‘new Canadian air policy on May 10, 1984, the proposals of the Minister of Transport in his discussion paper ‘Freedom to Move’ in July 1985, a Bill tabling the *National Transportation Act* in the House of Commons on June 26, 1986, and later to international markets.

Changes to regulations governing the domestic advance booking charter market were proposed by the Canadian Transport Commission. The most significant advance was consideration of authorization to new entrants. Should an open skies approach be taken or should new entrants (Class 4 - Charter) be required to prove public convenience and necessity. The new Canadian air policy provided for less regulation and more competition in Southern Canada. Its key features were:

*elimination of a defined role for carriers;
*relaxation of entry into markets;
*elimination of licence restrictions on frequencies and aircraft types, and freedom to discount ticket prices.

These developments later led to proposals by the Minister of Transport in his discussion paper *'Freedom to Move'* of July 1985, and the new *National Transportation Act, 1987* which came into effect on January 1, 1988. The discussion paper reinforced the 1984 initiative and proposed even further regulatory reforms. There followed a period of "administrative deregulation" characterized by increasingly liberal interpretation of formerly restrictive regulations. The new *National Transportation Act, 1987* turned "de facto" deregulation into official regulatory reform. The bulk of economic regulation was removed and reduced in Southern and Northern Canada respectively, though regulation of international air services remained unaltered. Entry into the airline industry was no longer to be based on the standards of public convenience and necessity. For Southern Canada, an applicant must be "fit, willing and able" and be Canadian, further these licences can no longer be restricted. For Northern Canada, the onus is on any objector to show why an application for a licence should not be granted. Further, domestic tariffs no longer had to be filed, only published. Regulatory control over fares on monopoly routes in the southern zone and on all northern routes were to be restricted and confidential contracts between carriers and travellers/shippers were now permitted for domestic transportation. More specifically:

> *the licensing test for domestic operation was contained in subsection 72(1) of the *National Transportation Act* (NTA), it is based on safety and insurance requirements but it does not apply to designated areas (s. 72(2)(b) and (4) of the NTA;
> *the suspension or cancellation of a domestic licence for contravention of the relevant provisions of the NTA were contained in subsection 75(1) of NTA;
> *the discontinuance or reduction of certain domestic services by giving 60 days notice was contained in subsection 76 of the NTA;
> *the elimination of regulation of domestic service fares, rates and changes with exceptions were contained in sections 80(1) and (2);
> *the publication of tariffs were contained in subsections 83(1) and (2);
> *the provision for financial assistance and compensation were contained in sections 85 and subsection 3(1)(f);
> *the issuance of Ministerial directions was contained in sections 86 and subsection 86(2);
> *the provisions for scheduled international service, eligibility and non-scheduled international service were contained in sections 87, 93, 89 and 94;
> *the terms and conditions of a licence and suspension or cancellation of a licence were contained in subsections 91(1), 96(1), 92(2) and 97(2);
> *the mechanism for review and appeal was contained in sections 64 and 65;
> *the provision for making of regulations by the National Transportation Agency was contained in section 102; and
> *the provision for acquisition was contained in Part VII of the NTA.

Deregulation's basic purpose in air transportation in Canada was: improvement or expansion or services to the travelling and shipping public; opportunities to compete in the domestic market; greater reliance on competition and market forces that would result in lower costs, competitive prices, and a wider range of services; and removal of unnecessary regulatory expense and paper burden; and a regulatory process that is open, accessible and not excessively costly or time consuming.

International air transport is governed by bilateral agreements and occasionally by multilateral agreements. International air transportation liberalization with other countries began in 1995 with the Canada-United States Open Skies Agreement in air transportation. There are several approaches to liberalization for example group agreements vs. bilateral agreements (the latter is Canada's primary vehicle for liberalizing international air services). On a theoretical basis, an Open Aviation Agreement will increase efficiency and economic benefits by: more efficient firms replacing less efficient firms; exploitation of size-related economies over a larger market; closer integration among firms leading to pricing synergies; output expansion; cross-border flows of capital; and cross-border flow of labour. Not surprisingly, the 2001 *Canadian Transportation Act Review Panel's* most provocative recommendation involved creating a North American Common Aviation Area with carriers from Canada, U.S. and Mexico in which carriers from these countries would compete freely.

Commenting on this issue of the Panel, a former Minister of Transport, Mr. Collenette said that "he didn't think a North American free trade zone for aviation would fly. The likelihood of that is slim. If we're talking about an agreement where there's going to be cabotage, the Americans have shown no appetite for that,.." Multilateral initiatives have also existed since 1945 (e.g. exchange of rights for overhead flights and non-traffic stops for scheduled services). Multilateral initiatives like common aviation areas appear to offer possibilities for further liberalization but at the moment this avenue to increase liberalization does not appear to be promising. This is because it may call for the elimination of security, immigration and customs by the countries to the agreement which they may be unwilling to do.

C. Other Acts that affect Competition in Air Transportation

Security Regulations

In the wake of September 11, 2001, the federal government implemented several key measures to address the security of the travelling public and to keep borders secure, open and efficient. Security considerations have continued to be prominent in future policy developments.[iii] Following these events, the *Canadian Air Transport Security Authority Act* of 2002[iv] was passed and security regulations pursuant to the *Transport of Dangerous Good Act, 1992*[v] were developed in each transportation mode.

Canadian Air Transport Security Authority Act of 2002

The *Canadian Air Transport Security Authority Act* of 2002 created the Canadian Air Transport Security Authority (CATSA). CATSA is responsible:[vi]

> *for taking actions, either directly or through a screening contractor;
> *for the effective and efficient screening of persons who access aircraft or restricted areas through screening points, the property in their possession or control, and the belongings or baggage that they give to an air carrier for transport;
> *for ensuring consistency in the delivery of screening across Canada;
> *for any other air transport security function provided for in the *CATSA Act*; and
> *for air transport security functions that the Minister of Transport may assign to it, subject to any terms and conditions that the Minister may establish.

CATSA must carry out its responsibilities under the *CATSA Act* in the public interest, having due regard to the interests of the travelling public.[vii] On September 4, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced the first round of decisions to strengthen aviation security, resulting from the Canadian Air Transport Security Authority (CATSA) Act review.[viii]

In the period thereafter, reducing costs and charges levied on passengers or airlines[ix], liberalization of commercial freedoms, making flying secure and reducing emissions have begun to receive a great deal of attention at the national and international level which are described in greater detail.

I. Air Transportation (2004-2024)

Over the period 2004-2024, the major events that governed regulatory developments in air transportation can be classified under the following: **A. Liberalization of Air Transport Agreements. B. Consumer Protection. C. Safety and Security. D. Airport Governance. E. Covid-19 measures/Opening up the border.** The first had its genesis in deregulation. The second had its genesis in full price disclosure and was later elaborated in detail in passenger rights in the *Transportation Modernization Act.* The third is not new and has been supplemented with the arrival of new technologies. The fourth has its genesis with the Airports Act. The fifth had its genesis with Covid-19.

A. Liberalization of Air Transport Agreements.

On November 27, 2006, the Blue Sky policy was officially adopted by the Government of Canada. The Blue Sky policy calls for a proactive approach to the liberalization of Air Transport Agreements. In particular, it seeks to negotiate reciprocal Open Skies-type agreements when it is in Canada's overall interest to do so. Since its inception, the Blue Sky policy has become an important vehicle to promote connectivity between all Canadian regions and the world. It has also provided Canadian consumers with more choices in terms of destinations and number of direct flights. Three types of agreements are negotiated or amended under the Blue Sky policy:

> *an *Open Skies-type agreement* allows any number of carriers to operate both direct and indirect services between Canada and another country. Airlines choose the routes to serve, the frequency of the service and the prices of flights, without any restrictions;[x]
> *an *expanded agreement* modifies an existing bilateral agreement. It generally provides more flexible provisions to carriers. An agreement can be expanded many times; and
> *a *first-time agreement* puts in place a new formal framework to govern scheduled services between Canada and its new partner.

Expanded or first time agreements that are not Open-Skies-type agreements do not necessarily constrain the plans of carriers. In most cases, they contain sufficient rights to allow carriers to launch new services without having to renegotiate or make changes to the agreement. The agreements do not include cabotage rights – the right for a foreign airline to carry domestic traffic between points in Canada. Since November 2006, Canada has concluded new or expanded Air Transport Agreements covering over 80 countries though Open Skies Agreement existed as early as 1995 with the U.S.

B. Consumer Protection
Consumer Protections measures can be classified as follows: 1. Full Price Disclosure. 2. Passenger Rights – Transportation Modernization. 3. Air Transportation Passenger Protection Regulations. 4. Additional Protection Regulations and Clarification. 5. Action to Reduce Delays at Airports and Strengthening Air Passenger Protection.

1. Full Price Disclosure.
On May 4, 2006, Bill C-11 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-44 (2005) which died on the order paper and its predecessor Bill C-26 (2003)) was introduced in the House of Commons by the Minister of Transport, Lawrence Cannon. Its major highlight regarding pricing was that it amends the air transportation provisions in Part II of the CTA, notably in relation to:

> *the complaints processes;
> *the advertising of prices for air fares; and
> *the disclosure of terms and conditions of carriage

"Clause 27 of this Bill adds a new section, 86.1, to the Act, obliging the Agency to make regulations respecting advertising in all media (including on the Internet) of prices for air services within, or originating in, Canada. The new section further provides that without limiting the generality of the above, regulations may be made that require a carrier who advertises a price for an air service to include in the price all costs to the carrier of providing the service, and to indicate in the advertisement all fees, charges, and taxes collected by the carrier on behalf of another person in respect of the service, so as to enable a purchaser to determine the total amount to be paid for the service. As well, the provision states that the regulations may prescribe what constitutes "costs, fees, charges and taxes" for the above purposes." This clause is the same as that in Clause 30 found in Bill C-44 (other than 'empowering the Agency, on the recommendation of the Minister' is now replaced with 'obliging the Agency'). Bill C-26 also contained a section in Part II(d) on Air Service Price Advertising.[xi] Bill C-11 received Royal Assent on 22 June 2007.

On February 10, 2009, a private member's bill (C-310) *An Act to Provide Certain Rights to Air Passengers*, put forward by MP Jim Maloway and modelled on the European Union's Airline Passengers Bill of Rights, passed second reading (narrowly) in the House of Commons. The proposed bill was to move to the House of Commons transport committee for further review before it passed to third reading and then to Senate for approval. The bill contained provisions for:

*delay, bumping, total fare disclosure, etc.; and
*penalties.

The penalties proposed were quite severe and the industry warned that they were unrealistic. The Air Transportation Association of Canada objected to the bill indicating that it will not only be financially punitive and economically unjust but will also have a negative impact on safety, small airlines, remote areas and inequitable accountability. To prevent the private member's bill from introducing stiff penalties on Canadian airlines, four Canadian airlines introduced a binding passengers' bill of rights that would take effect in the second week of June 2009. This was to ensure airlines provide meal vouchers for four-hour delays, pay for hotel rooms for overnight disruptions, rebook bumped passengers and let travellers off the plane if stuck on the tarmac longer than 90 minutes. It was proposed that these requirements be enforced by the Canadian Transport Agency.[xii] In late September 2009, the Bill was referred to the House Transport, Infrastructure and Communities Committee after winning a favourable vote by a narrow margin. In late November 2009, the Committee decided not to proceed with the Bill. There was a growing consensus that Bill C-310 failed to present a fair and balanced approach to the protection of air passengers, while at the same time not jeopardizing the financial health of airlines in Canada.[xiii] This bill was last introduced in the 40th Parliament, 3rd Session, which ended in March 2011.

On December 16, 2011, the Honourable Steven Fletcher, Minister of State (Transport), and Pierre Poilievre, Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities announced the coming into force of clause 27 of *An Act to Amend the Canada Transportation Act and The Railway Safety Act and to Make Consequential Amendments to Other Acts*. This set the stage for the Canadian Transportation Agency to proceed with developing regulations regarding airfare advertising. The regulations would require Canadian air carriers to include all fees and taxes in their advertised prices. As a result, air travellers would have a simpler time determining the true price of airline tickets by December 2012.[xiv] On December 12, 2012, the Canadian Transportation Agency developed regulations under the *Air Transportation Regulations*. The key features of the regulation were:

*air carriers will be required to include all fees, charges and taxes in their advertised prices for air services or full price disclosure; and
*air carriers could face fines up to $25,000.

After giving Canadians an opportunity to comment on the proposed regulatory amendments, the government announced that all-inclusive airfare advertising is now mandated under amendments to the *Air Transportation Regulations*. The regulations support two key objectives: 1. *To enable consumers to easily determine the total advertised air price.* The display of the total price in air price advertising reduces confusion and frustration as to the total price and increases transparency. It also allows consumers to more easily compare prices and make informed choices. 2. *To promote fair competition between all advertisers in the air travel industry.* The regulations promote competition by achieving a level playing field for all persons who advertise air prices for travel within, or originating in Canada. Failure to abide by the guidelines could result in fines of up to $25,000 for repeat offenders.[xv]

At a press conference at Pearson airport in the middle of December 2012, Transport Minister Denis Lebel said firms must disclose the price of tickets with all taxes, fees and charges clearly stated. Lebel told reporters "We are protecting Canadian air travellers by helping them see, clearly and up front, the full cost of air tickets, so they can make informed travel choices." The new regulations will not only allow air travellers to compare prices but should also lead to greater competition among carriers. Many carriers in anticipation of these regulations have already incorporated full price disclosure in their advertisements.[xvi]

Five years later, a major effort was made to establish consumer protection legislation.

2. Passenger Rights – Transportation Modernization

On May 16, 2017, the Honourable Marc Garneau, Minister of Transport introduced legislation in Parliament to modernize air transportation. The key measures of the *Transportation Modernization Act* (Bill C-49) relating to air transportation include:

> *****establishing new air passenger rights; and
> *****liberalizing international ownership restrictions for Canadian air carriers (except for carriers providing specialty services) to provide travellers with more choice through increased competition.

The first, hoped to achieve the above measures by preventing passengers from being bumped off against their will with minimum payments for bumped off passengers, introducing compensation for passengers for lost bags, spelling out what airlines will do for passengers who are delayed (as a result of airlines fault), preventing airlines for charging extra for children (below the age of 14) seated with their mothers, introducing standards for carriage of musical instruments and introducing further penalties if the new regulations are not met. The second, hoped to achieve the above measures by increasing foreign ownership limits to 49 per cent (from 25 per cent) thereby improving access to international investors and global capital markets. Further, its proposals regarding joint ventures (which will now be considered and approved in conjunction with the Commissioner of Competition) in the airline industry should facilitate the opening up of new markets by Canadian airlines and should accelerate projects underway. The proposed legislation also contains amendments to address the shortfalls regarding CATSA. Overall the legislation would promote transparency, system efficiency and fairness.[xvii]

Industry welcomed the legislation and provided their views. Air Canada was of the view that the increase of foreign ownership limits to 49 per cent (from 25 per cent) should provide improved access to international investors and global capital markets for Air Canada. Further, the proposed amendments on joint ventures should also facilitate the opening up of new markets by Air Canada and its joint venture partners and should accelerate projects that are currently under consideration. Regarding the CATSA proposed amendments, Air Canada hoped that the Government would have addressed shortfalls in CATSA funding and other shortcomings in a more comprehensive fashion so as to improve the overall air traveller experience. Furthermore, Air Canada encouraged the Government to address matters on aviation industry infrastructure, rates, taxes and charges.[xviii] WestJet Vice-President, Industry, Corporate and Airport Affairs, Mike McNaney. commented on the *Transportation Modernization Act* saying "We welcome the legislation and are committed to working with the CTA, the Minister, parliamentarians and government agencies in the months to come".[xix] The Consumers' Association of Canada, criticized the bill because it did not spell out in detail: compensation amounts for bumping or lost and for damaged baggage; ban on overbooking, list of penalties, and the onerous nature of filing complaints.[xx]

The Minister of Transport on May 23, 2018 issued the following statement regarding the Royal Assent of the *Transportation Modernization Act*. "I am pleased that the *Transportation Modernization Act* has received Royal Assent today, which shows the Government of Canada's commitment to improving our transportation system. … The first major element of this Act is that air passengers should know their rights and are entitled to clear, consistent, transparent and enforceable compensation, as well as minimum standards of treatment when things do not go as planned. … The Act is part of the Government's strategic plan for the future of transportation in Canada, Transportation 2030." It includes amendments to the *Canada Transportation Act* and other related transportation acts.[xxi]

3. Air Transportation Passenger Protection Regulations.

The first major element promised by the Minister was delivered on December 17, 2018. The proposed *Air Passenger Protection Regulations* established airlines' minimum obligations toward passengers – including standards of treatment and in some circumstances, minimum compensation – for flights to, from and within Canada. Highlights of the proposed regulations include:

> *a requirement that airlines communicate in a simple, clear way with passengers regarding their rights and recourses, and provide the reasons for flight delays and cancellations;
> *the obligation for airlines to provide passengers with food, drink, and accommodation when their flights are delayed;
> *a compensation of up to $1,000 for flight delays and cancellations within an airline's control that are not safety-related;
> *a compensation of up to $2,400 if a passenger is denied boarding because an airline has over-booked the flight or because of other actions within an airline's control;
> *the rebooking and refund entitlements when flights are delayed, including, in some cases, the obligation for an airline to use a competing airline to get passengers to their destination;
> *a requirement that passengers be allowed to leave the airplane, when it's safe to do so, if a tarmac delay lasts for over three hours and there's no prospect of an imminent take-off;
> *a requirement that airlines facilitate the seating of children under 14 years in close proximity to an accompanying adult, at no extra charge;
> *a compensation for lost or damaged baggage, including a refund of any baggage fees;
> *a clarification on the policies that airlines must establish regarding the transportation of musical instruments; and
> *an administrative monetary penalty of up to $25,000 for airlines' non-compliance with their obligations under these regulations.[xxii]

The new *Air Passenger Protection Regulations Phase 1* became effective on July 15, 2019. Airlines are required to:

> *****communicate information to passengers in a simple, clear way about their rights and recourses, and provide regular updates in the event of flight delays or cancellations;
> *****provide compensation of up to $2,400 for denial of boarding for reasons within the airlines' control;
> *****ensure passengers receive prescribed standards of treatment during all tarmac delays and allow them to leave the airplane, when it's safe to do so, if a tarmac delay lasts for over three hours and there's no prospect of an imminent take-off;
> *****provide compensation for lost or damaged baggage of up to $2,100 and a refund of any baggage fees; and
> *****set clear conditions regarding the transportation of musical instruments as checked or carry-on baggage.

Phase 2 came into effect on December 15, 2019, and related to:

> *****a delay of flights and cancellation i.e. payment of compensation up to a maximum of $1000 for reasons within the airlines' control - except for safety reasons; provision of reasonable food and drink; and
> *****an access to communication; and hotel accommodations for overnight delays and seating arrangement for children in proximity of a parent or guardian based on age.

To help passengers navigate their new rights, the Canadian Transportation Agency (CTA) launched an online service for air passengers at airpassengerprotection.ca.[xxiii]

Proponents for the new regulations welcomed them, but felt that the airlines may use some loopholes to prevent providing compensation. It is suggested that the protection does not go as far as the passenger protection regulations in Europe. Critics of the Air Passenger Protection Regulations felt that compensation should never be more than the price of the airline ticket. Some airlines are challenging the new regulations in federal court. Two other packages alongside these consumer protection regulations were released: one related to business behaviour and the other to access. One to encourage innovation and reduce administrative burdens for airlines by simplifying and streamlining the oversight of practices such as code sharing and aircraft leasing. The other to help ensure that Canadians with disabilities have equal access to air (as well as other federally regulated modes) travel.[xxiv]

Competition and business conduct were addressed in a new process for review and authorization of air carrier joint ventures. This allows the Minister of Transport to authorize a proposed joint venture that would be in the public interest.[xxv]

4. Additional Protection Regulations and Clarification.
A year later in 2020, additional consumer protection measures were undertaken:

> *clarifying *Air Passenger Protection Regulations* (March 2020);
> *providing Package of assistance to Canadian airlines, airports and the aerospace sector (Nov. 2020); and
> *supporting essential air access to remote communities (January 2021).

First, the *Air Passenger Protection Regulations* (APPR) set air carriers' obligations to passengers that vary depending on whether the situation is 'within the air carrier's control', 'within the air carrier's control but required for safety', or 'outside the air carrier's control'. List of situations were provided of the latter e.g. medical emergencies and orders or instructions from state officials that air carriers would not be required to provide standards of treatment or compensation for inconvenience.[xxvi] On December 18, 2020, the CTA's authority to establish an obligation for airlines to provide a refund was extended by a Ministerial letter to requirements to lengthy delays outside airlines' control filling the gap that became obvious after the onset of the pandemic and the collapse of air travel.

Second, regarding financial assistance which could include loans and potentially other support to major airlines, a process was set before airlines receive money. Canadians will first have to get their refunds and "Any assistance the Government of Canada provides will come with strict conditions to protect Canadians and the public interest."[xxvii] In response for further help, on May 11, 2021, two new contribution funding programs were launched to help Canada's airports recover from the effects of the COVID-19 pandemic: 1) The Airport Critical Infrastructure Program (ACIP), a new program, providing close to $490 million; 2) The Airport Relief Fund (ARF), a new program, providing almost $65 million. In addition, the Capital Assistance Program (ACAP) was extended with a funding top-up of $186 million over two years with extended eligibility for airports.[xxviii] The government also announced a $375 million loan to Sunwing companies. Air Canada received a multibillion dollar relief package from the federal government and it entered into a series of debt and equity financing agreements with the Government of Canada which will allow Air Canada to access up to $5.879 billion in liquidity.[xxix]

Third, to support essential air access to remote communities in the first quarter of 2021, the Government of Canada announced new agreements with funding to the Governments of Ontario ($11,134,000), British Columbia ($2,176,000), Manitoba ($12,031,000) and Saskatchewan ($1,592,000).[xxx] In July 2021, the Government announced new support measures. It will: 1. Seek bilateral agreements with provinces and territories to ensure continuity of service for at least 6 months. 2. Establish a $75-million funding program for the federal contribution for the first 6 months and maintenance of these essential services through an investment of up to $174 million over 18 months, if needed. 3. Provide more funding depending on the needs of the communities and the pace of recovery of air travel to remote communities.[xxxi]

The overall reactions to these air regulations were unprecedented in modern history. They brought sharp reactions from the businesses they affected as they restricted air travel and in some cases closed it down. Passengers while somewhat agreeing that it was necessary were frustrated. The life line thrown by the government in the form of packages of assistance to the airlines and airports had the initial effect of calming the storm of negativity. The removal of restrictions in 2021 that led to the opening of airports and resumption of air services were welcomed by both these business and they wanted the government to work closely with them before taking any action. The 2021 re-imposition of restrictions brought a strong reaction from the airlines and the airports council for increasing confusion and cancellation of services.

Further clarification on consumer protection was made on September 8, 2022 with amendments to the *Air Passenger Protection Regulations*. The key feature of this regulation was:

> *****refunds outside the control of airlines (September 8, 2022).

The refund regulations were extended requiring airlines to provide refunds *outside* the control of the airlines, the earlier 1999 regulations required refund to be provided for flight disruptions *within* the control of airlines. The new regulations: 1. Require airlines to provide a passenger affected by a cancellation or a lengthy delay due to a situation outside the airline’s control with a confirmed reservation on the next available flight that is operated by them or a partner airline, leaving within 48 hours of the departure time indicated on the passenger's original ticket. If the airline cannot provide a confirmed reservation within this 48-hour period, it is required to provide, at the passenger's choice, a refund or rebooking; 2. Identify what costs must be refunded (unused portion of the ticket, which includes any unused add-on services paid for); 3. Identify the method to be used for refunds (same as the original payment, e.g., a return on the person's credit card); 4. Require airlines to provide a refund within 30 days. The new regulations apply to flight disruptions that occur as of September 8, 2022. On the same day, the Minister of Transport, the Honourable Omar Alghabra, issued this statement on the new regulations: “Passengers have rights and they need to be respected. “Starting today, the new regulations, which amend Canada’s existing *Air Passenger Protection Regulations*, apply to flights that are cancelled, or where there is a lengthy delay, for reasons outside of an air carrier’s control, including major weather events or a pandemic, where it is not possible for the carrier to complete the passenger’s journey within a reasonable time. “The COVID-19 pandemic revealed a gap in Canada’s passenger protection framework, with flights delayed or cancelled due to situations outside an airline’s control and where carriers could not rebook passengers within a reasonable time, like a global pandemic. These new regulations will correct this gap.”[xxxii] Canada’s airlines say new rules forcing them to refund or rebook passengers, even when delays and cancellations are outside their control, are unfair, especially as the industry struggles.

To further strengthen consumer protection, on April 24, 2023, the Minister of Transport, the Honorable Omar Alghabra announced proposed amendments to the *Canada Transportation Act* as part of Bill C-47, the *Budget Implementation Act.* Two important features of the Bill are:

> *****to strengthen Canada’s passenger rights regime (April, 2023); and
> *to streamline the processes for administering air travel complaints.

These new proposed amendments to the *Canada Transportation Act* would, among other things, allow the Agency to modify its regulations to: 1. make compensation mandatory for all disruptions, unless the disruption was caused by very limited circumstances that would be specifically defined by regulations; 2. remove exemptions to air carriers’ compensation obligations based on broad categories of disruptions (e.g., disruptions outside/within the control of airlines or required for safety); 3. make standards of treatment, such as the provision of food and water, mandatory for all flight disruptions; and 4. establish requirements for delayed baggage and prescribe parameters around refund requirements as a result of a travel advisory issued by the Government. The amendments would also: a. replace the current process for resolving air travel complaints, which includes an adjudication process by Governor in Council-appointed members, with a more simplified process conducted primarily by Agency staff to ensure travellers get quicker decisions; b. impose a greater burden of proof on air carriers where it is presumed that compensation is payable to a complainant, unless the air carrier proves the contrary; c. require air carriers to establish an internal process for dealing with air travel claims; d. broaden the authority of the Agency to set fees and charges to recover its costs; and e. enhance the Agency's enforcement powers with respect to the air transportation sector by allowing the Agency to increase the maximum amount of Administrative Monetary Penalties applicable to the APPR for corporations and by providing the Agency with the authority to enter into compliance agreements with air carriers.

The Canadian Transportation Agency also issued: a decision when crew shortages may be considered within the airline's control; and a decision ordering the payment of compensation to passengers affected by a cancellation caused by a crew shortage.[xxxiii]

5. Action to Reduce Delays at Airports and Strengthening Air Passenger Protection

In 2022, to ease increased wait times and delays at Canadian airports. The following developments occurred:

*****actions to reduce wait time (June 20, 2022);
*delays continued into the last six months of 2022; and
*updates and continued actions (September 1, 2022).

The Government of Canada recognized the impact that significant wait times at some Canadian airports were having on travellers. It provided actions it was taking to alleviate this problem and issued monthly updates. The actions underway by the Government of Canada and the air industry as of June 20, 2022 included: "1. Since April, nearly 1,000 CATSA screening officers have been hired across Canada. With this, the number of screening officers at Toronto Pearson International Airport and Vancouver International Airport is now over 100 percent of the targeted requirements for this summer based on projected traffic. 2. CBSA is maximizing officer availability and additional Student Border Services Officers are now at work. 3. CBSA and the Greater Toronto Airports Authority are making available additional kiosks at Toronto Pearson International Airport customs hall areas. 4. CBSA and PHAC streamlined the process to identify travellers who are required to undergo testing at Toronto Pearson International Airport. 5. As of June 11, 2022, mandatory randomized COVID-19 testing has been temporarily suspended at all airports until June 30, 2022. As of July 1, 2022, all test swabbing, including for unvaccinated travellers, will be performed off-site. 6. PHAC is adding additional staff on select days to verify that travellers have completed their ArriveCAN submissions on arrival and further inform air travellers about the importance of the mandatory requirements."[xxxiv]

The delays continued into the last six months of 2022 beginning on Canada Day, Canadian airlines stated the delays were beyond its control (lack of workers and airports blamed the government), IATA called on the government to end all Covid-19 restrictions, and the government began issuing monthly updates. At the end of August 2022, Transport Minister Omar Alghabra called the delays faced by passengers at airports "frustratingly unacceptable" but said congestion was being reduced.

On September 1, 2022, the government issued an update on the continued action and progress to reduce traveller wait times and delays across Canadian airports, namely: 1. *New screening officers hired across*

Canada; 2. *Faster security screening*; 3. *Fewer delays for international arrivals*; 4. *More flights departing on time*; and 5. *Fewer flight cancellations*.[xxxv] In October 2022, the government issued further updates and on December `16, 2022, the Minister of Transport issued an update and best practices for travelling this holiday season. They were categorized into groups such as: 1. Before you go; 2. Reminders; and 3. Advance CBSA Declaration. For further information on each of these groups visit Transport Canada website.[xxxvi]

The year 2023 began with further problems of airlines arising from winter storms in British Columbia; and Eastern Canada and Sunwing Airlines Inc. failure to serve customers because of a shortage of pilots over the holiday season.[xxxvii] This resulted in proposed new legislation to overhaul passenger charter rights. On June 22, 2023, the *Budget Implementation Act, 2023, No. 1* (BIA) received Royal Assent and came into force. The major changes were:

> *it amended the *Canada Transportation Act* (the Act) to clarify, simplify and strengthen Canada's air passenger protection regime;
> *it requires airlines to provide compensation for inconvenience to passengers when there is a flight disruption, unless there are exceptional circumstances; and
> *it also puts the burden on airlines to prove the situation is an exceptional circumstance. The Canadian Transportation Agency (CTA) must amend the *Air Passenger Protection Regulations* (APPR) to reflect the changes made to the Act.

The Canadian Transportation Agency launched consultations to strengthen air passenger protection.[xxxviii] During the consultation period, the CTA received a total of 291 written submissions – 229 submissions from members of the public, 40 submissions from airlines and other industry representatives, 20 submissions from consumer advocacy organizations, and 2 submissions from academics. The CTA is drafting regulations for consideration and comment.

C. Safety and Security

The regulatory changes on safety encompass a wide number of changes to the: I. *Canadian Aviation Regulations* relating to: 1. Aviation Safety. 2. Oversight of private operators and pilot licensing; 3. Offshore helicopter operations and seaplane operations; 4. Unmanned Air Vehicles or Drones; and 5. Passenger and flight crew; II. *Transportation of Dangerous Goods Regulations;* and III. *Canadian Aviation Security Regulations.* The key changes under the above regulations will be indicated hereafter.

I. *Canadian Aviation Regulations*

1. Aviation Safety

Introduction of Amendments to the Aeronautics Act

On May 17, 2005, Transport Minister Jean-C. Lapierre announced legislation to amend the Aeronautics Act and Bill S-33 was introduced in the Senate.[xxxix] The proposed legislation would provide Transport Canada with the required tools to maintain and enhance the safety of Canada's aviation system. The changes reflect new strategies being implemented to regulate aviation safety that would:

> *permit an increase in penalties that may be imposed under the act; and
> *allow voluntary non-punitive reporting programs, by individuals and operators confidentially report, certain regulatory violations.

On 27 April 2006, the Hon. Lawrence Cannon, Minister of Transport, Infrastructure and Communities introduced Bill C-6, *An Act to amend the Aeronautics Act* and to make consequential amendments to other Acts, in the House of Commons. The bill is very similar in most respects to its predecessor bill, C-62, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts, which was introduced in the House of Commons on 28 September 2005 (1st Session, 38th Parliament). That bill died on the Order Paper with the dissolution of Parliament, without having gone beyond first reading. Department officials say the substantial amendments to the Aeronautics Act (the Act) contained in Bill C-6 are necessary to improve aviation safety and to bring the Act in line with other transportation Acts that have recently been updated. Key amendments to the *Aeronautics Act* proposed in Bill C-6 include the following:

> *provisions for additional regulation-making powers, for things such as aircraft emissions and fatigue countermeasures, as well as safety management systems for holders of Canadian aviation Documents;
> *provisions for new powers, comparable to those of the Transportation Accident Investigation and Safety Board, for the Canadian Forces Airworthiness Investigative Authority to investigate aviation incidents and accidents involving both military personnel and civilian contractors;
> *provisions to encourage employees of Canadian aviation document holders to report safety concerns voluntarily without fear of legal or disciplinary action;
> *provisions to allow for more self-regulation in low-risk areas of the aeronautics industry; and
> *provisions for additional tools, for the Minister of Transport to ensure compliance and increased penalties for contraventions.[xl]

On October 29, 2007, The Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities reintroduced the former Bill C-6 (Act to amend the Aeronautics Act) in the House of Commons (as at prorogation of the earlier Bill C-6).[xli] It reflects new strategies to regulate aviation safety including the following:

> *permit an increase in penalties that may be imposed under the Act;
> *allow individuals and operators to confidentially report, on a voluntary basis, less safety-critical regulatory violations; and
> *provide the Canadian Forces Airworthiness Investigative Authority with new powers and duties to carry out flight safety investigations that may involve civilians in military aviation accidents or incidents.

These new powers and duties would be comparable to those exercised by Transportation Safety Board investigators examining civilian accidents. The bill did not become law.

On May 19, 2007, Transport Canada announced a proposed amendment to the *Canadian Aviation Regulations* to help protect the safety of air travellers and crew members.[xlii] It would:

> *deal with passengers whose words or actions could interfere with the safe operation of the aircraft and create an unintended hazard for the aircraft, its crew and its passengers;
> *strengthen air operators' ability to protect the safety of all passengers and crew by refusing to board those who may represent a threat to that safety;
> *improve crew training requirements;
> *provide guidance to air operators to assist in developing programs for recognizing and preventing incidents of disruptive and unruly passenger behaviour, and for effectively managing such incidents when they do occur; and
> *include the mandatory reporting of incidents that interfere with the safety responsibilities of crew members and the regular provision of summary reports to the department.

On June 27, 2007, to reduce the risk of mid-air collisions Transport Canada amended the *Canadian Aviation Regulations* by:

> *requiring aircraft in Canada to install collision avoidance equipment.

The equipment is designed as a safety backup to existing ground-based air traffic control systems. This equipment, known as an airborne collision avoidance system, alerts flight crews when their aircraft is on course to collide with another aircraft. It includes auditory and visual alerts.[xliii]

On July 9, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities announced proposed regulatory amendments to increase accountability in the aviation sector through the implementation of safety management systems by airports and organizations providing air traffic services. The proposed amendments to the *Canadian Aviation Regulations* require airports and organizations providing air traffic services to:

*implement safety management systems in their organizations; and
*appoint executives who are accountable for safety.

These systems will make organizations more accountable for day-to-day operations while allowing flexibility to determine the most effective means of improving safety performance. "The purpose of implementing safety management systems is not only to increase industry accountability, but to instill a consistent and positive safety culture and help improve the safety performance of operators," added Minister Cannon. "This approach represents a systematic, explicit and comprehensive process for managing hazards to safety."[xliv]

On April 30, 2008, the Government of Canada announced new regulations to improve aviation safety with new language requirements.[xlv] The regulations will require:

*Canadian flight crew and air traffic controllers to demonstrate proficiency in either English or French.

The announcement was made by the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities.

On April 3, 2009, the Government of Canada introduced regulatory changes that would improve air safety for Canadian travellers by:[xlvi]

*prohibiting high-speed departures to a maximum of 250 knots for aircraft.

This is because in the event of a bird strike, high-speed departures can result in severe damage to aircraft and injuries to passengers and crew

2. Oversight of private operators and pilot licensing
New Aviation Safety Regulations for Air Traffic Services
On Dec. 21, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities announced amendments to the *Canadian Aviation Regulations* to increase accountability in the aviation sector.[xlvii]

*these amendments require airports and organizations providing air traffic services to implement safety management systems in their organizations and appoint executives who are accountable for safety. These systems will make organizations more accountable for day-to-day operations while allowing them flexibility to determine the most effective means of improving safety performance within the regulatory framework; and
*each system is based on an operator's in-depth knowledge of the company and integrates safety into policies, management and employee practices, as well as operating procedures throughout the organization. As each organization integrates safety into daily operations, management and employees can continuously work to identify and overcome potential hazards that could cause accidents.

The amendments build on the regulations that have been in place since 2005 for air operators.

On August 8, 2008, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities announced proposed amendments to the *Canadian Aviation Regulations* to help search and rescue authorities better locate aircraft in distress.[xlviii] The aircraft will be:

> *required to be equipped with an emergency locator transmitter operating at the 406 MHz frequency or any other alternative equivalent means.

These regulations will harmonize Canadian requirements with international standards.

On December 2, 2011, the Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities announced proposed new regulations to enhance the safety of Canadian aviation.

> *these regulations would require private and commercial airplanes with six or more passenger seats to be equipped with an alert system known as the "terrain awareness and warning system" (TAWS). TAWS provides acoustic and visual alerts to flight crews when the path of their aircraft is predicted to collide with terrain, water or obstacles.

On December 9, 2013, the Honourable Lisa Raitt, Minister of Transport announced *proposed regulatory amendments for the certification and oversight functions of private air operators*. These amendments were published in Part I of the *Canada Gazette*, on December 7, 2013.[xlix]

On February 12, 2014, amendments to *the Canadian Aviation Regulations* on pilot licensing were announced. The amendments would:

> *set the groundwork for the introduction of the Multi-crew Pilot Licence (MPL);
> *extend the validity period of medical certificates associated with certain pilot licences; and
> *modify the requirements regarding credits of co-pilot flight time.[l]

On May 30, 2014, new regulatory amendments for the oversight of private air operators were announced by the Honourable Lisa Raitt, Minister of Transport. These new regulations:

> *cover all aspects of an operation including aircraft maintenance, cabin safety, flight operations and safety management systems.[li]

3. Offshore helicopter operations and seaplane operations

On November 16, 2013, the Honourable Lisa Raitt, Minister of Transport announced proposed new regulations to enhance the safety of offshore helicopter operations in Canada. These regulations will:

> *prohibit offshore helicopter operations when weather or water conditions make ditching in the water unsafe;
> *require operators to carry emergency underwater breathing apparatus for each passenger onboard offshore flights; and
> *require all crew members to wear a water immersion survival suit specifically designed for crew.[lii]

On April 22, 2015, the Honourable Lisa Raitt, Minister of Transport announced the above amendments will enhance the safety of offshore helicopter operations in Canada and will come into force. These regulations came into effect on July 22, 2015, and brought Canada in line with international standards and best practices for offshore helicopter operations. Transport Canada also amended the Canadian Aviation Security Regulations, 2012 (regarding security) to expand supply chain security and reduce potential screening bottlenecks at Canadian airports. These regulatory changes came into effect on October 17, 2016.[liii]

On May 20, 2016, to enhance the safety of seaplane operations, the Honourable Marc Garneau, Minister of Transport proposed changes to the *Canadian Aviation Regulations*. The proposed regulations respond to the Transportation Safety Board of Canada's recommendations following the 2009 seaplane accident in Lyall Harbour, British Columbia and the 2012 accident in Lillabelle Lake, Ontario. The proposed changes will:

> *require all passengers and crew on commercial seaplanes to wear an inflatable flotation device when boarding the aircraft and while it operates on or over water;
> *require mandatory training for pilots of fixed wing commercial seaplanes on how to exit a seaplane under water; and
> *allow the use of more modern, practical and durable inflatable flotation devices designed for constant wear (i.e. the vest in a waist pouch type).

The proposed changes were published in *Canada Gazette*, Part I[liv] and become effective on the date indicted in Part II of the *Canada Gazette*.

On March 6, 2019, further changes regarding seaplane operations were announced in the *Canadian Aviation Regulations* by the Minister of Transport. The changes require:

> *****passengers and crew of commercial seaplanes with nine passengers or less to wear an inflatable flotation device while the aircraft operates on or over water. In seaplanes with 10 to 19 passengers, flotation devices will continue to be required onboard for all occupants; however, occupants will not be required to wear the flotation device; and
> *****pilots of commercial seaplanes to take mandatory training on how to exit an aircraft under water. Commercial seaplane operators have 18 months after the publication of the regulations in Canada Gazette, Part II, to implement the new rules requiring passengers to wear personal flotation devices while on or above water. The pilot exit training must be implemented within 36 months.[lv]

4. Unmanned Air Vehicles or Drones
On October 21, 2014, the Honourable Lisa Raitt, Minister of Transport launched the Government of Canada's safety awareness campaign for unmanned air vehicles (UAVs), or drones. The national campaign will help ensure UAV users—both recreational and commercial—understand the rules of the skies and always think safety first. A few weeks later, Transport Canada announced, at the Unmanned Systems Canada conference in Montréal, two exemptions that simplify small UAV operations. Under the new exemptions:

> *UAVs (under 2 kg) will no longer require a Special Flight Operations Certificate involving certain operations; and
> *UAVs (between 2 kg and 25 kg) will no longer require a Special Flight Operations Certificate involving certain operations.

The exemptions are expected to contribute to a strong safety regime and to integrate UAVs safely into Canadian airspace.[lvi]

On May 28, 2015, the Honourable Lisa Raitt, Minister of Transport launched consultations on proposed amendments to the regulations governing the safe use of unmanned air vehicles (UAVs). In December 2015, Transport Canada encouraged all new drone users to consult the wide variety of educational tools available on www.tc.gc.ca/SafetyFirst.[lvii]

On March 16, 2017, Transport Minister Garneau announced an immediate measure which will affect the operations of model aircraft and recreational drones of more than 250 g and up to 35 kg. The key new rules require recreational drone operators to mark their drone with their contact information. They may not fly:

*****at a height more than 90 metres;
*****at night;
*****at a distance within 75 metres of buildings, vehicles or people; or
*****at a distance within 9 kilometres of the centre of any airport, heliport, aerodrome or water aerodrome where aircraft take off and land.

Operators of drones for commercial, academic or research purposes are not affected by this measure. These rules already in place, are presently effective and most commercial users operate their drones in a safe manner. However, if any recreational operator fails to comply with the new flying restrictions and conditions they could be subject to fines of up to $3,000. WestJet Executive Vice President, Operations on March 16, 2017 said "We are pleased that Minister Garneau has taken this step…." Canada's airports also indicated that they are pleased with Transport Canada's launch of an Interim Order that will help address the growing threat that Unmanned Air Vehicles pose to commercial aircraft near airports or within a restricted airspace. The International Air Transport Association (IATA) also welcomed the announcement by Canada's Minister of Transport.[lviii]

On June 9, 2019, the Minister of Transport announced Canada's new rules for remotely piloted aircraft systems (drones). The new rules, which came into force on June 1, 2019, apply to all pilots flying drones between 250 grams and 25 kilograms. They must be operated within the drone pilot's visual-line-of-sight, regardless of whether the drone is flown for fun, work or research. The final regulations introduce two main categories of drone operation: basic and advanced. The categories are based on distance from bystanders and airspace rules. Both categories have their own set of easy-to-follow rules that will require the drone pilot to:

*****register and mark the drone with its registration number;
*****pass an online exam and get a pilot certificate for basic or advanced operations;
*****be a minimum age of 14 for basic and 16 for advanced operations, unless supervised by a person having proper certificates;
*****stay below an altitude of 122 m (400 feet) above ground level; and
*****stay away from air traffic.

Only drone pilots who need to fly a drone outside the rules for basic or advanced operations will need to apply for a Special Flight Operations Certificate (SFOC) before they fly.[lix] These regulations are needed because the use of drones for commercial and recreational purposes has increased tremendously. Transport Canada confirmed 95 incidents where drones posed a risk to aviation safety so far this year and 499 such incidents since 2014, the worst being the drone and aircraft crash in Quebec in 2017. The need for regulation was highlighted with the recent incident at Gatwick airport in UK.

In June 2023, Canada proposed drone safety regulations becoming the first country in the world to do so. The key features of these regulations for drones Beyond Visual Line-of-Sight (BVLOS) are:

*****new rules for lower risk operations of BVLOS (June 22, 2023);
*****new drone regulations on capability of detecting and avoiding other air traffic; and
*****new class of pilot certification for (BVLOS).

On June 23, 2023, the Minister of Transport, the Honourable Omar Alghabra announced the first proposed Beyond Visual Line-of-Sight (BVLOS) drone rules in Canada. The proposed changes to the Canadian Aviation Regulations (CARs) include rules for lower-risk operations of drones beyond visual line-of-sight, as well as for the operation of medium-sized drones within visual line-of-sight. The proposed rules would require drones to be capable of detecting and avoiding other air traffic to ensure safety. They would also introduce a new class of pilot certification for lower-risk BVLOS operations, including a requirement to meet a new drone pilot medical standard, and eliminate the requirement to obtain a Special Flight Operations Certificate (SFOC) for certain lower-risk BVLOS and medium-sized drone operations. These proposed changes would benefit Canadians as it would permit drone operations such as package delivery to remote communities, first responder operations, and natural resources and wildlife surveys – among many other potential uses.[lx] Some provisions of the regulations would come into force upon publication in Canada Gazette, Part II, which is anticipated in fall 2024, while others would come into force on April 1, 2025.

5. Passenger and flight crew

On June 30, 2017, The Honourable Marc Garneau, Minister of Transport proposed changes to the *Canadian Aviation Regulation*s to improve passenger and flight crew safety and align regulations with today's scientific data, international standards, and best practices. The proposed changes will introduce:

> *****new rules to prohibit flight crew members from working within 12 hours of drinking alcohol. This would be an increase from the current limit of 8 hours;
> *****new fit-for-duty rules that will prohibit any flight crew member from working while they are not fit for duty. This will include consumption of alcohol or drugs, mental and physical conditions, and fatigue;
> *****new rules on flight crew fatigue management that address flight time and hours of work limits;
> *****flight duty period limits that take into account the time of day, increased rest periods, and new requirements for time free from duty; and
> *****fatigue Risk Management Systems (FRMS) to allow air operators to adapt policies, procedures and practices to manage fatigue risk in an operation. The FRMS will allow operators, including those who provide cargo services, more flexibility as long as they can demonstrate an equivalent level of safety.

The draft amendments were published in the *Canada Gazette*, Part I, on July 1, 2017.[lxi] Air Transport Association of Canada (ATAC) reacted to the proposed changes by indicating that some changes they had been seeking during their prolonged advocacy have been incorporated in this latest proposal. However, overall ATAC indicated that it is not pleased with the latest proposal, as many of the specific new requirements penalize the industry that already has one of the best safety records in the world. It is of the opinion that the Government's "one size fits all" approach isn't justifiable nor practical! ATAC indicated that it will continue to work closely with their members, and their other industry colleagues, over the 90 day comment period to ensure that the Government understands their concerns and hopefully listens to their concerns prior to proceeding to publishing the regulation in *Canada Gazette Part 2* in 2018.[lxii]

On December 12, 2018, Minister of Transport announced changes to the Canadian Aviation Regulations to improve air travel safety for passengers and flight crews. The changes to the Canadian Aviation Regulations introduce:

> *prescribed Flight and Duty Time Limits that respect modern fatigue science and international standards to limit the amount of time a crew member can be on the job; and
> *fatigue Risk Management Systems that will allow operators the flexibility to set flight hours based on their unique operations if they can demonstrate that alertness and safety will not be affected.[lxiii]

On June 28, 2018, the Minister of Transport announced a new measure which prohibits the possession of battery-operated hand-held laser over 1 milliwatt (mW) outside of a private dwelling without a legitimate purpose, such as for work, school, or education purposes. This Interim Order took effect immediately and applies to:

*a municipality within the greater Montréal, Toronto, and Vancouver regions; and
*a 10-kilometre radius around any airport or certified heliport across Canada.

The new measure allows Transport Canada and delegated law enforcement to issue fines on the spot to anyone who possesses a hand-held laser within a prohibited zone without a legitimate reason. The maximum fines are $5,000 for an individual and $25,000 for a corporation. In addition to the Interim Order, Transport Canada is also designating laser attacks on aircraft as offences subject to immediate fines under the *Canadian Aviation Regulations*. Air Transportation Association of Canada strongly applauded the Minister's actions.[lxiv]

II. *Transportation of Dangerous Goods Regulations*
On December 30, 2014, amendments to Canada's *Transportation of Dangerous Goods Regulations* (TDGR) were announced by the Honourable Lisa Raitt, Minister of Transport. The amendments include:

*****a ban on transporting lithium metal batteries as cargo on passenger flights in Canada, and
*****a new labelling and Emergency Response Assistance Plan requirements for certain dangerous goods.

Other changes to the TDGR include:

*incorporating Protective Direction (PD) 33 into the TGDR. PD33 introduced in April 2014 ordered rail shippers of ethanol, petroleum crude oil, gasoline, and other petroleum products to have an approved Emergency Response Assistance Plan (ERAP) in place to ensure proper emergency response in the event of an incident or release involving these flammable liquids;
*adding ERAP requirements for petroleum sour crude oil and Alcohols N.O.S. (typically used to classify ethanol in the US), which were not previously included under PD33; and
*numbering of products used by United Nations (UN) for petroleum sour crude oil and biomedical waste.[lxv]

Lithium batteries are dangerous goods, much like gasoline, propane, and sulphuric acid. In Canada, the shipping and importing of lithium batteries are subject to the *Transportation of Dangerous Goods Act, 1992* and its regulations. There are two main kinds of lithium batteries: lithium-metal battery; and lithium-ion battery. A lithium-metal battery is usually non-rechargeable, contains metallic lithium, and features a higher energy density than other non-rechargeable batteries. Lithium metal batteries are often used in calculators, pacemakers, hearing aids, remote car locks and watches. A lithium-ion battery is rechargeable, does not contain metallic lithium, and features high energy density. A lithium polymer battery is considered a type of lithium-ion battery. Lithium-ion batteries are used in consumer products such as cell phones, electric vehicles, laptop computers, power tools, and tablets. While most lithium batteries are safe, some have overheated and have caught fire. Once ignited, they can cause any nearby batteries to overheat and catch fire as well. These fires are difficult to put out and produce toxic fumes. Given these concerns, effective April 1, 2016 the Honourable Marc Garneau, Minister of Transport issued:

*a new protective directive banning the shipment of lithium-ion batteries on passenger aircraft.[lxvi]

To protect Canadian passengers and flight crews, Transport Canada issued a Notice to Airmen on October 14, 2016 advising airlines and air operators that:

*Samsung Galaxy Note 7 smartphones are no longer allowed in any aircraft effective immediately.

This safety measure applies to both carry-on and checked baggage on flights within Canada and is in compliance with the *Transportation of Dangerous Goods Regulations*. Transport Canada officials are reaching out to airlines so they can take the necessary steps to protect passengers and crew. The department is also in close contact with the Federal Aviation Administration in the United States to exchange safety information. On October 15, 2016, Air Canada announced that it will not permit the above devices aboard its aircraft effective immediately, as result of new regulations in Canada and the U.S. prohibiting Samsung Galaxy Note 7 devices aboard commercial aircraft.[lxvii]

III. *Canadian Aviation Security Regulations*

On August 10, 2006, following a major counter-terrorism operation in the United Kingdom, Transport Canada brought in heightened security measures on liquids, gels and aerosols on aircraft. Effective immediately:[lxviii]

> *liquids or gels in containers of any size will not be permitted to be brought onboard by passengers as carry-on baggage on all flights (domestic Canada, U.S. transborder and international); and
> *restrictions in other jurisdictions could apply.

On November 6, 2006, Transport Canada amended security requirements for liquids, gels and aerosols on aircraft.[lxix] Air passengers are permitted to bring:

> *liquids, gels and aerosols through security screening at Canadian airports provided that the items are packaged in containers with a capacity of 100 ml / 100 grams (3.4 oz.) or less – instead of the previously required 90 ml / 90 grams (3 oz.) or less; and
> *containers should fit comfortably in one clear, closed and resealable plastic bag with a capacity of no more than 1 litre (1 quart).

Transport Canada on May 8, 2008, advised passengers that restrictions on liquids, aerosols and gels remain in effect.

On May 11, 2007, government officials announced new regulations that will strengthen air passenger security screening.[lxx] Canadians will:

> *not need a passport for travel within Canada but rather can present a range of government-issued ID to the air carriers including a health card, a birth certificate, a driver's licence and a social insurance card.

Current requirements for international travel will remain in place.

On June 28, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities reiterated Canada's New Government's commitment to aviation security, specifically to the Passenger Protect program.[lxxi] Numerous safeguards to ensure accuracy were developed. These include:

> *a specified Person List - limited in scope;
> *a revision to the list at least every 30 days;
> *a system of accountability i.e., by the Minister of Transport and the Program to Parliament;
> *a Government-issued identification (ID) for all air travellers over 12 years of age;
> *the available 24/7 of a Transport Canada officer to receive calls from airlines about any possible identity matches; and
> *an application for independent assessment of the case to the Office of Reconsideration.

On December 26, 2009, as a result of an alleged terrorist incident on Northwest Flight 253 from Amsterdam to Detroit, additional security measures were put in place at Canada's airports for flights to the United States.[lxxii] The important measure is:

*passengers are now restricted to one carry-on bag.

These measures are expected to be in place at least for several days.

On June 14, 2010, the Honourable Rob Merrifield, Minister of State (Transport) announced that the Government of Canada is launching a full review of the agency responsible for the country's air transport security, with the goal of enhancing the safety and security of air travellers.[lxxiii] Specific elements of the review will include the following:

*identify opportunities to improve the flow of passengers and bags at Canada's airports;
*invite input on the roles and responsibilities of key stakeholders under the current national screening delivery model;
*encourage suggestions or comments on areas of possible improvements relating to not only CATSA operations, but also Canada's aviation security system; and
*provide suggestions or comments on future directions for aviation security.

On January 4, 2012, the Government of Canada took steps to streamline the *Canadian Aviation Security Regulations* and ensure they reflect the current aviation security environment. This will also align Canada's regulations to meet International Civil Aviation Organization commitments and reflect extensive consultation with industry stakeholders. It also announced new regulations to improve aviation safety in Canada on July 4, 2012:

*the new regulations require private turbine-powered and commercial airplanes with six or more passenger seats to be equipped with an alert system known as the "terrain awareness and warning system" (TAWS).

The system provides acoustic and visual alerts to flight crews when the path of their aircraft is likely to collide with terrain, water or obstacles.[lxxiv]

On July 2, 2014, The Honourable Lisa Raitt, Minister of Transport announced amendments to the *Canadian Aviation Security Regulations, 2012* to strengthen airport security and non-passenger screening programs at Canadian airports. The airport security program amendments introduce:

*new requirements for airport operators that are designated for security screening.

The amendments were made following extensive consultations with stakeholders and further enhance Canada's aviation security framework, as well as facilitate compliance.[lxxv]

On June 30, 2015, the Honourable Lisa Raitt, former Minister of Transport announced changes to make air cargo screening more efficient in Canada. According to the changes:

*approved shippers will be allowed to screen cargo at any point in the secure supply chain—from the location where it is packed to where it is loaded on an aircraft.

These changes will provide shippers with more flexibility and help reduce bottlenecks, move goods efficiently, and meet the highest security standards. To benefit from these changes, shippers must apply to Transport Canada. The changes (incorporated in the *Canadian Aviation Security Regulations, 2012*) will come into effect on October 17, 2016. It should bring Canada in line with international shipping standards that advance Beyond the Border—the Canada-U.S. Action Plan.[lxxvi]

In December 2017, Bill *C-23 - US Preclearance* received Royal Assent. Daniel-Robert Gooch, president of the CAC said "U.S. preclearance provides Canadian airports distinct advantages in attracting air service and offering enhanced connectivity in a globally competitive marketplace …. Canada's airports look forward to working with the Government of Canada on implementation of Bill C-23." Preclearance is currently offered at Canada's eight highest-volume airports. It allows travellers direct access to destinations in the U.S without customs facilities, promoting the cross-border flow of people and goods. Each U.S. Customs Border Protection officer stationed in Canada clears on average 30,000 passengers/year.[lxxvii]

In May 2023, a New Verified Traveller program to improve traveller screening was announced.[lxxviii] The new Verified Traveller program offered at selected airports will help ease congestion over time, as use of dedicated Verified Traveller lines grows. The new lines provide eligible travellers with select benefits at security screening checkpoints, such as keeping laptops, large electronics and compliant liquids and gels in their carry-on, and keeping their shoes, belt and light jacket on. Eligible travellers include: 1. Members of NEXUS and Global Entry; 2. Active members of the Canadian Armed Forces and US military, including reservists, with valid ID; 3. Canadian aircrew and airport workers with Restricted Area Identification Cards; 4. International aircrew (in uniform) with valid airline ID; and 5. Royal Canadian Mounted Police (RCMP) officers, Canadian police officers and constables with a badge and proper photo identification issued by their respective organizations. The Verified Traveller program allows children who are 17 years of age and younger, and adults who are 75 years of age and older, to accompany verified travellers through security, provided they are on the same reservation.

D. Airport Governance

On March 20, 2003, Transport Minister David Collenette introduced Bill C-27, the *Canada Airports Act* in the House of Commons. The bill modernizes the corporate governance regime for airport authorities and establishes a framework for disclosure and accountability for Canada's major airports. The legislation contains:

*a new airports policy statement to replace the National Airports Policy; and
*the roles and obligations of the Government of Canada and of the affected airport operators.

The Act will affect 30 airports when it comes into force. It will also apply to any additional airports that, in the future, reach a passenger threshold of more than 200,000 passengers per year averaged over three years. The introduction of the *Canada Airports Act* is the culmination of extensive studies and stakeholder consultations and responds to recommendations in a number of recent reviews. It also fulfils one of the commitments made in *Straight Ahead - A Vision for Transportation in Canada* and contributes to the Government of Canada's governance agenda as set out in the 2002 Speech from the Throne.[lxxix]

On June 15, 2006, the Honourable Lawrence Cannon tabled in the House of Commons (Bill C-20) An Act respecting airports, airport authorities and other airport operators and amending the Transportation Appeal Tribunal of Canada Act. A predecessor bill, C-27, an Act respecting airport authorities and other airport operators and amending other Acts (Canada Airports Act), was introduced in the House of Commons by a previous government on 20 March 2003 (2nd Session, 37th Parliament), but subsequently died on the Order Paper, having only been debated at second reading. The current bill provides:

*an accountability framework for Canada's largest airports;
*a modern corporate governance regime for the airport authorities;
*a new declaration of Canadian airports policy;
*the roles and obligations of the Minister and the affected airport operators; and
*a fee-setting regime for affected airports, with basic charging principles and notice requirements for setting aeronautical and passenger fees together with avenues for public response.

It will initially affect the 28 largest airports and later the medium sized airports. In addition, it provides the federal government with authority to audit the business affairs of airport authorities and to give direction on matters such as equitable access measures, allocation of slots to airlines, and compliance with environmental requirements.[lxxx] This Act did not become law.

On October 10, 2006, The Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities proposed regulatory amendments requiring all certified Canadian airports to:[lxxxi]

> *follow a clear and consistent set of criteria when developing and evaluating emergency response plans.

The proposed amendments include provisions for ensuring a more formal approach to airport emergency planning together with plans for testing.

Enhancing Transparency and Accountability in the Transportation System Act
The Minister of Transport on June 22, 2023 introduced Bill C-52, the *Enhancing Transparency and Accountability in the Transportation System Act.* The three major features of the proposed legislation were on:

> *****enhancing Air Transportation Accountability (June 22, 2023);
> *****strenghtening *Canada Transportation Act; and*
> *****enhancing transparency in the *Canada Marine* Act

Bill C-52 contains three parts: PART I is on: Enacting the *Air Transportation Accountability Act* to enhance accountability and transparency in air transportation (i.e. service standards and public reporting; information requirements: authorize the Minister of Transport to require airports and other operators to provide information to the Minister, where needed, to inform strategic decision-making; Noise consultation; environmental obligations; and Diversity). PART II is on: Amending the *Canada Transportation Act* to strengthen accessibility performance monitoring (i.e. accessibility reporting and publishing; and complaints). PART III is on: Amending the *Canada Marine* Act to enhance transparency and accountability for Canada Port Authorities (i.e. rate-setting: complaint process; alternative dispute resolution; and cost recovery). Canadian Airports reacted to new Air Sector Legislation indicating that they support actions to drive greater accountability for all players in the national air transportation ecosystem.[lxxxii] As of November 2023, it was in the House for second reading.

E. Covid-19 measures / Opening up the border
The Covid -19 Measures can be classified into: 1. Covid – 19 Measures. 2. Opening up the border, advisory and further easing of travel restrictions.

1. Covid – 19 Measures.
The year 2020 will go down in history when the Government of Canada announced unprecedented measures for the airline industry. Three sets of measures were introduced:

> *air operator requirements (March 2020);
> *air health passenger requirements (April 2020); and
> *air operator requirements - Additional (June 2020).

These are briefly described: *First*, all air operators will be required to: a) conduct a health check of travellers before they board a flight within Canada or depart from Canada, based on guidance from the Public Health

Agency of Canada. b) refuse boarding to a passenger that presents COVID-19 symptoms. c) notify travellers that they may be subject to provincial or territorial measures at their final destination.[lxxxiii]

Second, when travelling by air, travellers will be asked to cover their mouth and nose: a) when screeners cannot always keep two metres of separation between themselves and the traveller at check points; b) when they cannot physically distance from others, or as directed by the airline employees; and c) when directed to do so by a public health order or public health official. Aviation passengers on all flights departing or arriving at Canadian airports will also be required to demonstrate that they have the necessary non-medical mask or face covering during the boarding process otherwise they will not be allowed to continue on their journey. Passengers should follow the current Public Health Agency of Canada's guidance on face coverings.[lxxxiv]

Third, the Government of Canada will now require temperature screenings for all passengers flying in or to Canada. A three phased approach will be taken. Phase 1: By June 30, 2020, all air operators will be required to conduct temperature screenings of all passengers travelling to Canada prior to departure from international or transborder points of departure. Phase 2: By the end of July 2020, temperature screening stations will be placed in the departure section of the four major airports that are currently identified as the only Canadian airports for international travel (Montréal, Toronto, Calgary, Vancouver). Phase 3: By September 2020, temperature screening stations will be in place in the departure sections of the next 11 busiest airports in Canada (St. John's, Halifax, Québec City, Ottawa, Toronto – Billy Bishop, Winnipeg, Regina, Saskatoon, Edmonton, Kelowna, and Victoria). In addition, all employees and personnel that enter or work in the restricted area of the airport will be subject to temperature screening procedures by Canadian Air Transport Security Authority personnel.[lxxxv]

In 2021, more Covid-19 measures were introduced for travellers entering Canada. These measures were:

> *negative test for Covid-19 before travel and review of quarantine plans (January 2021);
> *new rules on international travel and flights to and from Mexico and Carribean were suspended. Travellers for non essential reasons on re-entry face new expenses for Covid-19 molecular test and quarantine in government approved hotels (January 2021);
> *flights from India and Pakistan were suspended and passengers travelling via an indirect route would need to obtain a negative COVID-19 pre-departure test from a third country (April 2021); and
> *new border requirements for fully vaccinated Canadians and permanent residents (April 2021).

2. Opening up the border, advisory and further easing of travel restrictions
In 2021, measures to open the border began. These were:

> *****new border measures (September 2021/November 2021);
> *opening up of Canadian airports for international flights carrying passengers (Aug./Nov. 2021);
> ***i**nternational standardized proof of vaccine (October 2021); and
> *level 3 Advisory (December 2021).

First, Canada's borders will be opened to any fully vaccinated traveller who has completed the full course of vaccination with a Government of Canada-accepted vaccine at least 14 days prior to entering Canada and who meet specific entry requirements for non-essential travel.[lxxxvi] Proof that they meet any COVID-related requirements and negative Covid testing may result in airlines refusing air passengers to board their flights.[lxxxvii] To facilitate and ensure safety of the opening of the borders, airline employees were required to be fully vaccinated.[lxxxviii] On November 30, 2021, new measures were announced that a negative COVID-19 molecular test will no longer be accepted as an alternative to vaccination with limited exemptions.[lxxxix]

Second, with the onset of Covid-19, international flights arriving to Canada were only permitted at four airports: Toronto Pearson International Airport; Montréal-Pierre Elliott Trudeau, International Airport; Calgary International Airport; and Vancouver International Airport. As of August 9, 2021, **five** additional Canadian airports: Halifax Stanfield International Airport; Québec City Jean Lesage International Airport; Ottawa Macdonald–Cartier International Airport; Winnipeg James Armstrong Richardson International Airport; and Edmonton International Airport were opened to international flights carrying passengers. Billy Bishop Toronto City Centre was later added to the list. Effective November 30, 2021, international flights carrying passengers were permitted to land at **eight** additional Canadian airports: St. John's International; John C. Munro Hamilton International; Region of Waterloo International; Regina International; Saskatoon John G. Diefenbaker International; Kelowna International; Abbotsford International; and Victoria International bringing the total number of airports with international service to 18.[xc]

Third, on October 21, 2021 the Government of Canada indicated that it is on the implementation of an internationally-recognized, national, standardized proof of vaccination. This Proof of Vaccination Credential (PVC): 1. was developed by provinces and territories, with support from the Government of Canada; 2. is a recognized, trusted document that has been shared with our international partners; 3. shows your COVID-19 vaccination history; and 4. can be verified after you upload it into ArriveCAN (on your return to Canada). This proof does not guarantee your entry or transit through another country. There is currently no internationally recognized standard for a PVC. The global landscape for proof of vaccination is evolving rapidly, with different types of documentation and requirements being used in different jurisdictions.[xci]

Fourth, on December 15, 2021, the Public Health Agency of Canada advised travellers to avoid non-essential travel outside of Canada (level 3). At a news conference on Parliament Hill, federal ministers and health officials said the advisory against international travel is back in place. The government usually issues a notice at level 3 when: 1. there is a large-scale outbreak in a large geographic area, or 2. there is an increased risk to the traveller and other groups including the Canadian public.

Further easing travel restrictions began in 2022. These were:

*****making adjustments to the current border measures (February 28, 2022);
*****easing further travel restrictions (March 17, 2022);
*****removing a few restrictions (June 30, 2022); and
*removing all Covid-19 restrictions (October 1, 2022).

First, a series of adjustments to the current border measures, began on February 28, 2022.[xcii] These include: 1. Easing the on-arrival testing for fully-vaccinated travellers. This means that travellers arriving to Canada from any country, who qualify as fully vaccinated, will be randomly selected for arrival testing. Travellers selected will also no longer be required to quarantine while awaiting their test result. 2. Providing travellers will now have the option of using a COVID-19 rapid antigen test result (taken the day prior to their scheduled flight or arrival at the land border or marine port of entry) or a molecular test result (taken no more than 72 hours before their scheduled flight or arrival at the land border or marine port of entry) to meet pre-entry requirements. 3. Adjusting its Travel Health Notice from a Level 3 to a Level 2. This means that the Government will no longer recommend that Canadians avoid travel for non-essential purposes. The reaction to the announcement by RJ Steenstra, CEO & President of Fort McMurray International Airport and Policy Council Chair of the Canadian Airports Council was positive.[xciii]

Second, a further easing of travel restrictions effective April 1, 2022 was announced. These include: 1. Travellers fully vaccinated will no longer need to provide a pre-entry COVID-19 test result to enter Canada by air, land or water after April 1, 2022. Fully vaccinated travellers seeking to arrive in Canada before April 1, 2022, must still have a valid pre-entry. 2. Travellers arriving to Canada from any country, who qualify as fully vaccinated, may need to take a COVID-19 molecular test on arrival if selected for mandatory random testing. Travellers selected for mandatory random testing are not required to quarantine while awaiting their test result. 3. Travellers partially or unvaccinated who are currently allowed to travel to Canada, pre-entry testing requirements are not changing. The Canadian Airports Council issued the following statements on the government's intention to remove pre-entry COVID-19 testing for all fully vaccinated travellers to Canada as of April 1, 2022. "The federal government's decision to remove the pre-entry test requirement for fully vaccinated travellers is great news for Canadians. This is a major step forward that brings Canada in line with many other jurisdictions, including the United Kingdom, Denmark, Switzerland and Ireland, and allows individuals and businesses to plan their summer and fall travel. "The elimination of the testing requirement for fully vaccinated travellers will remove a major deterrent to travel and help to rebuild Canada's $102 billion tourism and travel sector, and restore jobs. Today is a good day for Canada."[xciv]

Third, a few more restrictions were removed. 1. On June 30, 2022, mandatory randomized testing was temporarily suspended at all airports. 2. On July 1, 2022 all testing, including for unvaccinated travellers, will be performed off-site. This expanded measure builds upon action currently underway by the Government of Canada and the air industry. 3. On June 20, 2022, it suspended vaccination requirements for domestic and outbound travel, federally regulated transportation sectors and federal government employees. However, Canadian citizens and Canadian permanent residents returning from international destinations who do not qualify for the fully vaccinated traveller exemption continue to be required to provide a valid pre-entry test result, remain subject to Day 1 and Day 8 molecular testing, and quarantine for 14 days. Vaccine requirements for entry into Canada by foreign nationals remain unchanged at this time and foreign nationals who are not fully vaccinated continue to be prohibited entry into Canada. In addition, masking requirements continued to be required on federally regulated planes and trains and cruise ships.[xcv]

Fourth, removal of all Covid-19 restrictions. On September 26, 2022, the Government of Canada announced the removal of all COVID-19 entry restrictions, as well as testing, quarantine, and isolation requirements for anyone entering Canada, effective October 1, 2022.[xcvi] The removal of border measures has been facilitated by a number of factors. All travellers, regardless of citizenship, will no longer have to:

*submit public health information through the ArriveCAN app or website;
*provide proof of vaccination;
*undergo pre- or on-arrival testing;
*carry out COVID-19-related quarantine or isolation; and
*monitor and report if they develop signs or symptoms of COVID-19 upon arriving to Canada.

Transport Canada also removed existing travel requirements. As of October 1, 2022, travellers will no longer be required to:

*undergo health checks for travel on air and rail; or
*wear masks on planes and trains.

Canadian Airports Council (CAC) welcomed the announcement from the Government of Canada that all pandemic safety measures, including mandatory masking, will be lifted for air travel on October 1st, 2022. The head of the Canadian Airports Council said the organization is relieved to know its members can return to normal operations.[xcvii]

Besides the above, several other regulatory developments occurred such as: New Policy on Safety, Security, Wet-leasing and Reciprocity (2013);[xcviii]Expanded use of Portable Electronic Devices (PEDs) (2014);[xcix] Air Canada Public Participation Act (2016);[c] decisions by the Canadian Transportation Agency, etc.

Rail Transportation[ci]

Background

The history of regulation in rail goes back to the mid 1850s. In 1851, the first general law on rail transportation, the *Railway Act*, was enacted. Rail regulation played an important role in consolidating Canada in the Confederation scheme of 1867. Since then, up until the mid 1980s, the railways were regulated by several federal acts - the *Railway Act*, the *Transport Act*, the *Canadian Transportation Act 1996*, the *Railway Relocation and Crossing Act*, the *Canadian National Railway Act*, the *Western Grain Transportation Act*, the *Government Railways Act*, the *Maritime Freight Rates Act*, and the *National Energy Board Act*. In addition, the railways were also subject to their respective provincial Acts and regulations.

In the period from 1985-2003, the major events that governed regulatory developments in rail transportation can be classified under the following: **A. Regulations before the Deregulation Era of 1987. B. Regulatory Reforms Introduced between 1987 and 1995. C. Regulatory Reforms Introduced between 1996 and 2004. D. Regulatory Reforms Proposed after 2004. E. Grain Transportation Deregulation in Canada. F. Railway Passenger Services.**

A. Regulations before the Deregulation Era of 1987

Before deregulation in 1987, there were two major facets of **economic** regulation, apart from technical regulations. The first involved ensuring adequate quality of service to users and embodied:

*monitoring of passenger services;
*applying for branch line abandonments;
*approving of new track construction;
*examining applications for the consolidation of local stations; and
*dealing with complaints from various groups.

The second related to costing and rate matters and encompassed:

*auditing the accounts of Canadian railways under federal jurisdiction;
*analyzing and developing railway costing methodologies;
*determining subsidy payments; and
*reviewing matters related to rates and traffic.

The major aspects of regulation pertaining to competition were contained in the *Railway Act* and the *National Transportation Act 1967*. The important ones were:

*publishing freight rates and filing of prospective rate increases at least 30 days prior to the increases (s. 275 of the Railway Act (i.e., RA)), with actual rates being determined by the carrier;
*appealing freight rates which may be prejudicial to the public interest with remedial powers to change rates viewed as 'uniform', 'too high' or 'discriminatory' (s. 23 of the *National Transportation Act 1967* (i.e., NTA));
*establishing rate minima - compensatory rates that exceed variable cost to prevent loss-leader pricing (ss. 276 and 277 RA);
*establishing rate maxima regulation (captive shipper assistance clause - s. 278 RA);
*protecting a small shipper by adjustment of rates to shippers of small loads facing a railway (s. 264 RA);
*filing of agreed and joint tariffs on traffic passing over a continuous route in Canada operated by two or more railway companies (s. 284 RA);
*allowing collaboration by the railways to establish common rates and to exchange cost information with an exemption from the provisions of the *Combines Investigation Act* (now the *Competition Act*) (s. 279 RA);

*allowing agreed charges to meet intermodal competition for most or all of a shipper's traffic. The agreed charges are not restricted to the parties initially signing the agreement (ss. 32-35 of the *Transport Act* i.e., TA) and protection against unjust discrimination (s. 33 TA);
*granting subsidy payments under the *Maritime Freight Rate Act* and *Atlantic Region Freight Assistance Act*;
*reviewing of adequacy of service (s. 262 RA) and suitability of traffic accommodation (ss. 265-266 RA);
*considering abandonment or rationalization of lines and services and related matters of compensation (s. 256 RA);
*determining infrastructure, location and construction (s. 101 RA); and
*reviewing acquisition of an interest in a transport enterprise by another transport enterprise (s. 27 NTA).

B. Regulatory Reforms Introduced between 1987 and 1995

During the period 1987 and 1995 one major package of regulatory reforms was introduced.

1. The reforms of 1987

The first major impetus for reforms in Canadian railways came from the regulatory reforms introduced in the U.S. as a result of the *Railroad Revitalization and Regulatory Reform Act* and the *Staggers Rail Act*. Namely, the offering of rebates made possible by the *Staggers Rail Act* which were prohibited in Canada led to substantial loss of traffic to American railroads.

General and specific proposals to introduce reforms were reflected in the July 1985 Discussion Paper *Freedom to Move* of the Minister of Transport. These proposals were later embodied in the *National Transportation Act, 1987* which in the words of the Agency "signals a new era in Canada's transportation history - an era of greater competition, less regulatory intervention and more innovative transportation services. There will be more choices and greater competition in rail transportation." Reforms were introduced in four basic areas:

*access to alternative rail service;
*new tariff provisions;
*rail network rationalization; and
*dispute resolution services.

The access provisions were expanded to provide shippers greater choices to alternative rail services in a number of ways:

*interswitching limits were expanded to a radius of 30 kilometres from the previous limit of 6.4 kilometres (subsection 153(3) of the NTA now sections 127 and 128). These limits may be expanded in some cases on application to the Agency, if within close proximity to the prescribed limits (subsection 127(4) of the CTA).

In other words, it is an application to have its facility be deemed to be within the thirty kilometre radius. Further, the interswitching rates can be adjusted to reflect differences in distances, efficiencies and costs. Furthermore, the new rates will be periodically adjusted compared to the old interswitching rates which were not adjusted for over thirty years.

*for shippers beyond the 30 kilometre radius, the shipper can agree with the carrier or ask the Agency to set a competitive line rate (i.e., CLR) (sections 134-144 of the NTA now sections 129-139 of the CTA) to the interchange point of a competing carrier.

The shipper, however, must first obtain a rate from the competing carrier. The CLR will be based on the regulated interswitching rates and competitive line haul rates from the interswitching limit to the competing carrier's connection. The competing carrier is responsible for car supply and other common carrier obligations, and must share interchange maintenance cost.

The tariff provisions were designed to encourage competition in several ways:

*railways right to discuss and set rates collectively were abolished;
*shippers can negotiate confidential contracts, an agreement which provides shippers flexibility in negotiating rates and conditions of services. These contracts must be filed with the Agency;
*tariffs and agreed charges will follow a streamlined approach;
*tariffs can be electronically filed;
*tariffs are required when rates affect subsidy payment;
*tariffs must be published; and
*railways serving competing points are no longer required to consent to agreed charges between these points before they are established.

The rail network rationalization provisions enable the railways to become more cost efficient through improvements in productivity while preserving rail lines when required in the public interest. The streamlined abandonment procedures include the transfer of lines to independent operators and the funding of improvements for alternative transportation facilities.

The dispute resolution service provisions provide a new framework for conflict management. They include:

*mediation;
*final offer arbitration; and
*public interest investigations.

C. Regulatory Reforms Introduced between 1996 and 2003
Between 1996 and 2003 two sets of regulatory reforms were introduced.
1. The reforms introduced between 1996 and 1997
On July 1, 1996, the *Canada Transportation Act* (i.e., CTA) the successor to the *National Transportation Act, 1987* was enacted to modernize and streamline transportation and to enhance the viability of Canada's major rail carriers. A number of new provisions were added to the previous act, the *National Transportation Act, 1987.* The focus of the new provisions were on development of a healthy short line industry, cost reduction of the major Class I carriers through rationalization, and provision of opportunities for retaining rail services. The Act:

*eases the entry of smaller, lower cost rail carriers into operations in concert with CN and CP;
*lines must be offered for sale before they are abandoned; and
*introduces a new statutory requirement for federal railways to issue a three-year network plan.

The basic intent of the first is to encourage the development of shortline railways as they complement the mainline carriers as feeders of traffic. The intent of the second is to afford governments ample opportunity to acquire such lines when no interested party is found. To provide for rail rationalization along more commercial lines and to make it a less adversarial process and more conducive to the sale or lease to new operators, revisions were made to the old act. The intent of the last is to protect the public interest by providing an opportunity to interested parties to purchase lines to be discontinued or sold. In addition to the above, a number of other changes were made:

*the provisions pertaining to non-compensatory rates were repealed;

*a substantial harm test was added to section 27(2);
*the public interest test was removed for: CLRs, level of service and interswitching but retained for the grant of running rights;
*the Agency's review of transport acquisition was dropped;
*a new subsection 4(2) was specifically added to the Act indicating that nothing in or done under the authority of the Act affects the operation of the *Competition Act*; and,
*the Governor-in-Council may take steps, in the event of an extraordinary disruption, notwithstanding subsection 4(2) and it will prevail over the *Competition Act*.

In 1997, the Agency reviewed the interswitching regulations, including a review of the rate levels and section 112 of the Act. A new feature stipulated that rates established by the Agency shall be commercially fair and reasonable to all parties.

2. The reforms introduced between 1998 and 2003.
The amendments deal with:

*a revenue cap;
*the final offer arbitration; and
*the abandonment of a branch line.

First, the revenue cap will result in a reduction of estimated revenue from freight rates by $178m. This is approximately an 18 percent reduction in grain freight rates from the 2000-2001 levels. Second, the final offer arbitration provision will provide for: a summary process for disputes of less than $750,000, an exchange of offers after ten days, a faster process for dealing with disputes (i.e., 30 days for disputes of less than $750,000 and 60 days for disputes of more than $750,000) and a three person arbitration panel. Third, the branch line amendments facilitate branch line rationalization and the measures to achieve this include the following: compensation (transitional) of $10,000 per mile for three years to affected municipalities or districts when a grain line is closed, operation of the remaining part of the branch line for three years, discouraging de-marketing (i.e., purposefully deferring maintenance to make operations uneconomic) of grain lines by ordering improvement of services and identification of lines for discontinuance in the three year plan. Fourth, section 116 was amended to provide for running rights to protect grain shippers in the event a railway breaches its level of service obligations.

In 2002, the Agency began a review of the interswitching regulations again as required after every 5 years and on Feb. 1, 2004 new interswitching regulations came into force. The rates in the four zones for blocks of less than 60 cars decreased on an average of 13% to reflect the decline in variable costs of interswitching of the two major carriers. In 2005 and 2006, the Agency determined that no changes were necessary to the existing rates. In 2007, it began reviewing the regulations again.

On February 23, 2003 - Bill C-26 - An Act to Amend the *Canada Transportation Act* was introduced in the House of Commons by Transport Minister, David Collenette. It contained several reforms pertaining to rail. The reforms were largely based on the recommendations of the Canada Transportation Act Review Panel. The reforms deal with:

*the review of mergers under section 15;
*the substantial commercial harm test (s. 7(1) and s. 40)) was deleted from the interswitching, the extended interswitching and the CLR provisions.

*the interswitching provision (s. 40) was modified so that interswitching rates determined by the Agency will be maximum rates to encourage negotiations between shippers and railways;
*the regulated connection rate (s. 42) will replace the CLR provision due to the lack of success with this provision in providing competitive access;
*the regulated connection rate now has a number of new tests to be satisfied (s.44); and
*the final offer arbitration provision (s. 60) has been clarified to allow groups of shippers to join in one proceeding and submit one offer for arbitration that seeks a common relief in disputes under $750,000. The section numbers indicated above refer to the sections in the Bill.

Regarding review of mergers, a merger that involves a transportation undertaking that must be notified under the *Competition Act* may be subject to the merger review provisions of the *Canada Transportation Act*. A special merger review process is now applicable to all modes of transportation under federal jurisdiction not just air transportation as was previously the case. It involves a dual approval process: a public interest process and a process under the *Competition Act*. The substantial harm test was perceived by shippers to be time consuming and costly and likely contributed to the fact that no applications were made under the extended interswitching or competitive line rate provisions since 1996, when the substantial commercial harm test was introduced. The new amendments were a positive initiative, however the bill died when the minority Conservative Government was elected in early 2006.

D. Regulatory Reforms Proposed after 2004

On March 24, 2005, Bill C-44 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-26) was introduced in the House of Commons by the Minister of Transport, Jean-C. Lapierre. It contained several reforms pertaining to rail. The new amendments were a positive initiative, however the bill died when the minority Conservative Government was elected in early 2006.

On May 4, 2006, Bill C-11 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-44) was introduced in the House of Commons by the Minister of Transport, Lawrence Cannon. The former bill died on the Order Paper with the dissolution of Parliament, not having gone beyond first reading. According to departmental officials, the amendments to the Canada Transportation Act (CTA) contained in Bill C-11 focus on balancing the interests of communities, consumers, commuters and urban transit authorities with those of air and rail carriers. This bill is similar to Bill C-44 with a few notable exceptions.

*Bill C-44 contained a number of amendments to provisions in Division IV, entitled Rates, Tariffs and Services, of Part III (pertaining to railway transportation) of the CTA. The proposed amendments related to the setting of rates payable by railway shippers for the transport of goods and are not included in Bill C-11;
*Bill C-11 proposed to add a new provision in Part III of the CTA that permits the Minister to enter into an agreement with a provincial authority to authorize the latter to regulate a railway in the same manner and to the same extent as the Minister may regulate the construction, operation and safety of a federally regulated railway as well as the rates and conditions of service; this provision was not included in Bill C-44;
*Bill C-44 contained a number of amendments to certain provisions in Part IV of the CTA respecting final offer arbitration – a process that is generally available to a shipper who is dissatisfied with the rates or conditions of service proposed by a railway company; those amendments are not included in Bill C-11;
*Bill C-44 proposed to add a new Part V.1 to the CTA pertaining to international bridges and tunnels. Instead of being included as part of the broader package of amendments to the CTA in Bill C-11, the relevant provisions are now contained in a separate stand-alone bill, C-3, the International Bridges and Tunnels Act, which was introduced in Parliament on 24 April 2006;

*Bill C-11 proposed to add a number of detailed provisions respecting a review procedure for, and appeals of, administrative monetary penalties in Part VI of the CTA; these provisions were not included in Bill C-44; and
*Bill C-44 proposed to introduce a new VIA Rail Canada Act that would have changed the governance of VIA Rail from the Canada Business Corporations Act to the proposed Act; the relevant provisions were not included in Bill C-11.

It also contained amendments to the general, air and railway transportation provisions as well as an adjustment to the calculation of the grain revenue cap. It received Royal Assent on 22 June 2007 and came into force on the same day.

E. Grain Transportation Deregulation in Canada[cii]

1. Regulations before the deregulation era

The regulation of western grain transportation goes back to the late 1800's. In 1897, the Federal Government and the Canadian Pacific Railway (CPR) signed the Crow's Nest Pass Agreement. In 1925, these rates became statutory as they were embodied in the *Railway Act*. Pursuant to the Agreement, grain producers absorbed 18.7% of the cost of transporting grain, the remainder being paid by the federal government. In 1927, the statutory rates were extended to Canadian National Railway and to exports of grain and flour to ports on the West Coast and Churchill. In 1984, the Western Grain Transportation Act replaced the Crow's Nest Pass freight rates. This Act set a formula for determining freight rates on the basis of a multiple of the Crow rate.

2. Regulatory Developments in Grain Transportation Over the Past Few Years (1995-2000)

The absorption of the cost or subsidy by the Federal government ended when the Minister of Finance in his budget speech announced the end of the subsidy programs in 1995. In lieu of the subsidy, the government offered a onetime payment of $1.6b to registered landowners tax free. The *Western Grain Transportation Act* was repealed in 1995 and with that Western grain transportation subsidy came to an end after 98 years. Further, to protect the farmers, the maximum rates that could be charged by the railways for the transportation of 58 grain commodities were set under the *Canada Transportation Act*. The demise of the Crow rate did not bring about a strong reaction from the farmers. Its abolition enabled Canada to honour some of its obligations under the revised General Agreement on Tariffs and Trade to reduce agricultural subsidies which were described as anti-competitive. Further, it discouraged efficiency, frustrated efficient pricing, distorted market signals creating situations which moved Prairie grain to Thunder Bay and then back to Winnipeg for export to the United States in order to collect the subsidy. Finally, given the size of the deficit at that time and the changed attitude of the federal government to subsidies, its abolition helped to alleviate some of the government's fiscal problems. The elimination of rail freight subsidies initiated a process of gradual deregulation, one of the major deregulatory events that began in the 1990s.

Some noteworthy developments that occurred thereafter are: 1. Canada - United States Joint Commission on Grains; 2. Western Grain Panel Marketing Report; 3. Changes to the Canadian Wheat Board Act - Bill C-4, *An Act to Amend the Canadian Wheat Board (1998);* 4. Estey Grain Review (In December 1998, the final Report of Willard Estey on Western Grain Handling and Transportation was submitted to the Federal Government. The report contained 15 recommendations pertaining to handling and transportation of grain); 5. Minister of Transport Policy Statement (May 12, 1999) (agreed with Estey's vision and appointed Mr. Arthur Kroeger to develop operational details so as to implement the Federal Government's plan for the 2000-01 crop year). 6. Arthur Kroeger Reports [By the end of September 1999, Mr. Kroeger prepared three reports after consultation with various stakeholders to give effect to Willard Estey's recommendations. The recommendations of Mr. Kroeger fall under four groups: a. *The Revenue Cap* - should replace the present rate cap (12% reduction from revenues in the base year 1998 and future rate reductions determined by competition). b. *Railway Competition* - should be increased. c. *Final Offer Arbitration* - should be revised. d. *The Transportation Role of the Canadian Wheat Board* - should be superseded by commercial, contract-based arrangements. For further description on each of the above developments refer to the article indicated.[ciii]

The above developments led to Bill C - Implementing Reforms in the Marketing and Handling of CWB Grain. On May 10, 2000, the Minister of Transport, David Collenette, together with Ralph Goodale, the Minister of Natural Resources and the Minister for the Canadian Wheat Board, and the Minister Lyle Vanclief, Minister of Agriculture and Agri-food announced a package of reforms on Canada's Grain Handling and Transportation System. The Reform Package (based on Estey and Kroeger) proposed by the Ministers contains 6 components: replacing of the rate cap with the revenue cap; creating of a more commercial and competitive system for moving grain from country elevators to ports (by tendering of Canadian Wheat Board shipments); improving the FOA provisions of the *Canada Transportation Act*; funding for prairie grain roads; improving branch line rationalization; and monitoring (private) the impact of changes. The first three Reforms indicated above were to be implemented by August 1, 2000. Additional details of these three reforms are provided hereafter. First, the revenue cap to be established provides for an annual estimated reduction of $178 million in railway revenues. This represents an estimated 18 percent reduction in grain freight rates from 2000-2001 levels. Second, logistical services for 25 percent of the grain shipments of the Canadian Wheat Board through the ports of Vancouver, Prince Rupert, Thunder Bay and Churchill will be tendered in 2000-2001. This percentage will be increased to 50 percent in 2002-2003. Third, the *Canada Transportation Act* will be amended to facilitate the transfer of branch lines to community-based shortlines and to simplify the Final Offer Arbitration process.

An *Act to Amend the Canada Transportation Act* went into effect on July 26, 2000. The amendments deal with:

*a revenue cap;
*the final offer arbitration; and
*the abandonment of a branch line.

First, the revenue cap will result in a reduction of estimated revenue from freight rates by $178m. This is approximately an 18 percent reduction in grain freight rates from the 2000-2001 levels. Second, the final offer arbitration provision will provide for: a summary process for disputes of less than $750,000, an exchange of offers after ten days, a faster process for dealing with disputes (i.e., 30 days for disputes of less than $750,000 and 60 days for disputes of more than $750,000) and a three person arbitration panel. Third, the branch line amendments facilitate branch line rationalization and the measures to achieve this include the following: compensation (transitional) of $10,000 per mile for three years to affected municipalities or districts when a grain line is closed, operation of the remaining part of the branch line for three years, discouraging de-marketing (i.e., purposefully deferring maintenance to make operations uneconomic) of grain lines by ordering improvement of services and identification of lines for discontinuance in the three year plan. Fourth, section 116 was amended to provide for running rights to protect grain shippers in the event a railway breaches its level of service obligations.

3. Regulatory Developments in the Grain Transportation over the Past Few Years (2000-2008)

Some noteworthy developments that occurred thereafter are: 1. Grain Monitoring Program; 2. Canada Transportation Act Review Panel CTARP (May 2001) recommended that the grain handling and transportation system be moved to a more commercial basis, which could lead to repeal of the revenue cap on grain rates. 3. Canadian Transportation Act - Revenue Cap (s. 151) requires the Agency to determine each railway company's revenue cap annually and whether each cap has been exceeded by the railway companies. It also determines the Volume Related Composite Price Index (VRCPI) to be used to establish railway-specific revenue caps. 4. Straight Ahead - A Vision for Transportation in Canada (February 2003) - Regarding grain transportation it indicated that the government: 1. continue to monitor the impact of its May 2000 grain policy reforms before making decisions on further policy changes; and 2. propose that the *Canada Transportation Act* be amended to require railways to publish a list of sidings available for loading grain producer cars and to give a 60-day public notice before removing such sidings from operation. *(Sidings are the places where farmers load their grain into rail cars. This provision would give farmers time to make alternative arrangements or to work with the railway to keep such sidings in operation)*. 5. Amendments to the Canada Transportation Act Bill C 8 on the Canada Transportation Act received Royal Assent on February 29, 2008. For further description on each of the above developments refer to the article indicated.[civ]

F. Railway Passenger Services

Rail passenger services have played a less prominent role than freight services in Canada. Passenger services accounts for less than three percent of total rail revenues. Most rail passengers are commuter travellers rather than intercity. Intercity passenger services are provided basically by VIA Rail with services by other carriers to a lesser extent. Initially there was no legislative basis for VIA Rail. On February 24, 1986, the *VIA Rail Act* (contained in Bill C-91) was introduced in the House of Commons. Its features were:

*a national passenger policy;
*a scheduling priority;
*a compensation regime by VIA to CN and CP;
*a standard for service determination; and
*a provision for commuter rail service.

In 1990, the restructuring of services of VIA led to its reduction by half. The cut in services was to reduce the subsidy payment and to improve operating efficiencies and productivity. In 1992, *the Royal Commission on National Passenger Transportation* recommended that VIA Rail be given a corporate mandate and that subsidies by the government be further reduced. Bills C-26 and its successor Bill C-44 were introduced in 2003 and 2005, respectively giving VIA Rail legislative corporate mandate. Before Bill C-44 was passed, a new minority conservative government was elected and the bill died. On May 4, 2006, a new Bill C-11 was introduced but it did not contain those provisions. Apart from these legislative developments, the former Transport Minister David Collenette announced Renaissance I and II which provided funding of more than $1 billion in April 2000 and October 2003 to ensure the revitalization of passenger rail services in Canada. On October 11, 2007, the government provided a new funding package of $691.9 million for passenger services.

II. Rail Transportation (2004-2024)

Over the period 2004-2024, the major events that governed regulatory developments in rail transportation can be classified under the following: **A. Rail Freight Service**. **B. Railway Safety**. **C. Transportation Modernization**. The genesis of first was the Report of Justice of Willard L. Estey. The genesis for the second was the Lac-Mégantic train accident. The genesis for the third was the *Transportation Modernization Act.*

A. Rail Freight Service

The Rail Freight service can be classified into: 1. Rail Freight Service and Competition. 2. Fair Rail Freight Service. 3. Fair Rail for Grain Farmers.

1. Rail Freight Service and Competition.
On October 7, 2004, Bill S-6 An Act to amend the Canada Transportation Act (running rights for carriage of grain) received first reading.
The basic amendment (138.1) in the bill provides for:

> *the application by a railway company to the Minister of Transport for running rights for the carriage of grain;
> *the Minister having regard to the public interest in the efficient and economical movement of grain, after consulting with the Minister responsible for the Canadian Wheat Board may make an order granting rights and may impose any conditions on either railway; and
> *the Minister may also order the amount to be paid as compensation for the grant of running rights if the railway companies fail to agree.

The Canadian Transport Agency shall assist the Minister in determining the compensation if requested. The Bill went for second reading on November 2, 2005.[cv] The bill did not receive third reading.

On March 24, 2005, Bill C-44 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-26 (2003)) was introduced in the House of Commons by the Minister of Transport, Jean-C. Lapierre. It contained several reforms pertaining to rail. The reforms were largely based on the recommendations of the 2001 Canada Transportation Act Review Panel and the 2003 publication of Transport Minister, David M. Collenette, *Straight Ahead - A Vision for Transportation in Canada*. The reforms deal with:

> *the review of mergers under section 15;
> *the substantial commercial harm test (s. 7(1) and s. 40)) was deleted from the interswitching, the extended interswitching and the CLR provisions;
> *the interswitching provision (s. 40) was modified so that interswitching rates determined by the Agency will be maximum rates to encourage negotiations between shippers and railways;
> *the regulated connection rate (s. 42) was to replace the CLR provision due to the lack of success with this provision in providing competitive access;
> *the regulated connection rate now has a number of new tests to be satisfied (s. 44);
> *the maximum grain revenue entitlement (Clause 54); and
> *the final offer arbitration provision (s. 60) which was clarified to allow groups of shippers to join in one proceeding and submit one offer for arbitration that seeks a common relief in disputes under $750,000. The section numbers indicated above refer to the sections in the Bill.

A merger that involves a transportation undertaking that must be notified under the *Competition Act* may be subject to the merger review provisions of the *Canada Transportation Act*. A special merger review process is now applicable to **all** modes of transportation under federal jurisdiction not just air transportation as was previously the case. It involves a dual approval process: a public interest process and a process under the *Competition Act.* The substantial commercial harm test was perceived by shippers to be time consuming and costly and likely contributed to the fact that no applications were made under the extended interswitching or competitive line rate provisions from 1996 to 2005, when the substantial commercial harm test was introduced in 1996. The new amendments were a positive initiative, however, the bill died when the minority Conservative Government was elected in early 2006.

On May 4, 2006, Bill C-11 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-44) was introduced in the House of Commons by Minister of Transport, Lawrence Cannon. It contains amendments to the general, air and railway transportation provisions as well as an adjustment to the calculation of the grain revenue cap. The important amendments relating to rail freight service and competition in this bill were:

*the transferring and discontinuing the operation of railway lines (Clauses 35-42);
*the maximum grain revenue entitlement (Clause 43); and
*the final offer arbitration.

Section 151 concerns the calculation for a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year. The formula makes reference to, among other things, the "volume-created composite price index." Among the rules listed in the provision that are applicable to the volume-related composite price index is the rule set out in paragraph 151(4)(c) that the Agency must make adjustments to the index to reflect the incremental costs incurred by the prescribed railway companies for the purpose of obtaining cars as a result of the sale, lease or other disposal or withdrawal from service of government hopper cars. Clause 43 amends the paragraph to remove the reference to "incremental" and to add at the end of the paragraph the following: "and the costs incurred by the prescribed railway companies for the maintenance of cars that have been so obtained." Clause 43 also adds a new section, 151(6), to provide that despite section 151(5) (concerning when the Agency must make the determination of a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year), the Agency must make the adjustments referred to in subparagraph 151(4)(c) referred to above at any time that it considers appropriate and determine the date when the adjusted index takes effect.

Other amendments deal with: definitions; railway noise; financial transactions of railway companies; scheme of arrangement; dispute resolution (public passenger service providers and railway companies); agreements to apply transportation law to provincial railways; and agreements with provincial authorities.

On 22 June 2007, the Act received Royal Assent and came into force on the same day.

On October 29, 2007, The Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, tabled Bill C-8 on *Amendments to the rail freight provisions of the Canada Transportation Act* in the House of Commons. It replaced its predecessor (Bill C-44). This was the third and final stage of its amendment to this Act (the first was Bill C-3 and the second was Bill C-11). The amendments in this bill were:

*removing the substantial commercial harm test which now applies to extended interswitching and competitive line rates;
*increasing the notice period provisions to 30 days from 20 days for rate increases;
*permitting the Agency, upon complaint by a shipper, to conduct its investigation on charges and incidental charges and to establish new charges;
*ensuring that the discontinuance process applies to railway lines that are leased to local railway operators and subsequently revert to a federal railway;
*requiring railways to publish a list of rail sidings available for grain producer car loadings together with a 60 days' notice before removing such sidings from operation;
*extending the final offer arbitration to groups of shippers; and
*allowing for the suspension of any final offer arbitration process, if the parties agree to pursue mediation.[cvi]

The new bill does not contain any substantial new amendments with regard to the competitive access provisions, with the exception that the substantial commercial harm test has been removed. This is an improvement compared to the existing provisions.

On February 29, 2008, Bill C-8, An Act to Amend the Canada Transportation Act (railway transportation), received Royal Assent.[cvii]

2. Fair Rail Freight Service.
On December 11, 2012, the Honourable Denis Lebel, along with the Honourable Gerry Ritz, Minister of Agriculture and Agri-Food, announced the introduction of the *Fair Rail Freight Service Act* Bill C-52:

> *to give companies that ship goods by rail the right to a service agreement with railways;
> *to create an arbitration process to establish an agreement when commercial negotiations fail;
> *to respond within 30 days of a shipper requesting a service contract by the railways;
> *to provide for service arbitration to establish terms of service if an agreement cannot be reached through commercial negotiations;
> *to provide incentives to shippers and the railways to negotiate commercially; and
> *to give the Canadian Transportation Agency the power to levy a fine up to $100,000 for each violation of an arbitrated service level agreement.

The drafting of the bill was based on the recommendations of the final report of the Facilitator of the Rail Freight Service Review (Mr. Jim Dinning) on June 22, 2012.[cviii] The Honourable Denis Lebel, Minister of Transport, said "Mr. Dinning's report provides clear direction for both shippers and rail companies moving forward. He proposes five commercially–oriented recommendations which build upon recent service improvements. I urge the parties involved to use these additional tools in their commercial negotiations." Initial reaction to the report was positive except from CN. It indicated that shippers' demands for greater government intervention in rail service were clearly misguided. The Western Grain Elevator Association and the Coalition of Rail Shippers were of the opinion that the bill is 'a step in the right direction'. CN expressed disappointment, its CEO said "Such an approach would stifle innovation, chill the positive service momentum that's taken hold and result in potentially unintended consequences for the rail industry and the customers we serve." CP also echoed CN's sentiment that there was no need for additional regulation between railways and shippers.[cix]

3. Fair Rail for Grain Farmers
In 2013, Western Canadian farmers harvested a record 81 million-tonne crop - one of the largest harvests in Canadian history. But with the boom began to appear a bust, hurting farmers due to lack of adequate rail transportation. Saskatchewan Premier Brad Wall indicated that the federal government could do something by regulation or through an order-in-council. On March 7, 2014, Transport and Agriculture ministers announced that concrete measures were being considered. On March 26, 2014, the Ministers introduced in Parliament the *Fair Rail for Grain Farmers Act* (amending the Canada *Transportation Act* and the *Canada Grain Act*), to respond to the challenges facing Western Canada's rail shipping system at that time. The amendments were designed to:

> *increase supply chain transparency;
> *strengthen contracts between producers and shippers;
> *balance accountability better in agreements and contracts between shippers and railways; and
> *help ensure that the entire grain handling and transportation system is working efficiently at the top of its capacity.

The Act received Royal Assent on May 29, 2014. The railways expressed disappointment and were disturbed that the interswitching limits were increased to 160 km.[cx]

On August 1, 2014, Ministers Ritz Raitt announced the coming into force of an Order in Council (OIC) and a series of important regulations related to the Act. The measures, which took effect immediately, include:

> *passing of an OIC, which sets out the minimum grain volumes that Canadian National Railway Company (CN) and Canadian Pacific Railway Company (CP) are each required to move from August 3, 2014 to November 29, 2014;
> *regulations requiring CN and CP to provide additional data on grain movement to better monitor the overall performance of the rail-based supply chain;
> *regulations to clarify the operational terms in a service level agreement that can be arbitrated by the Canadian Transportation Agency, to support commercial negotiations between shippers and railways. These newly defined rail service obligations will increase predictability for all shippers;
> *regulations on an amendment to *Railway Interswitching Regulations* extending the limit for rail interswitching from 30 kilometres to 160 kilometres in the provinces of Alberta, Saskatchewan and Manitoba for all commodities so as to increase competition among railway companies and give shippers access to alternative rail services; and
> *regulations to provide farmers with better protection through more accountability for grain companies in contracts.

The Order in Council required minimum quantities of grain to be moved by Canada's two major railways (500,000 tonnes of grain per week by each railway) imposing fines of $100,000 if they fail to comply (these were extended until March 28, 2015 in November 2014).[cxi] The regulations were not to the liking of the two major Canadian railways, particularly those known as interswitching. CP said its cost to switch a car to a rival line is $825, but it can only charge the regulated rate of $461. As a result, based on traffic volumes, it would lose $13 million a year.[cxii] The two railways were upset and blamed the harsh winter and indicated that a solution requires cooperation on all players in the supply chain.

The sunset provisions of the *Fair Rail for Grain Farmers Act*, was to take effect on August 1, 2016. There was some support for postponing the sunset. Gordon Bacon, CEO of Pulse Canada indicated that the extended interswitching provisions contained in the Act have begun to have an effect and evidence of this is mounting within the grain industry. He said "Some companies are noting lower prices on certain routings and in cases where railways have lost business due to competition, they are actively campaigning to get it back by offering rate reductions and improved levels of service." The government said it will work with parliament to postpone the sunset by one year. On June 15, 2015, the Government of Canada announced that it is postponing for one year the repeal of certain provisions of the *Canada Transportation Act* that were enacted in 2014 by the *Fair Rail for Grain Farmers Act*. The postponement was approved by the House of Commons and the Senate. The provisions being extended provide the authority to:

> *prescribe different distances, by region or by goods, when making regulations on interswitching;
> *make regulations specifying what constitutes "operational terms" that can be referred to in level-of-service arbitration;
> *order a railway company to pay compensation to a shipper or any person for any expenses they incurred as a result of the railway company's failure to comply with its level-of-service obligations; and

*prescribe a minimum amount of grain to be moved by Canadian National Railway and Canadian Pacific Railway during any period within a crop year, and authorize designated persons to impose administrative monetary penalties for failing to meet these requirements.[cxiii]

On May 15, 2015, the Agency decided to review the issues of treatment of interswitching and exchange switching under the Maximum Revenue Entitlement (MRE) Program and to launch an industry-wide consultation for that purpose. The issues to be examined were: 1. What is the most appropriate method of recognizing the costs and revenues associated with interswitching operations, in a way that is consistent with the MRE formula and the Act? 2. Should Agency staff treat revenues and costs related to operations performed under commercially negotiated "exchange agreements" entered into by CN and CP the same way it does interswitching revenues and costs?[cxiv]

On August 1, 2017, the interswitching provisions of the Act expired. To replace these provisions, Bill C-49 (*Transportation Modernization Act*) introduced long-haul interswitching, a new, permanent mechanism designed to assist “captive shippers across different sectors and regions of Canada.

On April 17, 2023, the federal Government published draft legislation to implement certain provisions of the 2023 Budget. Bill C-47 amends the *Canada Transportation Act* to effect a pair of changes relevant to rail freight shippers in Canada:

*extending regulated interswitching limits up to 160 kilometres for traffic in Manitoba, Saskatchewan, and Alberta, and
*empowering the federal Government to make regulations requiring data disclosure by users of the national transportation system, such as shippers.

The amendments establish a new zone that extends the interswitching limit for the three prairie provinces to 160 km, which is a repeat of the geography and distance that were previously in place from 2014 to 2017 under the *Fair Rail for Grain Farmers Act*. The new zone will sunset after 18 months unless the Government takes action to continue that limit. The Minister will also receive data in connection with the above which may allow Government to assess how effective an expanded interswitching limit is at promoting competition.[cxv]

4. Hopper cars and allocation of cars

A brief description of rail freight transportation would not be complete without specific mention of regulatory developments in the hopper cars used in the transportation of grain. The history of allocation of hopper cars that the governments owned has been a contentious and complicated issue.[cxvi] In November 2005, the government reached an agreement in principle to lease the grain hopper cars it owned to the Farmer Rail Car Coalition (FRCC). However, a final agreement was never concluded and on May 4, 2006, the government decided not to proceed with the transfer of the cars to the FRCC. Reference to hopper cars in regulatory developments after 2004 appeared in Bill C-11 - An Act to Amend the *Canada Transportation Act* (formerly Bill C-44) introduced in the House of Commons on May 4, 2006. The amendment (which had a bearing on hopper cars) related to:

*the maximum grain revenue entitlement (Clause 43).

The maximum revenue entitlement for the movement of grain in a crop year was contained in Section 151 as it pertained to its calculation for a prescribed railway company. The formula makes reference to, among other things, the "volume-created composite price index." Among the rules listed in the provision that are applicable to the volume-related composite price index is the rule set out in paragraph 151(4)(c) that:

> *the Agency must make adjustments to the index to reflect the incremental costs incurred by the prescribed railway companies for the purpose of obtaining cars as a result of the sale, lease or other disposal or withdrawal from service of government hopper cars. Clause 43 amends the paragraph to remove the reference to "incremental" and to add at the end of the paragraph the following: "and the costs incurred by the prescribed railway companies for the maintenance of cars that have been so obtained."

Clause 43 also adds a new section, 151(6), to provide that despite section 151(5) (concerning when the Agency must make the determination of a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year), the Agency must make the adjustments referred to in subparagraph 151(4)(c) referred to above at any time that it considers appropriate and determine the date when the adjusted index takes effect.

Clause 57 of Bill C-11 also stated:

> *"the Canadian Transportation Agency shall, once only, on request of the Minister of Transport and on the date set by the Agency, adjust the volume-related composite price index to reflect costs incurred by the prescribed railway companies, as defined in section 147 of that Act, for the maintenance of hopper cars used for the movement of grain, as defined in section 147 of that Act."[cxvii]

On 22 June 2007, the Act received Royal Assent and came into force on the same day.

On May 15, 2015, the Agency decided to review the issues of treatment of interswitching and exchange switching under the Maximum Revenue Entitlement (MRE) Program and to launch an industry-wide consultation for that purpose.[cxviii] On October 15, 2007, the Agency released their lengthy and comprehensive "Hopper Car Consultation Document" to stakeholders and sought input and in February 19, 2008 released Determination 67-R-2008 explaining its findings.

In 2018, Bill C-49 *The Transportation Modernization Act* repealed the definition of 'government hopper car' contained in section 147 of the Canada Transportation Act of 1996. (Section 147 states "government hopper car means a hopper car provided to a prescribed railway company by the government of Canada or a province or by the Canadian Wheat Board"[cxix])

This had bearing on the issue of hopper cars used for the transportation of grain in Canada as the use, maintenance and replacement of the publicly provisioned hopper cars had administrative considerations governing their use. The *Transportation Modernization Act* also directed the Agency to begin calculating two independent VRCPI values for the railways' MRE. Section 41(4) of Bill C-49 states:

> (4) The following rules are applicable to a volume-related composite price index:
> (b) an index shall be determined in respect of each prescribed railway company; and
> (c) the Agency shall make adjustments to each prescribed railway company's index to reflect the costs incurred by the prescribed railway company to obtain hopper cars for the movement of grain and the costs incurred by the prescribed railway company for the maintenance of those hopper cars.

This change is now attributed with unleashing the railway investment in new generation hopper car (as it removed the 'free rider' effect often cited as acting as a functional barrier to investment), essentially replacing the entire government fleet over the last 5 years.[cxx]

B. Railway Safety Act

From 2004 to 2012 amendments were made to the *Railway Safety Act*. The railway safety regulatory developments that occurred over this period can be classified into: 1. New Reflectors on Trains to Improve Safety. 2. Train Speeds. 3. Faulty Train Wheels. 4. Amendments to the *Railway Safety Act*.

1a. *Railway Safety Act* (2004-2012) – 1. New Reflectors on Trains to Improve Safety

On May 1, 2006, new rail rules requiring reflective material on Canadian locomotives and freight cars came into force.[cxxi] According to the new rules:

> *all Canadian-owned locomotives and freight cars operated by railways that are regulated under the Railway Safety Act are subject to the rules;
> *all standards for the application, inspection and maintenance of the reflective material are outlined;
> *all freight cars subject to the rules must be equipped with retro reflective sheeting within seven years of the effective date of the rule; and
> *all locomotives subject to the rules must be equipped with retro reflective sheeting within four years of the effective date.

Previous requirements called for reflective materials to be displayed on both sides of all freight cars owned or leased by CN Rail and CP Rail only. Rail cars which have reflective material will be significantly more visible at night reducing the possibility of accidents.

2. Train Speeds

On July 24, 2006, a Notice and Order was issued by Transport Canada to CN:[cxxii]

> *restricting its train speeds in the Province of Ontario in continuous welded rail territory (non-jointed rail), where construction or significant maintenance of line work is being undertaken.
> *restricting freight train speeds to 10 MPH; and
> *restricting passenger train speeds to 30 MPH.

The exception is if such work has been inspected by a qualified CN track supervisor and approved by the chief engineer for the area.

3. Faulty Train Wheels

On June 13, 2008, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, issued an emergency safety directive to Canadian National Railway:[cxxiii]

> *to identify and remove from use as quickly as possible any potentially faulty train wheels from Canadian service by no later than October 15, 2008.

4. Amendments to the Railway Safety Act[cxxiv].

On June 1, 2010, The Honourable Rob Merrifield, Minister of State (Transport), announced that the Government of Canada will introduce legislation to improve railway safety in Canada.[cxxv] The proposed amendments to the *Railway Safety Act* will encourage rail companies to create and maintain a culture of safety and penalize rule breakers by enabling the Government of Canada to:

*crack down on rule breakers with tough new monetary penalties and increased judicial penalties;
*strengthen safety requirements for railway companies;
*create whistleblower protection for employees who raise safety concerns; and
* require each railway to have an executive legally responsible for safety.

In June 2010, amendments to the *Railway Safety Act* were tabled in the House of Commons and passed second reading. However, the amendments were terminated when the Third Session of the 40th Parliament was dissolved by Royal Proclamation on March 26, 2011.

On October 7, 2011, The Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities, and Minister of the Economic Development Agency for the Regions of Quebec, re-introduced legislation to improve railway safety in Canada. The amendments are the same as those introduced on June 1, 2010.

On May 17, 2012, An Act to amend the Railway Safety Act and to make consequential amendments to the Canada Transportation Act received Royal Assent. It encouraged rail companies to create and maintain a culture of safety and penalize rule breakers by enabling the Government of Canada to:

*require railway companies to obtain a safety-based Railway Operating Certificate and to submit environmental management plans;
*crack down on rule breakers with tough new monetary penalties and increased judicial penalties;
*create whistleblower protection for employees who raise safety concerns;
*require each railway to have an executive legally responsible for safety; and
*emphasize the central importance of safety management systems.

The amendments came into force on May 1, 2013.[cxxvi]

From 2013 to 2016, rail safety dominated the rail news after the Lac-Mégantic rail disaster together with other accidents and recommendations of the Transport Safety Board that followed thereafter from 2017 to 2023 and other events. The Railway Safety regulatory developments that occurred over this period can be classified into: 1. *Railway Safety Act – Emergence and Protective Directives, Operating certificate and Penalties. 2. Transportation of Dangerous Goods Regulations.* 3. *Grade Crossing Regulations*. 4. Railway liability and compensation regime. 5. Locomotive voice and video recorders. *6. Key Trains, Key Routes, Track Inspections* and *Brake Use*. 7. Duty/Rest Rules for Railway Operating Employees.

1b. *Railway Safety Act* (2013-2024) – 1. Emergence and Protective Directives
On July 23, 2013, Transport Canada announced an emergency directive pursuant to section 33 of the *Railway Safety Act* to increase rail safety, effective immediately. It required:

*trains carrying dangerous goods to be operated by at least two people;
*trains carrying dangerous goods cannot be left unattended on a main track;
*locomotive cabs must be secured against unauthorized entry;
*directional controls must be removed from unattended trains;

*special instructions on hand brakes would be applied to locomotives attached to one or more cars and left unattended for more than one hour; and
*automatic brakes would be set to full service position and the independent brake would be fully applied to locomotives attached to one or more cars and left unattended for less than one hour.

On July 23, 2013, CN said that it would adjust its safety practices to comply with Transport Canada's Section 33 Directive issued under the *Railway Safety Act* agreeing with the directive. In the US too, an emergency session was held on August 30, 2013 by the U.S. Federal Railroad Administration's Railroad Safety Advisory Committee to consider additional safety regulations in the wake of the July 2013 Quebec train derailment. Working groups were established, and their findings were to be presented to the committee by April 2014.

On October 17, 2013, to further enhance safety in the transportation of dangerous goods, the Honourable Lisa Raitt, Minister of Transport acted by directing that a protective direction be issued:

*requiring any person who imports or transports crude oil to conduct classification tests on crude oil.

On November 20, 2013, the Minister of Transport, issued a protective direction requiring rail companies to share information with municipalities. Effective immediately, Transport Canada required that:

*any Canadian Class 1 railway company that transports dangerous goods must provide municipalities with yearly aggregate information, presented by quarter, on the nature and volume of dangerous goods the company transports by rail through that municipality; and
*any person who transports dangerous goods by rail, who is not a Canadian Class 1 railway company, must provide municipalities with yearly aggregate information on the nature and volume of dangerous goods transported through that municipality and must notify municipalities of any significant changes to that information, as soon as possible.

In addition, the Auditor General of Canada's report (fall 2013) made recommendations on railway oversight and the Honourable Lisa Raitt, Minister of Transport agreed with them on November 26, 2013. She stated "In response to the Auditor General's findings and recommendations, the department is: 1) improving processes, procedures and tools inspectors use to assess risk; 2) reviewing inspection tools and continuing to improve them as necessary; 3) ensuring timely and mandatory training for inspectors and managers; 4) determining whether the current workforce has the required skills and competencies; and 5) adopting a quality assurance plan that supports consistent oversight and inspection methodology…"[cxxvii]

In May 2014, the Honourable Lisa Raitt, Minister of Transport proposed *Railway Safety Administrative Monetary Penalties Regulations* that will provide Transport Canada with new enforcement tools for railway companies that violate the *Railway Safety Act*. The proposed Railway Safety Administrative Monetary Penalties Regulations, introduce:

*fines of up to $250,000,

These fines will further enhance Transport Canada's ability to quickly enforce safety requirements. These types of administrative penalties—already used in the marine and aviation sectors—provide a faster alternative to prosecution.[cxxviii]

On November 19, 2014, the Honourable Lisa Raitt, Minister of Transport announced new *Railway Operating Certificate Regulations* to enhance railway safety oversight in Canada. The new regulations under the *Railway Safety Act:*

> *stipulate that federally regulated companies will be required to hold a valid *Railway Operating Certificate (ROC)* to operate in Canada.

The Railway Operating Certificate Regulations establish baseline safety requirements that must be met before a company begins operations, providing another tool to ensure railway companies operate safely in Canada. The regulations apply to both new and existing railway companies. Existing companies will have a two-year grace period to obtain a Railway Operating Certificate, whereas new companies will be required to obtain a certificate prior to operating in Canada. These new regulations empower Transport Canada to put an immediate stop to a company's operations by suspending or revoking a company's certificate if a serious violation is identified. These new regulations will come into force on January 1, 2015.[cxxix]

2. Transportation of Dangerous Goods Regulations
On June 20, 2014, the Honourable Minister Raitt, the Minister announced the *Transportation of Dangerous Goods Regulations* for identifying dangerous goods transported on Canadian roads and rails are being harmonized across Canada and with the United States and United Nations rules. On June 27, 2014, she announced new rules aimed at further safeguarding communities along our country's railway lines. Key changes include:

> *requiring 35 provincially regulated railway and light-rail companies operating on federal track to develop and implement Safety Management Systems;
> *formalizing new DOT-111 tank car standards that will require thicker steel walls and other reinforcements to reduce the risk of spills on impact; and
> *improving data reporting requirements for railways, requiring them to proactively identify and address safety risks before accidents happen.[cxxx]

On April 23, 2015, the Honourable Minister Raitt, Minister of Transport issued an Emergency Directive to railway companies concerning the safe and secure transportation of dangerous goods. Companies must:

> *slow their trains to a maximum of 40 miles per hour (64 kilometres per hour) when travelling in highly urbanized areas; and
> *require increased inspections and risk assessments along key routes used for the transportation of dangerous goods, including crude oil and ethanol.

The Emergency Directive remained in place until August 17, 2015.[cxxxi]

On June 5, 2015, by the Honourable Lisa Raitt, Minister of Transport proposed new amendments to the *Transportation of Dangerous Goods Regulations* that would enhance reporting requirements and expand data collection. The proposed amendments would:

> *apply to the transportation of dangerous goods in all transportation sectors;
> *broaden the scope of the original reporting requirements; and
> *help improve emergency response and risk analysis through stronger, more comprehensive data collection.

This additional information would allow Transport Canada to establish more effective regulations in the future.[cxxxii]

On May 2, 2019, Amendments to the *Transportation of Dangerous Goods Regulations*, updated regulations on dangerous goods tank cars and Emergency Response Assistance Plans. Dangerous goods shippers are required now to:

*****transport toxic inhalation hazard substances in tank cars constructed of normalized steel.

Normalized steel undergoes a heat treatment process that increases its durability and resistance to cracking at low temperatures. Toxic inhalation hazard substances include substances such as anhydrous ammonia, a fertilizer used by farmers. The phasing out of rail tank cars constructed of non-normalized steel will provide greater protection to Canadians and the environment by reducing the risks of transporting toxic substances by rail. Rail shippers will now have consistent rules on both sides of the Canada-U.S. border as these regulations now align with those of the United States.[cxxxiii]

On December 13, 2021, the Honourable Omar Alghabra, Minister of Transport, announced the publication of proposed amendments to the *Transportation of Dangerous Goods Regulations (*Part 6 - Training*)*, in the Canada Gazette, Part 1. The proposed amendments, aimed at any transportation employee, will:

*introduce a competency-based approach to training and assessment;
*incorporate by reference the new training standard developed under the guidance of the Canadian General Standards Board; and
*align training requirements with a series of international codes.

These amendments provide greater clarity and certainty to employers regarding the level of training required to be compliant with *Transportation of Dangerous Goods Regulations*. By implementing these changes, Transport Canada will promote more consistent training and certification for employees who handle and transport dangerous goods across the country.[cxxxiv]

On December 20, 2023, Transport Canada proposed changes to the *Transportation of Dangerous Goods Regulations* (TDGR) to improve safety and bring Canadian rules into alignment with international codes.[cxxxv] The proposed amendments to the Transportation of Dangerous Goods Regulations, are aimed at:

*enhancing buffer car requirements;
*strengthening emergency response assistance plan requirements for the transport of agricultural anhydrous ammonia on public roads;
*aligning regulations with other federal rules on transporting dangerous goods;
*introducing new rules to match international codes; and
*referencing and incorporating two new standards.

Through these proposed changes to the Transportation of Dangerous Goods Regulations, Transport Canada wanted to strengthen transportation safety in Canada and reduce the risk of incidents involving dangerous goods.

3. Grade Crossing regulations

On February 7, 2014, the Honourable Lisa Raitt, Minister of Transport announced proposed new *Grade Crossings Regulations* to improve the safety of railway crossing. A couple of months later Transport Canada issued a Section 31 Notice and Order to VIA Rail to immediately address safety issues at six railway crossings in the Barrhaven community of Ottawa following the rail bus collision. VIA Rail:

> *must have flagmen on site around the clock at the six affected crossings to provide manual crossing protection for all freight and passenger trains; and
> *develop a long-term plan to manage safety at these railway crossings.

On December 17, 2014 the Minister announced new *Grade Crossings Regulations* to improve safety by helping to reduce the frequency and severity of accidents, preventing derailments and injuries and saving lives. In particular, the Regulations improve safety by:

> *providing consistent grade crossing safety standards across Canada;
> *clarifying the roles and responsibilities of railway companies and road authorities; and
> *improving safety features and promoting collaboration between all parties.[cxxxvi]

On April 27, 2015, Rail Safety Week was launched and the Minister of Transport announced new funding of more than $9.7 million for 600 railway crossing improvements through its Grade Crossing Improvement Program (GCIP).[cxxxvii]

On June 18, 2021, *Grade Crossings Regulations*[cxxxviii] were proposed and published in the *Canada Gazette*, Part I for public comment. Then, on November 29, 2021, the Minister of Transport, the Honourable Omar Alghabra, announced new amendments to *Grade Crossings Regulations*. These Regulations increase safety at Canada's federally regulated grade crossings and help prevent deaths, injuries, property damage and environmental damage by imposing requirements that grade crossings:

> *make use of engineering best practices to ensure that all crossing users can have a safe crossing experience (Nov. 2021);
> *put in place clear and enforceable safety standards for both new and existing crossings (Nov. 2021); and
> *define the roles and responsibilities of railway companies, road authorities and private landowners (Nov 2021).

Amendments to the Regulations will preserve the core safety objectives while providing financial relief to public and private authorities during the COVID-19 pandemic by extending compliance deadlines and ensuring that low-risk grade crossings are not subject to an undue burden. It includes: 1) a one-year extension for existing public grade crossings which present a higher risk; 2) a three-year extension for all remaining public and all private grade crossings; and 3) an exclusion from the construction and maintenance requirements for very low-risk grade crossings (e.g. field crossings with minimal train traffic). A few days later on June 23, 2021, the Minister of Transport, the Honourable Omar Alghabra announced amendments to the *Contraventions Regulations*, with regard to provisions under the *Railway Safety Act* that increase the fine amounts for trespassing onto property where railway lines are located and for not giving way at railway crossings. With these amendments, the fine for trespassing on the property where railway lines are located have increased from $100 to $500, while the fine for not giving way at railway crossings have increased from $150 to $750.[cxxxix] On September 15, 2023, The Canadian Transportation Agency updated its charges for crossing maintenance and construction to reflect increases in inflation since 2021 in its *Guide to Railway Charges for Crossing Maintenance and Construction 2023*.[cxl]

4. Railway liability and compensation regime

The Honourable Lisa Raitt, Minister of Transport, on February 20, 2015 introduced legislation in the House of Commons that will enhance railway safety and make the rail industry and crude oil shippers more accountable to Canadians. The new *Safe and Accountable Rail Act* proposes amendments to the *Canada Transportation Act* and *Railway Safety Act*. Changes include:

> *a new liability and compensation regime for federally regulated railways, including minimum insurance requirements;
> *a compensation fund financed by levies on crude oil shippers; and
> *an increase in information-sharing provisions; and stronger oversight powers for the Minister and Transport Canada inspectors.

The new liability and compensation regime were to be consistent with those the Government introduced for other modes of transport, such as marine tankers and oil pipelines. It is based on the “polluter pays” principle and makes railways and shippers responsible for the cost of accidents, protecting taxpayers and communities by ensuring that adequate resources are available for compensation if an accident were to occur. On June 18, 2015, the *Safe and Accountable Rail Act* received Royal Assent.[cxli]

On May 18, 2016, the Honourable Marc Garneau, Minister of Transport announced that the strengthened liability and compensation regime for rail, under the *Safe and Accountable Rail Act*, were to be brought into force on June 18, 2016. The regime is based on the “polluter pays” principle, sharing responsibility for rail accidents between railways and shippers. Under the new regime, federally regulated railways will be required to carry:

> *a mandatory minimum level of insurance, based on the type and volume of dangerous goods they carry, ranging from $25 million to $1 billion;
> *a phasing in of the two middle insurance levels, $100 million and $250 million, to provide short line railways with additional time to adjust to the new requirements; and
> *a supplementary compensation fund—the Fund for Railway Accidents Involving Designated Goods—financed by shippers of crude oil by rail. This fund will cover any damages above the railways’ mandatory insurance level for accidents involving crude oil.

These measures ensure that sufficient resources will be available to adequately compensate potential victims, pay for clean-up costs and protect taxpayers in the event of a rail accident.[cxlii]

On July 10, 2019, the Canadian Transportation Agency (CTA) announced that ***Regulations Amending Certain Regulations made under the Canada Transportation Act (Rail Transport)*** were finalized. The regulations:

> *prescribe filing requirements for freight railway companies so that the CTA can validate that they are carrying appropriate minimum third party liability insurance coverage; and
> *designate rail-related provisions of the Act, and CTA Orders, as subject to administrative monetary penalties of up to $25,000 per violation, and amend the *Railway Interswitching Regulations* to ensure consistency with the recently amended interswitching provisions of the *Canada Transportation Act*.

Amendments followed consultations held in fall and summer 2018 with representatives from Canadian and U.S. passenger and freight railway companies, rail tourism operators, industry associations, shipper associations, associations representing logistics and freight management, private companies who are users of rail, and other industry experts. The CTA also considered all input received following the publication of draft regulations on March 30, 2019. The regulations represent Phase 4 of the CTA's Regulatory Modernization Initiative.[cxliii]

5. Locomotive voice and video recorders (LVVR)

In 2017, the Government of Canada proposed to amend *the Railway Safety Act* following the 2012 accident in Burlington, Ontario following due process of consultation. The amendment seeks to mandate the installation of LVVR in locomotive cabs to further enhance the safety of the rail transportation system in Canada. The proposed legislative amendments would also limit the purpose for which the data is used, to mitigate the employees' privacy concerns. As a result, LVVR would only be used by:

> *Transport Safety Board of Canada (TSB): for accident/incident investigation purposes;
> *Federally-regulated companies: to conduct analysis via random sampling in order to identify safety concerns as part of ongoing safety management; to determine the cause of a reportable accident/incident not being investigated by the TSB; and to address a prescribed safety threat; and
> *Transport Canada: to develop trend analysis to inform future policies, regulations or legislation via random sampling; to determine the cause of a reportable accident/incident not being investigated by the TSB; to address a safety threat; and to ensure compliance with the specific provisions of the LVVR regime.[cxliv]

CP commended the Transport Minister for leadership on LVVR. Keith Creel CEO of CP said "By implementing LVVR as a preventative, proactive, behaviour-changing tool we will promote safe behaviors and improve safety, … We recognize the need to use this technology in a way that is respectful of our employees, and are committed to working closely with government, regulators and the unions to do so."[cxlv]

On May 24, 2019, *Locomotive Voice and Video Recorder Regulations* were proposed specifying:

> *the technical specifications required for the locomotive voice and video recording equipment, including environmental and crashworthiness standards and requirements for voice and video quality, placement of cameras and microphones, and synchronization of data; and
> *the privacy protections for the access and use of the voice and video data, including the requirements for random selection, access controls, collection, communication, and destruction of the data.

In the regulations, privacy protections include matters such as: prevention of unauthorized access and safeguards; identification of person in the company that uses such data; destruction of data; provision of training to authorized person; information to employees of the use of recording devices; and preservation of records. Safety concerns and threats include matters such as: use of cellephones, use of personal entertainment devices except as provided by company policies; use of alcohol or drugs; presence of a non-authorized person in the controlling locomotive; etc. Random selection include matters such as: written random selection policy such as randomness requirements, methodology, identification of person authorized to conduct random selection, submission of policy to Transport Canada. The scope of the regulation is limited to rail companies based on gross revenues, passenger service or number of employees.[cxlvi] Transport Minister Marc Garneau said the devices will make Canada's rail system safer. "Having these devices at the very least will help us understand when there is an accident … what was the cause of that accident and that in itself will help us to lower the possibility that the same cause will be responsible for subsequent accidents." The rationale for the regulations were provided in the Canada Gazette.[cxlvii] Transport Canada stated that "The proposed Locomotive Voice and Video Recorder Regulations reflect a careful balance between measures to increase safety benefits, while safeguarding the privacy rights of railway employees. This includes information that Transport Canada obtained from key stakeholders and partners, including rail companies, unions, the Transportation Safety Board of Canada, Canada's Labour Program, and the Office of the Privacy Commissioner. The proposed regulations are aligned with the Government of Canada's commitment to enhance railway safety. They also address outstanding recommendations raised by the Transportation Safety Board of Canada."[cxlviii] On September 2, 2022, the Minister of Transport, the Honourable Marc Garneau, announced the publication of the final *Locomotive Voice and Video Recorder Regulations* in Canada Gazette, Part II, that specify the technical requirements for rail companies to install these devices on board their locomotives by September 2, 2022.[cxlix]

6. Key Trains, *Key Routes*, *Track Inspections* and *Brake Use*

Rules Respecting Key Trains and Key Routes under the *Railway Safety Act* [cl] had its origins in Ministerial Orders between February 16, 2020 and April 3, 2020 after the derailment of a key train in Guernsey Saskatchewan[cli] followed by Transport Canada Order of April 6, 2020 and the Ministerial Order of November 2020. The April 6, 2020 order was around the speed of these trains, which are now classified as "key trains" and "higher-risk key trains" hauling hazardous materials, namely crude oil. These types of trains are defined as follows: 1) Key trains have one or more loaded tank cars of dangerous goods that are toxic by inhalation; or contain 20 or more tank cars carrying dangerous goods. 2) Higher-risk key trains which carry crude oil or liquefied petroleum gases in a continuous block of 20 or more tank cars or 35 or more tank cars dispersed throughout the train. There are three areas of speed limits for a train: a) in metropolitan areas; b) in areas where there are track signals; and c) in areas where there are no track signals. The speed limit for Key trains in the three zones are: 35; 50; and 50. The speed limit Higher risk trains in the three areas are: 30; 50; and 50 (from March 16 to November 14) and 25; 40; and 25 (from November 15 to March 15). The major revised features of the Rules:

> *require railway companies to develop a winter operation plan that is specific to each subdivision where higher risk key trains operate, which must be approved by a professional engineer (February 2021);
> *require use of new technology to detect a broken rail in areas where it is not currently present (Feb. 2021);
> *strengthen track inspection (increased frequency and improved quality) and track maintenance requirements (i.e., ultrasonically testing replacement rail and improved record-keeping) (February 2021); and
> *define a 'higher risk key train' as a train carrying large quantities of crude oil or liquid petroleum gases and prescribe speed restrictions for these trains (February 2021).

On May 31, 2021, *Rules Respecting Track Safety* revisions were introduced. It had its origins in the second Ministerial Order issued in 2020 to address major risks that could cause derailments due to the condition of railway infrastructure. The Rules specify safety requirements that railway companies must follow when inspecting and maintaining their railway track infrastructure. As a result of the new changes to the Rules,[clii] railway companies will be required to:

*put in place a certification process for employees who inspect tracks and supervise the restoration of tracks to make sure their personnel have the proper knowledge and experience to carry out their safety duties (May 2021);
*establish a process to ensure that track maintenance and repair work meets regulatory requirements and the railway companies' own standards to improve accountability (May 2021); and
*develop and implement comprehensive plans to manage rail wear and the condition of the rail surface that are to be approved by a professional engineer to improve the integrity of railway tracks (May 2021).

Another phase of changes to the *Rules Respecting Track Safety* was approved on December 15, 2021[cliii], which focus on track inspection frequency and the use of automated track inspection technology. As a result of these latest changes, railway companies will be required to:

*increase the frequency of railway track inspections in higher risk areas where trains travel at faster speeds while carrying a greater tonnage of freight (December 2021);
*follow new procedures governing the use of advanced automated track inspection technology (December 2021); and
*ensure inspection data clearly identifies the exact date and track mileage of any track inspection so that rail safety inspectors can effectively verify compliance with regulatory requirements (December 2021).

On June 1, 2022, Transport Canada approved a series of changes that will strengthen the *Rules Respecting Track Safety*. These changes – the final phase in a series of three – stem from a 2020 Ministerial Order that focused on major risks that could cause derailments due to the condition of railway infrastructure. The changes require railway companies to:[cliv]

*develop key performance indicators to help Transport Canada analyze track conditions and inform the department's oversight activities;
*strengthen requirements for railways to inspect and maintain crossties; and
*provide Transport Canada inspectors with access to additional information on company track standards so they can ensure that oversight is effective and consistent across Canada.

On July 5, 2022, two new safety rules were announced. One focuses on railway-related fire prevention, while the other improves the resiliency of Canada's railway infrastructure against climate change impacts, such as flooding, landslides, and fire risks. To help prevent fires on railway property and in nearby communities, Transport Canada introduced these measures as part of broader federal government efforts on climate change adaptation by creating new rules for the fire season (April 1 to October 31). These new rules require railway companies to:

*reduce train speeds and conduct additional track inspections when temperatures are high to reduce the risk of a derailment caused by track conditions;
*inspect locomotive exhaust systems more frequently to ensure they are free of any deposits that could pose a fire risk; and
*implement a fire risk reduction plan.

These new rules had its genesis in the measures contained in Ministerial Order 21–06, issued on July 9, 2021 which made them permanent. This was done to protect public safety for the temporary return of residents to inspect their homes in Lytton. Transport Canada issued a subsequent Ministerial Order to strengthen safety by further protecting against wildfires in the context of extreme weather conditions.[clv]

On July 29, 2015, Transport Canada issued the following statement on train securement: "Transport Canada has approved revisions to *Rule 112 of the Canadian Railway Operating Rules*, establishing multiple layers of defence to secure trains and to further reduce the risk of runaways. "Following the accident in Lac-Mégantic the department imposed stricter rules for securing unattended trains by issuing an emergency directive which set a standard on the number of applied handbrakes and a subsequent directive which also required additional physical securement measures to prevent runaway trains…"[clvi]

On July 30, 2021, The *Canadian Rail Operating Rules*[clvii] was announced and approved by Transport Canada to reduce risk of uncontrolled rail equipment movement and was the result of the 2017 fatal accident at CN's Melville Yard in Saskatchewan and the Transportation Safety Board of Canada's investigation. The changes now prescribe:

> *uses of air brakes when required during switching operations (i.e. process of rearranging rail cars in a train yard) to ensure a consistent approach across the railway system (July 2021);
> *measures to ensure that stationary equipment is secured during switching operations to prevent uncontrolled movements (July 2021); and
> *restrictions on speed when switching is conducted with a remotely controlled locomotive ((July 2021).

Following the uncontrolled movement of a Goderich-Exeter Railway train, which led to a derailment in Goderich, Ontario, on February 1, 2021 two Ministerial orders were issued.[clviii] The first Ministerial Order requires the railway companies to implement specific procedures that must be followed by their locomotive engineers to prevent the uncontrolled movement of railway equipment due to an unintended release of the train's air brakes. The second Ministerial Order requires the railway industry to add an additional layer of defence to prevent the uncontrolled movement of railway equipment by proposing amendments to the Railway Locomotive Inspection and Safety Rules and the Canadian Rail Operating Rules (CROR) for the Minister's approval. The amendments will include: 1) improving performance standards for locomotives equipped with roll-away protection, which is a feature designed to apply the air brakes when movement is detected; and, 2) clarifying the definition of an 'unattended train' under the CROR, for a more consistent application of the rule.

On July 25, 2022, a new Ministerial Order came into effect requiring railway companies to propose revisions to rules for the Minister's approval. The revisions to be proposed will:

> *enhance regular pre-departure inspections and periodic maintenance of air brakes on trains and address the elevated risks of operating trains in cold temperatures; and
> *require rail companies to develop a winter operating plan for their equipment. The plan would specify actions to be taken when temperatures are very cold, including implementing speed restrictions and performing enhanced inspections.

The revisions will address the Transportation Safety Board of Canada's recommendation to enhance inspection and maintenance requirements for brakes on steep grades in cold weather. The Minister of Transport also announced that, beginning in September 2022, Transport Canada will launch a working group with railway companies to consider the design and safety parameters of automatic parking brakes. Transport Canada will also conduct testing of automatic braking technology under real world operating conditions to verify safety and performance. This is in alignment with the Transportation Safety Board of Canada's recommendation to install automatic parking brakes on all freight cars. Finally, in agreement with the Transportation Safety Board's third recommendation for Transport Canada, the Government of Canada will launch targeted audits of Canadian Pacific Railway (CPR) by August 2022, to assess the effectiveness of their safety management systems and training regime. In parallel, the department will conduct oversight of CPRs occupational health and safety committees. This will enable Transport Canada to monitor whether the company is effectively identifying and addressing hazards.

On May 17, 2022, the approval of revisions to the *Canadian Rail Operating Rules* and the *Locomotive Inspection and Safety Rules* to reduce the risk of uncontrolled movements of trains were announced. To help ensure that trains are properly secured, the revisions will establish:

> *performance standards for locomotives equipped with rollaway protection, which is a feature designed to automatically apply brakes when there is an unintended movement of a train;
> *safety procedures and requirements that must be met before leaving a locomotive, such as confirming that brakes are effectively set and double-checking with another employee that safeguard measures have been implemented; and
> *testing procedures to ensure that the rollaway protection system is operating properly.

The new rules build on measures in place to secure trains and reduce the risk of uncontrolled movement, such as requiring handbrakes be applied in specific circumstances, and will further help keep communities and workers safe.[clix]

In 2022, the government of Canada also took *Steps toward implementing innovative technologies to improve rail safety*. It published a Notice of Intent in the *Canada Gazette*, Part I, describing a path forward to implement Enhanced Train Control technologies in Canada. These technologies will provide an additional layer of safety in transporting people and goods across the country's vast railway network. With driver assist mechanism embedded within, Enhanced Train Control technologies at their most basic level of functionality reduce the potential for human error by alerting the train crew to potential danger. At their most advanced level of functionality, Enhanced Train Control technologies can stop a train's movement to prevent a collision or derailment. [clx]

7. Duty/Rest Rules for Railway Operating Employees

On November 25, 2020, the Minister of Transport, the Honourable Marc Garneau announced that the *Duty/Rest Rules for Railway Operating Employees* have been updated to better reflect the latest science on fatigue management and to keep Canadians working or living near railways safe. The new rules represent a historic improvement over the existing rules, such as:

> *placing new limits on the length of a duty period;
> *increasing the length of the minimum rest period between shifts;
> *establishing limits on the total number of hours that can be worked in a week (60 hours in a seven-day period) as well as in a month (192 hours in a 28-day period); and
> *developing more comprehensive Fatigue Management Plans that establish clear responsibilities for mitigating fatigue risks

Under the new rules, railway companies will need to complete their Fatigue Management Plans within 12 months and implement the Fitness for Duty provisions within 24 months. In consideration of the significant changes required under these rules, the requirements regarding the length of work and rest periods will take effect in 30 months from today (i.e. November 25, 2020) for freight railways, and in 48 months from today (i.e. November 25, 2020) for passenger railways, to ensure implementation. The revised rules will be complemented by regulations on fatigue risk management systems to further mitigate the risks of fatigue.[clxi]

C. Transportation Modernization

These are listed as follows: 1. National Transportation Policy. 2. Modernizing the Transportation Act; and 3. Enhance the transparency and competitiveness of the freight rail system.

1. National Transportation Policy.

On May 4, 2006, Lawrence Cannon, the Minister of Transport Infrastructure and Communities introduced (Bill C-11) An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts in the House of Commons. This major bill applies to all modes of transportation under federal jurisdiction. The important amendments in this bill relating to rail were:

> *a modernized and simplified National Transportation Policy Statement;
> *an improvement to the policy framework for publicly funded passenger rail services that will help address urban transportation challenges;
> *a public interest review process for mergers and acquisitions of all federally regulated transportation services;[clxii]and
> *a provision allowing the Canadian Transportation Agency to address railway noise complaints.[clxiii]

This Bill replaced Bill C-44 which died when the new Conservative Government was elected. The Bill received Royal Assent on June 22, 2007

2. Modernizing the Transportation Act

On May 18, 2017, Transport Minister Garneau proposed the *Transportation Modernization Act* – Bill C-49 pertaining to rail freight transportation. The key measures of the Act include:

> *a new reporting requirement for railways on rates, service and performance;
> *a new mechanism, Long-Haul Interswitching, to provide captive shippers across sectors and regions of Canada with access to a competing railway to ensure they have options;
> *a definition of "adequate and suitable" rail service that confirms that railways should provide shippers with the highest level of service that can reasonably be provided in the circumstances;
> *the ability for shippers to seek reciprocal financial penalties in their service agreements with railways;
> *a more accessible and timely remedy for shippers on both rates and service; and
> *an amendment to the *Railway Safety Act* to mandate the installation of locomotive voice and video recorders.[clxiv]

The railways and the industry affected by the amendments reacted by responding to the measures affecting them the most. Regarding the Maximum Revenue Entitlement (MRE), Keith Creel, CEO for CP said "The proposed changes to the Maximum Revenue Entitlement should promote hopper car investments that is good for the farmer, good for CP and for all Canadian exporters." Regarding the extended interswitching provision (i.e. replacing temporary extended interswitching with long-haul interswitching (LHI)) he said that "The details on LHI need further review, however a move to commercial, market-based fundamentals versus the current regulated approach to extended interswitching is a step in the right direction." But potential access by

US carriers raises reciprocity issues. Recently, the two railways have indicated that a US carrier has begun to take advantage of the provision replacing a Canadian carrier. This not only affects the incentive of Canadian carriers to invest but also that such rights are not available to Canadian carriers serving the US. Regarding proactive use of Locomotive Voice and Video Recorders (LVVR), he was of the opinion that implementing it will promote safe behavior and improve safety. Regarding language around service, CP believes the proposed legislation to be balanced and focused on what service level is reasonable given the specific facts and circumstances. The amendments, if they are to be considered successful over the long-term, must be seen as improving the existing regulatory framework and enhancing the supply chain. Creel said "….overall, from a net-net perspective, we believe the proposed legislation to be balanced,…We are supportive of anything that facilitates railway investment in the supply chain to enable additional capacity and efficiency."[clxv] The Railway Association of Canada (RAC) President & CEO Michael Bourque said the RAC was 'very pleased with the provision on locomotive voice and video recorders', which 'addresses a key Transportation Safety Board recommendation.' Forest Products Association of Canada CEO Derek Nighbor welcomed the legislation, saying transportation represents about one third of the total costs of the average forest products company. The Chair and CEO of the Canadian Transportation Agency (CTA), at the National Railway Day Conference of the Canadian Association of Railway Suppliers', provided valuable insights into legislative change and regulatory modernization [clxvi]

Transportation Modernization Act

On May 23, 2018 the *Transportation Modernization Act* received Royal Assent. The provisions pertaining to rail transportation are:

> *providing a more transparent, fair, efficient and safer freight rail system that meets the long-term needs of users and facilitates trade and economic growth for years to come; and
> *increasing safety by requiring railways to install voice and video recorders in locomotives to better understand events leading to an accident as well as help prevent future accidents.[clxvii]

It is worthwhile noting that the government only partially accepted three of the ten recommendations of the Senate Report (i.e. the need for additional flexibility for shippers to access the proposed "Long Haul Interswitching"; the need to permit the Canadian Transportation Agency to undertake rail investigations on its "own motion"; and the need for railway operational and costing data to be made available to shippers when accessing the "Final Offer Arbitration" (FOA) process to resolve rate disputes).

On May 31, 2018, as part of its *Regulatory Modernization Initiative*, the Canadian Transportation Agency (CTA) launched consultations on rail-related regulations and guidance materials. These consultations will support the implementation of the *Transportation Modernization Act* (Bill C-49), which amends the *Canada Transportation Act* (Act) to introduce new measures related to freight rail. The CTA invited affected stakeholders to share their views to ensure that the CTA's rail-related regulations and guidance materials are relevant, clear and up to date. A *discussion paper* was available that explains many of the regulations and guidance materials under review. Specific areas where regulatory updates and related guidance material were considered to be beneficial include: 1) Amending the *Railway Interswitching Regulations*, in order to smoothly implement provisions of the amended Act, including the new Long-Haul Interswitching remedy;[clxviii] 2) Designating rail-related provisions, and CTA Orders, as subject to Administrative Monetary Penalties (AMPs) – including new and enhanced shipper remedies under the amended Act; 3) Clarifying insurance filing requirements for freight rail operations; 4) Updating insurance coverage requirements for passenger rail operations; and 5) Providing guidance materials on shipper remedies and recovery of costs related to a railway fire.[clxix] The CTA also sought views on whether all of its rail-related regulations should be consolidated into a single regulation, for ease of reference. Following publication in Part I of the *Canada Gazette*, the CTA reviewed all feedback received and made adjustments in order to finalize the Regulations.

Strengthening the Port System and Railway Safety in Canada Act:
On November 17, 2022, the Minister of Transport, the Honourable Omar Alghabra, introduced Bill C-33, *Strengthening the Port System and Railway Safety in Canada Act* in the House of Commons. The Act aims to:

> *amend current legislation and modernize the way Canada's marine and railway transportation systems operate;
> *remove systemic barriers to create a more fluid, secure, and resilient supply chain;
> *expand Canada Port Authorities' mandate over traffic management;
> *position Canada's ports as strategic hubs that support national supply chain performance and effectively manage investment decisions for sustainable growth;
> *improve the government's insight into ports and their operations; and
> *modernize provisions on rail safety, security, and transportation of dangerous goods.

These measures together seek to improve the supply chain, including the competitiveness of Canada's transportation system and operations that are safe, secure, efficient, and reliable. The proposed measures would support the flow of essential goods and would implement tools to mitigate risks and impacts of future supply chain challenges.[clxx] Its status is Report stage (House), as of Feb. 7, 2024

3. Enhance the transparency and competitiveness of the freight rail system
On May 6, 2022, proposed amendments to the *Transportation Information Regulations* were announced. The proposed amendments were designed to collect new freight rail information to enhance the transparency and competitiveness of the freight rail system. It would require class 1 rail carriers:

> *to report to Transport Canada on waybill, traffic, and service and performance information, for the benefit of all rail users.

These new reporting requirements would provide rail users and the public with much more relevant and precise information relating to rail service and performance. The amendments reflect the Government of Canada's commitment to strengthening Canada's supply chains in support of the broader economy. Railways will have to comply with the new rules starting on April 4, 2023. Transport Canada said in a release that the amendments "aim to strengthen the accountability of freight rail service providers", by requiring major railways to provide more service and performance information.[clxxi]

Water Transportation[clxxii]

Background

In the period from 1985-2003, the major events that governed regulatory developments in water transportation can be classified under the following: **A. Economic Regulations in Water Transportation before Deregulation. B. Economic Regulations in Water Transportation after Deregulation. C. Other Acts in Water Transportation that Affect Competition.**

A. Economic Regulations in Water Transportation before Deregulation
Before deregulation, the Water Transport Committee (WTC) of the Canadian Transport Commission (CTC)

was the regulatory body for water transport legislation under the jurisdiction of the Federal Government. The basic laws that were applicable to the sectors examined here were: The *National Transportation Act* (NTA), the *Canada Shipping Act* (CSA) - Part XV, *Transport Act* (TA) - excluding Part V, the *Inland Water Freight Rates Act* (IWFRA) and the *Shipping Conferences Exemption Act* (SCEA) 1979. In addition, there were other acts such as the *Pilotage Act* (PA) and the *St. Lawrence Seaway Authority Act* (SLSAA).

Domestic Waters: The major facets of economic regulation were:

*entry control (through licencing and nature of service through such restrictions as type of vessel, area of operation, passenger vs. freight services and scheduled vs. unscheduled services);
*tariff filing and control (maximum and standard tariffs together with appeal); and
*acquisitions.

More specifically the laws provided for regulation in specific areas are described hereafter:

1. *Pacific and Atlantic Waters:*
   *registration of ships (s. 661(1) CSA);
   *reservation of the coasting trade for commonwealth vessels (s. 663(1) and (2) CSA); and
   *suspension of the coasting laws (s. 665 CSA).
2. *Inland Waters:*
   *entry control (s. 10 & 11 TA);
   *capacity control (s. 10 TA);
   *rate regulation on passenger and non-bulk traffic (traffic between L'lle d'Orleans and Thunder Bay) (s. 12 and Part III TA);
   *reservation of the coasting trade on the Great Lakes and St. Lawrence River for Canadian ships (s. 663(3) CSA);
   *filling records with the Board of Grain Commissioners for Canada (s. 3 IWFRA); and
   *non-recovery of excesses over the maximum rates and penalties by the Board (s. 5(4) IWFRA).
3. *Mackenzie River and Arctic:*
   *entry control of passengers and goods through licensing (s. 10 TA) and the ports between which the ships named may carry goods and maintain the service (s.10(4) TA). Equipment over 10 gross tons in the Mackenzie and over 500 gross tons in the Arctic must be licensed in the name of the carrier (s. 2(1) TA);
   *regulation of transport of bulk commodities in the Mackenzie (ss. 13-34);
   *regulation by Order-in-Council for the movement of deck cargo in Western Arctic;
   exemption by the Governor-in-Council (s.12(2) TA);
   *filing of tariffs (s. 14 TA) and charging as filed unless disallowed (s. 16 TA) together with division of tariffs and approval of standard tariffs and supplements;
   *application of tolls equally (i.e. no discrimination between passenger/shipper/ localities) (s. 21 TA); obligations by all licensed common carriers (with reasonable and proper facilities and without unreasonable preference/advantage/prejudice/ disadvantage) (s. 22 TA);
   *disallowance of tariffs (s. 23 TA) and permission to issue special rates (s. 28 TA);
   *outlawing rebates/concessions/ discrimination/falsification of information to obtain less than applicable tolls (s. 27(1) TA);
   *non-discrimination in carriage of traffic free or at reduced rates (s. 29 TA); and
   *allowance of agreed charges to meet intermodal competition and protection of shippers if agreed charges are unjustly discriminatory (ss. 32-35 TA).

International Waters: The major facets of economic regulation were: filing of conference agreements and tariffs, strengthening the bargaining position of shippers and acquisitions. More specifically SCEA provided for:

> *exempting agreements (shipping conference, interconference, and conference and non-conference) on price, allocation of markets and ports, times of sailings, kinds of services and pooling of revenues or cargoes subject to limitations (s. 6));
> *prohibiting rebates, sanctioning of closed conferences, and providing for termination of patronage agreements together with the maximum differential of 15% between contract and non-contract rates (s. 5);
> *filing of agreements and tariffs (s. 7);
> *strengthening of bargaining position of the shipper group through the requirement of meetings and the provision of information for the satisfactory conduct of the meetings (s. 15);
> *appealing of freight rates which may be prejudicial to the public interest with remedial powers to change rates viewed as 'uniform', 'too high' or 'discriminatory' (s. 23 NTA); and
> *reviewing and disallowing acquisitions (s. 27 NTA).

B. Economic Regulations in Water Transportation after Deregulation

The deregulation phase reflected an attempt to remove or reduce all unnecessary costs and to bring the regulation in water into harmony with other modes. It also reflected an increase in cabotage to protect Canadian interest and maintain its competitive position.

Domestic Waters: In 1985, Don Mazankowski, the Minister of Transport at that time, introduced his white paper. It made the following proposals:

1. *Pacific and Atlantic Waters:*
Amend the *Canada Shipping Act* by:

> *restricting the coasting trade to Canadian ships (the coasting trade permitted commonwealth ships);
> *extending the acts jurisdiction to 200 nautical miles offshore (from 12 miles); and
> *covering all marine activities (e.g. offshore exploration and development, dredging, etc. which were formerly excluded) except fishing.

It was not until 1992 that these changes (which were recommended earlier by W. J. Darling) were introduced in Part X of the *Coasting Trade Act* (1992).

2. *Inland Waters:*
Repeal *IWFRA* and the provisions of the TA pertaining to the Great Lakes.

> *with regard to the former, only grain was subject to maximum rate regulation, as there appeared to be sufficient competition given a single buyer. Further, the Canadian Grain Commission never had cause to prescribe maximum rates. These factors outweighed any argument for retaining it; and
> *with regard to the latter, the nature of competition in that area (Thunder Bay and L'Ile D'Orleans) was deemed not to require retention of regulatory control.

3. *Mackenzie River and Arctic:*
Retain regulation of community resupply while streamlining the TA with regard to:

*entry;
*licensing; and
*rates, given the special needs of northern transport.

Subsequently, the *National Transport Act, 1987*, recognizing these special needs continued regulation of entry, capacity, and area of service for the transport or resupply of goods by water to communities on the Mackenzie River watershed (including Athabasca) and Western Arctic as far as Spence Bay to the east and the Alaska boundary to the west.

Seven years later in 1994, Transport Minister, Douglas Young introduced a policy of commercialization (Marine Atlantic ferry service) and decentralization of government operations (divestiture of ports), including the elimination of federal licencing and tariff regulation of marine resupply services in the North. In 1996, the *Canada Transportation Act* eliminated licensing and tariff regulation of marine resupply services in the North and extended the Final Offer Arbitration provision to Northern marine resupply rates.

International Waters: The major changes to enhance competition in SCEA1987 were:

*removing the exemption for agreements between conference and non-conference carriers (s. 4(1));
*prohibiting shipping carriers from requiring transport of **all** cargo under loyalty contracts (s. 4 (1(b));
*providing for service agreements (s. 4(2);
*providing for independent action (s. 4(3));
*removing the exemption if conference members engage in predatory pricing (s. 4(4) or for intermodal conference rate agreements (s. 5(2)); and
*requiring 30 day notice for an increase in rates to the shipper's group and WTC.

In 2001, a few other changes were introduced in SCEA 2001. The important ones were:

*providing for individual service contracts (i.e., between a shipper and a member of the conference (s. 4(3.1));
*providing for independent action through a reduction of the notice period (s. 4(3)(a);
*removing tariff filing (s. 6(1)(d) deleted); and
*providing for electronic filing (s. 2(2)).

The government's deregulation policy reflected two conflicting philosophies: allowing market forces to dictate the provision of market services; and protecting Canadian interests from market forces. The former with regard to international operations and the latter with regard to domestic operations.

C. Other Acts in Water Transportation that affect Competition

On December 22, 1988, the tug, *Ocean Service*, collided with the barge, Nestucca which spilled more than 230,000 gallons of No. 6 fuel oil into the Pacific Ocean near Grays Harbor, Washington. The resulting oil slick dispersed over 800 square miles from Grays Harbor north to Vancouver Island, British Columbia, Canada and south to Oregon. On March 24, 1989, *Exxon Valdez*, ran aground on Bligh Reef during a voyage from Valdez, Alaska, to California which spilled approximately 40,000 tonnes of oil. The *Exxon Valdez* had a single-hull, no marine pilot and was not escorted by a tug boat. On March 22, 2006, *Queen of the North* sank after running aground on Gil Island in Wright Sound, 135 kilometres (73 nautical miles) south of Prince Rupert, British Columbia with 240 tonnes of oil on board. In the wake of the Exxon Valdez oil spill, the U.S. Congress passed the *Oil Pollution Act of 1990*. This Act increased penalties for companies responsible for oil spills and required that all oil tankers in United States waters have a double hull. In 2002, the European Union banned single-hulled tankers. In response to Exxon Valdez, Canada amended the Canada Shipping Act in 1993 to improve oil spill preparedness and response measures. It also provided for the establishment of six regional advisory councils which have faded into obscurity after a government report recommended they be abolished. Instead of abolishing the B.C. Regional Advisory Council, which awaited an aboriginal representative, the government had the opportunity of looking north to Alaska for inspiration and appointed a new, independent advisory council with industry funding representing the local communities, First Nations and citizens' groups.

Canada Shipping Act

The *Canada Shipping Act, 2001* (CSA 2001) is an updated version of the previous *Canada Shipping Act* (CSA), which dates back more than 100 years. The CSA 2001 came into force on July 1, 2007.[clxxiii] It is the principal legislation that governs the activities of Canadian vessels in all waters (large commercial vessels, small commercial vessels, passenger vessels, fishing vessels, tug and barges and pleasure crafts), and all vessels in Canadian waters. The CSA 2001 applies to a marine transportation industry that is as diverse as the country it serves - from pleasure craft to fishing vessels, from tugs and barges to tankers and cruise ships.

The CSA reform began in 1997, and in addition to the legislative changes, included more than 100 regulations identified for review and updating. The reforms evolved through two bills: 1. Bill C-15, revised provisions of the CSA dealing with vessel ownership, registration, and mortgages. It also added a preamble to the Act to make its objectives easy to understand and its content easier to interpret. Bill C-15 received Royal Assent in June 2001. 2. Bill C-14, which received Royal Assent on November 1, 2001, as the CSA 2001.

The CSA 2001 is less prescriptive and more performance-based. The key changes were:

> *enhances safety and provides better protection for the marine environment;
> *shifts from an inspection-based regime to a compliance-based regime;
> *introduces a new method of enforcement with the introduction of Administrative Monetary Penalties (AMPs);
> *replaces the Board of Steamship Inspection with the new Marine Technical Review Board; and
> *establishes a new set of voyage classifications

It provides for registration/ licensing of vessels. To better protect the marine environment. The CSA 2001 increases the maximum penalties for polluting and the powers available to Transport Canada to deal with pollution issues. The following three regulations significantly help to protect the marine environment: *Regulations for the Prevention of Pollution from Ships and for Dangerous Chemicals; Ballast Water Control and Management Regulations; and Environmental Response Regulations.* The introduction of Administrative Monetary Penalties (AMPs) in the CSA 2001 creates a new enforcement tool to promote compliance. AMPs provide more flexibility since they use an administrative rather than a judicial means of enforcement. An AMP can be appealed to the Transportation Appeal Tribunal of Canada (TATC).

Examples of supporting regulations are: *Marine Personnel Regulations*; *Regulations for the Prevention of Pollution From Ships and for Dangerous Chemicals*; *Small Vessel Regulations*; New *Fishing Vessel Safety Regulations*; *Administrative Monetary Penalties Regulations*; etc.

The Minister of Transport, David M. Collenette in *Straight Ahead - A Vision for Transportation in Canada, 2003* stated "Marine Safety, *The Way Ahead and The Next Wave* Marine Safety's current strategic plan, The Way Ahead, 1997-2002, reached full maturity at the end of last year. While much of the vision it articulates is still valid, planning is under way for the follow-on to these strategic priorities, entitled *Marine Safety 2003-2010, The Next Wave*. The linchpin of the current plan – enactment of the *Canada Shipping Act, 2001* – became a reality in November 2001. The revised plan will build on the vision, which calls for an enhanced regulatory framework to support a culture focused on safety and emphasizes the establishment of performance-based requirements; innovation, including the use of new technology; and the development of quality assurance programs. Information systems will be revamped to ensure that data collection systems provide the best possible information for safety planning and decision-making."[clxxiv]

Pilotage Act

Pilotage services developed because ports and bodies of water are different, each with unique hazards. To circumvent these hazards, a pilot is used to guide the vessels throughout these waters. Pilotage services in Canada are basically regulated pursuant to the 1972 *Pilotage Act,* and the pilotage regulations including the *Memorandum of Arrangements*. Other relevant laws are the *Canada Transportation Act* (i.e., CTA) and the *Canada Marine Act*. The major aspects of economic regulation in the *Pilotage Act* are:

*the creation of pilotage Authorities and geographic pilotage areas;
*the economic objects that pilotage Authorities are to pursue and the arrangements for the provision of pilotage service;
*the conditions governing the entry of personnel into the pilot profession; and
*the prescription of pilotage tariffs.

The *Act* of 1972 provides for the establishment of four pilotage authorities in Canada, the Great Lakes Pilotage Authority (GLPA), the Laurentian Pilotage Authority (LPA), the Atlantic Pilotage Authority (APA) and the Pacific Pilotage Authority (PPA). These Crown corporations have the responsibility of establishing, operating and administering efficient pilotage services in their respective regions in Canada in the interests of safety. To assist in this task, they are empowered to make regulations relating to pilotage.

In addition to the above regulations, the Memorandum of Arrangements (MOA) with the U.S. plays a major regulatory role in the International districts of the Great Lakes. From the economic perspective, the relevant sections of the MOA are concerned with: 1. Definition of geographic areas in the districts and co-ordination of pilotage services by Canada and the US; 2. Allocation of dispatching and pilot boats by Canadian and US pilotage authorities; 3. Participation by the authorities in the two countries in the provision of pilotage services; 4. Provision for reimbursement of costs, and 5. Regulations regarding imposing identical rates, charges and other conditions.

In 1998, amendments were made to the *Pilotage Act* which came into effect on October 1, 1998. Several studies were made - The Acres Report, The Blouin Report, the Canadian Transport Committee Study, The Transport Canada Study, The Gauthier Report, The Standing Committee on Transport Report - before attempts were made to introduce reforms into the *Pilotage Act* in 1998. A number of these studies were extremely critical of the issues and made several recommendations. The last report mentioned above called for a repeal of the *Pilotage Act* and a dissolution of the Pilotage Authorities which would be replaced by a Pilotage Desk/Secretariat which would regulate pilotage in Canada. In addition, it recommended: a commercialization of pilotage services, a review of compulsory pilotage areas and criteria for exemption, and a mechanism for settlement of disputes. The amendments in the 1998 pertain to:

*a faster setting of tariffs;
*an end to appropriations by Parliament to cover losses except in emergencies;
*a provision for borrowing of money; and
*a review of pilotage issues by the Minister of Transport within a year of the Act being force.

III. Water Transportation (2004-2024)

Over the period 2004-2024, the major events that governed regulatory developments in water transportation can be classified under the following: **A. Ocean Freight Competition and Service. B. Canada Shipping Act, 2001. C. Protection of Marine Environments. D. Marine Safety and Security. E. Modernization Marine Transportation**.

A. Ocean Freight Competition and Service after 2004

In the previous two sectors, regulatory developments affecting competition and services that occurred after 2004 were largely an offshoot of deregulation that had been introduced in some markets and not in others or concern that the competitive provisions introduced by deregulation were not working as intended. In water transportation two such developments have attracted attention: 1. Concerns about shipping conferences in ocean transportation; and 2. Strikes at Canadian Ports.

1. Shipping conferences in ocean transportation

The Shipping Conferences Exemption Act in brief grants an exemption to liner shipping from certain provisions of the Competition Act. In June 2001, the Canada Transportation Act Review Panel (appointed by the Minister of Transport, the Honourable David Collenette, to conduct a review of transportation laws on June 30, 2000) submitted its Report – *Vision and Balance* to the Minister. The submissions to the Panel indicated the divergent view of carriers and ports vs. shippers. The Panel favoured removing artificial barriers to competition, as the guarantee of cost efficiency among carriers and of service and price to users. In principle, therefore, it favoured eliminating the exemptions provided by SCEA. In view of the above:

> *"The Panel recommends that the government make clear its commitment to eventual elimination of the liner conference exemptions from competition law and that it actively pursue multilateral agreement among international partners to do so." [clxxv]

From 2002 to 2014, there were no reports on SCEA other than that Transport Canada was monitoring the impact of the SCEA reforms together with developments occurring on the international front. In 2014, Transport Canada undertook a review of Canada's transportation laws. On February 27, 2015, the Commissioner of Competition made a submission to this Review Panel. The submission stated:

> *"The rationale for shipping conferences laws is outdated. Tariffs resulting from market driven decisions lead to a more efficient allocation of resources than tariffs established on a common collaborative basis. The special privilege that international shipping is given does not apply to other sectors of the economy. For instance, collective rate making was abolished in 1987 in the railway sector. The increased trends toward globalization of trade reinforce the need to instill greater competitive forces into the shipping industry, including marine transportation. By way of comparison, in 2006, the European Union repealed its block exemption from European competition law for liner shipping conferences. The repeal ultimately went into effect in October 2008 after a two-year transition period." [clxxvi]

It therefore recommended "*That the Government end the exemption to shipping conferences from competition law.*"[clxxvii]

Similarly, The Freight Management Association of Canada (FMA) in its submission stated:

> *"While FMA has not noted any pressure from its member companies to amend or repeal SCEA, the need to exempt ocean shipping from competition laws seems to be unnecessary as it is generally not working. FMA recommends that Transport Canada open discussions with the U.S. Department of Transport (DOT) to determine if OSRA and SCEA should be amended or repealed."[clxxviii] Regarding consortia it stated "While shippers have been broadly supportive of traditional consortia and vessel sharing agreements (VSAs), many shippers are concerned that the new alliances go well beyond vessel sharing in terms of their scale and the sharing of information and data on capacity and costs. FMA recommends that Transport Canada work with European, U.S. and other nations to collect data and monitor the operation of the alliances to promote competition on the major freight lanes."[clxxix]

The review of the transportation laws which culminated in the publication of the Emerson Report in 2016, *Pathways: Connecting Canada's Transportation System to the World* made no mention of shipping conferences or amendments to the law governing them.

A few years later, with the start of Covid-19, the sentiment towards shipping conferences and alliances changed dramatically. On December 13, 2022, the Canadian International Freight Forwarders Association (CIFFA) submitted a brief on the Shipping Conferences Exemption Act to Minister of Innovation, Science and Economic Development Canada. It stated that "Under this legislation a specific community of transportation service providers is exempt from the provisions of the *Competition Act*. … It is CIFFA's position that the rationale for this extraordinary measure has long been overtaken by economic realities and the benefits of vigorous competition have been denied to Canadian customers. In consideration of changes to Canada's competition regime, it's essential that this aberrant law be removed. … The main argument in favour of permitting collusion among ocean shipping firms was the supposed benefit of "stable prices." … through the crisis of Covid 19, Canadian customers would have avoided many billions of dollars in shipping fees. … Some members reported rates six times higher than they had paid in 2019. … Far from providing stable rates, the industry's ability to cooperate on pricing allowed an unprecedented extraction from customers, exacerbating an economic crisis. … A particular issue vividly outlines how Canadians are not served by the absence of competition in ocean shipping … called demurrage and detention fees. … One explanation for Canada's willingness to exempt ocean shipping from the Competition Act was the supposed benefit the conferences would provide to Canada's domestic shipping industry. But this justification has plainly not worked. At present Canada has no ocean shipping firms registered as part of a conference. … Today, in reality, there are 3 "alliances" … [which] control in excess of 80% of global ocean movements." It concluded by stating:

> "The exemption of ocean shipping from Canadian competition law has not resulted in benefits for consumers. It has not assured us of stable prices, or encouraged the development of domestic ocean shipping. As the government of Canada considers the future of the *Competition Act*, it's essential that this aberrant off-shoot be repealed."[clxxx]

In 2022, the Canada's Competition Bureau joined the competition authorities of the United States, Australia, New Zealand, and the United Kingdom in a new working group focused on sharing information to identify and prevent potentially anti-competitive conduct in the global supply and distribution of goods.[clxxxi]

In June 2023, the FMA along with other shipper associations, made a submission to the Canadian Competition Bureau to bring attention to the anti-competitive behaviour of ocean carriers who serve Canadian customers. During Covid, there were serious service issues or no service at all and very high rates. The FMA continues to ask Transport Canada to repeal the Shipping Conference Exemption Act (SCEA), the act that allows ocean carriers to reduce competition.[clxxxii]

In light of the above and the end of the exemption to consortia in Europe on April 25, 2024, regulatory developments are expected.

2. Strikes at Canadian Ports.
Strikes at Canadian ports that have affected the free flow of goods have attracted a great deal of attention and often resulted in back to work legislation. The strikes at ports could arise not only from truck workers but also from port workers. The strikes at Canadian ports that have attracted a great deal of attention were: **1.** The 2014, 28-day disruption at the Port of Vancouver between the BC Trucking Association and the United Truckers Association (non-unionized owner/operators) and Unifor-Vancouver Container Truckers' Association. It resulted in back to work legislation[clxxxiii] by British Columbia which finally culminated in the December 1, 2014, new truck licensing system at the Port. **2.** The 2020, 12-19-day strike (followed by a seven month cooling down period) at the Port of Montreal between Maritime Employers Association and 1,125 longshore workers represented by the Canadian Union of Public Employees. Shippers pleaded for federal intervention as business warned that the strike could cost more than $29 million a day. On April 27, 2021, the labour minister, Filomena Tassi tabled Bill C-29 to put an end to the strike. The bill would require employees to return to work after and was approved by the House of Commons and passed by the Senate. **3.** The 2023, 11-day strike at the Port of Vancouver between the British Columbia Maritime Employers Association (BCMEA) and International Longshore and Warehouse Union Canada (ILWU Canada). Given the economic consequences of the strike, Prime Minister Justin Trudeau stepped up action and the federal labour minister Seamus O'Regan decided to use his authority under section 107 of the Canada Labour Code to "preserve industrial peace" and directed the matter to the Canada Industrial Relations Board (CIRB). If a negotiated resolution was not possible, the Minister directed the board to either impose a new collective agreement or impose final binding arbitration to resolve outstanding terms of the collective agreement. Shortly thereafter a four year contract was ratified.[clxxxiv]

B. Canada Shipping Act, 2001
The *Canada Shipping Act, 2001* (CSA 2001) came into force on July 1, 2007. It is the principal legislation that governs the activities of Canadian vessels in all waters, and of all vessels in Canadian waters. It updates the previous *Canada Shipping Act* (CSA), which dates back more than 100 years. The provisions of the CSA 2001:

*enhance passenger and vessel safety;
*better protect and support crews; and
*the marine environment.

The CSA 2001 has been simplified by: a. including definitions only when the ordinary dictionary meaning has been narrowed or expanded; b. removing technical details from the Act to simplify the legislative framework. They are placed in regulations, standards, or other documents; c. using language that is clearer and much easier to understand; and d. moving all liability provisions to the *Marine Liability Act*.

The CSA 2001 authorizes the development of supporting regulations that:

*clarify and improve existing vessel safety requirements;
*environmental protection; and
*personnel certification and training.

Examples of supporting regulations are: *Marine Personnel Regulations*; *Regulations for the Prevention of Pollution From Ships and for Dangerous Chemicals*; *Small Vessel Regulations*; New *Fishing Vessel Safety Regulations*; *Administrative Monetary Penalties Regulations*; etc.

Bill C-3 An Act to amend the Canada Shipping Act, the Canada Shipping Act, 2001, the Canada National Marine Conservation Areas Act and the Ocean Act, was introduced into the House of Commons.[clxxxv] This enactment:

*transfers powers, duties and functions from the Minister of Fisheries and Oceans to the Minister of Transport.

The Bill received Royal Assent on June 23, 2005.

C. Protection of Marine Environments

To protect Canada's marine environments, over the period 2004 to 2024, several initiatives were undertaken by the Government. These are listed as follows: 1. Preparedness for Oil Spills; 2. Arctic and Canadian Waters Pollution; 3. Vessel Abandonment; 4. Aquatic invasive species; 5. Whale Protection; 6. Environmental measures for ships.

1. Preparedness for Oil Spills

Oil Tanker Moratorium Act

In March 2013, the Government of Canada announced safety measures on tanker safety and Transport Canada proposed amendments to the *Canada Shipping Act, 2001* (Bill C-3)**.**[clxxxvi] The proposed amendments will:

*strengthen the current requirements for pollution prevention and response at oil handling facilities;
*increase Transport Canada's oversight and enforcement capacity by equipping marine safety inspectors with the tools to enforce compliance;
*classify new offences to be considered as contraventions of the Act and extend financial penalties relating to pollution; and
*enhance response to oil spill incidents by removing legal barriers that could otherwise block agents of Canadian response organizations from participating in clean-up operations.

The Bill was assented to December 9, 2014.

On December 3, 2013, the Tanker Safety Expert Panel, an independent panel appointed to review Canada's current tanker safety system and to propose measures to strengthen it, released its report, *"A Review of Canada's Ship-Source Oil Spill Preparedness and Response Regime—Setting the Course for the Future."* The report aimed to improve Canada's system for ship-source oil spill preparedness and response, in order to better protect the public and the environment. The report made forty-five recommendations. The report said "Generally, we found that the foundational principles of the regime have stood the test of time, but that there are a number of areas that could be improved to enhance Canada's preparedness and response to ship-source oil spills." It recommended that the government do a better job of assessing the risk of spills in specific areas, and ensuring that polluters will pay for any cleanup. And it said 'Transport Canada and the Canadian Coast Guard need substantial additional resources to enforce regulations and to oversee response preparedness'. The government planned to study the recommendations.[clxxxvii]

On May 13, 2014, the Government of Canada announced that it is further strengthening Canada's already robust tanker safety system. These measures act on the recommendations by the independent Tanker Safety Expert Panel and build on other studies, as well as input received from provincial governments, Aboriginal groups and marine stakeholders from across Canada. These safety measures are in addition to those announced by the Government of Canada in March 2013. The improvements announced on May 13, 2014 work towards:

*preventing spills in the first place;
*cleaning them up quickly if they do occur; and
*making sure polluters pay.

Implementing these new measures represents an ongoing commitment to the Canadian public towards Canada's world-class tanker safety system, which is essential to protect our marine environments and to responsibly transport our natural resources.[clxxxviii]

On April 8, 2015, the Government of Canada released the second report of the independent Tanker Safety Expert Panel. The report, "*A Review of Canada's Ship-source Spill Preparedness and Response: Setting the Course for the Future, Phase II – Requirements for the Arctic and for Hazardous and Noxious Substances Nationally*" marks a milestone in the Government's commitment to continue strengthening Canada's world-class tanker safety system. The Panel's report concludes that there are opportunities to enhance Canada's prevention, preparedness and response requirements to better protect the public and the environment. The report also contains recommendations for the Arctic, for hazardous and noxious substances, and a recommendation on the management of marine casualty incidents.[clxxxix]

On May 12, 2017, the Government of Canada introduced Bill C-48, the proposed ***Oil Tanker Moratorium Act*** in Parliament. This Act will deliver on the Prime Minister's commitment to Canadians to formalize a crude oil tanker moratorium on British Columbia's north coast. This legislation:

*prohibits oil tankers carrying crude and persistent oils as cargo from stopping, loading or unloading at ports or marine installations in northern British Columbia;
*provides a high level of protection for the coastline around Dixon Entrance, Hecate Strait and Queen Charlotte Sound. The proposed moratorium area extends from the Canada/United States border in the north, down to the point on British Columbia's mainland adjacent to the northern tip of Vancouver Island, and also includes Haida Gwaii;
*allows vessels carrying less than 12,500 metric tonnes of crude or persistent oil as cargo to be permitted in the moratorium area to ensure northern communities can receive critical shipments of heating oils and other products;
*proposes strong penalty provisions for contravention that could reach up to $5 million; and
*proposes flexibility for amendments.[cxc]

On June 21, 2019, the Oil Tanker Moratorium Act (Bill C-48) received Royal Assent. This Act:

> *prohibits oil tankers carrying crude and persistent oils as cargo from stopping, loading or unloading at ports or marine installations in northern British Columbia; and
>
> *allows vessels carrying less than 12,500 metric tonnes of crude or persistent oil as cargo to be permitted to stop, load and unload in the moratorium area to ensure northern communities can receive critical shipments of heating oils and other products.[cxci]

This bill led to a great deal of controversy. Suggestions of a constitutional challenge against the federal government plan were made because it represents a grave threat to the economic interests of Alberta and Canada. The Senate committee that studied the legislation recommended against passing the Liberal plan. Notwithstanding the criticism, the Senators rejected the committee's report by a vote of 38 to 53, with one abstention. After making amendments at the third reading phase of the legislative process the Senate sent the bill back to the Commons for approval.

2. Arctic and Canadian Waters Pollution

On December 4, 2008, the Honourable John Baird, Minister of Transport introduced in the House of Commons, amendments to the *Arctic Waters Pollution Prevention Act*, to enhance Canada's sovereignty over Arctic waters and to protect them from pollution.[cxcii] It will give Canada greater and more effective control over marine activity in the Canadian Arctic while enhancing environmental protection in Canada's North. The definition of "arctic waters" was:

> *extended from 100 nautical miles to 200 nautical miles.

On January 8, 2009, Canada's Transport Minister, John Baird, introduced legislation in the House of Commons to enhance Canada's sovereignty over Arctic waters and protect them from pollution. On June 11, 2009, amendments to the *Arctic Waters Pollution Prevention Act* received Royal Assent. The amendments will:

> *extend the application of the Act by amending the definition of "arctic waters" from 100 to 200 nautical miles;
> *enlarge Canada's sovereignty in these waters enabling it to exercise greater control over these waters; and
> *ensure that ships do not pollute Canadian waters.

The Act came into force on August 1, 2009.[cxciii]

On January 19, 2018, to uphold the Government of Canada's high standards for marine shipping in the north, Transport Canada introduced new *Arctic Shipping Safety and Pollution Prevention Regulations*. The regulations:

> *incorporate the International Code for Ships Operating in Polar Waters (the Polar Code) into Canada's domestic legislation.

The Polar Code addresses the unique hazards encountered by certain vessels that operate in the Arctic and Antarctic. The Polar Code and Canada's new regulations include a variety of safety and pollution prevention measures, including those related to vessel design and equipment, vessel operations and crew training.

Drawing from decades of experience as an Arctic regulator, Canada played a key leadership role in developing the Polar Code at the International Maritime Organization.[cxciv]

On November 15, 2022, the Auditor General released its report on the surveillance of Arctic waters.[cxcv] The report states "Overall, the federal government has not taken the required action to address long-standing gaps affecting its surveillance of Canada's Arctic waters. As a result, the federal organizations that are responsible for safety and security in the Arctic region do not have a full awareness of maritime activities in Arctic waters and are not ready to respond to increased surveillance requirements. These requirements are growing as a warming climate makes our Arctic waters increasingly accessible to vessels and as interest and competition for this region grows."

On June 28, 2024, the Minister of Transport, Pablo Rodriguez, announced the Government of Canada is moving forward with a domestic ban on the use and carriage for use as fuel of heavy fuel oils in Arctic waters that will be implemented on July 1, 2024. The ban will be implemented through an Interim Order while the regulations are being amended. All double hulled ships will be exempted from the HFO ban until July 1, 2029, and ships involved in Arctic community resupply can apply for a waiver until July 1, 2026. Decarbonizing the marine sector is a key part of growing a clean net-zero economy.[cxcvi]

On June 16, 2006, Transport Canada announced proposed regulations that will update and augment the current program to prevent shippers from polluting waters under Canadian jurisdiction.[cxcvii] In addition to current requirements, the proposed regulations include:

> *requiring new oily water filtering equipment and bilge alarms to meet stricter approval standards;
> *requiring any vessel fitted with a toilet to have a holding tank etc., to keep records of operations involving sewage and to obtain receipts for discharges to shore pump-out stations;
> *changing the definition of 'garbage' and specifying the requirements for record-keeping for garbage-related operations on commercial carriers;
> *requiring ships to be inspected and certified for compliance, banning the release of ozone-depleting substances, substances in ships' incinerators, and specifying the quality of fuel that can be burned by ships; and
> *banning the use of organotins in anti-fouling systems on ships, and requiring ships' anti-fouling systems to be inspected and certified.

The Regulations came into effect on May 3, 2007.

On July 6, 2006, the *Pleasure Craft Sewage Pollution Prevention Regulations* to prevent the discharge of sewage by all recreational and commercial vessels operating in Bras d'Or Lake, Nova Scotia, were announced.[cxcviii] The Regulations made pursuant to the Canada Shipping Act will further:

> *protect the aquatic species in the lake, as well as the health and safety of its users and will automatically also apply to commercial vessels under the Non-Pleasure Craft Sewage Pollution Prevention Regulations.

The Pleasure Craft Sewage Prevention Regulations went into effect in 2006 and have been repealed in 2007 and replaced by subdivision 4, of The Regulations for the Prevention of Pollution from Ships and for Dangerous Chemicals Act.

On November 24, 2009, the Government of Canada announced that Canada is taking important steps to help reduce air and water pollution from ships in Canadian waters, and ensure the safety of vessels, goods and workers.[cxcix] It will ratify international conventions related to marine pollution and maritime safety building on the past Clean Air Act in 2007. The convention (Maritime Labour Convention, 2006) will:

*reduce air and water pollution;
*better protect the marine environment and biodiversity;
*ensure the safety of vessels, goods and workers on board;
*create economic opportunities for Canadian companies; and
*enhance the competitiveness of Canadian ships.

On April 23, 2018, the Government announced its ratification of the 2010 *Hazardous and Noxious Substances Protocol*, a global regime that ensures compensation for those affected by a hazardous and noxious substances spill. Though these types of spills are rare, they can have severe consequences on coastal communities, tourism activities, fishing industries, and can incur significant clean-up costs. The Government has long recognized the marine risk associated with the transportation of hazardous and dangerous goods along our coasts. By ratifying the Protocol, Canada agrees to apply the "polluter pay principle" – making ship owners liable for hazardous and noxious substances spills. Once the Protocol comes into force, a new global compensation fund to compensate affected individuals and communities will be established through contributions from industry.[cc]

3. Vessel Abandonment

Wrecked, Abandoned or Hazardous Vessels Act

On October 30, 2017, *Wrecked, Abandoned or Hazardous Vessels Act* Bill C-64 was introduced in Parliament. The Honourable Marc Garneau, Minister of Transport, said the proposed legislation will proactively deal with wrecked, abandoned or hazardous vessels. Bill C-64 will also bring the *Nairobi International Convention on the Removal of Wrecks, 2007* into force as law in Canada. It is one of several measures the Government of Canada has committed to delivering and implementing under the Oceans Protection Plan. The *Wrecked, Abandoned or Hazardous Vessels Act* will:

*prohibit vessel abandonment;
*strengthen owner responsibility and liability for hazardous vessels and wrecks, including costs for clean-up and removal; and
*empower the Government of Canada to take proactive action on hazardous vessels before they become more costly to Canadians.[cci]

At the end of July 2019, the *Wrecked, Abandoned or Hazardous Vessels Act* came into effect. This Act:

*prohibits vessel abandonment and brings into Canadian law the Nairobi International Convention on the Removal of Wrecks, 2007;
*increases owner responsibility and liability for their vessels, addresses irresponsible vessel management, and enables the Government of Canada to proactively intervene to address problem vessels that pose hazards; and
*can result in an administrative monetary penalty of up to $50,000 for individuals and up to $250,000 for companies or corporations for non compliance. Convictions of more serious offences could result in a maximum fine of $1 million for individuals and upto $6 million for companies or corporations.[ccii]

These actions are part of the Government's broader $1.5- billion Oceans Protection Plan – the largest investment ever made to protect Canada's coasts and waterways. By acceding to the Nairobi Convention, Canada is now in line with international standards enabling it to better protect our coastlines.

4. Aquatic invasive species

On June 13, 2005, Transport Minister announced proposed regulations to further reduce the risk of harmful aquatic species being introduced into Canadian waters through ships' ballast water.[cciii] Ships will be required to:

> *exchange their ballast water at least 200 miles from shore and in waters having a depth of 2,000 metres or more before entering Canadian waters; and
> *best management practices will have to be followed in other situations.

On June 28, 2006, the Minister of Transport, Infrastructure and Communities, announced publication of Ballast Water Control and Management Regulations.[cciv] These regulations will further:

> *reduce the risk of harmful aquatic species and pathogens being introduced into Canadian waters through ships' ballast water.

The regulations entered into force on July 1, 2007.

On October 27, 2011 and 2017 administrative changes were made to the Regulations to bring them under the regime of the new *Canada Shipping Act, 2001*.

On June 7, 2019 proposed *Ballast Water regulations* were designed to strengthen existing rules and further reduce the risks to Canada's environment and economy associated with the introduction and spread of aquatic invasive species through ballast water. The proposed regulations would replace Canada's existing *Ballast Water Control and Management Regulations*. The proposed regulations would address Canada's obligations under the International Convention for the Control and Management of Ships' Ballast Water and Sediments and would include requirements for vessels to:

> *implement a Ballast Water Management Plan approved by the Minister;
> *be surveyed and carry an International Ballast Water Management Certificate;
> *meet a performance standard that limits the discharge of organisms capable of reproducing—typically using a Ballast Water Management System;
> *record ballast water operations and maintain a Ballast Water record book on board; and
> *be subject to periodic inspections in ports or offshore terminals to ensure compliance.

The proposed regulations would apply to Canadian vessels everywhere and vessels in waters under Canadian jurisdiction. This includes, for the first time, extending ballast water standards to Great Lakes vessels, for example ships operating in this region between Canada and the United States and other Canadian domestic ships.[ccv]

On June 23, 2021, the Minister of Transport announced new *Ballast Water Regulations* aimed to reduce the spread of aquatic invasive species within Canada, as well as their transfer from Canada to other countries, and to help protect global biodiversity. The new regulations mark a transition from the traditional method of ballast water management (the exchange of ballast water in mid-ocean) to the use of modern ballast water management systems (which clean ballast water of organisms before release). These regulations,[ccvi] which replace the *Ballast Water Control and Management Regulations*, apply to vessels in Canadian waters and to Canadian vessels anywhere in the world. They are based on a global approach to manage ballast water. Vessels are now required to:

> *plan their ballast water management and reduce the number of organisms in their ballast water, typically by installing a ballast water management system; and
> *carry a valid certificate, keep records, and be regularly surveyed and inspected. Smaller vessels may follow an equivalent approach tailored to their operations and size.

As a result of these regulations, the intrusion by five severely damaging species will be avoided and benefits in millions of dollars will be obtained. They came into force in June 2021.

On February 22, 2023, to advance the implementation and enforcement of the *2021 Ballast Water Regulations*, the Minister of Transport, the Honourable Omar Alghabra, launched the Ballast Water Innovation Program as part of Canada's Oceans Protection Plan with a $12.5 million funding. This program will:

> *fund research projects that ensure ballast water management systems are optimized for unique water environments in the Great Lakes and St. Lawrence River region;
> *provide innovative solutions to ensure the successful implementation of the new ballast water regulations and prevent the entry and spread of invasive aquatic species in the region;
> *enable the Government of Canada to deepen its technical expertise relating to ballast water management system issues; and
> *inform Canada's discussions with the U.S. and other countries towards more compatible rules and increased environmental protections.

The program is expected to play an important role in further reducing the spread of aquatic invasive species in the Great Lakes and St. Lawrence River region by investing in innovative solutions to ballast water management, an effective solution in the Great Lakes and St. Lawrence region. To address the challenges caused by unique water conditions (cooler temperatures and heavy sedimentation rates) and prevent the spread of aquatic invasive species.[ccvii]

5. Whale Protection

Marine Mammal Regulations

In 2017, thirteen right whales were found dead, the largest number of deaths of this endangered species since the 1800s. A mid 2017 report indicated that of the six endangered North Atlantic right whales found dead since June 2017 in the Gulf of St. Lawrence four were struck by ships and one died caught in fishing gear. There was no evidence that various toxins may have played a major role in the death. On August 11, 2017, Transport Canada took action to protect whales by implementing:

> *a temporary mandatory slow down of vessels 20 metres or more to a maximum of 10 knots; and
> *the speed restriction applies to vessels travelling in the western Gulf of St. Lawrence, between the Quebec north shore and just north of Prince Edward Island.

The move was to take immediate effect, according to the *Shipping Gazette*. If vessels fail to do so, they face a fine of up to US$19,600. To ensure immediate compliance, Transport Canada took action issuing $6,000 penalty fines to each of the following vessels: *Seven Seas Navigator*, *Petalon*, *Pearl Mist*, *Crown Princess*, *MV EM*, *Azoresborg*, *New Shanghai*, *Jacqueline C.*, *C.T.M.A. Vacancier* and *Federal Cardinal*.[ccviii] In March 2018, the Fisheries and Ocean Canada announced the investment of more than $12 million in new science funding and research projects to study the impacts of reduced prey availability and underwater noise on marine animals, including the southern resident killer whale, as part of the Oceans Protection Plan. Then, on June 22, 2018, Canada's Whales Initiative (a $167.4 million initiative) was announced in Vancouver to protect and support the recovery of killer whales.[ccix]

The measures to protect whales from 2019 to 2023 are described under two headings: a. Measures to protect Southern Resident killer whales in Canada; and b. Measures to protect North Atlantic right whales in Canada.

a. Measures to protect Southern Resident killer whales

In 2019, the Government of Canada issued an Interim Order (May 27), effective June 1, 2019, to protect whales from vessel disturbance. The Interim Order will be in place until October 31, 2019.[ccx] As of June 1, 2019:

> *all vessels are prohibited from approaching any killer whale within a 400-metre distance. This prohibition applies throughout the Southern Resident killer whale critical habitat;
> *commercial whale watch operators and eco-tourism companies that demonstrate a commitment to environmental conservation may apply for authorization from the Minister of Transport to approach non-Southern Resident killer whales to a distance of 200 metres; and
> *vessels are prohibited from entering areas newly designated as Interim Sanctuary Zones. These zones are located at Swiftsure Bank, off the east coast of Saturna Island, and south-west of North Pender Island. Some exemptions are provided for emergency response vessels and Indigenous persons in certain activities.

The population of Southern Resident killer whales is small and declining, with only 75 remaining, and they are exposed to a number of serious threats, including underwater noise and disturbance from vessels. Given the imminent threats whales are facing, the Government is also asking vessel operators to respect the following voluntary measures:

> *respect a "Go Slow" zone around whales by reducing speed to less than 7 knots when within 1,000 metres of a whale in the Enhanced Management Areas that have been identified through the Gulf Islands, the Strait of Juan de Fuca and the Mouth of the Fraser River; and
> *reduce noise by turning echo sounders off when not in use and turning engines to neutral idle when within 400 metres of a whale.

On May 10, 2019, the marine transportation industry entered into a conservation agreement with the Government of Canada to support ongoing recovery efforts for the Southern Resident killer whale population that frequents the B.C. coast. There were nine signatories to the agreement, including the Vancouver Fraser Port Authority, the Chamber of Shipping of British Columbia, the Shipping Federation of Canada, Cruise Lines International Association, the Council of Marine Carriers, the International Ship Owners Alliance of Canada, the Pacific Pilotage Authority, Transport Canada and Fisheries and Oceans Canada.[ccxi]

In 2020, the Government announced on May 7, protective measures for this year and beyond to protect the Southern Resident killer whales focusing on prey availability and accessibility, acoustic and physical disturbance, and contaminants.[ccxii] Measures include:

*protecting access to Chinook salmon with minimal disturbance in key foraging areas. There will again be area-based closures in the Juan de Fuca Strait and Southern Gulf Islands for recreational and commercial salmon fisheries. Specific dates will be announced in June. This year, all fish harvesters will also be asked to voluntarily stop fishing within 1000 metres of killer whales throughout B.C. waters;

*creating interim sanctuary zones off Pender Island, Saturna Island and at Swiftsure Bank, which are in effect from June 1 to November 30, 2020. This is an additional month longer than last year. No vessel traffic will be permitted in these areas subject to certain exceptions for emergency and Indigenous vessels;

*prohibiting vessels from approaching any killer whale within a 400-metre distance, effective June 1, 2020. Starting this year, this will apply year-round and in BC coastal waters between Campbell River and Ucluelet, which is further north than last year's measure;

*asking all vessels to "go slow" and reduce speed to less than seven knots when within 1000 metres of a whale. Vessels are also asked to turn off echo sounders and fish finders when not needed, and turn engines to neutral idle if a whale is within 400 metres. This will be year-around; and

*reducing contaminants affecting whales and their prey. Long-term actions focus on enhancing regulatory controls, monitoring and research, sharing information and data, and expanding outreach and education.

On December 10, 2020, the Minister of Transport, the Honourable Marc Garneau, announced that vessels are still prohibited from approaching any killer whale within a 400 metre distance in B.C. coastal waters between Campbell River and Ucluelet until May 31, 2021. Canada's Marine Mammal Regulations, which require maintaining 200 metres away from killer whales off the coast of B.C., continue to apply year-round. From June 1 to November 30, 2020, three Interim Sanctuary Zones were created where Southern Resident killer whales were safe from boats and where fishing was not permitted. These zones gave the whales space to better socialize and kept the three pregnant females safe from human interactions. Only Indigenous peoples exercising their existing rights, vessels responding to boating emergencies, vessels accessing local residences or establishments, and human-powered vessels (kayaks, paddle boards, etc.) navigating within 20 metres of the shoreline were permitted in these zones. The Government of Canada also took additional action this year through the Whales Initiative to further promote the development of new technologies and quiet vessel designs, and reduce human-made underwater noise. This included deployment of an underwater listening station at Boundary Pass by JASCO Applied Sciences in May 2020. The 2020 measures resulted in more than 155 enforcement actions.[ccxiii]

In 2021, to protect the Southern Resident killer whales the measures[ccxiv] taken (April 14) were:

*prohibiting vessels in 2020-21 from approaching any killer whale within a 400-meter distance in southern B.C. coastal waters between Campbell River and Ucluelet, Barkley and Howe Sound (April 2021);

*re-introducing three interim sanctuary zones off Pender Island, Saturna Island and at Swiftsure Bank, from June 1 to November 30, 2021. No vessel traffic will be permitted, subject to exceptions (April 2021);

*putting fishery closures in place for commercial and recreational salmon in a portion of Swiftsure Bank from July 16 to Oct. 31, 2021, and Strait of Juan de Fuca from Aug. 1 to Oct. 31, 2021 (April 2021);

*introducing a new pilot closure protocol for commercial and recreational salmon fisheries in the southern Gulf Islands (whereby fishery closures are triggered) (April 2021); and *continuing to help reduce contaminants in the environment affecting whales and their prey (April 2021).

Canada's Marine Mammal Regulations will continue to require maintaining 200 metres away from killer whales off the coast of B.C., year-round. The government also renewed an agreement with the local whale watching and ecotourism industry partners and signed a five-year agreement with industry partners which are part of the Enhancing Cetacean Habitat and Observation Program in 2019. The 2020 measures resulted in more than 155 enforcement actions and an additional federal investment of $61.5 million for supporting survival and recovery of killer whales and their habitat.

In 2022, the Government of Canada announced (April 29) protective measures for Southern Resident killer whales on the West Coast. The focus of the measures is on addressing the primary threats to Southern Resident killer whales: reduced prey availability and accessibility, acoustic and physical disturbance, and contaminants. These measures include:

*two new Seasonal Slowdown Areas near Swiftsure Bank (maximum 10 knots);
*vessels must stay at least 400 m away from all killer whales (between Campbell River and Ucluelet, including Barkley and Howe Sound;
*a renewed agreement not to offer or promote tours focused on Southern Resident killer whales;
*two interim sanctuary zones off Pender Island and Saturna Island;
*expanded fishery closures for commercial and recreational salmon fisheries in 2022;
*a Southern Gulf Islands closure protocol for commercial and recreational salmon fisheries;
*continued help to reduce contaminants in the environment affecting whales and their prey; and
*voluntary underwater noise reduction initiatives in key areas of Southern Resident killer whale critical habitat across the Salish Sea (Haro Strait and Boundary Pass, Swiftsure Bank, and the Strait of Juan de Fuca).

On June 15, 2022, in recognition of the importance of reducing underwater noise to support the protection and recovery of Canada's endangered whale species, the Minister of Transport, the Honourable Omar Alghabra, announced the launch of a new request for proposal to support the development of propulsion improving devices, specifically aimed at reducing underwater noise generated by propellers.[ccxv]

In 2023, Transport Canada will be strengthening the requirements of the avoidance distance to further minimize physical and acoustic disturbance in the presence of Southern Resident killer whales in the Interim Order under the Canada Shipping Act, 2001.[ccxvi] Some of these 2023 measures (from June 1 until November 30, 2023) continue:

Acoustic and physical disturbances from vessel zones
*****mandatory Speed Restricted Zones near Swiftsure Bank, co-developed with the Pacheedaht First Nation. While in the areas all vessels are required to slow down to a maximum of 10 knots.
Interim sanctuary zones
*****to ensure protection of whales no vessel traffic or fishing activity is allowed in interim sanctuary zones off the southwest coast of South Pender Island and the southeast end of Saturna Island; and
*****to ensure the safety of those operating human-powered vessels, a 20-metre corridor next to shore will allow kayakers and other paddlers to transit through these zones. If a killer whale is in the sanctuary at the time, paddlers must remain 400 metres away from the whales.
Prey availability zones
*****area-based closures are expanded in Southern Resident killer whale key foraging areas for recreational and commercial salmon fisheries around Swiftsure Bank;

*area-based closures for recreational and commercial salmon fisheries will be in place in Southern Resident killer whale key foraging areas in the Strait of Juan de Fuca;
*area-based fishing closures in the Southern Gulf Islands are triggered for commercial and recreational salmon fisheries upon the first confirmed presence of Southern Resident killer whales in the area; and
*areas when killer whales are within 1,000 metres, all fishers are encouraged to temporarily cease fishing activities (e.g., do not haul in gear)

On June 3, 2024, the Minister of Natural Resources Canada, Jonathan Wilkinson, on behalf of the Minister of Transport, Pablo Rodriguez, the Minister of Fisheries, Oceans and the Canadian Coast Guard, Diane Lebouthillier, and the Minister of Environment and Climate Change Canada, Steven Guilbeault, announced a series of measures, which came into effect as of June 1, 2024 as well as an investment of $3.5 million to protect Southern Resident killer whales, and the renewal of a five-year Conservation Agreement that was signed between the Government of Canada and the marine transportation industry. The 2024 and 2025 measures include:

*mandatory speed-restriction in two zones near Swiftsure Bank, effective June 1 to November 30, 2024;
*interim sanctuary of two zones off Pender and Saturna Islands, effective June 1 to November 30, 2024;
*voluntary speed reduction zone in Tumbo Channel, off the North side of Saturna Island;
*continued requirement for vessels to stay at least 400 metres away from all killer whales, and a prohibition from impeding the path of all killer whales in Southern British Columbia coastal waters between Campbell River and Ucluelet, including Barkley and Howe Sound. This is now in effect until May 31, 2025;
*agreement with local whale watching and ecotourism industry partners to abstain from offering or promoting tours viewing Southern Resident killer whales;
*fishery closures for commercial and recreational salmon fisheries in key Southern Resident killer whale foraging areas in 2024 and 2025; and
*introduction of additional actions to reduce contaminants in the environment affecting whales and their prey. Transport Canada measures focus on addressing the three primary threats to Southern Resident killer whales: acoustic and physical disturbance, prey availability and accessibility, and contaminants.

Further details are provided on addressing these three primary threats to Southern Resident killer whales. In addition, Transport Canada will provide $3.2 million over two years to the Vancouver Fraser Port Authority to continue the Enhancing Cetacean Habitat and Observation (ECHO) Program. Transport Canada will also provide $300,000 to Ocean Wise to support their Whale Report Alert System, which notifies large commercial vessels when they may be near whales via an online app.[ccxvii]

b. Measures to protect North Atlantic right whales in Canada

In 2019, "Due to the unfortunate deaths of a number of North Atlantic right whales in Canadian waters, Transport Canada is implementing (June 26)":

*an interim precautionary speed restriction of 10 knots, for vessels of 20 metres or more in length travelling in the western the Gulf of St. Lawrence, in the two designated shipping lanes north and south of Anticosti Island. This measure is effective immediately.

This measure is in addition to the fixed speed restriction introduced on April 28, 2019, in a large area in the Gulf of St. Lawrence, where vessels 20 metres or longer are restricted to a maximum of 10 knots until November 15, 2019. Transport Canada inspectors, with assistance from the Canadian Coast Guard's Marine

Communications and Traffic Services, will enforce this precautionary measure. Failure to comply will result in an Administrative Monetary Penalty of up to $25,000.[ccxviii]

Further measures to protect these iconic creatures were announced on July 8, 2019 by the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard. These additional measures include slowing down more ships in areas, increasing the zones in which speed restrictions will apply, increasing aerial surveillance, and funding for initiatives to enhance marine mammal response. Specific additional measures include:

*increasing surveillance;
*expanding the current slowdown zone further east;
*expanding the application of the mandatory speed restrictions;
*dividing the mandatory slowdown zone;
*adjusting the trigger for fisheries;
*investing $1.2 million in 2019;
*providing new funding;
*funding two additional projects; and
*expanding the slowdown buffer zone.[ccxix]

Transport Canada imposed fines on several vessels for non-compliance and intensified aerial surveillance. Some observers note that some of these measures did not succeed as it drove vessels into the more direct routes along which whales gathered. Nevertheless, the government continued its efforts by committing an investment of up to $30 million to support new vessel design to decrease underwater noise.[ccxx]

In 2020, the Minister of Fisheries, Oceans and the Canadian Coast Guard along with the Minister of Transport, announced (February 27) the enhanced 2020 measures that will help reduce the risks to North Atlantic right whales during the 2020 season from April to November.[ccxxi] To help prevent entanglements with fishing gear, Fisheries and Oceans Canada will:

*implement new season-long fishing closures in areas where whales are aggregating in the Gulf of St. Lawrence;
*expand temporary fishing closure areas into the Bay of Fundy;
*impose new gear marking requirements; and
*work with the fishing industry on implementing other gear modifications to be phased in starting in 2021.

The Department is also authorizing ropeless fishing gear trials in closed areas. To help prevent whale collisions with vessels, Transport Canada will:

*re-implement the mandatory speed limit to 10 knots in the western Gulf of St. Lawrence; and
*continue to allow vessels to travel at safe operational speeds in parts of the shipping lanes north and south of Anticosti Island when no North Atlantic right whales are detected in the area.

New measures also include two seasonal management areas:

*a restricted area in the Shediac Valley where vessels will be required to avoid the area or reduce their speed to 8 knots; and
*the Cabot Strait where a trial voluntary speed limit of 10 knots will apply for parts of the season.
All measures apply to vessels longer than 13 metres.

On November 18, 2020, Fisheries and Oceans Canada introduced a new season-long fishing area closure protocol in the Gulf of St. Lawrence, based on where whales were detected. The department also expanded the scope of where temporary and season-long closures were applied. As a result of these enhanced measures, 35,000 square kilometers was closed to fishing for the season—an area equivalent to six times the size of Prince Edward Island. An additional 6,935 square kilometers were closed temporarily during the season. These closures have direct economic and operational impacts on harvesters, and the Government of Canada appreciates their continued cooperation and collaboration in helping protect these endangered whales. In terms of vessel management measures, covering 72,000 square kilometers, Transport Canada introduced three new measures in addition to the implementation of the mandatory 10-knot speed restriction throughout much of the Gulf of St. Lawrence for vessels over 13 metres, including:

*a two speed-restricted seasonal management areas;
*a restricted area in and near the Shediac Valley where vessels were required to avoid the area, except for exempted vessels who were required to reduce their speed to eight knots in the area; and
*a trial, voluntary slowdown of 10 knots in Cabot Strait, at the beginning and end of the season to address whale migration in and out of the Gulf of St. Lawrence.[ccxxii]

In 2021 (February), to protect the North Atlantic right whales, the measures (For all vessels more than 13 metres in length) taken in 2020 were continued in 2021.[ccxxiii] These are listed below:

*a mandatory speed limit to 10 knots in the western Gulf of St. Lawrence (Feb./Nov. 2020);
*a mandatory speed restriction to 10 knots for 15 days when a North Atlantic right whale is detected in shipping lanes north and south of Anticosti Island (Feb./Nov. 2020);
*a trial, voluntary slowdown of 10 knots in Cabot Strait, at the beginning and end of the season to address whale migration in and out of the Gulf of St. Lawrence (Feb./Nov. 2020);
*a restricted area in and near the Shediac Valley where vessels were required to avoid the area, except for exempted vessels who were required to reduce their speed to eight knots in the area (Feb./Nov. 2020); and
*a trial, voluntary slowdown of 10 knots in Cabot Strait, at the beginning and end of the season to address whale migration in and out of the Gulf of St. Lawrence (Feb./Nov. 2020)

The measures modified in 2021 were:

*the mandatory restricted area in and near the Shediac Valley was refined by size, location (Feb. 2021); and
*the speed limit exemption in waters of less than 20 fathoms will be expanded to all commercial fishing vessels.

In addition, gear markings and modification of gears were required to be implemented in 2021.

In 2022, following two successful years during which there were no reported right whale deaths in Canadian waters, the Minister of Fisheries, Oceans and the Canadian Coast Guard, the Honourable Joyce Murray, and the Minister of Transport, the Honourable Omar Alghabra, announced the fishery and vessel management measures for the 2022 season.[ccxxiv] These are:

*Fisheries and Oceans Canada will again implement seasonal and temporary fishing area closures in the Gulf of St. Lawrence, Bay of Fundy, and critical habitat areas where and when right whales are visually and acoustically detected;
*Fisheries and Oceans Canada will also continue addressing ghost gear in the Gulf of St. Lawrence, supporting networks of marine mammal responders, and working with harvesters to help them transition to whale safe gear in 2023; and
*Transport Canada's vessel traffic management measures include a speed restriction for all vessels over 13 metres, throughout much of the Gulf of St. Lawrence, to protect areas where whales are detected. This year's measures take effect on April 20 to better respond to North Atlantic right whale presence.

In 2023, Transport Canada issued a notice[ccxxv] to fish harvesters in accordance with the 2023 traffic management measures, as previously announced by Transport Canada, to protect North Atlantic right whales (NARW) in Canada. Due to changing migration patterns of North Atlantic right whales and their increased presence in the Gulf of St. Lawrence, the Government of Canada has established seasonal speed restrictions in specific zones. These speed restriction zones are defined as "static zones", "dynamic shipping zones", "seasonal management areas", a "voluntary seasonal speed restriction zone'', and a "restricted area". Vessels **must follow** Navigational Warnings outlining the speed restrictions. *The Interim Order for the Protection of North Atlantic Right Whales (Eubalaena Glacialis) in the Gulf of St. Lawrence, 2023* enables the issuance of Navigational Warnings (NAVWARNs) imposing speed restrictions or navigation restrictions.

The overall reaction by environmentalists and groups to protect endangered species was positive.

6. Environmental measures for ships
On May 8, 2007, government officials announced new regulations to protect marine environment.[ccxxvi] The Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities said that "These new requirements and improvements to existing regulations demonstrate the Government of Canada's commitment to ensuring a cleaner and healthier marine environment." Further, "They align Canadian practices with international standards, making Canada a leader in the prevention of marine pollution." The regulations are a compilation of existing requirements under the Canada Shipping Act, and international marine standards and add the optional provisions of an International Convention on prevention of pollution from ships. Key features of these regulations include:

*requiring new oily water filtering equipment and bilge alarms to meet stricter approval standards;
*requiring any vessel fitted with a toilet to have a holding tank or an approved marine sanitation device for the treatment of sewage;
*adding cargo sweepings and residues from non-toxic bulk cargoes to the definition of "garbage";
*specifying the requirements for record-keeping for garbage-related operations on commercial carriers;
*requiring ships to be inspected and certified for compliance with provisions for air emissions;
*limiting emissions of nitrogen oxide from new diesel engines;
*banning the release of ozone-depleting substances;
*banning the burning of specified substances in ships' incinerators, and specifying the quality of fuel that can be burned by ships; and
*banning the use of organotins in anti-fouling systems on ships, and requiring ships' anti-fouling systems to be inspected and certified.

After providing 30 days for comment the regulations were published in Part II of Canada Gazette and came into effect on June 13, 2007.

On June 23, 2023, the Minister of Transport, the Honourable Omar Alghabra, announced mandatory environmental measures for cruise ships effective immediately. These measures continue the voluntary measures announced in April 2022. The measures address discharges of greywater (the drainage from sinks, laundry machines, bathtubs and showers, or dishwaters) and sewage (wastewater from bathroom and toilets). These mandatory measures for the cruise ship industry include:

> *prohibiting the discharge of greywater and treated sewage within three nautical miles from shore where geographically possible across Canada;
> *strengthening the treatment of greywater together with sewage before it is discharged between three and twelve nautical miles from shore south of 60°N using an approved treatment device in non-Arctic waters. This will complement existing regulations for Arctic waters under the *Arctic Waters Pollution Prevention Act*; and
> *reporting compliance with these measures in Canadian waters upon request.

Cruise ships will be subject to fines for non-compliance with these measures, up to the maximum permitted ($250,000) under the *Canada Shipping Act, 2001*.[ccxxvii] The first set of results from this reporting in 2022 demonstrates that the cruise ship industry has successfully implemented the new measures thus far this year.[ccxxviii]

On November 7, 2022, the Minister of Transport, the Honourable Omar Alghabra, announced: the creation of a Canadian Green Shipping Corridors Framework and that Canada is joining the Zero-Emission Shipping Mission. These two new initiatives were highlighted by Canada's Climate Change Ambassador during COP27.[ccxxix]

D. Marine Safety and Security.
To provide marine safety and security, over the period 2004 to 2023, several initiatives were undertaken by the Government. These are listed as follows: 1. Safety of passengers and crew. 2. Vessel regulations. 3. Marine Liability. 4. Administrative monetary penalties. 5. Marine Security.

1. Safety of passengers and crew
On November 3, 2004, Canada and 40 other countries and international organizations from Europe and the Pacific Rim signed a declaration on Port State Control (PSC).[ccxxx] The declaration underlines:

> *joint commitments to eliminate substandard ships and minimize the threat they pose to life, property and the marine environment.

PSC is an inspection program by countries to ensure that foreign vessels entering their waters are incompliance with strict international safety and anti-pollution standards. The declaration identifies two objectives for the coming years: the need to apply increasing pressure on operators of substandard ships; and the need to undertake new proactive PSC policies.

On June 27, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced new regulations that ensure safer practices for Canadian and foreign vessels carrying cargo in Canadian waters.[ccxxxi] The *Cargo, Fumigation and Tackle Regulations* include requirements for:

*safe loading, unloading, and carriage of cargo for marine transportation;
*safe fumigation practices aboard vessels; and
*safe methods for using cargo gear, such as loading ramps and accommodation ladders.

These regulations came into effect.

On October 23, 2009, Canada's Transport Minister John Baird proposed new *Fire and Boat Drills Regulations* to enhance safety and better ensure that passengers and crew of vessels understand what to do during emergencies. The proposed regulations will enhance safety by meeting Transportation Safety Board recommendations for better accounting of passengers and improved emergency preparedness on vessels. These regulations:

*require that an accurate account of persons on board the vessel be available for search and rescue workers;
*require passengers and crew know what procedures to follow;
*require passengers and crew when to abandon a vessel; and
*require passengers and crew how to react safely and efficiently to an onboard emergency.

These regulations would replace the existing *Boat and Fire Drill* and *Means of Exit Regulations* and conform to the new regulatory regime under the *Canada Shipping Act, 2001*.[ccxxxii]

On May 14, 2010, the Government of Canada announced new regulations (the *Fire and Boat Drills Regulations*) that will enhance safety and better ensure that passengers and crew of vessels, including passenger ferries, understand what to do during emergencies. They require:

*keeping an accurate count of persons on board a vessel;
*providing instruction about when to abandon a vessel;
* providing instruction how to react safely and efficiently to an onboard emergency; and
*making practice drills more realistic and efficient, etc.

These regulations replace the Boat and Fire Drill and Means of Exit Regulations.[ccxxxiii] The regulations were published in the Canada Gazette, Part II, and came into effect on May 12, 2010.

Canada also ratified new regulations to improve marine worker safety. Minister of Labour Raitt said, “We are implementing these regulations to protect marine workers and prevent accidents and injuries in their place of work.”[ccxxxiv]

On November 3, 2011, the Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities, announced the *Voyage Data Recorder Regulations*.[ccxxxv] Under the new regulations, certain large passenger and cargo vessels will be required to have voyage data recorders. Similar to an airplane's black box, the equipment captures critical information to help investigations into accidents at sea. The *Voyage Data Recorder Regulations* will require, as of January 1, 2012, that:

*new passenger vessels of 500 gross tonnage or more and new cargo vessels of 3,000 gross tonnage or more not engaged on an international voyage be fitted with voyage data recorders.

Owners of existing passenger vessels have until July 1, 2015, to install the equipment, depending on their inspection schedule. The new safety measure addresses a Transportation Safety Board recommendation highlighted in its Watchlist earlier this year. The regulations also implement the voyage data recorder requirements under the *International Convention for the Safety of Life at Sea (SOLAS), 1974* for Canadian vessels engaged on international voyages.

Ferry Accessibility for Persons with Disabilities - *Code of Practice*
On November 6, 2014, the Canadian Transportation Agency updated the Code of Practice on Ferry Accessibility for Persons with Disabilities. The Code contains accessibility standards developed to enhance the level of accessibility for persons with disabilities when travelling by ferry. The Code covers five main aspects of accessibility for ferry vessels and services for persons with disabilities:

*vessel Accessibility;
*maintenance;
*communication;
*disability-related Services; and
*personnel Training.[ccxxxvi]

Cruise ship measures – Covid-19
On March 13, 2020, the Government of Canada decided to defer the start of the cruise ship season in Canada, from April 2, 2020, to July 1, 2020, at the earliest.[ccxxxvii] This deferral will apply to cruise ships capable of carrying more than 500 passengers and crew members. On April 5, 2020, the Minister of Transport, the Honourable Marc Garneau announced new measures to reduce the risk of COVID-19 transmission on commercial passenger vessels and ferries. As of April 6, the new measures with mandatory requirements are:

*prohibit all commercial marine vessels with a capacity of more than 12 passengers from engaging in non-essential activities, such as tourism or recreation. These measures will remain in place until at least June 30;
*prevent any Canadian cruise ship from mooring, navigating, or transiting in Canadian Arctic waters (including Nunatsiavut, Nunavik and the Labrador Coast). These measures will remain in place until October 31, 2020; and
*require ferries and essential passenger vessel operators to: immediately reduce by 50% the maximum number of passengers that may be carried on board (conduct half-load voyages) to support the two-metre physical distancing rule; or implement alternative practices to reduce the risk of spreading COVID-19. There are exceptions.[ccxxxviii]

Then on May 29, 2020, the Minister of Transport, the Honourable Marc Garneau, updated measures pertaining to cruise ships and passenger vessels in Canadian waters. These measures are:

*cruise ships with overnight accommodations allowed to carry more than 100 persons are prohibited from operating in Canadian waters until October 31, 2020; and
*all other passenger vessels as of July 1, 2020, must follow provincial, territorial, local and regional health authority requirements for timelines and processes to resume operations. Passenger vessels with the capacity to carry more than 12 persons continue to be prohibited from entering Arctic coastal waters (including Nunatsiavut, Nunavik and the Labrador Coast) until October 31, 2020. Beginning July 1, 2020, passenger vessels will be allowed to operate in inland rivers and lakes in the Northwest Territories, Nunavut and Yukon.[ccxxxix]

On October 29, 2020, given the ongoing situation with COVID-19, the Minister of Transport, the Honourable Marc Garneau, announced the extension of measures pertaining to cruise ships and pleasure craft until February 28, 2021. This means:

*cruise ships with overnight accommodations carrying more than 100 people continue to be prohibited from operating in Canadian waters;
*passenger vessels (all other) must continue following provincial, territorial, local and regional health authority guidance;
*passenger vessels carrying more than 12 people continue to be prohibited from entering Arctic coastal waters, including Nunatsiavut, Nunavik and the Labrador Coast; and
*pleasure craft (adventure-seeking) also continue to be banned in Arctic waters.[ccxl]

On October 28, 2020, The Minister of Transport, the Honourable Marc Garneau, announced that the Government of Canada has published the new *Marine Navigation Safety Regulations, 2020*, which now apply to commercial vessels of all sizes, including fishing vessels, workboats, water taxis and ferries. The new regulations, which reflect extensive consultation with Canadians and the marine industry, represent a consolidation of nine existing sets of marine safety regulations into a single one that:

*provides clearer and more up to date language on required navigational safety equipment;
*requires vessel owners to have equipment to help reduce the risk of collisions that could cause pollution, like oil spills, and threaten endangered marine life, such as whales;
*requires lifesaving equipment that will send emergency signals and provide the vessel's location;
*applies to over 23,000 commercial vessels of all sizes; and
*aligns better with international marine safety standards such as the International Convention for the Safety of Life at Sea.[ccxli]

On November 22, 2022, the Minister of Transport, the Honourable Omar Alghabra, Chief Councillor of the Gitga'at Nation, Arnold Clifton, and Chief Councillor of the Gitxaala Nation, Linda Innes, announced new waterway management guidelines to improve safety and reduce conflict among Indigenous, public, and commercial waterway users in an important North Pacific Coast waterway.[ccxlii] Effective September 1, 2022:

*new North Coast Waterway Management Guidelines apply to all types of vessels travelling between Kitimat and Browning Entrance; and
*new North Coast Waterway Management Guidelines include safety zones, speed reductions, recommended routing, guidance for ships meeting and passing each other, and stronger communications on the water. The guidelines also include First Nations Areas of Concern where ships must ensure local community users can transit and use the area safely.

Marine Safety Fees Regulations
The Marine Safety Fees Regulations came into force on April 1, 2021.[ccxliii] The Regulations will:

*repeal the *Port Wardens Tariff*;
*introduce 17 fees for five types of marine safety inspections;
*amend the *Cargo, Fumigation and Tackle Regulations* and the *Board of Steamship Inspection Scale of Fees;*
*repeal references to existing marine cargo fees and *Port State Control fees*; and
* amend the *Vessel Pollution and Dangerous Chemicals Regulations*.

The modernization of the marine cargo fee regime will better reflect the actual cost to TC of providing inspection services and will simplify the fee structure for both industry stakeholders and TC. By implementing a modern fee regime that requires the beneficiaries of services to pay a greater portion of the costs for these services, TC is promoting better balance between the financial burden borne by service recipients and by Canadians.

Amendments to the Marine Safety Fees Regulations
On February 28, 2024, the Minister of Transport, Pablo Rodriguez, announced amendments to the Marine Safety Fees Regulations to modernize vessel registry fees. The amendments will come into force April 1, 2024.[ccxliv] This is a step forward to modernize marine safety and services in Canada. These amendments:

*ensure that Transport Canada's services are sustainably funded and efficiently delivered; and
*shift a portion of this cost burden from taxpayers to those who directly benefit from these services, like vessel owners.

The *Marine Safety Fees Regulations*[ccxlv] deal with 17 fees for five types of marine safety inspections. The fees are indexed annually, based on the applicable Consumer Price Index published by Statistics Canada.

2. Vessel regulations
On March 10, 2006, Minister of Transport, Infrastructure and Communities, announced a new policy which will help fishing vessel operators better understand the stability limits of their vessels.[ccxlvi] The policy:

*requires operators of new and existing fishing vessels between 15 and 150 gross tons, or less than 24.4 metres in length, to have a stability booklet if the vessel meets certain risk criteria.

This announcement follows Transport Canada’s action to deal with the stability of small fishing vessels as ‘safety is the priority’.

On June 13, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced new regulations that modernize the certification system for Canadian seafarers, and harmonize their working conditions with international labour standards.[ccxlvii] They are divided into three parts:

*the first covers the requirements for individual certificates of competency;
*the second covers the crewing requirements for vessels; and
*the third covers the working conditions for crew, including the requirements of the Maritime Labour Convention, 2006.

On August 21, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, proposed *Vessel Operation Restriction Regula*tions to ensure consistency with the Canada Shipping Act, 2001.[ccxlviii] The new restrictions included in the proposed regulations will maintain the safety of navigation, both commercial and recreational, by restricting the type or speed of vessels that may use the various waterways. The proposed Vessel Operation Restriction Regulations are part of the CSA 2001 regulatory reform, and are intended to replace the existing *Boating Restriction Regulations*. They will provide for the establishment of restrictions to boating activities and navigation in Canadian waters. The restrictions made possible by the proposed regulations address:

*access by vessels to specified areas;
*restrictions on the mode of propulsion used;
*limitations on maximum engine power or speed;
*prohibitions on recreational towing activities (e.g., water-skiing); and
*areas in which a permit is required in order to hold a sporting or recreational event (e.g., regattas and dragon boat races).

The regulations came into force on April 17, 2008.

On April 30, 2008, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced the coming into force of the Special-purpose Vessels Regulations and the Vessel Operation Restriction Regulations.[ccxlix] These regulations are made under the Canada Shipping Act, 2001 (CSA 2001). The first incorporates:

*the industry best practices by outlining the requirements for all river rafting companies to have vessel and safety equipment standards such as helmets, life jackets, etc.

The second incorporates:

*the possibility for local authorities to apply to Transport Canada to place restrictions on the access of a vessel or class of vessels to specified waters;
*the mode of propulsion used;
*the maximum engine power or speed; and
*the recreational towing activities (e.g., water-skiing); and
*the imposition of a universal shoreline speed limit of 10 km/h within 30m of the shore in all rivers and lakes of Nova Scotia, including Bras d'Or Lake.

On July 3, 2008 amendments to the *Vessel Operation Restriction Regulations*, which improve safety and protect the environment by restricting vessel navigation were proposed.[ccl] The specific areas impacted are:

*Columbia Wetlands in south-eastern British Columbia;
*Lac Nairne, Lac Bleu, Lac Saint-François-Xavier and Lac des Becs-Scie in Quebec; and
*Kempenfelt Bay, Lake Simcoe, in Ontario.

On August 20, 2009, the government announced amendments to the *Vessel Operation Restriction Regulations*. The changes improve safety and protect the environment by:

*restricting vessel navigation on select waterways in three areas in Canada; and
*provide a mechanism for local authorities to apply to the federal government to place restrictions on the operation of a vessel or class of vessels to specified waters.

The specific areas impacted are: Lac Nairne, Lac Bleu, and Lac Saint-François-Xavier in Quebec; Kempenfelt Bay, Lake Simcoe, in Ontario; and Columbia Wetlands in south eastern British Columbia. Other action included the modernization of equipment of the Dash 7 with a Maritime Surveillance System. With this equipment, the Government of Canada can track and identify polluters on a 24-hour basis and in situations with reduced visibility, such as darkness or low cloud cover.[ccli]

On October 27, 2009, Canada's Transport Minister John Baird announced changes to clarify the regulations amending the *Vessel Operation Restriction Regulations*. It includes:

*making it easier to issue permits for sporting;
*appointing municipal inspectors;
*clarifying speed limits for a vessel towing a person on water-skis; and
*correcting errors.[cclii]

On December 13, 2017, the *Vessel Operation Restriction Regulations* were updated and will:

*prohibit the use of all power-driven vessels and implement a maximum speed limit of 10 km/h for vessels driven by electrical propulsion;
*inform the users of Lac Sainte-Marie of the new Regulations, and post appropriate signs so that the Regulations can be enforced for the next boating season;
*ban all vessels in the lower portion of the Niagara River, south of Whirlpool and north of the Niagara Falls Bridge Commission in the City of Niagara Falls, Ontario. This portion of the river is extremely dangerous and emergency response in the area is very limited; and
*correct the geographical coordinates for existing restrictions in 20 bodies of water in Quebec, one body of water in Ontario, and 42 in British Columbia.

The amendments were published in Part II of the *Canada Gazette* to enhance safety on Lac Sainte-Marie in the municipality of Nominingue, Quebec, on December 13, 2017.[ccliii]

On December 31, 2023, the Minister of Transport, Pablo Rodriguez, announced amendments to the *Vessel Operation Restriction Regulations* to incorporate requests received in fall 2021. In total, 21 new vessel operation restrictions have been introduced for six waterways in Ontario, Quebec, and Manitoba. These new restrictions apply to Big Tub Harbour, Ontario; Richelieu River, Quebec; St-Maurice River, Quebec; Duhamel Lake, Quebec; and Pinawa Channel and Lee River, Manitoba. Changes affect engine power limits, exemptions, technical requirements on signage, wake surfing, designation authorities, and administrative corrections.[ccliv]

On August 14, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, proposed amendments to the *Collision Regulations and the Canal Regulations* to ensure consistency with the Canada Shipping Act, 2001 (CSA 2001), which came into effect on July 1, 2007.[cclv] The Collision Regulations provide uniform measures to ensure the safe conduct of vessels. The proposed amendments to the *Collision Regulations and the Canal Regulations* are part of the second phase of the CSA 2001 regulatory reform, and are intended to replace and clarify some of the requirements in the existing regulations. The *Collision Regulations* provide uniform measures to ensure the safe conduct of vessels. The regulations describe:

*the rules of general conduct specific to the navigational, steering and sailing rules;
*the navigational lights and shapes to be displayed; and
*the sound and light signals to be used by every vessel and pleasure craft in Canadian waters.

The proposed amendments to the *Canal Regulations*, made pursuant to the Department of Transport Act, are non-substantive. They are proposed to ensure consistency with the title of the Collision Regulations.

On August 14, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, proposed *Special-Purpose Vessels Regulations* to establish comprehensive and consistent standards for commercial river rafting across Canada.[cclvi] The proposed regulations will:

*establish minimum standards for commercial river rafting; and
*apply them to all waters in Canada, instead of limiting the regulatory regime to the waters specified in the Boating Restriction Regulations.

On May 17, 2010, updated *Small Vessel Regulations* pertaining to new requirements for safety equipment and operational safety practices for small vessels were also introduced. The updated regulations:

*reflect best practices for small commercial vessel safety and guided excursions;
*make the certification process for small non-pleasure vessels simpler and extend it to manufacturers and importers;
*make compliance easier without compromising safety; and
*allow 90 days to transfer licences between owners by mail, during which time new owners are permitted to operate their pleasure craft.

The regulations also provide for harmonization of standards.[cclvii]

On July 13, 2016, the Honourable Marc Garneau, Minister of Transport, announced several amendments to the *Small Fishing Vessel Inspection Regulations* that will enhance safety in the commercial fishing industry.[cclviii] The new regulations will:

*update the current safety equipment and vessel stability requirements as well as introduce safe operating procedures for small fishing vessels.

The commercial fishing industry (one of the most dangerous occupations in the world) significantly contributes to the economy of many small communities by providing employment opportunities. The amendments come into force one year from July 2016.

On July 13, 2017, the Honourable Marc Garneau, Minister of Transport, announced that new regulations to enhance safety in the commercial fishing industry are now in force. The *Fishing Vessel Safety Regulations* set out new requirements for:

*safety equipment;
*written safety procedures; and
*vessel stability for small commercial fishing vessels operating in Canada.[cclix]

On October 28, 2020, the Government of Canada published the new *Marine Navigation Safety Regulations, 2020*, which now apply to commercial vessels of all sizes, including fishing vessels, workboats, water taxis and ferries. The new regulations, which reflect extensive consultation with Canadians and the marine industry, represent a consolidation of nine existing sets of marine safety regulations into a single one that:

*provides clearer and more up to date language on required navigational safety equipment;
*requires vessel owners to have equipment to help reduce the risk of collisions that could cause pollution, like oil spills, and threaten endangered marine life, such as whales;
*requires lifesaving equipment that will send emergency signals and provide the vessel's location;

*applies to over 23,000 commercial vessels of all sizes; and
*aligns better with international marine safety standards such as the International Convention for the Safety of Life at Sea.[cclx]

On January 3, 2024, the Minister of Transport, Pablo Rodriguez, announced that the new *Vessel Construction and Equipment Regulations*, which apply to the construction and equipment of new vessels 24 metres or more in length (excluding fishing vessels and pleasure craft), have come into force.[cclxi] The regulations update and consolidate requirements that previously existed in various regulations under the Canada Shipping Act, 2001, and the Canada Labour Code, into one set of regulations and add penalties for non-compliance. The regulations are wide-ranging setting:

*requirements (updated) with respect to structural strength, stability, machinery, electrical systems, lifesaving equipment, and crew accommodations, as well as fire protection on vessels without mechanical means of propulsion; and
*requirements for passenger vessels to carry enough infant-sized and child-sized lifejackets.

The latter guarantees that each person on board has access to an appropriately sized lifejacket, addressing safety considerations raised by the Transportation Safety Board of Canada. Lifejackets on board passenger vessels that operate on overnight voyages will also need to be equipped with locator lights. Additionally, these new streamlined and modernized regulations will reduce logistical and administrative burdens for the shipping industry. They also bring Canada's regulations in line with the International Maritime Organization standard.

3. Marine Liability
On June 23, 2009, amendments to the *Marine Liability Act*, received Royal Assent. The major amendments include:

*protecting Canadians against the financial consequences of oil spills by tripling the fines for damages;
*allowing for regulations requiring all commercial passenger vessels in Canada to carry insurance for passenger injury liability;
*making it possible for Canada to proceed with ratifying two international conventions;
*clarifying rules on liability of owners and operators in the marine adventure tourism sector; and
*making other changes.[cclxii]

The *Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996* was signed at the International Maritime Organization in United Kingdom in October 2011. It established a global liability regime and further protect our environment from the risks of marine transport.

On October 18, 2013, the Minister of Transport proposed amendments to the *Marine Liability Act.* These amendments were to fill a critical gap in the current liability and compensation regime and implement:

*a new international convention that covers incidents involving hazardous and noxious substances carried by ships.

In addition, the proposed amendments to the *Canada Shipping Act, 2001:*

> *will strengthen the current requirements for spill prevention and preparedness at oil handling facilities; and
> *increase Transport Canada's oversight and enforcement capacity; and enhance response to oil spill incidents.[cclxiii]

On December 9, 2014, amendments to the *Marine Liability Act* received Royal Asset and implemented the 2010 HNS Protocol in Canada.

On December 12, 2018, Minister of Transport, announced new regulations that:

> *require Canadian passenger vessel operators to carry a minimum of $250,000 in liability insurance for every passenger on board.

This will ensure that all passengers and their families receive fair compensation in the event of injury or fatality in a marine accident, while protecting vessel operators against catastrophic losses and possible civil actions from passengers. Most vessel operators already carry this level of insurance; however, the new regulations make liability insurance mandatory under the *Marine Liability Act* for passenger vessels. The new regulations will come into force on January 11, 2019.[cclxiv]

4. Administrative monetary penalties
New Proposed Regulations for Marine Safety Violations
On November 7, 2007, government officials announced proposed *Administrative Monetary Penalties Regulations* to establish:[cclxv]

> *a comprehensive and consistent method outside of the courts, for penalizing marine safety violations across Canada.

They would help the marine community operate in a manner that is safer, more efficient, and environmentally sound. In addition, they would promote consistency of enforcement without using the criminal court system.

On April 16, 2008, The Honourable Lawrence Cannon, the former Minister of Transport, Infrastructure and Communities, announced the coming into force of the new *Administrative Monetary Penalties Regulations*. The regulations establish:

> *a comprehensive and consistent method outside the courts for penalizing marine safety violations across Canada; and
> *the maximum penalty for a serious violation is $25,000.

The regulations demonstrate the government's commitment to safety.[cclxvi]

On July 10, 2023, the Minister of Transport, the Honourable Omar Alghabra, announced new regulations under the *Canada Marine Act*, effective immediately. These regulations allow for enforcement officers to issue:

> *administrative monetary penalties, or fines to individuals, corporations, or ships for violations of the Act and its associated regulations, providing them with more flexibility in dealing with situations where rules or standards are not being followed; and

*maximum fines $5,000 for an individual and $25,000 for a corporation or ship.

Fines are an enforcement tool that allow enforcement officers to issue monetary penalties rather than recommending legal action. They allow for a flexible, step-by-step enforcement process that both motivates rule breakers to return to compliance and discourages them from breaking the rules again. The maximum total penalty varies depending on the severity of the violation and the factors that make it worse or less harmful. This approach is expected to decrease the number of violations in the marine industry as a whole, and ultimately keep the sector and Canadians safe.[cclxvii]

On April 15, 2024, the Minister of Transport, Pablo Rodriguez, announced that the value of monetary penalties for violations under the *Canada Shipping Act, 2001* has been increased from a

*maximum of $25,000 to a new maximum of $250,000.

The revised penalties are structured into three levels: minor, medium, and serious and reflect the seriousness of the violation. 1. Minor violations are administrative in nature and pose no threat to public safety or the environment; 2. Medium violations apply to situations when regulations around pollution response are not followed, but may not pose a large threat to people or the environment; and 3. Serious violations are those that endanger human health or the environment, or involve destroying documents or obstruction of authority. Examples of each penalty are provided.[cclxviii]

5. Marine Security

On October 23, 2003, Transport Minister David Collenette announced a new marine security-reporting requirement for a wide range of Canadian-flagged vessels and port facilities. The Canadian requirement will complement new security rules announced on October 23, 2003 by the U.S. Coast Guard. "We have moved ahead with this action in response to input from stakeholders on the importance of a comprehensive security regime, our own assessment of the risks and threats in the marine sector, and our consultations with U.S. authorities," said Mr. Collenette.[cclxix] Operators of certain classes of vessels operating on international voyages or on the Great Lakes/St. Lawrence Seaway will be required to identify themselves to Transport Canada for marine security purposes. These include:

*cargo vessels of 100 gross tonnage or greater;
*towing vessels greater than eight metres in length engaged in towing certain classes of barge; and
*passenger vessels carrying more than 12 passengers.

Port facilities that serve SOLAS-class vessels must also meet this requirement.

On May 21, 2004, Transport Canada strengthened the *Marine Transportation Security Regulations* for requirements for vessels, marine facilities and ports.[cclxx] The regulations require:

*the completion of security assessments and security plans; and
*the designation of security officers.

They apply:

*to cargo vessels of 100 tons or more (excluding towing vessels);
*to towing vessels that tow barges carrying dangerous cargoes; and

*to marine facilities and ports that serve the above vessels

The regulations were passed to meet the International Maritime Organization's (IMO) July 1, 2004 deadline for implementation of the International Ship and Port Facility Security (ISPS) Code requirements. It is implementing the Security Code which apply to commercial vessels of 500 tons or more or carrying 12 passengers or more and travelling between countries, marine facilities and port. The regulations go beyond the IMO requirements. On July 1, 2004, Transport Canada began enforcing new marine security requirements.[cclxxi]

On September 17, 2004, Transport Minister announced consultations on proposed amendments to the *Marine Transport Security Regulations*. The amendments are being proposed further to the Government of Canada's National Security Policy. These amendments include the introduction of a Marine Facilities Area Access Clearance Program. It will also include background security checks for port workers who require access to certain restricted areas or who occupy designated positions.[cclxxii]

On November 16, 2006, the Minister of Transport, Infrastructure and Communities announced amendments to the *Marine Transportation Security Regulations* that will strengthen marine security by requiring:[cclxxiii]

*background checks for port workers through the Marine Transportation Security Clearance Program on November 16, 2006.

This program is expected not only to further secure our ports but also to help ensure the continued competitiveness of our marine industry.

On September 23, 2009, Canada's Transport Minister John Baird proposed *Long-Range Identification and Tracking of Vessels Regulations* to help improve marine safety and security that would enable Canada to adopt international shipping requirements that mandates tracking systems aboard certain classes of vessels. This would help ensure safety and security, and the free flow of cargo by sea. The proposed regulations would:

*apply to Canadian passenger vessels with more than 12 passengers and cargo vessels, including high-speed craft, of 300 gross tonnes and up that undertake international voyages; and
*require long-range identification and tracking systems on board these vessels that transmit the identity and position of the vessel to coastal authorities of other countries that also mandate the use of this equipment on their vessels.[cclxxiv]

These regulations came into force on October 21, 2010.

On October 5, 2009, Canada's Transport Minister John Baird, announced proposed *Domestic Ferry Services Regulations* to improve security for domestic ferry services. Under the proposed regulations, operators would be required to:

*have security plans in place to help detect security threats; and
*take preventive measures against security incidents affecting domestic ferries and facilities.

The regulations would affect eight domestic ferry operators, 20 ferry routes and 32 ferry facilities.[cclxxv] On December 3, 2009, the regulations came into force.

On December 23, 2009, new regulations to enhance the security of domestic ferries and Canada's marine transportation system were announced by Canada's Transport Minister John Baird.[cclxxvi] Canada announced news procedures for domestic ferries for detecting and preventing security threats. The *Domestic Ferries Security Regulations* increase the level of protection of 18 domestic ferry routes and 29 ferry facilities across the country. The Domestic Ferries Security Regulations establish a framework for detecting security threats and taking preventive measures to protect ferries and ferry facilities. Specifically, the regulations:

> *establish standards so that ferry operators can develop customized security plans that are appropriate to each ferry and ferry facility;
> *set out the roles and responsibilities of operators and personnel to develop and implement security plans;
> *provide a methodology for carrying out, documenting and reporting security assessments, and for establishing adequate security protocols; and
> *provide Transport Canada with a means of overseeing and enforcing security for domestic ferry services.

The *Domestic Ferries Security Regulations* were pre-published in the *Canada Gazette*, Part I, on September 19, 2009. After consideration of all comments received, the regulations came into effect and were published in the *Canada Gazette*, Part II, on December 23, 2009.

On July 2, 2014, Transport Canada updated its marine transportation security regulations to align them with international requirements. The Amendments to the *Marine Transportation Security Regulations* (MTSR) will improve marine security and bring greater clarity and consistency for marine operators. The MTSR focus on meeting mandatory requirements set by the International Maritime Organization (IMO) and reflect recent changes made to the International Convention on Standards of Training, Certification and Watch keeping (STCW) for Seafarers. These amending regulations also serve to:

> *align further regulatory approaches with the United States regulatory regime and contribute to eliminating duplication and impediments to trade without compromising marine security;
> *ease the regulatory compliance burden and improve efficiency and flexibility for operators; and
> *cut red tape for business so they can focus on what they do best: job creation and economic growth.[cclxxvii]

E. Modernization Marine Transportation.
To modernize marine transportation, over the period 2004 to 2024, the major initiatives undertaken by the Government are grouped as follows: 1. Modernize Ports and Gateways. 2. Oceans Protection Plan.

1. Modernize Ports and Gateways
Canada's Ports Policy
In June 2005, Bill C-61 *An Act to Amend the Canada Marine Act* was introduced into the House of Commons,[cclxxviii] in response to the final report of the Canada Marine Act (CMA) Review Panel, which was completed in 2003.[cclxxix] The CMA dealt with Canada Port Authorities. Under the CMA, port investment in infrastructure was constrained because it did not permit public financial grants, subsidies and limited the borrowing powers of ports. The Act was subject to a review in accordance with section 144 of the CMA. The proposed amendments contained in the Bill were:

*modify the Act's objective;
*modify a port authority's access to federal funding;
*allow the Minister of Transport, in certain cases, to increase a port authority's borrowing limits;
*reduce the minimum number of directors on the board of most Canadian port authorities; and
*streamline certain enforcement provisions.

The amendments also include transitional provisions, a correction to an Act, and a consequential amendment to another Act. This bill did not become law and died with the election of the new Conservative government.

On February 19, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced the publication of proposed amendments to the *Port Authorities Management Regulations*.[cclxxx] The proposed amendments would provide a process for:

*two or more Canada Port Authorities (CPAs) to amalgamate and continue as one integrated CPA.

The proposal is based on the recommendations of the Canada Marine Act Review Report in 2003. According to it, amalgamation presents an opportunity to make CPAs more modern, efficient, competitive and responsive to emerging global opportunities and challenges. There are nineteen CPAs that make up the national system of ports that are of strategic importance to Canada's trade. They are non-share capital corporations that were incorporated under the 1998 Canada Marine Act (CMA) and mandated to operate according to business principles.

On May 30, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, announced amendments to the *Port Authorities Management Regulations*.[cclxxxi] The amendments:

*provide a process for two or more Canada Port Authorities (CPAs) to amalgamate and continue as one integrated CPA.

On November 16, 2007, the proposed amendments to the). These amendments will: *Canada Marine Act* were introduced (Bill C-23

*strengthen the operating framework for Canada Port Authorities (CPAs) by modifying the current borrowing regime, providing for access to contribution funding, and clarifying some aspects of governance;
*amalgamate CPAs; and
*introduce new provisions to make the enforcement of minor violations easier to manage.

A number of policy initiatives to modernize the National Marine Policy, to streamline the process for borrowing limits and to enhance flexibility in management of port lands were also introduced.[cclxxxii]

On June 18, 2008, The Honourable Lawrence Cannon announced that Bill C-23, which amends the *Canada Marine Act*, received Royal Assent. This Bill strengthens the operating framework for Canada Port Authorities by:

*modifying the current borrowing regime;
*providing for access to contribution funding; and
*clarifying some aspects of governance.[cclxxxiii]

The amendments also include provisions regarding amalgamation of CPAs and introduce new provisions to make the enforcement of minor violations easier to manage.

In May 2018, Transport Canada published the 'Ports modernization review: discussion paper' following an announcement by the Transport Minister in March 2018 that the Ports Modernization Review was being launched. In a recent article, Professor Brooks indicates that Canada needs to revisit its port policy and remove CPAs that no longer serve a national strategic purpose yet remain eligible to draw on government funding. Canada's CPA ports need a better governance framework; their governance needs modernization, not their operations. Not only should CPAs meet the best governance practice reporting standards of publicly traded companies, but, as federal agencies, they must be transparent given that they're responsible to the citizens of Canada and the communities where they're located. The current Port Modernization Review wants not just efficient trade gateways, but also ports that are socially and environmentally responsible to their local communities. Currently, Canada's CPA ports are inconsistent in their financial, social and environmental performance reporting. This implies that a public-private relationship is needed, not a private one focused only on shareholder value. The Port Modernization Review should lead to greater clarity of port purpose, less political control through board appointments, and better reporting standards for Canada.[cclxxxiv] The Ports Modernization Review was launched in March 2018 with an aim to optimize Canada Port Authorities (CPAs') current and future role in the transportation system as innovative assets that support inclusive growth and trade. Throughout 2018 and 2019, Transport Canada engaged with stakeholders and after receiving comments and formal submissions in 2020, the Minister of Transport released What We Heard Report summarizing stakeholder views.

Proposed amendments to Modernize Ports

On October 11, 2022, the Minister announced that the government intends to introduce legislative amendments in the coming months to update how Canada's ports are managed and operated based on the results of the Ports Modernization Review. The proposed legislative changes will achieve several key policy objectives, including:

> *adjusting port governance and financial management to provide ports with the tools to unlock greater performance, efficiency, and productivity in order to be effective instruments of public policy;
> *ensuring ports their continued competitiveness and are positioned as strategic enablers of trade and traffic given their central role as intermodal hubs that support supply chain performance and economic growth;
> *strengthening relationships with Indigenous Peoples and local communities through structured engagement to foster alignment of port development and operations, and advance reconciliation;
> *ensuring ports assume a leadership role in advancing the greening of the marine sector by promoting environmentally sustainable infrastructure and taking action on climate change;
> *furthering the transportation system with port safety and security projects while protecting them from threats and ensuring that goods move efficiently through the supply chain; and
> *proposing amendments that will support the development of a new investment policy for Canada's ports and port infrastructure to attract investment capital that is critical to the national transportation supply chain for decades to come.[cclxxxv]

In October 2005, Bill C-68 *The Pacific Gateway Act* was introduced by Transport Minister Jean-C. Lapierre in the House of Commons.[cclxxxvi] It sets out a new policy and governance foundation for further development of Canada's Pacific Gateway. It:

*provides for a declaration of the Government of Canada's Pacific Gateway strategy; and
*creates Canada's Pacific Gateway Council, a new advisory council that will be tasked with providing advice and analysis to maximize the effectiveness of the Pacific gateway and its contribution to Canada's prosperity.

Several elements of the bill also make clear the government's commitment to work in collaboration with other orders of government and private sector partners to support development and use of the Pacific Gateway. The strategy was also serve as a basis for elaborating in the future a national policy framework on strategic gateways and trade corridors. With the election of the new Conservative government, the bill died.

2. Oceans Protection Plan
On May 31, 2017, the government official announced five initiatives as part of the Oceans Protection Plan. These initiatives were:

*the establishment of seven new lifeboat stations (an investment of $108.1 million) together with the creation of 24/7 emergency management and response capacity within the three existing Regional Operations Centres across Canada to better plan and coordinate effective response during an incident;
*a five year, $75 million national Coastal Restoration Fund;
*a review of the *Pilotage Act*, the Review will focus on topics such as tariffs, service delivery, governance, and dispute resolution;
*the launch of a national, five-year $6.85 million Abandoned Boats Program led by Transport Canada; and
*a separate initiative that will soon support the Department of Fisheries and Oceans' mandate of operating a national network of safe and accessible small craft harbours for the commercial fishing industry.[cclxxxvii]

A few months later, in December 2017, the government indicated it plans to improve local maritime situational awareness through the Oceans Protection Plan.

On October 30, 2018, the Government proposed legislative changes to the Oceans Protection Plan. These amendments would improve marine safety and environmental protection by:

*modernizing Canada's Ship-Source Oil Pollution Fund, including unlimited compensation for victims and responders in the event of an oil spill from a ship;
*strengthening the legal authority to regulate marine vessels in order to protect the marine environment, including for example to protect endangered whale populations;
*authorizing the Transport Minister to issue interim orders to allow for immediate actions to be taken to address a pressing risk to marine safety or environment;
*enabling more proactive, rapid, and effective response to oil spills in Canada's waters, while maintaining the polluter pays principle; and
*supporting research and innovation to enhance marine safety and environmental protection. Two inter-related pieces of legislation would be amended: the *Canada Shipping Act, 2001*; and the *Marine Liability Act*.[cclxxxviii]

On July 12, 2023, the Minister of Transport, the Honourable Omar Alghabra, announced that with the passage of Bill C-47, the *Budget Implementation Act*, new legislative changes to help the Government of Canada protect our oceans are now in force to modernize marine protection and safety. This includes new measures to strengthen marine safety, respond faster and more effectively to more types of marine pollution, to take action on abandoned boats in our waters, and to provide better compensation for communities impacted by a spill. Three acts - the *Canada Shipping Act, 2001*, the *Marine Liability Act*, and the *Wrecked, Abandoned or Hazardous Vessels Act* – have been amended as part of Canada's Oceans Protection Plan to strengthen marine safety on our waters. These changes will:

> *provide faster access during incidents to port and emergency services, such as marine firefighting and emergency towing;
> *reinforce the preparedness and response to marine incidents that involve hazardous and noxious substances, in addition to oil. Vessel and facility operators will be required to report hazardous and noxious substance spills and have response plans;
> *strengthen enforcement of safer navigation by all vessels;
> *introduce penalties for companies such as importers, manufacturers, and retailers of pleasure craft if they do not attach proper identification information and serial numbers to boats;
> *establish a Vessel Remediation Fund to finance activities that will assess, address, and prevent problem vessels from becoming hazards to navigation; and
> *improve the compensation available after a spill for all types of harvesting including fishing, hunting, and gathering of Indigenous traditional medicines, and expand the amount for future losses.[cclxxxix]

3. *Pilotage Act*
On May 26, 2002, David Collenette, Minister of that time appointed an expert Panel to undertake consultations and make recommendations on the *Canada Marine Act*. On June 4, 2003, a Report to the Minister by the Panel on the Review of the Canada Marine Act was tabled in the House of Commons. It made two recommendations: one on arbitration; and the other on the composition of pilotage boards. It also made a few observations.

On June 19, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, tabled amendments to the *Pilotage Act* (Bill-64) on June 19, 2007. The five key amendments in general help to:

> *ensure the financial self-sufficiency of pilotage authorities while maintaining high levels of safety;
> *include as requirements that an Authority has to consider;
> *give flexibility to conduct an investigation to the Minister when a notice of objections is received;
> *ensure that an arbitrator considers certain factors (i.e., requirement to be self-sufficient and the Authority‟s corporate plan) when selecting a final offer;
> *require the Canadian Transportation Authority to consider certain factors (i.e., requirement to be self-sufficient and the Authority's corporate plan) when making an amendment to a tariff regulation; and
> *make it possible for an Authority to engage in certain employment practices (i.e. engaging both employee pilots and contracted corporate pilots with a Pilot Corporation) for provision of pilot services.[ccxc]

This bill did not become law.

On October 26, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, re-introduced the *Pilotage Act* Bill C-4 with five key amendments to help ensure the financial self-sufficiency of pilotage authorities while maintaining high levels of safety.[ccxci] The highlights of the bill:

*makes it possible for a pilotage authority to engage both *employee* pilots and *contracted* corporate pilots with a pilot corporation for the provision of pilots, simultaneously;
*ensures that an arbitrator in choosing one or the other of the final offers of a pilotage authority and a pilot corporation in respect of outstanding issues regarding the renewal of a service contract takes into account the objects of the authority under section 18 (including the requirement for an authority to be financially self-sufficient) and the summary of the authority's corporate plan (referred to in section 125(4) of the *Financial Administration Act*);
*includes in the objects of a pilotage authority, as stated in the Act, the requirement to be financially self-sufficient;
*gives the Minister flexibility to conduct an investigation when a notice of objection is received concerning amendments to the regulations regarding compulsory pilotage areas and the qualifications of pilots; and
*requires the Canadian Transportation Agency to consider both the objects of the pilotage authority under section 18 (including the requirement to be financially self-sufficient) and the summary of the authority's corporate plan when making a determination concerning an amendment to a tariff regulation.

It died on the Order Paper with the prorogation of Parliament. Since then the Pilotage Authorities have made amendments to their tariffs.[ccxcii]

In 2017, as part of the Oceans Protection Plan, Transport Canada launched the Pilotage Act Review on May 31, 2017, and concluded it on April 30, 2018. The primary purpose of the current Pilotage Act Review was to modernize the legislation so as to better align it with the existing and future realities of the marine transportation system. The Review provided 38 recommendations to the Minister of Transport.[ccxciii]

4. *Navigable Waters Protection Act*
The Act allows for the building of bridges and other works that might interfere with navigation. From the day it was enacted in 1882, the intent of the *Navigable Waters Protection Act* has been the safe and efficient movement of marine traffic. On May 8, 2009, Canada's Transport Minister, announced modernization of the Navigable Waters Protection Act (NWPA).[ccxciv] It sets out criteria for determining classes of minor works and minor waterways under the Navigable Waters Protection Act (NWPA). This will enable one to segregate works that have no impact from major work.

On October 18, 2012, amendments as part of Bill C-45 were proposed that will:[ccxcv]

*change the name of this law to the *Navigation Protection Act* to reflect its historic intent;
*list clearly the major waterways for which regulatory approval is required prior to the placement or construction of a work;
*allow proponents of works in unlisted waters to opt-in and seek approval of their proposed work to give them additional legal certainty by allowing them to choose; and
*expand the list of low risk works (like minor repairs on bridges) that can be pre-approved because they pose very little impact on safe navigation.

The amendments received Royal Assent on December 14, 2012 and came into force on April 1, 2014.

On August 28, 2019, the Honourable Marc Garneau, Minister of Transport, announced that the *Navigation Protection Act* renamed as the *Canadian Navigable Waters Act* and the Major Works Order is in effect immediately.[ccxcvi] The new legislation restores lost protections on all navigable waters in Canada so that Canadians can continue to enjoy the right to navigate their boats (whether they are motorized boats, canoes or kayaks) through the extensive network of waterways across the country. Through the new Act, the government continues to approve works that may interfere with navigation on navigable waters, and have created:

*a new requirement for approvals of major works, such as large dams, that significantly impact navigation on all navigable waters;
*a process to notify the public, which also provides an opportunity for Canadians to engage early before construction begins on any navigable water;
*a mechanism where the Minister of Transport can address obstructions on any navigable water;
*a number of directives to take into consideration the cumulative impact on navigation of multiple projects on a waterway; and
*a resolution process for reviewing navigation concerns and works, such as a bridge, when concerns remain unresolved in navigable waters not listed in the schedule (the official annex of the legislation).

Road Transportation[ccxcvii]

Background

In the period from 1985-2003, the major events that governed regulatory developments in road transportation can be classified under the following: **A. Economic Regulations in Trucking Industry before Deregulation. B. Economic Regulations in the Trucking Industry after Deregulation. C. Other Acts in Transportation that affect Competition.**

A. Economic Regulations in Trucking Industry before Deregulation

1. Federal: The major federal laws that regulated highway transport besides the *Motor Vehicle Transport Act* (MVTA) were the *National Transportation Act* (NTA), *the Lord's Day Act* (LDA) and the *Atlantic Region Freight Assistance Act* (ARFA). The MVTA the most important act applicable to trucking is divided into three parts: Part I allows each province to licence extra-provincial bus undertakings; Part II of the Act allows each province to licence extra-provincial operations of extra-provincial truck undertakings; and Part III allows each province to licence extra-provincial truck undertakings involved in intra-provincial operations.

The main areas of regulation under federal government were:

*acquisitions that were proposed (section 27 of the NTA);
*licences and related issues (sections 36 to 42 of the NTA); and
*payments of subsidies (section 3(1) of ARFA).

Acquisitions that were proposed could be objected to the Motor Vehicle Transport Commission of the Canadian Transport Commission (CTC) on grounds that it will be prejudicial to the public interest. On investigation, the Committee may disallow such an acquisition.

Licences and related issues, such as issuance, prescription of routes and conditions, filing of tariffs , rebates, prescription of tariffs and the issuance of free or reduced rate transportation fell under the jurisdiction of the CTC in cases where motor vehicle passenger and freight services were exempt from the MVTA.

Payments of subsidies was provided to designated carriers for freight transported from points within Atlantic provinces to points outside the Atlantic provinces. ARFA also provided for other types of subsidies and assistance.

2. Provincial: In addition to the federal laws, the Provinces regulated transport through their provincial highway transport acts. In British Columbia, the Motor Carrier Commission administered the *Motor Carrier Act*; in Alberta, the Motor Transport Board administered the *Motor Transport Act*; in Saskatchewan, the Highway Transport Board administered the *Vehicles Act*; in Manitoba, the Highway Traffic Board administered the *Highway Traffic Act*; in Ontario, the Highway Transport Board administered the *Public Commercial Vehicles Act* and the *Highway Transport Board Act*; in Quebec, the Transport Commission administered the *Transport Act*; in New Brunswick the Motor Carrier Board administered the *Motor Carrier Act*; in PEI, the Public Utilities Commission administered the *Motor Carrier Act*; and in NS and Newfoundland, the Board of Commissioners of Public Utilities administered the *Motor Carrier Act*.

Apart from differences in detail, virtually all the provinces had legislation which provided for regulation of both intra and extra-provincial trucking and passenger bus operations and gave extensive authority over these modes to the Lieutenant-Governor-In-Council (LGIC). The LGIC appointed a regulatory commission or agency delegating all regulation to it.

The commission or agency had relatively broad powers to control:

*entry;
*operating authorities including routes;
*fare levels;
*capacity;
*service quality;
*safety;
*vehicle specifications;
*insurance requirements; and
*driver qualifications.

The exercise of these powers varied from province to province.

Regulations pertaining to entry-exit control, rate regulation and rate filing are summarized in the table hereafter for both intra and extra-provincial highway movement of freight. Entry-exit control is used in the context of the need to establish and maintain "public convenience and necessity" (PCN). Freight control is also achieved through various restrictions on operating authorities, such as origin/destination, route, commodities, weight, back-hauling, etc.

B. Economic Regulations in the Trucking Industry after Deregulation

1. Federal: The first indication of regulatory reform in highway transportation resulted from a statement by the federal Minister of Transport on September 28, 1984 which indicated that his government in cooperation with provincial governments should "proceed towards the establishment of a uniform and scaled-down regulatory framework for the trucking industry."[ccxcviii] Shortly thereafter, on February 27, 1985 the Council of Transportation of Ministers signed a Memorandum of Understanding proposing changes related to entry, elimination of rates, exemption of commodities from economic regulation and streamlining the application process. Besides these specific proposals which were later reflected in the July 1985 Discussion Paper *Freedom to Move* of the Minister of Transport, general principles underlying regulatory reform of transport were also contained in the Discussion Paper. These proposals were later embodied in Bill C-127 (*An Act*

Respecting Motor Vehicle Transport by Extra-Provincial Undertakings) and Bill C-126 (*An Act Respecting National Transportation*).

The basic reforms relating to economic regulation introduced in the *Motor Vehicle Transport Act*, 1987 (i.e., Bill C-127) were:

> *relaxation of extra-provincial trucking regulation by easing market entry;
> *discontinuation of rate regulation; and
> *restrictions on existing licences were to expire on January 1, 1993, for example extra-provincial licences were not to be limited to specific commodities or specific routes.

With regard to entry, more specifically, beginning January 1, 1988, the current 'public convenience and necessity test' was to be replaced by a 'fitness' entry test and a 'reverse onus' public interest test. Further, on December 31, 1992 the public interest test was to expire.

The revised *Motor Vehicle Transport Act, 1987* (i.e., MVTA) left regulation of intra-provincial operations by extra-provincial truck undertakings (Part III of the MVTA) and regulation of busing (Part I) unchanged. At the provincial level, a number of provinces also began to introduce regulatory reforms for intra-provincial carriers.

In 1990, the federal government agreed to repeal Part III (extraprovincial undertakings involved in intraprovincial operations) of the MVTA through the *Agreement on Internal Trade Implementation Act*.[ccxcix] The date for repeal was January 1, 1998, however, in response to requests from British Columbia and Québec, the Minister agreed to postpone the repeal to January 1, 2000.[ccc] "On August 26, 1999, the Governor in Council approved an order establishing January 1, 2000, as the date for repeal of Part III of the MVTA. As of this date, [extra-provincial] trucking [was] no longer subject to economic controls, such as economic entry controls and tariff regulations in any part of Canada."[ccci]

Deregulation of international trucking with regard to Mexico was achieved at a later date. The NAFTA, provided for access to Canada and US by Mexican carriers in 2000[cccii] and provided for ownership and investment in Mexican trucking companies providing international service up to 51 percent by the year 2001 and 100 percent by the year 2004.

The above success did not completely carry through to the busing sector, due to lack of consensus among the provinces, the matter was referred to a Parliamentary Committee. In December 2002, the Senate Standing Committee tabled its report on bus issues. Its key recommendation was a *reverse onus* public interest test of entry for extra-provincial bus carriers. The effect of this would be national liberalization of economic entry control.

2. Provincial: The *Agreement on Internal Trade* called for the elimination of economic controls on trucking. The elimination of intraprovincial economic regulation in various provinces did not all occur on the same date, e.g. PEI repealed its *Motor Carrier Act* on January 1, 1995, Manitoba and Saskatchewan phased out economic regulation on intraprovincial trucking on January 1, 1998. However, by January 1, 2000, the last vestiges of provincial economic regulation of *intraprovincial* trucking expired. Trucking is no longer subject to entry, or tariff filing or tariff regulation in any part of Canada. This does not mean that all regulation of trucking has been abandoned, regulation of safety, inspections, etc. have been retained either in their motor carrier acts or in cases where the act has been repealed in other regulations. It is also worthwhile noting that intra-provincial regulation of passenger transportation continues eg. taxis, busing, etc.

Before concluding the pre and post description of the industry before and after deregulation, it is worthwhile noting the following economic characteristics of for-hire highway freight transport in Canada according to econometric studies:[ccciii] i) The presence of economies of scale are either absent or unimportant in the production of TL freight transportation services. Costs do drop sharply with increases in output; however, beyond a relatively low level of operations, the cost curve becomes statistically flat. The reason for such a finding could be attributed to the fact that the variable costs dominate fixed cost, capital is highly divisible and has a relatively short-life, and the production process does not give rise to significant economies of scale. ii) The statistical evidence to indicate that line haul costs per mile decrease with respect to distance is very little. iii) The shipment weight can be expected to exert a significant influence on the structure of transportation cost. iv) The demand for highway trucking services with respect to own price is not highly elastic. The degree to which a regulatory provision applied varied from province to province. While entry regulation was practised in all provinces, the regulation of rates and fares was rigorously imposed in some while others did little more than accept them as filed. The provinces (except three) had the power to prescribe rates, however the extent to which they exercised these powers is not clear.

Regulatory Framework Applicable to Intra / Extra Provincial For-hire Highway Transport by Province

Province	Entry-Exit Control	Rate Regulation	Rate Filing
British Columbia	yes/yes	yes/no	yes/no
Alberta	no/yes	no/no	no/no
Saskatchewan	yes/yes	yes/no	yes/no
Manitoba	yes/yes	yes/no	yes/no
Ontario	yes/yes	no/no	yes/no
Quebec	yes/yes	yes/no*	yes/yes
New Brunswick	yes/yes	no/no	yes/yes
P.E.I.	yes/yes	no/no	yes/yes
Nova Scotia	yes/yes	no/no	yes/yes
Newfoundland	yes/yes	yes/yes	yes/yes

* Discontinued as a result of a Federal-Provincial memorandum of understanding realized in February 1985.

In sum, before regulatory reforms were introduced in 1987, economic regulation of highway transport was extensive. Economic regulation of highway passenger and traffic carriers covered: 1) Entry-exit and transfer control; 2) Rate regulation; 3) Rate filing; and 4) Authority restrictions (i.e., restrictions on commodities that can be carried, origin and destination points and routes, etc.)

C. Other Acts in Transportation that affect Competition

The *Transport of Dangerous Good Act, 1992* replaced the *Transport of Dangerous Good Act, 1980* which was passed in 1980. The next five years resulted in the development of regulations under the Act and came in to force in 1985. Each province had its applicable version making its application seamless. The Act found its application through the *National Transportation Act*. Therefore, it could only apply to certain modes (rail, marine, air) and to inter-provincial and international activities for any mode. A review of the Act began in 1990 and on June 23, 1992 the Act received Royal Assent.[ccciv] The Act consists of 47 sections. The provisions that cover safety and security are contained in section 5. This section states: No person shall import, offer for transport, handle or transport any dangerous goods unless:

> *the person complies with all safety requirements and security requirements that apply under the regulations;
> *the goods are accompanied by all documents that are required under the regulations;
> *a means of containment is used for the goods that is required or permitted under the regulations; and

*the means of containment and means of transport comply with all safety standards that apply under the regulations and display all applicable safety marks in accordance with the regulations.

The Act focuses on prevention. However, in the unlikely event of a mishap, the Act assigns roles and responsibilities to shippers and carriers and further empowers inspectors to take immediate steps, as appropriate, during an incident to preserve public safety. Safety regulations together with security regulations pertaining to each sector are issued pursuant to this Act.

The Minister of Transport, David M. Collenette in *Straight Ahead - A Vision for Transportation in Canada, 2003* stated "The department is in the process of developing a document entitled "Transportation of Dangerous Goods, Target 2010". Integrating the fundamental concepts of the Safety and Security Strategic Plan, this document will set the stage for improving an already safe system for transporting dangerous goods. It will aim for further improvements in the rate of industry compliance with transportation of dangerous goods legislation and regulations by 2010, in support of the ultimate objective of no fatalities, serious injuries or significant damage to property or to the environment as a result of accidental releases of dangerous goods."

In 2008, the Senate called for harmonized trucking regulations, new technology incentives, etc.[cccv]

IV. Road Transportation (2004-2024)

Over the period 2004-2024, the major events that governed regulatory developments in road transportation can be classified under the following: **A. Vehicle Safety. B. Environmental Concerns. C. Safe Operation and Passenger Protection. D. Governance.**

A. Vehicle Safety.

To provide vehicle safety over the period 2004 to 2024, several initiatives were undertaken by the Government. These are listed as follows: 1. Vehicle Requirements. 2. Recalling Vehicles.

1. Vehicle Requirements.

Vehicle requirements cover a wide variety of areas such as: anti-theft immobilizing systems, safety ratings, bumper design, tire safety, electronic logging devices, electronic stability control, weights and dimensions, etc.

Anti-theft Immobilizing Systems: On March 9, 2005, Transport Minister announced Amendments to the *Motor Vehicle Safety Regulations*. The key feature is:[cccvi]

*anti-theft immobilizing systems will be mandatory in all new cars.

The systems will assist in preventing the unauthorized use of vehicles by preventing its engine from starting. Immobilizers are devices that prevent vehicles from starting without keys, thus preventing hot-wiring — starting a car's engine by bypassing the ignition system. An engine with an immobilizer won't start until it recognizes a computer chip in the ignition key. The Amendments will come into effect on September 1, 2007. A study conducted in 2002 by the National Committee to Reduce Auto Theft – an initiative supported by several government departments, including Transport Canada, as well as a wide spectrum of public and private sector agencies – showed that between 1999 and 2001 the theft of vehicles by young offenders led to an average of 27 fatalities and 117 injuries each year.

Safety ratings: On June 10, 2005, Transport Minister announced legislative and regulatory changes to improve road by safety making amendments to the *Motor Vehicle Transport Act, 1987*.[cccvii] According to the Minister "Through these proposed amendments, we will be able to establish a common approach to safety ratings nationally so that safe motor carriers may compete on a level playing field across Canada and eventually across North America. This will help improve safety, reduce the risk of commercial vehicle collisions and promote a fair and competitive environment for safe carriers." The responsibility for motor carrier safety is shared between federal and provincial/territorial governments. The proposed regulations would:

> *permit the provinces and territories to monitor the safety performance of all extra-provincial motor carriers that operate in or through their jurisdiction; and
> *provide for the assignment of a rating, based on safety performance in areas such as vehicle maintenance, driver performance and accident record.

The carrier would then receive a Safety Fitness Certificate, with one of the following four ratings: "satisfactory – unaudited"; "satisfactory"; "conditional" or "unsatisfactory". A carrier whose safety performance deteriorates significantly could be prohibited from operating on Canadian roads. Amendments to the MVTA received Royal Assent in June 2001.

Bumper Design: On April 2, 2008, the Government of Canada proposed an amendment to the *Motor Vehicle Safety Regulations* to harmonize the Canadian bumper standard for passenger cars with similar safety standards from the United States and Europe.[cccviii] The proposed amendment would:

> *simplify the bumper design for vehicles destined for the North American and European markets and offer more choice to Canadians who wish to import vehicles.

"This proposed amendment would offer more choice to Canadians who wish to import vehicles," said the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities. "At the same time, it would help to maintain the safety of Canadian roads." This proposed change is consistent with the spirit of the Canada-U.S. Security and Prosperity Partnership to reduce regulatory differences and facilitate international trade while maintaining high levels of safety. The regulation took effect on June 25, 2008.

Tire Safety: Important regulations that were to enhance the safety of tires manufactured for the Canadian market were announced on November 20, 2013 by the Honourable Lisa Raitt, Minister of Transport. These regulations *Motor Vehicle Tire Safety Regulations*, (SOR/2013-198) will replace the current *Motor Vehicle Tire Safety Regulations, 1995* (MVTSR, 1995). The new regulations will require:

> *all tires sold in Canada must meet the new testing requirements; and
> *winter tires to meet certain standards together with winter alignment requirements.

"These changes will give consumers easier and better access to crucial information about their tires," said Jeff Walker, vice president of public affairs for the Canadian Automobile Association (CAA). "CAA supports regulatory measures that enhance consumer knowledge and choice." By implementing these regulations, the Government of Canada is responding to tire and vehicle manufacturers who have encouraged the government to align Canadian tire safety regulations with those of the United States. Alignment also supports the principles of the Canada-U.S. Regulatory Cooperation Council announced by Prime Minister Harper and President Obama in February 2011. Manufacturers will have until September 1, 2014 to conform to these new regulations.[cccix]

Electronic Logging Devices (ELDs): A report from the House of Commons all-party Standing Committee on Transport, Infrastructure and Communities made several recommendations on the transportation of dangerous goods and safety management systems in Canada. The standing committee made two recommendations regarding trucking. That Transport Canada implement regulations to require the use of Electronic Logging Devices (ELDs). That Transport Canada implement regulations to require Electronic

Stability Control on new trucks (ESC). Following a roundtable on March 19, 2015 with the Canadian Trucking Alliance, the Honourable Lisa Raitt, Minister of Transport, announced that Transport Canada supports two safety technologies-electronic logging devices (ELDs) and electronic stability control systems (ESC)-which have the potential to strengthen safety on Canada's roads. This is consistent with the Government of Canada's commitment to align with U.S. vehicle standards. Transport Canada also worked with the provinces and territories to develop a business case for introducing ELDs across Canada so that the provinces are well positioned once they are finalized.[cccx]

Electronic stability control: On December 17, 2017, Transport Canada issued new regulations for electronic stability control and electronic logging devices.[cccxi] The regulations:

> *require electronic stability control technology on new truck tractors and heavy buses sold in Canada (December 17, 2017);
> *require electronic stability control technology on intercity buses (June 2018); and
> *require electronic logging devices (December 17, 2017).

Electronic stability control systems can reduce collisions by helping drivers maintain control, preventing rollovers, and improving directional stability. Electronic logging devices help a driver to remain compliant with the federal *Commercial Vehicle Drivers Hours of Service Regulations*, which reduces the potential for driver fatigue. On March 2, 2021, Minister of Transport, the Honourable Omar Alghabra, said "Consultations in the lead-up to the mandate generated broad support, and identified June 12, 2021, as a feasible date for the installation of electronic logging devices."[cccxii]

The exact date of provincial enforcement can differ from province to province. In Ontario, the ELD mandate was set to take effect June 12, 2022, through to January 1, 2023. British Columbia's target for implementation of the mandate is January 1, 2023 though exact timelines for the implementation of ELDs in B.C. will be decided. Quebec will mandate electronic logging devices (ELDs) beginning April 30, 2023 and begin enforcing the federal electronic logging device (ELD) mandate only on June 1, 2023. Manitoba adhered to the June 12, 2021 deadline but for carriers operating strictly within Manitoba the use of ELDs came into force on December 12, 2021. Saskatchewan will have a period of progressive enforcement without penalties until January 1, 2023. Newfoundland, meanwhile, has confirmed it will not enforce the rule on provincially regulated carriers on Jan. 1, 2023. When it comes to penalties, individual provinces are taking different approaches. Fines range from no penalties in some provinces to a maximum penalty of $25,000 in other provinces. Transport Canada is looking to establish a series of penalties under the federal Hours of Service rules – with the most severe infractions generating fines as high as $2,000 for motor carriers and $1,000 for drivers. Several penalties involve rules around electronic logging devices (ELDs).[cccxiii] ELDs sold to meet the federal mandate must be certified by one of three recognized testing bodies, which determine whether the devices meet underlying technical standards. Twenty-two devices from 15 vendors have been approved so far. Transport Canada now identifies 58 certified devices that can be used to meet the mandate.

New rules on length of B-trains and right of way for tow trucks: On March 17, 2014, "Keeping Ontario's Roads Safe Act," was introduced by the province's Minister of Transportation Glen Murray. The new rules will:

> *permit B-trains in Ontario to have an extra half-meter added to their compliant length; and
> *require motorists in Ontario to pull over for and give the right-of-way to tow trucks flashing red or red-and-blue emergency lights.

Until now, drivers were only required to pull over and give way to police, ambulance and fire vehicles.

On October 21, 2014, Bill 31 was introduced in the Ontario Legislature to give operators of B-trains greater flexibility to accommodate safety and environmental enhancements. It proposes to amend the *Highway Traffic Act* by:

> *extending the maximum overall length of the popular B-train tractor-double trailer combination from 25 metres to 27.5 metres in order to accommodate a longer wheelbase tractor.

This was necessary to accommodate more comfortable sleeper berths for drivers, animal strike guards (moose bumpers) and technologies such as auxiliary power units in order to meet more progressively stringent air quality and GHG reduction standards.[cccxiv]

On August 1, 2014, the Province of Manitoba proposed amendments to the *Highway Traffic Act* that would:

> *allow for heavier loads and for the province to quickly implement detours for trucks during severe weather and floods.

The province says the goal is to add flexibility to the *Highway Traffic Act*. Any changes to the Act's allowable vehicle weight regulations are currently set by cabinet, and amending those regulations takes considerable time. The proposed changes would give the minister authority to temporarily increase weights or classifications on highways as needed.[cccxv]

New regulations on weights and dimensions and inspections: In October 2014, The Council of Ministers for Transportation and Highway Safety National approved amendments to standards for the weight and dimension limits of heavy vehicles under the Memorandum of Understanding on Interprovincial Weights and Dimensions (MOU). The changes:

> *harmonize nationwide the adoption of aerodynamic, emission-reducing "boat tail" devices on heavy trucks;
> *permit tri-drive configurations which increase traction and payload for trucks in heavy-haul sectors; and
> *permit B-train tractors with longer wheelbases to accommodate technologies which are required to meet heavy truck air quality and GHG emissions mandates while also improving wellness and fatigue management.

Federal, provincial and territorial ministers of transport approved the three recommendations. The Canadian Trucking Alliance (CTA) welcomed the approval of new safety and environmentally friendly technologies on heavy truck and trailer configurations in Canada.[cccxvi]

In Manitoba, the Manitoba Government and the Manitoba Trucking Association (MTA) announced regulatory changes to the province's *vehicle and weights and dimensions regulations* on August 28, 2015. The changes include:

> *an increase in permissible length for aerodynamic devices (boat tails);
> *an increase in the permissible length for a B-train configuration; and
> *an increase in the permissible weight for wide-base single tires and axle groups fitted with wide-based single tires.

All three changes addressed in Manitoba have been longstanding positions of the Canadian Trucking Alliance.[cccxvii]

On July 1, 2019, in Ontario, the MTO approved regulation 413/05 on the use of longer tractors on multi-axle semi-trailers and the use of smart lift axles on semi-trailers became effective. The amendments to the regulation:

> *eliminate the special vehicle configuration permits that are required to operate long wheelbase tractors with multi-axle semi-trailers, longer saddlemounts, and trailers equipped with smart lift axles.
> *extend the same tire weight allowances to wide-based single tires and dual tires when mounted on single axles;
> *allow boats to be hauled by stinger-steer auto carriers under the same weight and dimensional limits; and
> *allow for an emergency lift axle override, making it possible to lift a self-steering axle in emergency situations.[cccxviii]

On Nov. 28, 2019, in Quebec, the Quebec Ministry of Transport announced that it will now be more flexible towards long combination vehicles (LCVs) and allow for its use in winter. In Alberta, the Alberta government has updated its Commercial Vehicle Dimension and Weight Regulation to reflect what it called "modern vehicle configurations and equipment."[cccxix]

2. Recalling Vehicles
Motor Vehicle Safety Act: On June 1, 2015 the Honourable Lisa Raitt, Minister of Transport, announced the Government of Canada's intention to introduce new vehicle recall legislation in the House of Commons that will better protect Canadian motorists through new powers to order vehicle recalls. This new legislation was previously announced in Budget 2015. If the legislation is passed, the new powers would:

> *allow the Minister to order manufacturers to fix recalled vehicles; and
> *pay for repairs and ensure that new vehicles are fixed by the manufacturer before they are sold to the public if ordered by the Minister.[cccxx]

In 2016, Transport Canada proposed new legislation to give the Minister additional powers under the *Motor Vehicle Safety Act*. The proposed legislation includes amendments that would:

> *give the Minister of Transport the power to order companies to issue a recall notice and to make manufacturers and importers repair a recalled vehicle at no cost to the consumer;
> *give the Minister of Transport the power to order manufacturers and importers to repair new vehicles before they are sold;
> *allow the department to use monetary penalties (fines) to increase safety compliance and to leverage the monetary penalties to require manufacturers to take additional safety action;
> *provide the department with much needed flexibility to address ever-evolving vehicle safety technology;
> *require companies to provide additional safety data and conduct additional testing to address safety concerns; and
> *increase our vehicle inspection capability.[cccxxi]

On September 19, 2017, the Minister of Transport introduced Bill S-2, amendments to the *Motor Vehicle Safety Act* in the House of Commons (second reading). The most significant amendments have to do with safety recalls. The proposed legislation would ensure that the Minister has the necessary tools to protect the safety of Canadians, including the power to:

> *ordering a company to issue a recall;
> *making companies repair a recalled vehicle at no cost to the consumer; and,
> *preventing new vehicles from being sold in Canada until they are repaired.

Beyond these order powers, other powers will be introduced such as 1) Ordering companies to conduct tests and providing the information to Transport Canada; 2) Providing clear lines of communication; and 3) Increasing compliance to the Act by introducing an Administrative Monetary Penalty regime.[cccxxii]

In 2018, Bill S-2, the *Strengthening Motor Vehicle Safety for Canadians Act* received Royal Assent. It is a major step in improving road safety. This Act provides the Minister of Transport with new powers and the ability to:

> *order a company to recall a vehicle to correct a defect;
> *order a company to pay for the cost of repairs so consumers don't bear the cost;
> *order a company to conduct tests on a vehicle and to provide the results back to the Minister;
> *order a company to fix a new vehicle before it's sold; and
> *negotiate a settlement with a company which is alleged to be in violation of the *Motor Vehicle Safety Act*.

In addition, the *Act* gives Transport Canada the ability to:

> *perform more in depth vehicle inspections in relation to safety concerns; and
> *allow more flexibility to support innovative technologies, such as connected and automated vehicles.

The *Act* also paves the way for Transport Canada to impose future administrative monetary penalties (i.e. fines) to manufacturers of up to $200,000, per violation, for any contravention of the *Motor Vehicle Safety Act*.[cccxxiii]

On October 31, 2016, the Minister Garneau proposed new regulations *Amending the Motor Vehicle Safety Regulations* (Standards 101 and 111) that will require rear-visibility systems on all new vehicles sold in Canada to help drivers see behind their vehicle when they back up. While rear-view cameras and displays are found on a number of vehicles today, some models don't include them. The proposed regulations will rectify this by providing all new car owners with improved visibility to spot people and objects behind a vehicle when backing up. The proposed changes were published in *Canada Gazette*, Part I.[cccxxiv] Amendments were made in November 2017. "For the purposes of voluntary compliance by vehicle manufacturers, this amendment comes into effect upon publication in the *Canada Gazette*, Part II. For the enhanced rear-view visibility system requirements, all vehicles, except vehicles built in multi stages, covered by this amendment and manufactured on or after May 1, 2018, are required to fully comply with the Regulations, unless the United States amends their mandatory introduction date. Vehicles built by multi-stage manufacturers will be permitted to have one additional year to bring their new vehicles into compliance. This time frame would provide adequate lead time for manufacturers to modify any unique Canadian market models not already complying with the United States safety regulation."[cccxxv]

Commercial Vehicle Drivers Hours of Service Regulations: On March 11, 2009, an amendment to the *Commercial Vehicle Drivers Hours of Service Regulations* was proposed. This would:

> *limit the number of hours a person can drive a commercial motor vehicle in Ottawa, Outaouais and Windsor.

Transport Minister John Baird said "Transit operators must be rested and alert — for the safety of motorists, pedestrians and cyclists who share the road. This new amendment makes work–rest rules mandatory and will make our roads safer."[cccxxvi] Further amendments were made to this regulation.

On July 10, 2023, the Minister of Transport, the Honourable Omar Alghabra, announced that, in addition to existing measures, enforcement officers will be able to impose fines to drivers or companies who violate the *Commercial Vehicle Drivers Hours of Service Regulations*. The change was made possible by amending the *Contraventions Regulations*, which provided new ways to spell out contraventions in the Hours of Service, including the amount of fines. The Hours of Service Regulations are critical for promoting road safety as they mandate how long commercial drivers can operate their vehicles before they need rest. They also outline logging and reporting requirements for commercial vehicles and fleet operators.[cccxxvii] Truck drivers and carriers face 60 new federal fines for *Hours-of-Service* violations – including those specific to mandated electronic logging devices (ELDs). Coming in three tiers, the fines range from $300 to $1,000 for drivers, and $600 to $2,000 for motor carriers. The lowest tier includes administrative and minor recordkeeping contraventions. A second tier includes on-duty/drive limitations; off-duty requirements; more serious recordkeeping contraventions that increase risk; and contraventions that make it difficult to enforce carrier compliance. Topping the scales are fines for tampering, falsifying or obstructing records, and the most serious on-duty/driving limitations and rest requirements. Now included in *Contraventions Regulations*, the infractions can be addressed through tickets and voluntary payments of prescribed fines, rather than court appearances. “Issuing contravention tickets provides a new tool for authorities to use, however they do not replace the court process,” the regulator said in a July 10 statement. “This remains available to prosecute offenders of the *Commercial Vehicle Drivers Hours of Service Regulations*.”[cccxxviii]

B. Environmental Concerns

To deal with environmental concerns, over the period 2004 to 2023, a few initiatives were undertaken by the Government. These are listed as follows: 1. Biodiesel Mandate. 2. Greenhouse Gas Emissions.

1. Biodiesel Mandate

The Biodiesel Mandate started on November 1, 2009, which requires fuel suppliers to blend 2% renewable content in both on and off-road diesel fuel. The 2% blend percentage is based on an annual average, which provides suppliers with the flexibility in both blending season and renewable fuel types to meet the mandate. For example, fuel suppliers can blend higher seasonal percentages of both biodiesel or renewable diesel to meet the mandate, and typically blend these renewable fuels at 5% during the summer months, with less renewable content blended in winter.

On July 1, 2011, Canada’s two percent biodiesel mandate went into effect. It means that:

> *all diesel and heating oil sold in Canada, with some exceptions, will have to have two percent biodiesel.

Curbing green house gas (GHG) emissions was the prime driver in issuing this mandate. It was expected to bring Canada closer to its goal of reducing GHG emissions by 17% in 2020, compared to the 2005 levels. The biodiesel issue was a subject of study for years and led to the release of the Regulatory Impact Assessment Statement (RIAS) by the Government of Canada. The Assessment led to calls by the Canadian Trucking Alliance and the Canadian Trucking Association (CTA) for the government to re-think its approach to the mandate. They claimed that the Assessment found that costs outweigh the benefits (by $2.4 billion over 25 years) and the greenhouse gas emission reduction would be marginal (1 Mt CO_2 per year). It would mean that cost to consumers would increase through higher pump prices and reduced fuel efficiency. The CTA further argued that low-quality biofuel for blending processes increase the cost to the trucking industry and provide biofuel producers a captive market and massive subsidies. The views of the CTA however were challenged by the Canadian Renewable Fuels Association (CRFA). The CRFA claims that its experts indicate that the government estimates were flawed (it should result in a benefit of $1.66 billion over 25 years) and prices will go down. Further, biodiesel represents a net public benefit, biodiesel brings tangible environmental benefits and biodiesel has proven to work well with engines. The CTA replied by saying that the government's report raises sufficient doubt whether we should go in that direction and they are not opposed to creating new markets for farmers but they do not want this to be at the expense of the trucking industry. The Conference Board of Canada also studied the matter and published its report *Ethanol's Potential Contribution to Canada's Transportation Sector.* The report examines four questions regarding ethanol in Canada: What are the economic impacts of manufacturing and using ethanol in Canada?; How green is ethanol?; What is the impact of ethanol on Canadian public health?; and What is the energy balance in producing ethanol?

Finally the controversy is over. Effective 60 days from July 20, 2011:

> *diesel fuel sold in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario will have to contain an average annual biofuel blend of 2 per cent;
> *diesel fuel sold in Quebec and the Maritimes will be exempt until December 31st 2012; and
> *diesel fuel mandate is exempted for Newfoundland and Labrador.

This puts an end to the controversy of whether this requirement should go into effect. The Canadian Renewable Fuels Association (CRFA) has lauded the final release of the national 2% biodiesel mandate in Canada as good news for consumers, farmers and energy diversity in Canada. "This will be a special Canada Day for the renewable fuels industry in Canada," said Gordon Quaiattini, CRFA president in reacting to the federal government's announcement of a July 1 start date for biodiesel blends in Canada. "Homegrown biodiesel is a cleaner alternative to conventional diesel. It will help moderate price by adding to our fuel supply, create new jobs, and benefit farmers and drivers alike." The Canadian Trucking Alliance will be monitoring its impact.[cccxxix]

The Ontario Government on March 31, 2014 published a notice in the Environmental Registry stating that it had decided to proceed with regulations imposing a provincial biodiesel mandate which will come into force starting April 1, 2014. In its initial December 2013 proposal, the Ontario Ministry of the Environment (MOE) called for an annual average of 2% biofuel content in all diesel fuel sold in the province for the period of April 2014 to December 31 2015, followed by an annual average of biofuel content of 4% biodiesel starting after 2016. The regulation published on April 1, 2014 delays full implementation by one year and includes a 3% intermediary phase before the 4% mandate takes effect in 2017. Northern Ontario will not be included in the mandate until 2017.[cccxxx]

2. Greenhouse Gas Emissions

On April 13, 2012, Canada's Environment Minister, Peter Kent, announced proposed regulations to reduce greenhouse gas emissions from new on-road heavy-duty vehicles. The proposed regulations were designed to reduce emissions from the whole range of on-road heavy-duty vehicles and engines, including large pick-up trucks, short/long-haul tractors, cement and garbage trucks, buses, and more, for the 2014 model year and beyond. As a result of implementing the proposed standards, it is anticipated that greenhouse gas emissions from 2018 heavy-duty vehicles will be reduced by up to 23% from those sold in 2010.[cccxxxi]

Canada also announced that it will adopt the US greenhouse gas emissions standard for model years 2014-2018 heavy trucks. The tough new measures will not only reduce GHG emissions by upto 23% but will also improve efficiency. The Canadian Trucking Alliance said they would like to see a labelling requirement included "so truck buyers would know which units were 'GHG compliant'."[cccxxxii]

On December 20, 2023, Canada published final regulations amending the Passenger Automobile and Light Truck Greenhouse Gas Emissions Standards that will require 100 per cent of new passenger cars and light trucks (light-duty vehicles, "LDVs") sold from 2035 to be zero emission vehicles.[cccxxxiii]

C. Safe Operation and Passenger Protection

To provide safe operation and passenger protection over the period 2004 to 2023, several initiatives were undertaken by the Government. These are listed as follows: 1. Shoulder belts and school bus safety. 2. Transportation of Dangerous goods. 3. Transportation for Persons with Disabilities. 4. Driving and Driver Training. 5. New rules for taxis and ride-hailing services/food deliveries. 6. Covid – 19 Mandates.

1. Shoulder belts and school bus safety

Motor Vehicle Safety Regulations: On October 10, 2009, the Government of Canada proposed amendments to the *Motor Vehicle Restraint Systems and Booster Cushions Safety Regulations* to:

> *include a new testing procedure requiring child seats to be tested with a three-point lap/shoulder belt; and
> *ensure that testing reflects modern realities, uses state-of-the-art equipment and leads to a safer environment for children in the event of a collision.

Canada is leading the world with this amendment.[cccxxxiv]

On February 14, 2013, the Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities and the Honourable Leona Aglukkaq, Minister of Health, announced important safety regulations requiring:[cccxxxv]

> *new vehicles in Canada to include shoulder belts in the rear centre seat.

The amendments include a significant update to Standard 208, *Occupant Restraint Systems in Frontal Impact*. In addition to introducing a mandatory requirement for lap and shoulder seat belts in the rear centre seat, these amendments will make vehicles safer by:

> *requiring vehicle safety testing using female and child-sized dummies, in addition to the male testing dummies that were previously required;
> *improving air bag deployment testing; and
> *increasing the vehicle test speed to better protect occupants involved in serious frontal crashes.

On June 19, 2013, the Honourable Denis Lebel, announced changes to safety regulations for built-in child seats that will allow the seats to be designed and tested for use by larger children. These regulations will:

> *allow children to continue to use child restraints for a longer period of time, before graduating to booster seats and eventually, to the vehicle's seat belts.

These regulatory changes are consistent with the commitments of the Canada-United States Regulatory Cooperation Council announced by Prime Minister Harper and President Obama in February 2011. Minister Lebel said "By aligning the Canadian testing requirements with those of the United States, our government is reducing red tape which can ultimately reduce costs and increase choice for consumers." Under the new requirements, a forward-facing built-in child seat can be designed for use by a child from 10 to 41 kg. Manufacturers determine the weight and height range to which they certify their built-in child seats and must test their seats accordingly. They must also indicate the weight and height limits on each seat model and in the owner's manual. This amendment aligns the requirements for built-in child restraints with those that recently came into effect for removable child restraints that are commonly sold in stores. This amendment also advances safety by requiring the use of advanced test dummies and updated testing performance criteria.[cccxxxvi]

On July 6, 2022, the Minister of Transport, the Honourable Omar Alghabra, announced proposed regulatory changes to further strengthen school bus safety. The proposal recommends that:

> *all new and imported school buses in Canada be equipped with extended stop arms and a new visibility system for the bus driver to better see around the bus; and
> *clear requirements be set for the voluntary installation of infraction cameras. These devices can help law enforcement catch unsafe driver behaviour around school buses.

Together, these measures can help deter vehicles from illegally passing a stopped school bus, while also helping improve the bus driver’s ability to see children outside the bus. The proposal follows the 2020 Report of the Task Force on School Bus Safety, which recommends new measures to protect children outside the school bus, where they are at the highest risk.[cccxxxvii]

2. Transportation of Dangerous goods.
In 1992, the *Transportation of Dangerous Goods Act, 1992* was enacted. There was an informal commitment to Parliament to begin a review of the Act after 10 years. In 2002, Transport Canada began such a review, starting with safety issues. In the summer of 2003, the review was expanded to include security.

On February 20, 2008, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities at that time, announced that the *Transportation of Dangerous Goods Regulations* have been amended, in the interest of public safety, to:

> *reflect the re-classification of anhydrous ammonia (fertilizer) from non-flammable, non-toxic gas, to toxic gas; and
> *indicate changes regarding the transportation of infectious substances, as well as changes to the requirements for transporting explosives.

The change in classification is partly in response to the Transportation Safety Board's recommendation that Transport Canada review the primary class and safety marks for anhydrous ammonia, following three derailments involving releases of the gas. These derailments occurred near Britt, Ontario, on September 23, 1999; in Red Deer, Alberta, on February 2, 2001; and in Minot, North Dakota, on January 18, 2002.[cccxxxviii]

On May 26, 2008, the Honourable Lawrence Cannon, tabled Bill C-56 *An Act to amend the Transportation of Dangerous Goods Act, 1992*, in the House of Commons. The amendments would enhance security and safety in the transport of dangerous goods.[cccxxxix]

On February 2, 2009, Canada's Transport Minister, John Baird, tabled amendments to the *Transportation of Dangerous Goods Act*, 1992, Bill C-9 to enhance safety and security in the transport of dangerous goods.[cccxl] It is identical to Bill C-56 which died on the on the Order Paper with the dissolution of Parliament. The proposed amendments would introduce the following enhancements to public safety:

> *reinforce the existing Emergency Response Assistance Program, which requires emergency response assistance plans to be in place should incidents occur involving dangerous goods;
> *require security training and screening of personnel working with dangerous goods;
> *enable the drafting of regulations requiring that dangerous goods be tracked during transport and that incidents involving loss or theft be reported;
> *enable the use of security measures and interim orders, in accordance with the *Public Safety Act* and other legislation;
> *enable the development of a program to require transportation security clearances for dangerous goods; and

*amend the definition of an importer to Canada, to clarify who is subject to the requirements of the Act and its regulations for transporting dangerous goods.

The Transportation of Dangerous Goods Act, 1992, received royal assent on May 14, 2009 and came into force on June 16, 2009.

On June 1, 2016, the Honourable Marc Garneau, Minister of Transport, announced several amendments to the *Transportation of Dangerous Goods Regulations* to improve reporting requirements in order to enhance public safety and improve local emergency response. Effective immediately, individuals responsible for dangerous goods must report more information to the department, such as:

*dangerous goods that have been lost, stolen, or interfered with;
*road incidents involving dangerous goods; and
*undeclared or misdeclared dangerous goods transported by passenger aircraft.

The amendments also make permanent a previously announced *ban on lithium-ion battery cargo shipments* on passenger aircraft.[cccxli]

On July 14, 2017, the *Regulations Amending the Transportation of Dangerous Goods Regulations (International Harmonization Update, 2016)* published in Part II of the *Canada Gazette* on July 12, 2017 go into effect six months from date of publication. Highlights of the amendments are:

*new safety marks on Class 9, Lithium Batteries (to harmonize them with the UN standards);
*new Canadian labeling requirements for dangerous goods that are toxic by inhalation (to align them more closely with the requirements in the U.S. 49 CFR). Instead of the words "toxic by inhalation" or "toxic — inhalation hazard", the regulations now require the words "inhalation hazard" to be displayed on the means of containment as is required in the United States. The location of the markings on the means of containment and minimum size letters have also to be aligned with those in the United States;
*new ambulatory referencing of CSA technical standards that are incorporated in the TDG Regulations, allowing for the most recent versions of these documents to be used; and
*new updated standards for certain intermediate bulk containers and a time limit on the use of others.[cccxlii]

On December 13, 2021, the Honourable Omar Alghabra, Minister of Transport, announced the publication of proposed amendments to the Transportation of Dangerous Goods Regulations (Part 6 - Training), in the Canada Gazette, Part 1.[cccxliii] The proposed amendments, aimed at any transportation employee, will:

*introduce a competency-based approach to training and assessment;
*incorporate by reference the new training standard developed under the guidance of the Canadian General Standards Board; and
*align training requirements with a series of international codes.

These amendments provide greater clarity and certainty to employers regarding the level of training required to be compliant with Transportation of Dangerous Goods Regulations. By implementing these changes, Transport Canada will promote more consistent training and certification for employees who handle and transport dangerous goods across the country.

On December 20, 2023, the Minister of Transport, Pablo Rodriguez, announced that Transport Canada is proposing to introduce changes to the *Transportation of Dangerous Goods Regulations*, which will further improve the safety of Canada's transportation system and reduce the risk of accidents across the country.[cccxliv] The proposed amendments to the Transportation of Dangerous Goods Regulations are aimed at:

*enhancing buffer car requirements;
*strengthening emergency response assistance plan requirements for the transport of agricultural anhydrous ammonia on public roads;
*aligning our regulations with other federal rules on transporting dangerous goods;
*introducing new rules to match international codes; and
*referencing and incorporating two new standards.

3. Transportation for Persons with Disabilities

On July 10, 2019, The *Accessible Transportation for Persons with Disabilities Regulations (ATPDR)* were finalized. The regulations consolidate the CTA's various accessibility instruments – six voluntary codes and two regulations – to create a single, robust, legally binding set of accessible transportation regulations. The ATPDR require transportation service providers to:

*meet the communication needs of travellers with disabilities;
*train transportation workers to provide assistance to travellers with disabilities;
*comply with technical requirements regarding aircraft, trains, ferries, buses and terminals (such as airports);
*provide accessible services; and
*make border and security screening accessible.

Most provisions of the ATPDR came into force on June 25, 2020 while other more complex requirements Were phased-in over three years.[cccxlv] The CTA consulted extensively with persons with disabilities and industry, including members of its Accessibility Advisory Committee, as well as the general public, on which regulatory measures can help make the federal transportation network more accessible for persons with disabilities. On December 3, 2019, the CTA launched consultation on Phase II of its Accessible Transportation for Persons with Disabilities Regulations.

4. Driving and Driver Training

In Ontario on June 3, 2008, the Ontario government introduced legislation, *Photo Card Act*, which would:
*allow Ontarians to use an enhanced driver's licence as an alternative to a passport when crossing Canada-U.S. borders by land and sea, if passed.

Starting June 1, 2009, the U.S. government will require all visitors to prove their citizenship at the border. With more than 92,000 cars and over 22,300 trucks carrying almost $650 million in goods crossing the Ontario-U.S. borders daily, the new card will ensure that those without a passport can cross the border using the enhanced card.[cccxlvi]

On June 16, 2008, the Ontario legislature passed a Bill 41, *Highway Traffic Amendments Acts* (Speed Limiting Systems). The Bill proposed amendments to the Ontario Highway Traffic Act:

*mandating speed limiter use on most large trucks to cap speeds at 105 kilometres per hour to reduce pollution and improve road safety.

The new regulation was adopted and took effect on January 1, 2009 and is expected to lower maintenance costs and improve fuel economy by 100 million litres of diesel fuel annually. It will also reduce greenhouse gas emissions by 280,000 tonnes annually.[cccxlvii] Ontario and Quebec are jointly introducing speed limiter regulations effective January 1. This is one of several initiatives undertaken by Ontario and Quebec to harmonize regulations to strengthen the economy and help keep businesses competitive. The

Ministry of Transportation invited comments on how the law - Bill 41 - dealing with Speed limiters could be implemented and enforced.[cccxlviii]

On October 28, 2008, Ontario proposed a Bill 118, the *Countering Distracting Driving and Promoting Green Transportation Act, 2008. The Bill proposes to* ban the use of hand-held devices to talk, text or e-mail while driving. Under a bill, police would be able to:

*charge drivers who use a hand-held cell phone;
*send e-mail or text messages; or
*use other hand-held electronic devices while driving.

The use of hands free devices would be permitted. Ontario Trucking Association applauded the bill. It follows the ban adopted in the Provinces of Quebec, Nova Scotia and Newfoundland.[cccxlix] On October 26, 2009, Ontario's ban on hand-held devices while driving took effect. The new law makes it illegal for drivers to talk, text, type, dial or email using hand-held cell phones and other hand-held communications and entertainment devices. The Bill includes a fine of $500.[cccl]

On April 21, 2009, the Ontario legislature passed the *Road Safety Act, 2009* to make the province's roads safer for all drivers.[cccli] The new legislation will better protect young drivers, increase penalties for drinking and suspended drivers and gives police better enforcement tools. The new rules include:

*requiring a zero blood alcohol concentration level for all drivers 21 years of age and younger;
*introducing higher fines for serious Highway Traffic Act offences, such as running a red light, failing to stop for an emergency vehicle and failing to remain at the scene of a collision;
*imposing immediate, seven-day impoundment of vehicles driven by drunk or suspended drivers. Those who continue to drive without an ignition interlock when one is required would also be subject to an immediate seven-day vehicle impoundment; and
*proposing to increase the length of time that new drivers spend in the Graduated Licensing System to get a driver's licence, up to 36 months.

Since the time of the bill's introduction, a proposed regulatory change to the Graduated Licensing System that would have placed tighter restrictions on the number of passengers that teen drivers can carry has been removed. Many of the measures included in the Road Safety Act, 2009, came into effect by summer 2010.

On October 1, 2009, the Ontario Government introduced new safety requirements for E-bikes.[ccclii] E-bikes can share the road with cars, pedestrians and other traffic throughout Ontario — with new safety requirements. E-bikes reach a maximum speed of 32 kilometres per hour and offer another option for clean, green commuting and travel. Effective October 3, 2009, new requirements that will increase rider safety include:

*limiting the maximum weight of an e-bike to 120 kilograms;
*requiring a maximum braking distance of nine metres; and
*prohibiting modifications of the e-bike's motor to enable power-assisted speeds greater than 32 kilometres per hour.

All riders must be at least 16 years of age, wear approved bicycle or motorcycle helmets and follow the same traffic laws that apply to bicyclists such as keeping as close to the right edge of the road as possible.

On June 2, 2015, Ontario passed the *Making Ontario's Roads Safer Act*. In order to reduce collisions, injuries and fatalities on Ontario's roads, the new act will:

*increase fines for distracted driving and assigning three demerit points;
*apply current alcohol-impaired sanctions to drivers who are drug impaired;
*introduce additional measures to address repeat offenders of alcohol impaired driving;
*require drivers to wait until pedestrians have completely crossed the road before proceeding at school crossings and pedestrian crossovers;
*increase fines and demerits for drivers who 'door' cyclists, and require all drivers to maintain a minimum distance of one-metre when passing cyclists where possible;
*help municipalities collect unpaid fines by expanding licence plate denial for drivers who do not pay certain *Provincial Offences Act* fines; and
*allow a broader range of qualified medical professionals to identify and report medically unfit drivers and clarify the types of medical conditions to be reported.[ccclii]

On September 1, 2015, tougher penalties for certain driving violations plus increased driver and vehicle license fees in Ontario went into effect. The tougher penalties are for:

*driving that is distracted;
*dooring to protect cyclists; and
*ensuring the safety of tow truck drivers.

The province has also changed the rules pertaining to children riding school buses.[cccliv]

On September 30, 2016, Ontario drivers deemed to be high behind the wheel will face fines that match those in place for drunk driving under the influence of drugs as of Oct. 2, 2016. The province announced that drivers under the influence of drugs:

*will face a $180 fine and a three-day licence suspension for a first offense.

"Whether it's drugs or alcohol, impaired driving is never okay," said Ontario Minister of Transportation Steven Del Duca. Drug-impaired driving collisions in Ontario had an estimated social cost of $612 million in 2013.[ccclv]

On May 30, 2017, Ontario passed legislation to protect the most vulnerable users of local roads, children, seniors, pedestrians and cyclists. The *Safer School Zones Act* gives municipalities more tools to fight speeding and dangerous driving in their communities, including:

*the Automated speed enforcement (ASE) technology, which will help catch speeders. Municipalities will have the option to use this technology in school zones and also in community safety zones on roads with speed limits below 80 km/h;
*the ability to create zones with reduced speed limits to decrease the frequency and severity of pedestrian-vehicle collisions in urban areas; and
*a streamlined process for municipalities to participate in Ontario's effective Red Light Camera program without the need for lengthy regulatory approval.[ccclvi]

On September 1, 2018, Ontario's Government for the People took steps to ensure Ontario's roads are safe for everyone. There will be tougher penalties for careless driving endangering pedestrians. Drivers convicted of careless driving causing bodily harm or death will face:

*fines from $2,000 to $50,000;
*demerit points - six;
* five years or less suspension of a driver's licence; and
*two years or less in jail.[ccclvii]

On June 4, 2019, the *Getting Ontario Moving Act* was passed. The Legislation is designed to keep roads safe, protect frontline workers, school children, and motor cyclists. Changes to increase road safety include:

> *making learning to drive safer and reaffirming to new drivers that it is never safe to drive under the influence by introducing two new offences for any driving instructor that violates a zero blood-alcohol concentration or zero drug presence requirement;
> *improving traffic flow and enhancing road safety on our highways by introducing tougher penalties for driving slowly in the left-hand lane;
> *protecting our children by giving municipalities the tools they need to target drivers who blow by school buses and threaten the safety of children crossing roads to their school or home; and
> *strengthening laws that protect frontline, roadside maintenance, construction, tow truck and recovery workers from careless drivers.[ccclviii]

In April 2021, the government introduced the *Moving Ontarians More Safely Act, 2021* known as the MOMS Act.[ccclix] The proposed legislation will introduce new measures to:

> *combat high-risk driving and improve road safety, including longer driver's licence suspensions and longer vehicle impoundment periods for drivers who engage in stunt driving, street racing and aggressive driving;
> *introduce measures to protect vulnerable road users, such as pedestrians and highway workers, improve truck safety and strengthen the province's oversight of the towing sector by creating the Towing and Storage Safety and Enforcement Act, 2021; and
> *require tow operators, tow truck drivers and vehicle storage operators to be certified, and set new standards for customer protection and roadside behaviours, including penalties for non-compliance.

Solicitor General Sylvia Jones said "The increased penalties and sanctions proposed under the MOMS Act, along with the creation of the new Towing and Storage Safety and Enforcement Act, will ensure police services across the province have the tools they need to combat high-risk driving on Ontario's roads."

On May 16, 2024, Ontario's Minister of Transportation Prabmeet Sarkaria introduced *The Safer Roads and Communities Act*– a bill that

> *provides additional powers to MTO enforcement officers; and
> *initiates a comprehensive review of commercial driver training.

"This bill is paving the way by ensuring that enforcement officers have all the necessary powers to keep our roads safe and that our province has the best qualified commercial drivers operating to meet the growing demands of the Ontario supply chain," said Stephen Laskowski, President of the Ontario Trucking Association. "We applaud the government for these changes and for launching industry discussions to identify gaps and meaningful improvements to keep Ontario's roads safe for everyone." Under Chair James Steed, OTA's Board has emphasized the need to raise the bar for commercial driver training and licensing.[ccclx]

Driver Training Rules
In Saskatchewan, after the deadly Humboldt Broncos hockey bus crash in April 2018, in the first week of December 2018, the Saskatchewan government announced mandatory training for new semi drivers, which will take effect in March 2019.[ccclxi] According to the rules:

*drivers will be required to take at least 121 hours of training in the classroom and behind the wheel; and
*farmers are granted an exemption from mandatory entry level training.

The exemption prompted reaction from Canadian Trucking Alliance president Stephen Laskowski. He told media that all commercial semi truck drivers should be required to take mandatory training. Why a vehicle is on the road should not matter when deciding safety.[ccclxii]

In Manitoba, as of September 1, 2019, all Manitobans who want to obtain a Class 1 driver's licence must complete mandatory entry level training (MELT) as a prerequisite. MELT is part of the Manitoba government's commitment to road safety. MELT consists of 121.5 hours of in-class, in-yard and in-vehicle training that focuses on the basic operation and driver competencies that enable safe operation of Class 1 vehicles. Drivers in the agricultural sector wanting to obtain a Class 1 licence were provided extra time to complete MELT, initially until August 31, 2020.[ccclxiii]

In Alberta, the mandatory entry-level training (MELT) was required as of March 1st of 2019 for commercial truck drivers seeking a Class I licence.

In Ontario, the Province began to develop a new set of rules for truck driver trainers in the province, as regulators continue to refine the mandatory entry-level training (MELT) program introduced in 2017. The emerging rules will be introduced in the future, said Kim MacCarl, manager of the Ontario Ministry of Transportation's driver program development office, during an update for the Truck Training Schools Association of Ontario (TTSAO).[ccclxiv]

In British Columbia, the province implemented a mandatory entry-level training (MELT) for new Class 1 commercial driver's licence applicants. Effective Oct. 18, 2021, individuals applying for a B.C. Class 1 driver's licence must:

*successfully complete an ICBC-approved Class 1 MELT course before attempting a road test.

B.C.'s MELT program was developed through a review of best practices from other Canadian jurisdictions and with input from industry in British Columbia. It was designed to align with the Standard 16-Class 1 Entry-Level Training framework introduced as part of the National Safety Code in February 2020.[ccclxv]

On April 5, 2023, British Columbia's minister of transportation and infrastructure, Rob Fleming, tabled *Bill 23 - 2023: Motor Vehicle Amendment Act, 2023,* in the BC legislature. Bill 23 proposes amendments to create a safer environment for vulnerable road users, such as cyclists and pedestrians, and supports the shift to increased active transportation. The changes include:

*establishing a new vulnerable road-user framework that requires drivers to take proper precautions when pedestrians and cyclists are using a roadway;
*implementing a one-metre minimum safe-passing distance and a three-metre minimum following distance that drivers of motor vehicles must observe when sharing roadways with pedestrians, cyclists, e-bikes and other similar devices;
*requiring the use of speed-limiter equipment to regulate the maximum speed of heavy-duty commercial vehicles, decreasing GHG emissions, reducing speed-related crashes and making it safer for all road users; and
*expanding the Province's authority to implement more pilot projects, including enabling province wide pilot projects and broader regulation-making authority to test safe, new and emerging transportation technologies and road safety policies including delivery robots,

micro-utility devices, personal mobility devices and different classes of motor-assisted cycles or e-bikes.

The new legislation will establish a minimum safe passing distance that drivers of motor vehicles must observe when passing pedestrians, cyclists and other prescribed road users. The Act also establishes a new definition of vulnerable road user and a new offence framework for drivers who interact unsafely with those road users. The B.C. Trucking Association (BCTA) applauded the move.[ccclxvi]

5. New rules for taxis and ride-hailing services / food deliveries / towing.
In Ontario (Toronto), on May 3, 2016, Toronto city councillors voted 27-15 in favour of new rules (*A New Vehicle-for-Hire Bylaw to Regulate Toronto's Ground Transportation Industry* (LS10.3)) for taxis and ride-hailing services such as UberX, which allows regular drivers to carry passengers without a taxi licence. A few changes approved by the Council noted that:

*Uber can now operate legally in Toronto;
*Uber drivers must hold $2 million in liability insurance and provide proof to the city;
*Uber drivers must provide a background check to the city;
*Uber will charge a minimum fare price — $3.25;
*Uber vehicles can be no older than seven model years; and
*taxis can charge surge pricing, like ride-sharing services, if rides are booked through a smartphone app.

On July 7, 2016, Ontario's insurance regulator announced that it has approved a policy from Intact Financial Corp. for private vehicles transporting paying passengers through the ride-hailing service. Uber operates in more than 40 municipalities in Ontario, including the Greater Toronto Area, Hamilton, London, Windsor, St. Catharines, Kitchener and Kingston. The new policy covers all Uber drivers, passengers and vehicle owners when Uber is in use, and when the app is off the vehicle owner's personal auto-insurance policy applies. Mayor John Tory said "The public wants to have choices, and they should have choices."[ccclxvii]

In Ontario (Ottawa), on April 13, 2016, the City of Ottawa passed a new regulation *Vehicle for Hire By-law* (By-law 2016-272) to govern for-hire ground transportation. The regulation has 184 sections and went into effect on October 30, 2016. The most important feature of the new regulation is that it:

*introduces a new class of licence called private transportation company (PTC) that permits a ride to be booked for compensation through an app;
*requires a minimum $5 million in Commercial General Liability and $2 million motor vehicle insurance; and
*requires drivers to hold $2 million in liability insurance and must satisfy certain safety requirements.

In addition, the PTC will be required to remit to the city a charge of 11 cents per ride and will pay an application fee of $807 (1-24 vehicles), $2469 (25-99 vehicles) and $7,253 (100+ vehicles)."[ccclxviii]

In Alberta (Calgary), City of Calgary Council amended by-law 6M7007 approving the entry of Transportation Network Companies. (TNCs) bookable through electronic "Apps" into Calgary's livery market in 2016. Under the new Council-approved regulatory approach, several key aspects of the system were established:

*street hailing and accepting cash payments would remain as an exclusive service for taxis only;

*taxis would continue to operate under a plate limit (cap or controlled entry system), as determined by Council;
*TNCs or limos face no limits as to number of vehicles (open system); and
*livery industry participants using an approved App (approved by LTS) could set their own rates for customers, while taxis hired through street hails or telephone dispatch would be required to set rates no higher than the maximum City regulated meter rates.

In Manitoba, Bill 30, The Local Vehicles for Hire Act, C.C.S.M. c. L195, was enacted and came into force on February 28, 2018. The purpose of the Bill was to give municipalities in Manitoba:

*the power to make its own by-laws regarding vehicle for hire industry, which includes taxis, limos, and vehicles that are hired online.

In British Columbia (Vancouver) in August 2019, the BC Public Transport Board announced regulations for Transportation Network Service (TNS) companies. These regulations covered:

*price;
*region of operation; and
*fleet size.

Regarding pricing there will be no maximum price, the minimum ride-hailing rate will be the same as the flag rate for a taxi in Metro Vancouver, roughly $3.25-$3.95. Regarding operating regions TNS will be allowed to pick up passengers in one of five regions across the province and drop them off anywhere else. They can operate in much larger regional boundaries than taxi companies. Regarding fleet size ride-sharing companies in British Columbia will not face restrictions on fleet sizes, however, restrictions may be imposed at a later date.

The Food Delivery Service Fee Act – British Columbia
In 2023, the temporary cap on food-delivery fees was made permanent in British Columbia. The Province in December 2020, introduced a temporary cap on fees charged to restaurants by food-delivery companies under the *Emergency Program Act* and transitioned to the *COVID-19 Related Measures Act* (July 10, 2020) when the provincial state of emergency was lifted in June 2021. The measure also prohibits delivery companies from reducing driver compensation, making sure employees and contractors continue to be paid their wages and gratuities.[ccclxix] The cap is:

*15 percent of total order on fees charged by food-delivery companies; and
*5 per cent additional cap extended for other related fees associated with use of the service.

The cap was extended twice but in early November 2022, the *Food Delivery Service Fee Act* received Royal Assent making the cap permanent. The B.C. government was the first provincial government to place a permanent cap on food delivery companies. Brenda Bailey, Minster of Jobs, Economic Development and Innovation said "We all have a favourite local restaurant, somewhere we celebrate as families and friends, eat our favourite foods, or get a taste of home. When restaurants were being charged unfair fees, our government acted fast to implement a temporary cap on delivery-service fees. We're excited to bring in a permanent cap in the new year that will provide more support to restaurants."[ccclxx]

The B.C. government has also implemented a number of other changes to support the industry:[ccclxxi]

*bars and tourism operators with liquor licences can permanently purchase beer, wine and spirits at wholesale prices;
*patios temporary authorizations (thousands); and

*small-businesses corporate income tax ceiling raised from $15 million to $50 million in taxable capital.

New Certification for Towing Industry - Ontario

The Ontario government is increasing safety, supporting customers and improving standards in the towing industry. Effective July 1, 2024, Ontario will become the first province in Canada to require both tow truck drivers and vehicle storage operators to have a certificate to operate, helping protect drivers against fraudulent towing companies.[ccclxxii]

6. Covid – 19 Mandates

Covid – 19 Border and Domestic Vaccination Mandates

In January 2022, the federal government announced its vaccine mandate for truck drivers. These drivers had to satisfy this mandate notwithstanding their roles as essential works. The mandate requires:

*truck drivers entering Canada will have to be fully vaccinated as of January 15, 2022;
*truck drivers (Canadian) who are not fully vaccinated will have to quarantine for 14 days when returning to the country; and
*drivers will also be screened for Covid-19 on Day 1 and 8 of the quarantines.

The U.S. Department of Homeland Security (DHS) also confirmed Jan. 22, 2022 as the date Canadian truckers will need to be fully vaccinated to enter the country. Transport Minister Omar Alghabra and the CTA issued a joint statement on January 25, 2022 "The Government of Canada and the Canadian Trucking Alliance both agree that vaccination, used in combination with preventative public health measures, is the most effective tool to reduce the risk of COVID-19 for Canadians, and to protect public health."[ccclxxiii] The Government of Canada on September 26, 2022 announced the removal of all COVID-19 entry restrictions, as well as testing, quarantine, and isolation requirements for anyone entering Canada, effective October 1, 2022. All travellers, regardless of citizenship, will no longer have to:

*submit public health information through the ArriveCAN app or website;
*provide proof of vaccination;
*undergo pre- or on-arrival testing;
*carry out COVID-19-related quarantine or isolation; and
*monitor and report if they develop signs or symptoms of COVID-19 upon arriving to Canada.[ccclxxiv]

In April 2023, the DHS announced it will be removing border vaccine requirements impacting all non-U.S. citizens entering the country as of May 12, 2023 and the White House also confirmed the removal of the mandate along with a number of additional COVID related emergency measures.[ccclxxv]

Emergencies Act - Canada-U.S. border blockades

The Government of Canada's invoked of the *Emergencies Act* on February 14, 2022 to help end the cross border bridge blockades, to deal with protests that gripped the nation's capital and multiple border crossings for 18 consecutive days. A truck convoy termed the 'Freedom Convoy' began in Vancouver on January 22, 2022 and by late January 2022 it reached Alberta. The line-up of trucks in Alberta extended for several miles along the main Highway 4 into the border village of Coutts. It blockaded the highway at the busy U.S. border crossing at Coutts, Alberta. The Royal Canadian Mounted Police in Alberta said the event was "unlawful". They said "extensive efforts" to negotiate with protest organisers had failed and the force has tapped "additional resources" to make arrests or tow trucks if needed. "While we thought we had a path to resolve this, the protesters chose not to comply." Premier Jason Kenney said the blockade must end as it violates the province's *Traffic Safety Act.* The truck convoy made its way to Ontario. It then blocked the Ambassador Bridge linking Detroit and Windsor, Ontario closing traffic from February 7, 2022. Automakers on both side of the borders expressed concern due to the possible shortage of auto parts. The convoy ended in Ottawa, outside Parliament Buildings, paralyzing the downtown City of Ottawa causing major traffic disruptions. The Ontario Court of Justice raised fines to $1,000 for infractions related to noise, idling, use/care of roads and open-air fires. Protest outside Queen's Park in Toronto also occurred but were less problematic, other than the allegation from the Ontario Dump Truck Association which accused the provincial government of double standards during protests, being threatened with evacuation.

On February 13, 2022, the Ambassador Bridge, reopened after police in Windsor, Ontario, cleared out a protest over COVID-19 restrictions and the flow of traffic returned to normal on the February 14, 2022. The Canadian Trucking Alliance (CTA) applauded the Government of Canada's use of the *Emergencies Act*. The protest disrupted millions of dollars of trade and led multiple auto plants to slow production because of delays in receiving parts, not to mention the plunge in cross-border traffic and problems especially in Ottawa.[ccclxxvi] A public inquiry was conducted to determine if the use of the *Emergencies Act* was justified. In February 2023, the Public Order Emergency Commission published its findings in a 2,000-page report after hearing 300 hours of testimony and receiving more than 9,000 documents concerning the protests that spread from Ottawa to international border crossings in early 2022. Finance Minister Chrystia Freeland and her cabinet colleagues testified that the protests at the border with the U.S., particularly the blockade of the Ambassador Bridge in Windsor, Ont., threatened Canada's economy and its international reputation as a reliable trading partner. The report determined that the federal government was justified in using the *Emergencies Act* to crack down on 'Freedom Convoy' protests. It was nevertheless critical of steps such as a decision to suspend vehicle insurance in these efforts.[ccclxxvii] On January 23, 2024, the Federal Court ruled that the Liberal government's decision to invoke the Emergencies Act in response to the 2022 Freedom Convoy protests was unreasonable, unjustified and violated the Charter.[ccclxxviii]

D. Governance

On April 24, 2006, the Minister of Transport, Infrastructure and Communities, tabled the *International Bridges and Tunnels Act (Bill C-3)* in the House of Commons. The Act will:

> *establish a legislative framework enabling the government to exercise authority over international bridges and tunnels.

It also meets the government's agenda of securing Canada's borders, improving infrastructure and supporting the creation of jobs through international trade. There are currently 24 international vehicular bridges and tunnels and five international railway tunnels linking Canada and the United States.

On February 1, 2007, the *International Bridges and Tunnels Act*, formerly known as Bill C-3, received Royal Assent. This legislation which is the first stage of the Canada Transportation Act amendments:

> *provides the federal government with the legislative authority to ensure effective oversight of the existing 24 international vehicular bridges and tunnels and nine international railway bridges and tunnels, as well as any new international bridges or tunnels built in the future;
> *gives the Governor-in-Council power to make regulations; issue an emergency directive; construct new international bridges without the need for special legislation; and
> *requires approval of the minister for changes in ownership or operation of an international bridge or tunnel.

On February 18, 2007, the Federal Government announced that regulations are now in effect requiring owners of Canada's 24 international bridges and tunnels to inspect and report to the Minister of Transport on the safety of their structures on a regular basis. The regulations apply to the Canadian sections of all of the vehicular international bridges and tunnels, and put into place requirements concerning reporting and scheduled inspections. There are also stipulations that require owners to provide the Minister of Transport with reports every two years on maintenance and operations of these structures. In addition, the reports would identify any necessary actions to ensure the structures are kept in good condition.[ccclxxix]

On March 20, 2008, The Honourable Lawrence Cannon, the former Minister of Transport, Infrastructure and Communities, announced proposed regulations, that would support the International Bridges and Tunnels Act by introducing requirements for owners of Canada's 24 vehicular international bridges and tunnels to:

*inspect; and
*report to the Minister of Transport on the safety of their structures on a regular basis.[ccclxxx]

On February 18, 2009, the Government of Canada announced the *International Bridges and Tunnels Regulations* to support the *International Bridges and Tunnels Act is in effect*.[ccclxxxi]

On January 28, 2011, the Honourable Chuck Strahl, Minister of Transport, Infrastructure and Communities, announced proposed *Administrative Monetary Penalties Regulations* (AMP Regulations) to establish an efficient and inclusive method outside of the courts to address violations under the *International Bridges and Tunnels Act*. The proposed AMP Regulations would:

*set up a ticketing system by creating fines for infractions; and
*set up penalties would range from a maximum of $5,000 per day for individuals to a maximum of $25,000 per day for corporations.

Current enforcement tools include issuing Ministerial Orders and initiating criminal proceedings. "These proposed Regulations would improve the Government of Canada's ability to efficiently oversee existing international bridges and tunnels," said Minister Strahl. "They would help ensure important infrastructure continues to operate safely and effectively." There are currently 25 vehicular international bridges and tunnels, and nine international railway structures with various forms of ownership and governance structures covered under the Act. On August 1, 2012, the Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities, announced that under new regulations, the Government of Canada has established an efficient and effective method outside of the courts to address violations under the *International Bridges and Tunnels Act*.[ccclxxxii]

V. Conclusion

The regulatory developments over the last forty years have focussed on four important objectives of transportation law: provision of service and competition; safety; security; and environmental protection. From 1985 to 2000, the regulatory agenda before the new millennium was dominated by the first three objectives, the need to deregulate the industry so as to provide travellers with lower prices and better services; the need to provide safety due to the Exxon Valdez Spill, and; the need to provide security due to the 9/11 terrorist attack. From 2001 to 2024, the regulatory agenda was dominated by the need to ensure that the regulations enacted on providing service and competition were having its intended effect; the Lac-Mégantic and other transportation accidents, and; the new concerns arising from climate change and Covid-19. While the concerns of the recent past are likely to continue, the more interesting question is what will the regulatory agenda be in the near future?

In ***Air transportation*** we highlight these concerns:
A. The lack of competition and passenger rights. *Regarding competition* the recent decision by WestJet and Air Canada to focus on different parts of the country raised concern about possible collusion and called for an investigation.[ccclxxxiii] As a result in Canada, the Competition Bureau has begun an investigation[ccclxxxiv] and in the US, the Justice Department and the Department of Transportation have

launched a broad public inquiry into the State of Competition in Air Travel.[ccclxxxv] To deal with this concern, three possible solutions are offered:

> **a.** remove foreign ownership restriction on airlines that operate within Canada;
> **b.** liberalize of air bilateral agreements through modified sixth freedom passenger traffic rights (e.g. Vancouver-Chicago-Montreal);
> **c.** remove cabotage rights or permit modified removal, such as agreeing to a North American Common Aviation Market between Canada, United States and Mexico; and
> **d.** remove impediments to competition if any exist.[ccclxxxvi]

Besides the lack of competition, additional charges imposed on travellers have also been a matter of concern from time to time as they not only affect the demand for air travel but also affect competitiveness of Canadian airports.[ccclxxxvii] In Canada, three types of charges have been highlighted: Travelers' security charge; Airport Improvement Fee; and Excise tax on aviation fuel. In a letter on November 1, 2022, IATA stated "On behalf of the airline members of the International Air Transport Association (IATA) operating in Canada, I am writing to express the industry's serious concern about the recent announcements, on the 4 percent increase in aeronautical rates, and the Airport Improvement Fee (AIF) increase by CAD 5 to reach a total of CAD 35 per departing passenger and by CAD 1 to reach CAD 7 for connecting passengers (both a 17 percent increase), all effective 1 January 2023."[ccclxxxviii] On March 16, 2023, a report indicated that rising aeronautical fees at Canadian airports could hurt competitiveness.[ccclxxxix] We suggest:

> **d.** cap increases in additional charges to not more than an increase in the rate of inflation.

Regarding passenger rights there have been calls to tighten the regulations and increase fines. John Lawford, executive director of the Public Interest Advocacy Centre, said Canada needs to adopt the European framework. "The European model basically says if you delay someone, you cancel their flight or deny them boarding, unless you can show that a volcano erupted or there was an earthquake and the runway broke in half, you're paying compensation." He went on further to say that "As it stands, airlines have more to gain from resisting compensation claims, since even if they're ultimately found in the wrong by the regulator, the agency has issued only a handful of small penalties for violations. They should be fined for every claim they (wrongfully) denied up to $25,000 a claim…"[cccxc] Recently, the US Department of Transport penalized Lufthansa $4 million for violating passengers' civil rights and issued a landmark $50 million penalty against American Airlines for the treatment of passengers with disabilities for violations between 2019 and 2023.[cccxci] One possible solution is:

> **e.** consider tightening passenger rights, increase fines and speedup processing of compensation claims.

B. Safety. *Regarding safety* a number of accidents in air transportation could make the following issues part of the future regulatory agenda:

1. Goods carried in planes. Recently, there has been an increase in lithium batteries incidents.[cccxcii] These batteries are still permitted to be carried on cargo planes.[cccxciii] Included in this category is the need for proper classification of goods.

2. Airport requirements - runway/taxiway excursions. The rate of runway incursions is a concern for national airline safety boards, as the number of incidents has doubled over the past decade. According to the Transportation Safety Board of Canada, the number of incidents in the country grew from 5.3 incursions per 100,000 arrivals and departures in 2010 to 10.7 in 2021. The incident that brought a great deal of attention was the runway of Air France airlines in Toronto in 2005. It raised the question of whether all major Canadian airports meet the length of 300 m thought to be safe for runways.[cccxciv]

3. Icing/de-icing. There have been a number of accidents involving commercial aircraft operating on ice. Some of the incidents that have attracted attention are the incident at Fond du Lac[cccxcv] and the issue of the limitation of de-icing fluid below -29ºC. "At temperatures including and below -29 degrees Celsius, anti-icing fluid is no longer effective," said Stephanie Harris, a spokesperson for Calgary International Airport" for precipitation from adhering to the treated surface.[cccxcvi]

4. Pilot health. Concern about health of pilots due to incidents like the German Airwings and the impact of Covid -19, together with the shortage of pilots may call for an examination of the health requirements for pilots.[cccxcvii]

5. Defects of airplanes. The recent incident when the cockpit doors blew out of the 737 Max 9 (even though Canada does not have any of these planes) and the past serious accidents with the Boeing 737Max may result in increased call for regulations of airplanes.[cccxcviii]

6. Regulations for cargo airships if it becomes popular to transport air cargo and more regulations for drones used to transport cargo. The global airship market is expected to increase at a CAGR of 6.50% from 2021 to 2031 from US$260m in 2020 to US$519.78m in 2031.[cccxcix] The cargo drone market is expected to increase to $8.92 billion by 2030, at a CAGR of 34.2% from $1.53 billion in 2024.[cd]

To deal with these issues, we suggest:

a. increase penalties for misclassification of goods and consider if lithium batteries should be permitted in cargo planes;
b. ensure all major Canadian and growing airports runway meet the minimum 300m length;
c. consider alternative approaches icing and anti-icing if possible;
d. maintain and increase regular pilot health checks particularly when there is a shortage of pilots or when pilots workloads are increased;
e. require airplane doors to have indicator lights to detect any problems and increase inspection of particular airplanes when any airplane incident occurs in the world with that type of aircraft; and
f. consider special regulations for airships in Canada and speed up enforcement for drone regulations in Canada, ensure the regulations are enforced and tighten them up if incidents between drones and airplanes increase.

C. Environmental concerns. Regarding *environmental concerns* climate changes have resulted in increased storms, intensity of such storms, destruction and loss of property and life. These disasters are calling for increased action to reduce air pollution. In air transportation to reduce CO2 emissions, we suggest:

a. require a declining percentage of the fuel from non fossil sources and setting targets; and
b. encourage production of sustainable aviation fuels (SAF).

SAF could contribute roughly to 65% reduction in emissions by aviation enabling it to reach its net-zero target in 2050. This is expected to reduce CO2 emissions by 80 percent. The Canadian Council for Sustainable Aviation Fuels (C-SAF) advocates acceleration in the commercial production and use of Canadian-made low-carbon and sustainable aviation fuels (SAF) in Canada. IATA states "Government policy has an instrumental role to play in the deployment of Sustainable Aviation Fuels (SAF). … Incentives should be used to accelerate SAF deployment. … mandates should only be used if they are part of a broader strategy to increase the production of SAF and complemented with incentive programs that facilitate innovation, scale-up and unit cost reduction."[cdi] The head of global airlines' biggest trade group, IATA, implored oil producers to make more low-emissions aviation fuel, warning the future of commercial air travel depends on the industry's successful decarbonization. Sustainable aviation fuel is the best available tool for cutting emissions.[cdii]

In ***Rail transportation*** we highlight the following concerns:
A. The lack of competition. Regarding *competition* there does not appear to be any indication that the competitive provisions (Interswitching, CLR, RR and FOA) are working as effectively as the government or the shippers want. This was seen when the government amended the *Canada Transportation Act* on April 17, 2023 extending the regulated interswitching limits up to 160 kilometres for traffic in Manitoba, Saskatchewan and Alberta for 18 months. Captive shippers are likely to continue to maintain that they are faced with lack of competition. The CLR provision has not been very successful in introducing competitive rates. This is because "Before a shipper may apply to the Agency for a CLR, the shipper must have an agreement with the connecting carrier for the movement from the interchange point to the destination. In practice, this requirement has proved to be a major obstacle to shippers seeking a CLR, as neither CP nor CN has yet agreed to enter into such an agreement. The Rail Freight Service Review said that the provision was not being used "because the competing railways will not provide a rate or, at least, not a competitive rate. The non-use of this provision suggests railways may not aggressively compete even where rail-to-rail competition exists."[cdiii] In 2016, Bill C-49 introduced the Long-haul Interswitching provision to replace the competitive line rate provision but comments indicate that it is more restrictive than the previous provision and to date it has never been used. The Commissioner of Competition's submission went on to recommend that the *Canadian Transportation Act* be amended to provide for the use of the FOA process to resolve disputes where mutually agreements terms could not be reached. To deal with these concerns, we suggest:

> **a.** monitor the efficacy of the interswitching provision to 160 kilometres to see if it is effective;
> **b.** introduce new regulations to address the captive shippers; and
> **c.** revise the Long haul interswitching provision which replaced the CLR to make it easier for shippers to obtain a competitive rate.

B. Safety. Regarding *safety* rail accidents continue to be a matter of great concern. To reduce accidents, regulations in the following areas should be considered:

1. Enhanced Train Control (ETC) technologies. In Europe, the "European Train Control System (ETCS)", has been developed and deployed since 1990 as a standardized system to achieve interoperability on cross-border corridors, and to support international rail transport within Europe. This standardized system is replacing country-specific automatic train protection systems. In the USA, Positive Train Control (PTC) has been developed and deployed since 2008.[cdiv] If interoperability is the major concern in Canada, steps should be taken as was done in Europe which had to deal with railways in several European countries.

2. Automated gates and warnings at railway crossings. "Every year, approximately 23 people are killed and another 28 seriously injured at railway crossings in Canada. In 2019, 29% of crossing accidents resulted in fatalities or serious injuries, making them one of the deadliest types of rail accidents. The TSB identified a seasonal pattern in level crossing accidents involving motor vehicles, where during the winter months, the average rate of accidents increases by about 61%."[cdv] This was also found a few years ago when a CBC News investigation into Canada's top 25 most accident-prone railway crossings found wide-spread design flaws across the country and, in Saskatchewan. The investigation found that accidents were going up as many crossings had design flaws, lack automated gates and warnings. Further, some of the most dangerous railway crossings in Canada lack automated gate arms, protective pedestrian gates, advance warning signs, bells and flashing lights. Furthermore, other deficiencies include poor sightlines for drivers, confusing road signs and overgrown bush.[cdvi]

3. AI-enabled inspection of railcars. This produces high resolution images of railcars moving at track speeds. The wide array of images offer a 360º view of each railcar — including the undercarriage. An intuitive, graphical user interface allows mechanical railcar inspectors to scan trains, review railcars and perform detailed inspections rapidly. The RIP's optional Artificial Intelligence (AI) detections help elevate inspections to a highly automated process. Professionally developed AI models are available to target and identify a wide variety of specific railcar defects, providing inspectors with alerts and notifications. Inspection time is reduced and immediately draws attention to targeted areas of interest.[cdvii]

4. Track inspection. With the need for increased track inspection the government on June 1, 2022 passed new regulations to strengthen the *Rules Respecting Track Safety.* The government will have to monitor to see if these regulations are complied with and to keep abreast of innovate technology in autonomous inspection.

5. Classification of goods. Improper or inaccurate classification of goods require new regulations. Misclassification of goods transported arise to achieve lower cost by shippers. In addition to the above, other concerns have been recently highlighted by the US Department of Transportation which have led to recent rulemakings.[cdviii]

We accordingly suggest:

> **a.** require the use of enhanced train control technologies and develop regulations due to inoperability outage or when systems are temporarily disabled and encourage use of new technologies;
> **b.** require automated gates and warnings at railway crossing;
> **c.** require AI-enabled inspection of railcars;
> **d.** increase track inspection; and
> **e.** introduce a stricter classification for goods and increase fines for improper classification.

C. Environmental concerns. Regarding *environmental concerns* oil spills as a result of accidents have led to pollution of waters where they have occurred and fires. Transportation Safety Board Chair Kathy Fox indicated, that crude-by-rail shipments are expected to rise in the country.[cdix] In light of this, Canada ought to require stronger tank cars for transporting flammable liquids sooner than the current deadline in 2025, Two of the worst Canadian train disasters received a great deal of public attention that point to the above need were: 1. The Mississauga train explosion.[cdx] 2. The Lac-Mégantic train explosion that killed 47 people. Further, the US Bureau of Transportation Statistics (BTS) urged tank car manufactures to move up their safety deadlines in a recently published report the *'Fleet Composition of Rail Tank Cars Carrying Flammable Liquids: 2023 Report'*.[cdxi] One solution is:

> **a.** require stronger tank cars for transporting flammable liquids.

In ***Water transportation*** we highlight the following concerns:
A. The lack of competition. Regarding *competition* the exemption given to ocean shipping from the *Competition Act* was highlighted during COVID-19. In *ocean shipping* of containers, repeal of the Shipping Conference Exemption Act was proposed. On December 13, 2022, the Canadian International Freight Forwarders Association (CIFFA) submitted a brief on the *Shipping Conferences Exemption Act* strongly criticizing the exemption and called for a removal of this 'aberrant law.'[cdxii] In June 2023, the FMA along with other shipper associations, made a submission to the Canadian Competition Bureau to bring attention to the anti-competitive behaviour of ocean carriers who serve Canadian customers. During Covid-19, there were serious service issues or no service at all and very high rates. The FMA continues to ask Transport Canada to repeal the Shipping Conference Exemption Act (SCEA), the act that allows ocean carriers to reduce competition.[cdxiii] New Zealand removed the exemption to shipping conferences,

the EU has not extended the exemption to consortia in 2024, Australia is reviewing its approach to shipping conferences and the US passed the 2022 *Ocean Shipping Reform Act* and imposed stiff penalties for surcharges and other fees. In September 2024, Transport Canada called for submissions to facilitate its review of SCEA.[cdxiv]

In *shortsea shipping*, opening access to the Canadian market can achieve some of the potential environmental and social benefits that short sea shipping offers, this could lead to renewed interest in this development. Suggestions to remove impediments to investment in shortsea shipping and competition should be considered e.g. removing the 25% duty on importation of foreign built ships and the licensing conditions permitting foreign ships into Canadian waters.[cdxv]

In dealing with *Canadian Ports*, throughout 2018 and 2019, Transport Canada engaged with stakeholders and after receiving comments and formal submissions in 2020, the Minister of Transport released *What We Heard Report* summarizing stakeholder views.

To deal with these concerns, we suggest:

> **a.** repeal the exemption to shipping conferences and any exemption to consortia from the provisions of the Competition Act;
> **b.** remove the duty on importation of foreign built ships and remove the licensing of foreign ships in the Coasting Trade Act when there is lack of competition; and
> **c.** follow the amendments proposed in 2022 regarding ensuring the ports remain competitive.

B. Safety. Regarding *safety* providing safe passage to ships through bodies of Canadian waters has been an important concern. The process of amending the *Pilotage Act* has been going on for more than twenty-five years. The review of the Pilotage Act concluded on April 30, 2018 but further development on this matter was interrupted by Covid-19. Further action on this Act is expected in the future. There are also concerns about Canada's preparedness to address emergencies. The Transportation Safety Board of Canada says there are gaps in Canada's preparedness for marine emergencies that exceed the response capacity of a vessel's crew, posing a risk to vessels, the environment and the health and safety of the general public. The first safety concern relates to the risk of a phenomenon called parametric rolling, which led to the loss of containers, and the second concern addresses gaps in Canada's preparedness to respond to marine emergencies.[cdxvi] We suggest:

> **a.** complete the review and amendments to the *Pilotage Act*.

C. Environmental concerns. Regarding *environmental concerns* protecting the environment is increasingly becoming a matter of concern and likely to dominate the regulatory agenda. On March 4, 2023, a landmark UN treaty was signed to protect marine biodiversity. "We need to get it up and running soon to deal with those things," Susan Fuller said, referring specifically to CO2 removal schemes.[cdxvii] To deal with CO2 and other concerns, the following solutions have been proposed in the literature.

1. Biofuel program requirement? It could lead to a 80% to 90% reduction in greenhouse gas (GHG) emissions. The CSL Group ("CSL"), a global leader in responsible marine transportation services states "In 2023, our biofuel fleet set a new record by using 16,400 metric tonnes of B100 biodiesel in a single season, marking our highest consumption to date. This translates into an 80% to 90% reduction in greenhouse gas (GHG) emissions, leading to the avoidance of 50,000 metric tonnes of CO2 across our Great Lakes fleet."[cdxviii] Reducing shipping emissions by 34 percent by 2030 is necessary to stay on course with the Paris Agreement's 1.5°C goal.

2. High-tech systems? This could be capable by harnessing renewable wind energy to supplement the propulsion from a ship's engine is a new solution to the original use of sails.[cdxix]

3. Paying for pollution? Ships entering or using Canadian waters and ports could be made or should pay for their carbon pollution. A regulation similar to the European Union's Emissions Trading System which went into effect on January 1, 2024 could be considered.[cdxx]

4. Reducing underwater noise by transitioning to cleaner ships? On September 18, 2023 at the International Maritime Organization (IMO) in London, the Clean Arctic Alliance called for international action to support the transition to ships that are both more efficient and quieter as efforts to decarbonize the global shipping fleet are stepped-up.[cdxxi] Further action in this area may be needed in Canada in view of the fact that acoustics disturbances have any effect of distorting the sound that whales need to go to its feeding grounds and movement of fishes that it feeds on.

5. Whale Protection? Since these iconic endangered species change their movement from year to year new regulations are expected every year. However, basic regulations that remain the same should be developed and be made permanent.

In light of the above, we accordingly suggest:

a. require a declining percentage of the fuel from non fossil sources and setting targets to be met;
b. encourage use of forms of energy such as sails;
c. employ user pay schemes for carbon pollution;
d. encourage use of ships that are quieter and setting targets to be met; and
e. develop basic regulations to be supplemented with yearly regulations.

In ***Road transportation*** we highlight the following concerns:
A. Competition and Service. Regarding *competition* two issues deserve attention:
1. Regulation: Being unable to reposition empty trailers on the other side of the border is a long-running frustration carriers and other supply chain participants have complained about. Stephen Laskowski, head of the Ontario Trucking Association and Canadian Trucking Alliance said "The issue of the empty trailer seems so simple and really needs to be addressed. You have the supply chains on both sides of the border in support of it, and it's good for the environment." But industry associations have spent 10 years lobbying to allow greater flexibility on the movement of empty trailers without success. Mark Seymour, CEO of Kriska Transportation Group, said the current rules are costly for carriers and drivers, ….[cdxxii] He said "If we have the option to drop a loaded trailer, grab an empty and go somewhere else, it makes more sense than a driver idling in their truck for five to eight hours while getting live unloaded."[cdxxiii]

2. Rising Border Costs? The rising cost of engaging in transborder trade as a result of government actions has been a matter of concern to the Canadian trucking industry from time to time. Examples of this are Crossing Fees, Transportation Worker Identity Credential costs, levy to fund agricultural quarantine inspections, passport costs, costs for a Free and Secure Trade Program (FAST) card, costs imposed because of advanced information required by the Canada Border Services Agency (CBSA) and insurance costs. The sentiments voiced in 2007 were presented to the House of Commons Standing Committee on Agriculture and Agri-food by the CTA (2009). Some of these costs are a result of changes of rules in the US. These costs not only have a detrimental impact on trade in general but also a differential impact on large vs. small trucking companies and different modes of transport. The basic strategy adopted by the trucking industry to deal with rising border costs is to make submissions to the Canadian government and to oppose regulations that result in increased costs. It is unlikely that this has had any effect on costs imposed in the US. Advocating increased use of fuel taxes for funding could be more successful.

To deal with these issues, we propose:

a. renew discussions with the US on further removal of regulatory barriers on empty trailers.
b. cap increase in additional charges in Canada to not more than an increase in the rate of inflation; and
c. consider and retain gas tax cut as done in Ontario.

B. Safety. *Regarding safety* a number of accidents occur each year in road transportation. The major cause of these accidents are: pedestrian and passengers; and vehicles.

Pedestrian and Passengers: In Canada, there are 160,000 car accidents each year, of which 2,800-2,900 result in deaths for 2017 according to statistics published by Canadian Transportation Safety Board. Given the large number of deaths on the roads in Canada each year the following issues should be considered?

1. Busy road intersections where accidents happen. According to the National Collision Database, 27 percent of traffic fatalities and 41 percent of serious injuries occurred at intersections in Canada in 2020. Effective solutions in reducing fatalities could be "Protected Intersection" and "Roundabout".

2. Autonomous vehicle. "Autonomous vehicle (AV) technology offers a wide range of possibilities that fundamentally change transportation. Equipping cars and light vehicles with AV technology will reduce energy consumption, pollution, costs of congestion, and, beyond all, crashes and casualties."[cdxxiv] Mandate use of automatic emergency braking (AEB), including pedestrian AEB, standard on all passenger cars.

3. Enforcement – The largest voices in Canada's trucking industry, representing both labour and ownership, Teamsters Canada and CTA expect vigorous enforcement action to be taken against those non-compliant with Canada's labour and tax laws - Drivers Inc.[cdxxv] Circumventing regulations to reduce costs is not new and the trucking industry has voiced its concern repeatedly against this problem.

We therefore suggest:

a. make changes to busy road intersections where accidents happen;
b. encourage use of AVs; and
c. increase enforcement and penalties.

Vehicles: Use of technology that could reduce accidents has been suggested in the literature, for example:

1. Lane Departure Warning System / Forward Collision Warning / Automatic Emergency Braking Systems. "Lane-departure warning systems lower the rates of three types of passenger car crashes—single-vehicle, side-swipes, and head-on—by 11 percent and cut injuries in those same types of crashes by 21 percent, the study found."[cdxxvi] Another study conducted by the Insurance Institute for Highway Safety in the US, showed that forward collision warning and automatic emergency braking systems reduce rear end collisions by more than 40 percent.[cdxxvii]

2. Vehicle tank spills of dangerous goods. Vehicle tank spills of hazmat goods are a common occurrence on highways.[cdxxviii]

3. Electric cars and driverless vehicles. Comprehensive regulations must be in place before fully automated, driverless vehicles (AVs) can occupy Canadian roadways. A regulatory framework is beginning to emerge in Canada and is expected to be developed in the future. Harmonization between the provinces in its development could facilitate the process. In further regulating AV technologies, Canada

may look to other jurisdictions for guidance such as the United Kingdom, which is in the process of introducing legislation to regulate the safe use of autonomous vehicles.[cdxxix]

4. Sleep Apnea and Hours of Work. One-third (28 percent) of commercial truck drivers have mild to severe sleep apnea. It is likely that rules and regulations on this matter are expected together with increased enforcement of the Hours of Work regulation as trucking accidents are often costly.[cdxxx]

5. Tighter controls on Hours-of-Service compliance. In addition to the above, other concerns have been recently highlighted by the US National Transportation Safety Board (NTSB).[cdxxxi]

We therefore suggest:

> **a.** encourage use of lane departure warning system / forward collision warning / automatic emergency braking systems using incentives for adoption;
> **b.** increase standards and regulations for vehicle tank spills;
> **c.** speed up regulations for AVs and harmonize them between provinces;
> **d.** introduce regulations to deal with sleep apnea and increase enforcement of hours of work regulations; and
> **e**. ensure hours-of-work compliance with increased penalties and introduce tighter controls.

C. Environmental concerns. Regarding *environmental concerns* climate changes are calling for increased action from all transportation sectors that increase pollution. The Government of Canada has conducted consultations in March 2021 with stakeholders to solicit feedback on measures to support zero-emission vehicle uptake in the light-duty vehicle market. Work on the matter is ongoing. Recently, NACFE released a new *Guidance Report, Intermodal & Drayage: An Opportunity To Reduce Freight Emission*. It focuses on the need for a partnership between rail and truck to optimize freight movement and make use of zero-emission technology.[cdxxxii] In addition, the Canadian Trucking Alliance is expected to release a White Paper to Discuss Decarbonization Realities and Journey Towards a Zero-Emission Future for Heavy Trucks.[cdxxxiii] Further regulatory work on this subject is expected in the future. In road transportation to reduce CO2 emissions, we suggest:

> **a.** Zero-emission technology should be considered and adopted with deadlines.

The issues outlined above in each transportation sector should keep passengers, shippers, transportation businesses and regulators busy in the near future in the regulatory arena. In the past, regulatory activity has tended to be retroactive rather than proactive. We understand that regulations raise costs and encroach on the freedom of certain segments of society, while other segments of society clamour for it when it raises consumer prices or reduces service and causes externalities that are harmful. We also understand that all the objectives are not always perfectly compatible. Keeping all segments of society satisfied always and seeking a balance always is not easy, nevertheless we advocate a proactive approach as much as possible based on the view that in the long run it will be beneficial to all segments of society.

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ENDNOTES

[i] These reviews and studies make recommendations which Transport Canada examines and then makes recommendations to the government which if accepted or modified often results in Bills which eventually become laws and regulations.

[ii] Canadian Transportation System, Volume I and II, Joseph Monteiro and Gerald Robertson, October 2010.

[iii] Straight Ahead - A Vision for Transportation in Canada, David M. Collenette, 2003, p. 14. www.publications.ca

[iv] The Act has 35 sections: 1. Short Title; 2. Interpretation; 4. Role of the Minister; 5. Establishment and Mandate of the Authority; 9. Legal Powers of the Authority; 10. Structure of the Authority (Board; Chairperson; Chief Executive Officer); 23. Role of the Board; 25. Staff; 28. Contracts, Agreements and Arrangements; 31. Audit; 32. Security-related Information; 33. Five-year Review; 34. Regulations; and 35. Transitional Provisions.

[v] The most important amendments to the Act that would result from Bill C-56 with respect to new security requirements are those that would:
1. require security plans and security training; 2. require that prescribed persons must hold transportation security clearances in order to transport dangerous goods, and the establishment of regulatory authority in relation to appeals and reviews of any decision in respect of those clearances; 3. enable the use of security measures and interim orders (as are currently used in the Public Safety Act, 2002 and certain other federal Acts); and 4. enable regulations to be made in a number of additional areas, including those that would provide a means of tracking dangerous goods during transport and those that would require the reporting of the loss or theft of dangerous goods. See Bill 56: An Act to Amend the Transportation of Dangerous Goods Act, pp. 2-3, www.parl.ca

[vi] Canadian Air Transport Security Authority (CATSA) Review, August 14, 2019, www.tc.gc.ca

[vii] The four responsibilities currently assigned to CATSA in accordance with the Act are as follows: 1. Pre-board Screening; 2. Hold Baggage Screening; 3. Non-passenger Screening; and 4. Restricted Area Identity Card (RAIC). CATSA is federally funded and reports to Parliament through the Minister of Transport, Infrastructure and Communities.

[viii] Minister Cannon Announces Outcome of the Canadian Air Transport Security Authority Act Review, September 4, 2007, www.tc.gc.ca The following major decisions were announced: 1) The Minister of Transport, Infrastructure and Communities will continue to have responsibility for aviation security; 2) The CATSA will continue as a Crown Corporation; 3) The activities of CATSA will be focussed on its core aviation

security- screening role; 4) The administration of the Canadian Air Carrier Protective Program, will be transferred to the RCMP as of April 1, 2008; 5) The Airport Policing Contribution Program will be transferred to Transport Canada as of April 1, 2008; and 6) The CATSA will retain responsibility for the Restricted Area Identity Card Program while Transport Canada will remain responsible for defining the requirements of the program.

[ix] These charges are: 1. Airport Improvement Fees; 2. Air Travellers Security Charge; and 3. Excise Taxes on Fuel.

[x] In essence, an "Open Skies"-type agreement would cover the following elements for scheduled passenger and all-cargo services: 1. Open bilateral markets/access (third and fourth freedom rights); 2. No limit on the number of airlines permitted to operate; 3. No limits on the permitted frequency of service or aircraft type; 4. Market-based tariff/pricing regime for bilateral and third-country services; 5. Open and flexible regime for the operation of code-sharing services; 6. Unrestricted services to and from third-countries (fifth and sixth freedom rights); and 7. Rights for stand-alone all-cargo operations (seventh freedom rights). See, Bilateral Air Relations Between Canada and Foreign Countries, www.international.gc.ca; and The Blue Sky Policy: Made in Canada, for Canada, www.tc.gc.ca

[xi] It states "Consumer protection is a key element of Bill C-26. Accordingly, clause 16 adds proposed new sections, 60.1 to 60.4, regarding air service price advertising, to the CTA. Proposed section 60.1 requires a licensee or a person acting for a licensee, advertising an air service in Canada or originating in Canada, and that includes a price for the service in that advertisement, to indicate in the same advertisement the total amount to be paid by the purchaser for the service. Proposed section 60.2 provides that fees or charges collected on behalf of an airport authority need not be included in the total amount if they are individually identified and their amount, or range of the amount, is indicated in the advertisement. Similarly, a charge payable under section 11 of the Air Travellers Security Charge Act or any other fees or charges collected by the licensee on behalf of a government need not be included if the fee or charge is individually identified and its amount, or the range of the amount, is indicated in the advertisement. As well, a federal or provincial tax payable by the purchaser (for example, GST, HST and PST), other than a charge payable under section 11 of the Air Travellers Security Charge Act, need not be included if the tax is identified (it need not be quantified) in the advertisement. The purpose of proposed section 60.1 is to protect the travelling public by ensuring that the pricing information they receive in advertisements is clear and not misleading and that it reflects the total price of the air service they are purchasing. Departmental officials point out that consumers will be able to reasonably estimate the total cost of travel from an advertisement, compare advertisements of different carriers and avoid so-called "sticker-shock" when the total price for air travel is provided at the actual time of purchase.

Proposed section 60.2 prohibits a licensee, or person acting on behalf of a licensee, from advertising the price of an air service if no person can obtain the service at that price. The rationale for this provision is to prohibit the practice of advertising low fares that are not actually available, for example, advertising a fare for one-way travel when such fares can be obtained only if the consumer purchases a return ticket.

Proposed section 60.3 requires licensees to include in their contracts with travel wholesalers, tour operators, charterers or other persons associated with the provision of air services to the public, a requirement that the travel wholesalers, tour operators, charterers and other persons will also act in conformity with proposed sections 60.1 and 60.2. This provision is intended to ensure a level playing field for all advertisers of airfares. Departmental officials point out that an obligation to follow these advertising rules cannot be directly imposed on resellers because they do not fall under federal jurisdiction.

Proposed section 60.4 permits the Agency, on the recommendation of the Minister, to make regulations respecting the advertising of the prices of air services in Canada or originating in Canada. Hence, if the need for greater clarity of the advertising provisions in proposed sections 60.1 to 60.3 should arise, that can be provided through regulations."

[xii] Airlines strike back with passenger bill of rights, May 4, 2009, www.globeandmail.ca; and Airline passenger bill of rights narrowly passes crucial vote, May 13, 2009, www.nationalpost.ca

[xiii] Also See Catherine A. Pawluck, Air Passenger Rights Legislation Proposed, www.internaikonallawoffice.com

[xiv] The Government of Canada takes action to enhance air safety, December 2, 2011, www.tc.gc.ca; Fees up on fees in ads, Ottawa tells airlines, December 16, 2011, www.globeandmail.ca; Airlines forced to advertise true cost of flights, including taxes, by Christmas 2012, December 16, 2011, www.nationalpost.ca; and Government of Canada moves forward with changes to airfare advertising, December 16, 2011, www.tc.gc.ca

[xv] Consultations on Air Services Price Advertising Regulations, February 13, 2012, www.cta-otc.gc.ca; Canadians Have an Opportunity to Comment on Proposed Regulatory Amendments for Air Services Price Advertising, July 3, 2012, www.cta-otc.gc.ca; Harper government enacts all-inclusive airfare advertising laws, December 18, 2012, www.tc.gc.ca; All-Inclusive Air Price Advertising, December 18, 2012, www.cta-otc.gc.ca; and Airlines now face $25,000 fine if they fail to reveal total ticket price, Dec. 18, 2012, www.nationalpost.ca

[xvi] Regulations Amending the Air Transportation Regulations and the Canadian Transportation Agency Designated Provisions Regulations, www.gazette.gc.ca; and Ensuring Compliance with the All-Inclusive Air Price Advertising Requirements of the New Regulations, May 21, 2013, www.cta-otc.gc.ca

[xvii] Minister Garneau introduces legislation to support Canadian travellers and promote economic growth, May 16, 2017, www.tc.gc.ca; and Travellers Initiatives, May 16, 2017, www.tc.gc.ca

[xviii] Air Canada Comments on Proposed Transportation Modernization Act, May 16, 2017, www.aircanada.ca

[xix] WestJet comments on Transportation Modernization Act, May 16, 2017, www.westjet.ca

[xx] New bill to protect airline passengers 'useless,' says consumer group, May 18, 2017, www.cbc.ca

[xxi] Minister Garneau's statement on the *Transportation Modernization Act* receiving Royal Assent, May 23, 2018, www.tc.gc.ca

[xxii] Proposed Air Passenger Protection Regulations to be published in Part I of the Canada Gazette, December 17, 2018, www.cta-otc.gc.ca

[xxiii] Minister Garneau marks coming into effect of Phase 1 of new Air Passenger Protection Regulations, July 15, 2019, www.tc.gc.ca; New Air Passenger Protection Regulations now in force, July 15, 2019, www.cta-otc.gc.ca; New passenger bill of rights facing legal challenges by aviation industry, advocates, July 29, 2019, www.nationalpost.ca; and New provisions of Air Passenger Protection Regulations coming into force, December 13, 2019, www.cta-otc.gc.ca

[xxiv] Arriving at destination: Regulatory modernization comes to Canada's aviation sector, April 2, 2019, www.cta-otc.gc.ca

[xxv] New process for review and authorization of air carrier joint ventures now in place, April 4, 2019, www.tc.gc.ca

[xxvi] Canadian Transportation Agency issues temporary exemptions to certain Air Passenger Protection Regulations provisions to address the COVID-19 pandemic, March 13, 2020, www.cta-otc.gc.ca

[xxvii] Statement by Minister Garneau on measures to protect Canadians from the impacts of COVID-19 on the air travel sector, November 8, 2020, www.tc.gc.ca; Statement on the November 8, 2020 Air Sector Announcement by Transport Minister Marc Garneau, Nov. 10, 2020, www.cacairports.ca; and Ottawa makes refunds for cancelled flights condition for airlines to tap federal aid, Nov. 9, 2020, www.nationalpost.ca

[xxviii] Minister of Transport introduces new funding programs to support Canada's airports, May 11, 2021, www.tc.gc.ca; Airport Critical Infrastructure Program, May 11, 2021, www.tc.gc.ca; and Enhancement of the Airports Capital Assistance Program, May 11, 2021, www.tc.gc.ca

[xxix] Airline bailout begins in Canada with $375 million loan to Sunwing after beach holidays barred, February 2, 2021, www.nationalpost.ca
[xxx] See Govt. of Canada agreements with Ontario, British Columbia, Manitoba and Saskatchewan between Jan. and March 2021, www.tc.gc.ca
[xxxi] New measures to support essential air access to remote communities, July 7, 2021, www.tc.gc.ca
[xxxii] New refund regulations, June 22, 2022, www.cta-otc.gc.ca; Minister Alghabra highlights new regulations to address refund requirements for future flight cancellations outside of an air carrier's control, June 22, 2022, www.tc.gc.ca; New refund regulations now in force, September 4, 2022, www.cta-otc.gc.ca; and Minister Alghabra marks coming into force of new regulations on refund requirements for flight cancellations or lengthy delays outside of an air carrier's control, September 8, 2022, www.tc.gc.ca
[xxxiii] Government of Canada prohibits Russian aircraft to enter Canadian airspace, February 27, 2022, www.tc.gc.ca; Important Notice from the CTA on the Flair determination, May 5, 2022, www.cta-otc.gc.ca; The Canadian Transportation Agency issues final determination on whether Flair is Canadian, June 1, 2022, www.cta-otc.gc.ca; Flair Airlines shakes off regulator's scrutiny — now can it survive the market?, June 20, 2022, www.financialpost.ca; and Canadian Transportation Agency has issued a decision ordering the payment of compensation to passengers affected by a cancellation caused by a crew shortage, August 26, 2022, www.cta-otc.gc.ca
[xxxiv] Government of Canada and airport and airline partners making additional progress on reducing traveller wait times at Canada's major airport, June 20, 2022, www.tc.gc.ca; Government of Canada working with airports and air carriers to reduce airport wait times, May 27, 2022, www.tc.gc.ca; and Airlines must also be accountable for their role in flight delays: Transport minister, June 21, 2022, www.nationalpost.ca
[xxxv] The Government of Canada and industry continue to take action to address wait times and congestion at Canadian airports, September 1, 2022, www.tc.gc.ca; and The Government of Canada and industry continue efforts to reduce air traveller wait times, September 23, 2022, www.tc.gc.ca
[xxxvi] The Government of Canada and air industry continue collaboration to reduce wait times at airports across Canada, September 29, 2022, www.tc.gc.ca; The Government of Canada and industry partners continue to take action to reduce wait times and delays at Canadian airports, October 14, 2022, www.tc.gc.ca; and Update on operations at Canadian airports ahead of the holiday season, December 16, 2022, www.tc.gc.ca
[xxxvii] At a Canadian House of Commons committee hearing on January 12, 2023, Sunwing President Len Corrado said. "We know we could have done better." Winter storms of snow and ice, a lack of airline staff, and operational problems at airports forced Sunwing, a leisure carrier, to cancel 67 flights. The company has received 7,000 complaints, some passengers were stuck for days in Mexico without knowing when they would return. Kevin O'Connor, Air Canada's vice president for system operations control said "In such situations, we prioritize international flights, which are more difficult to recover because of the long flight times. Overall, we operated 98% of international flights during the holiday period." But in many cases, luggage didn't show up on time." Holiday travel mess shows why Canadian air travel industry needs competition: NDP, January 4, 2022, www.nationalpost.ca; Airlines blame Canada travel chaos on weather, pilot shortage, January 13, 2023, www.ajot.com; Transport minister, airline and rail executives to appear before Commons committee looking into travel chaos, January 9, 2023, www.nationalpost.ca
[xxxviii] The Canadian Transportation Agency launches consultations to strengthen air passenger protection, July 11, 2023, www.cta-otc.gc.ca
[xxxix] Introduction of Amendments to the Aeronautics Act, May 17, 2005, www.tc.gc.ca
[xl] Bill C-6: an act to amend the aeronautics act and to make consequential amendments to other acts, September 22, 2006, www.parl.ca
[xli] Canada Transportation Act and Aeronautics Act Amendments Reintroduced in Parliament, October 29, 2007, www.tc.gc.ca
[xlii] Additional Safety Measures for Canadian Air Travellers, May 19, 2007, www.tc.gc.ca
[xliii] Additional On-board Safety Equipment for Aircraft, June 27, 2007, www.tc.gc.ca
[xliv] Proposed Regulations to Improve Aviation Safety, July 9, 2007, www.tc.gc.ca
[xlv] Government of Canada Improves Aviation Safety with New Language Requirements, April 30, 2008, www.tc.gc.ca
[xlvi] Canada takes measures to further improve aviation safety, April 3, 2009, www.tc.gc.ca
[xlvii] New Aviation Safety Regulations for Air Traffic Services, Dec. 21, 2007, www.tc.gc.ca
[xlviii] Government of Canada Proposes Enhanced Regulations to Better Locate Aircraft in Distress, August 8, 2008, www.tc.gc.ca
[xlix] Transport Canada proposes regulatory amendments for the certification and oversight of private operators, December 7, 2013, www.tc.gc.ca
[l] Government of Canada introduces changes to pilot licensing, February 12, 2014, www.tc.gc.ca
[li] Transport Canada introduces new regulatory amendments for the oversight of private operators, May 30, 2014, www.tc.gc.ca
[lii] The Government of Canada takes action to enhance air safety, November 16, 2013, www.tc.gc.ca
[liii] New national safety standard for offshore helicopter operations, April 22, 2016, www.tc.gc.ca; and Transport Canada releases info on changes to Air Cargo Security Program, July 15, 2015, www.ctl.ca
[liv] Proposed regulations respond to TSB safety recommendations, May 20, 2016, www.tc.gc.ca
[lv] Government of Canada introduces strengthened seaplane regulations to improve safety for Canadian travellers, March 6, 2019, www.tc.gc.ca
[lvi] Minister Raitt launches national campaign on drone safety, October 21, 2014, www.tc.gc.ca; Simpler rules for small unmanned air vehicles, November 5, 2014, www.tc.gc.ca; and New rules for small unmanned aircraft, November 27, 2014, www.tc.gc.ca
[lvii] Transport Canada consults on proposed changes to UAV safety regulations, May 28, 2015, www.tc.gc.ca; and Transport Canada encourages new drone users to learn rules before flying, December 11, 2015, www.tc.gc.ca
[lviii] Transport Canada introduces measures to protect Canadians from reckless drone use, March 16, 2017, www.tc.gc.ca; WestJet applauds Minister Garneau's crack down on recreational drones, March 16, 2017, www.westjet.ca; Canada's Airports Applaud Government of Canada's New Safety Rules for Recreational UAV Operators, March 16, 2017, www.cacairports.ca; IATA Welcomes Transport Canada's New Safety Rules for Drones, March 16, 2017, www.iata.org; WestJet launches Montreal-Halifax route, March 16, 2017, www.westjet.ca; and 2016 Annual and December U.S. Airline Traffic Data, March 16, 2017, www.dot.gov
[lix] Minister Garneau unveils Canada's new drone safety regulations, January 9, 2019, www.tc.gc.ca
[lx] Minister of Transport announces Canada's first proposed drone safety regulations for beyond visual line-of-sight operations, June 23, 2023, www.tc.gc.ca
[lxi] Transport Canada proposes new rules on flight crew fatigue and fitness for duty to make air travel safer for Canadians, June 30, 2017, www.tc.gc.ca
[lxii] Regulations Amending the Canadian Aviation Regulations - Flight Crew Member Hours of Work and Rest Periods, July 4, 2017, www.atac.ca
[lxiii] Minister Garneau introduces new fatigue regulations to make air travel safer for all Canadians, December 12, 2018, www.tc.gc.ca
[lxiv] Government of Canada takes action to protect Canadians from laser attacks on aircraft, June 28, 2018, www.tc.gc.ca; and Minister Garneau introduces new safety measures to protect Canadians from laser attacks on aircraft, June 28, 2018, www.atac.ca

[lxv] Federal government bans shipments of lithium metal batteries on passenger flights, December 30, 2014, www.tc.gc.ca

[lxvi] Lithium Batteries, March 31, 2016, www.tc.gc.ca; and Minister Garneau bans lithium-ion battery shipments on passenger aircraft, March 31, 2016, www.tc.gc.ca

[lxvii] Transport Canada bans Samsung Galaxy Note 7 smartphones from all aircraft, Oct. 14, 2016, www.tc.gc.ca; and Air Canada Notifies Customers of Ban on Samsung Galaxy Note 7, October 15, 2016, www.aircanada.ca

[lxviii] Canada's New Government Announces Increased Security Measures for Airports and Air Travel, August 10, 2006, www.tc.gc.ca; and Travel advisory: security enhancements, August 10, 2006, www.aircanada.ca

[lxix] Transport Canada amends security requirements affecting liquids, gels and aerosols onboard aircraft, November 3, 2006, www.tc.gc.ca; and Transport Canada advised passengers that restrictions on liquids, aerosols and gels remain in effect, May 8, 2008, www.tc.gc.ca

[lxx] Air Security Strengthened – Passenger Protect Ready to Take Flight, May 11, 2007, www.tc.gc.ca

[lxxi] Canada's New Government Reiterates its Commitment to Passenger Protect, June 28, 2007, www.tc.gc.ca

[lxxii] Special Aviation Security Measures, December 26, 2009, www.tc.gc.ca

[lxxiii] Government of Canada moves to further enhance air transport security, June 14, 2010, www.tc.gc.ca

[lxxiv] Government of Canada moves to streamline aviation security regulations, January 4, 2012, www.tc.gc.ca; and Harper government takes action to enhance air safety, July 4, 2012, www.tc.gc.ca

[lxxv] Amendments to the Canadian Aviation Security Regulations, 2012 for airport security programs and non-passenger screening, July 2, 2014, www.tc.gc.ca

[lxxvi] Updated regulations will facilitate flow of goods, align with international practices, June 30, 2015, www.tc.gc.ca

[lxxvii] Canada's Airports Welcome the Royal Assent of Bill C-23, December 12, 2017, www.cacairports.ca

[lxxviii] Minister of Transport announces new Verified Traveller program to improve the security screening experience for eligible travellers, May 23, 2023, www.tc.gc.ca; and Canada's Airport Council Supports Verified Traveller Program, May 23, 2023, www.cacairports.ca

[lxxix] Transport Minister Introduces Canada Airports Act, No. H022/03 For release - March 20, 2003, www.tc.gc.ca

[lxxx] Transport Minister Introduces Canada Airports Act, June 15, 2006, www.tc.gc.ca

[lxxxi] Proposed Amendments for Airport Emergency Response, October 10, 2006, www.tc.gc.ca

[lxxxii] Proposed legislative changes to enhance transparency and accountability in the transportation system, June 22, 2023, www.tc.gc.ca; Minister of Transport introduces Bill C-52 to ensure accountability and transparency in the national transportation sector for Canadians, June 22, 2023, www.tc.gc.ca; and Canadian Airports React to New Air Sector Legislation, June 20, 2023, www.cacairports.ca

[lxxxiii] Government of Canada announces new domestic transportation measures, March 28, 2020, www.tc.gc.ca

[lxxxiv] New measures introduced for non-medical masks or face coverings in the Canadian transportation system, April 17, 2020, www.tc.gc.ca

[lxxxv] Temperature screening to be required for travellers at Canadian airports, June 12, 2020, www.tc.gc.ca; and Temperature screening for air travellers expanded to 11 Canadian airports, Sept. 29, 2020, www.tc.gc.ca

[lxxxvi] Government of Canada announces easing of border measures for fully vaccinated travelers, July 19, 2021, www.tc.gc.ca; and Canada's and Canada's Airports Welcome New Border Measures for Fully Vaccinated Travellers, July 19, 2021, www.cacairports.ca

[lxxxvii] What air passengers need to know now that borders are opening up, August 6, 2021, www.cta-otc.gc.ca

[lxxxviii] The WestJet Group responds to mandatory vaccination requirement for airline workers, August 13, 2021, www.westjet.ca; and Air Canada Welcomes New Health and Safety Measures by The Government of Canada to Facilitate Safer Travel, August 13, 2021, www.aircanada.ca

[lxxxix] Government of Canada provides further details on new vaccine requirements, October 29, 2021, www.tc.gc.ca

[xc] Government of Canada announces easing of border measures for fully vaccinated travellers, July 19, 2921, www.tc.gc.ca; and Government of Canada announces additional Canadian airports accepting international passenger flights, November 2, 2021, www.tc.gc.ca

[xci] International standardized proof of vaccine a welcome step in the safe reopening of Canada's air borders, October 21, 2021, www.cacairports.ca; and About the Canadian COVID-19 proof of vaccination, February 10, 2022, www.canada.ca

[xcii] On January 28, 2022, all travellers entering Canada became subject to the same pre-entry test requirements, regardless of their departure country. It removed the modified pre-departure test requirements for travellers coming to Canada on direct or indirect flights from India or Morocco. See Government of Canada provides update about Canada's border measures, January 28, 2022, www.tc.gc.ca

[xciii] Government of Canada lightens border measures as part of transition of the pandemic response From: Public Health Agency of Canada, February 15, 2022, www.canada.ca; Canada's airports support travel and tourism industry call to remove obstacles to international flights, including testing and advisories, February 10, 2022, www.cacairports.ca; and Canada's airports are encouraged by government's easing of travel restrictions and advisories, Feb. 15, 2022, www.cacairports.ca

[xciv] Government of Canada will remove pre-entry test requirement for fully vaccinated travellers on April 1, From: Public Health Agency of Canada, March 17, 2022, www.canada.ca; and Statement on the Canadian government removing pre-entry COVID-19 testing for international travel, March 17, 2022, www.cacairports.ca

[xcv] Government of Canada and airport and airline partners making progress on reducing traveller wait times at Canada's major airports, June 10, 2022, www.tc.gc.ca; and Suspension of the mandatory vaccination requirement for domestic travellers and federally regulated transportation workers, June 14, 2022, www.tc.gc.ca

[xcvi] Government of Canada to remove COVID-19 border and travel measures effective October 1, September 26, 2022, www.tc.gc.ca

[xcvii] Canada's airports welcome the government's decision to remove pandemic measures for air travel, September 26, 2022, www.canadaairports.ca

[xcviii] Harper government promotes Canadian jobs, reciprocity and fairness in the air industry, August 30, 2013, www.tc.gc.ca

[xcix] The Harper government to allow passengers to use portable electronic devices during all phases of flight, May 26, 2014, www.tc.gc.ca; WestJet applauds Transport Canada decision on PEDs, May 26, 2014, www.westjet.ca; and Air Canada Ready to Implement Expanded Use of Portable Electronic Devices for all Phases of Flight aboard its Aircraft, May 26, 2014, www.aircanada.ca

[c] Government of Canada proposes to modernize the *Air Canada Public Participation Act*, March 24, 2016, www.tc.gc.ca; Air Canada Comments on Bill to Amend the Air Canada Public Participation Act, March 24, 2016, www.aircanada.ca; and Air Canada welcomes bill passage on aircraft maintenance, June 24, 2016, www.ctl.ca

[ci] Based on the original article by Joseph Monteiro and Gerald Robertson, *Railways in Canada and the Experience with Regulatory Reform - with Emphasis on the Competitive Provisions*, CTRF Proceedings 2010, May 31-June 2, pp. 487-502.

[cii] Joseph Monteiro and Gerald Robertson , *Grain Transportation Deregulation in Canada,* 46th CTRF Proceedings 2011, May 2012-May 2012, pp. 328-343.

[ciii] Id.

[civ] Id.

[cv] Bill S-6 An Act to amend the Canada Transportation Act (running rights for carriage of grain) Senate, Second Reading, November 2, 2005, www.parl.gc.ca

[cvi] Bill C-8, www.parl.gc.ca

[cvii] Amended Canada Transportation Act Receives Royal Assent, February 29, 2008, www.tc.gc.ca

[cviii] The genesis for it began in, 2008 when the Government of Canada launched a comprehensive review of rail freight service in Canada and in September 2009, the Honourable Rob Merrifield, Minister of State (Transport), announced the appointment of a three member panel to conduct Phase II of the rail freight service review to examine the matter. The Panel submitted its final report to the government in December 2010. The government after careful consideration accepted the panel's commercial approach and intends to implement the following steps to improve the performance of the entire rail supply chain: initiate a six-month facilitation process with shippers, railways and other stakeholders to negotiate a template service agreement and streamlined commercial dispute resolution process; table a bill to give shippers the right to a service agreement to support the commercial measures; establish a Commodity Supply Chain Table, involving supply chain partners that ship commodities by rail, to address logistical concerns and develop performance metrics to improve competitiveness; and in collaboration with Agriculture and Agri-Food Canada, Transport Canada will lead an in-depth analysis of the grain supply chain to focus on issues that affect that sector and help identify potential solutions. On October 31, 2011, the Government of Canada appointed Mr. Jim Dinning to lead a six month facilitation process to enhance rail freight service.

[cix] Minister Lebel issues a statement on the final report of the Facilitator of the Rail Freight Service Review, June 22, 2012, www.tc.gc.ca; CN says Rail Freight Service Review Process prompted improved service, greater customer collaboration, June 22, 2012, www.cn.ca; CN boss warns Ottawa not to force new rail regulations, May 30, 2012, www.nationalpost.ca; Shippers and railways fail to overcome their differences, June 24, 2012, www.ctl.ca; Canada Expected to introduce rail legislation Tuesday, December 10 2012, www.joc.com; The Harper government moves to strengthen rail freight service, December 11, 2012, www.tc.gc.ca; New legislation provides penalties for rail service failure, December 12, 2012, www.globeandmail.ca; Proposed railways regulations would hurt Canadian economy, says CN chief Mongeau, December 11 2012, www.nationalpost.ca; CN chief calls federal rail service bill unnecessary, overly burdensome, December 11, 2012, www.ctl.ca; WGEA Optimistic on Fair Rail Freight Service Bill, December 11, 2012, Western Grain Elevators Association; Canadian rail service legislation puts at risk innovation and supply chain collaboration, says President and CEO Claude Mongeau, December 11, 2012, www.cn.ca; Shippers enthusiastic about powers provided under new rail bill, December 11, 2012, www.ctl.ca; Shippers confident Bill C-52 will be passed into law with no significant changes, December 12, 2012, www.ctl.ca; and Canadian Pacific responds to rail service review legislation, December 11, 2012, www.cpr.ca

[cx] This would mean that roughly 150 primary elevators across the Prairies will have the chance to be served by more than one railway, up from 14 elevators that currently have that option. Second, a time limit has been placed on this amendment to 24 months to see how it works. See Rail policy in Canada is on the wrong track, March 28, 2014, www.nationalpost.ca; and Transport Minister Lisa Raitt on why Ottawa wants Canada's grain to head south, April 4, 2014, www.nationalpost.ca

[cxi] To ensure that the law was complied with the government imposed the first fines against CN for failure to ship grain in September 2014. See CN faces first fine under Fair Rail Act, September 18, 2014, www.globeandmail.ca; Ottawa tells CN Rail it's not backing down on fines over grain shipments, September 23, 2014, www.nationalpost.ca; and Ottawa tells CN 'to pick up their game' and ship more grain, September 23, 2014, www.globeandmail.ca

[cxii] Grain Boom Busting Canada Farmers on Clogged Rails: Commodities, March 4, 2014, www.portofmontreal.ca; Saskatchewan passes motion on grain backlog, March 5, 2014, www.ctl.ca; Harper government acts to get grain moving in Western Canada, March 7, 2014, www.tc.gc.ca; Railways fire back over grain shipments, March 13, 2014, www.globeandmail.ca; Harper Government Introduces Legislation to Address Rail Capacity Challenges, March 26, 2014, www.tc.gc.ca; CN disturbed by Canadian government legislation introducing heavy-handed regulatory intrusion into rail grain transportation, March 26, 2014, www.cn.ca; CP's President & COO Keith Creel addresses Agriculture Standing Committee Hearing in Ottawa on Bill C-30, April 1, 2014, www.cpr.ca; Commercial incentives and supply chain collaboration are key to helping move more grain: CN President Mongeau, April 9, 2014, www.ctl.ca; CP CEO calls for face-to-face discussions to address Canadian grain supply chain issues, May 8, 2014, www.cpr.ca; CN transporting "record levels" of Canadian grain, May 28, 2014, www.ctl.ca; and Minister Raitt discusses Canada's rail-based supply chain, June 26, 2014, www.tc.gc.ca; Important Measures for the Grain Handling and Transportation System Now in Force, August 1, 2014, www.tc.gc.ca; CP fights back over Ottawa's new railway regulations, September 18, 2014, www.globeandmail.ca; CN's Claude Mongeau says commercially-aligned regulatory regime is key to railways' ability to support Saskatchewan's growing economy, September 25, 2014, www.cn.ca; and With grain-hauling rules set to expire, railways and farmers spar over extension, November 27, 2014, www.nationalpost.ca; and Government of Canada to maintain minimum grain volume requirements for railways, November 29, 2014, www.tc.gc.ca

[cxiii] Pulse Canada wants to postpone sunset provisions in Fair Rail for Grain Farmers Act, April 19, 2016, www.ctl.ca; Government of Canada intends to work with Parliament to extend certain provisions for rail in the Canada Transportation Act, April 22, 2016, www.tc.gc.ca; and Government of Canada extends provisions for rail in the *Canada Transportation Act, June 15, 2016,* www.tc.gc.ca

[cxiv] Consultation on the treatment of switching services under the Maximum Revenue Entitlement Program, May 15, 2015, www.cta-otc.gc.ca

[cxv] 2023 Budget Legislation Proposes Amendments to the Canada Transportation Act, May 3, 2023, www.macmillan.ca

[cxvi] For background see Grain Transportation Deregulation in Canada, Joseph Monteiro and Gerald Robertson, 46th CTRF Proceedings 2011, pp. 328-343; and Steve Pratte, Policy, regulatory reform and grain hopper cars: Bill C-11 and the "one time hopper car adjustment", 58th CTRF Proceedings 2023, pp. 439-446.

[cxvii] Bill C-11, An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts. 39th Parliament, 1 st Session. 2007.

[cxviii] Consultation on the treatment of switching services under the Maximum Revenue Entitlement Program, May 15, 2015, www.cta-otc.gc.ca

[cxix] Canada Transportation Act, SC 1996, c 10, s 147.

[cxx] Steve Pratte, Policy, regulatory reform and grain hopper cars: Bill C-11 and the "one time hopper car adjustment", 58th CTRF Proceedings 2023, endnote 17, p. 446.

[cxxi] New Reflectors on Trains to Improve Safety, April 28, 2006, www.tc.gc.ca

[cxxii] Transport Canada Orders CN to Restrict Train Speeds under Certain Conditions in Ontario, July 24, 2006, www.tc.gc.ca
[cxxiii] Government of Canada Issues Emergency Safety Directive Regarding Potentially Faulty Train Wheels, June 13, 2008, www.tc.gc.ca
[cxxivcxxiv] In December 2006, the Minister of Transport, Infrastructure and Communities launched an inquiry into the Railway Safety Act (RSA). On February 20, 2007, he announced that an advisory panel has been appointed to conduct a review of the Railway Safety Act. On March 7, 2008, he tabled the RSA review report, *Stronger Ties: A Shared Commitment to Railway Safety*, in the House of Commons. The report presents the findings, which included more than 50 recommendations to improve rail safety in Canada. The three key recommendations are: railway companies should be required to obtain a rail operating certificate once they meet regulated baseline safety requirements, prior to commencing or continuing operations; administrative monetary penalties should be included in the RSA as an additional compliance tool; and railway companies should be required to file annual environmental management plans with Transport Canada to demonstrate they operate in an environmentally responsible manner. The Standing Committee on Transport, Infrastructure and Communities also studied rail safety and issued its own report in May 2008. It included 14 additional recommendations, many building on the recommendations from the Railway Safety Act review. The Government of Canada has addressed the recommendations of both reports and amended the Railway Safety Act to further improve rail safety in Canada. See Improving Rail Safety in Canada: Minister Tables the Railway Safety Act Review Report in the House of Commons, March 7, 2008, www.tc.gc.ca
[cxxv] Government of Canada to improve rail safety for Canadians, June 1, 2010, www.tc.gc.ca
[cxxvi] The Railway Safety Act, April 2013, www.tc.gc.ca
[cxxvii] Expecting federal safety crackdown, CP tightens rules on unattended trains, July 17, 2013, www.globeandmail.ca; Transport Canada announces emergency directive to increase rail safety, July 23, 2013, www.tc.gc.ca; CN will adjust safety practices to comply with Transport Canada directive, July 24, 2013, www.cn.ca; U.S. to consider more rail crude regulations, August 30, 2013, www.americanshipper.com; Minister Raitt meets with the Federation of Canadian Municipalities to reiterate commitment to safe transportation, September 30, 2013, www.tc.gc.ca; Harper government acts to increase safety in the transportation of dangerous goods, October 17, 2013, www.tc.gc.ca; Minister Raitt discusses strengthening safety with the Advisory Council on Railway Safety, October 22, 2013, www.tc.gc.ca; Harper government acts to increase transportation of dangerous goods information sharing between rail companies and municipalities, November 20, 2013, www.tc.gc.ca; Transport Minister threatens to prosecute oil shippers that flout federal safety rules, November 25, 2013, www.globeandmail.ca; and Minister Raitt acts on recommendations in Auditor General's report on rail safety oversight, November 26, 2013, www.tc.gc.ca
[cxxviii] Minister Raitt announces new monetary penalties to strengthen railway safety enforcement, May 16, 2014, www.tc.gc.ca
[cxxix] New regulations to strengthen railway safety oversight, November 19, 2014, www.tc.gc.ca
[cxxx] Minister Raitt announces new regulations for identifying dangerous goods in transport, June 20, 2014, www.tc.gc.ca
[cxxxi] Minister Raitt issues Emergency Directive to slow trains transporting dangerous goods, April 23, 2015, www.tc.gc.ca
[cxxxii] Transport Canada proposes changes to strengthen the safe transportation of dangerous goods, June 5, 2015, www.tc.gc.ca
[cxxxiii] Transport Canada continues to improve the safe transportation of dangerous goods by rail, May 2, 2019, www.tc.gc.ca
[cxxxiv] Proposed amendments will enhance safety for transportation of dangerous goods across Canada, December 13, 2021, www.tc.gc.ca
[cxxxv] Minister of Transport announces proposed changes to the Transportation of Dangerous Goods Regulations to enhance safety for transportation of dangerous goods across Canada, December 20, 2023, www.tc.gc.ca; and Transport Canada beefing up DG regulations, January 9, 2024, www.tc.gc.ca
[cxxxvi] Transport Canada proposing new rail regulations, February 7, 2014, www.ctlc.ca; Transport Canada takes action at six Ottawa railway crossings, April 10, 2014, www.tc.gc.ca; and The Government of Canada introduces new railway regulations to reduce accidents and save lives, December 17, 2014, www.tc.gc.ca
[cxxxvii] Minister Raitt launches Rail Safety Week with new funding for railway crossing improvements, April 27, 2015, www.tc.gc.ca
[cxxxviii] Proposed amendments to the Grade Crossings Regulations will help focus efforts to improve safety at grade crossings, June 18, 2021, www.tc.gc.ca; and Government of Canada announces new amendments that will improve safety at grade crossings, Nov. 29, 2021, www.tc.gc.ca
[cxxxix] Canadians face increased fine for trespassing onto railway prop. and interfering with the safe oper. of the railway, June 23, 2021, www.tc.gc.ca
[cxl] Notice to industry: Agency has determined 2023 regulated interswitching rates for Zone 5, September 18, 2023, www.otc-cta.gc.ca; and Guide to Railway Charges for Crossing Maintenance and Construction 2023, September 15, 2023, www.cta-otc.gc.ca
[cxli] Government of Canada introduces legislation to strengthen rail safety and accountability, February 20, 2015, www.tc.gc.ca; and Legislation to strengthen rail safety and accountability receives Royal Assent, June 18, 2015, www.tc.gc.ca
Canada announces Joint Safety Study on Locomotive Voice and Video Recorders to Improve Rail Safety, April 30, 2015, www.tc.gc.ca
[cxlii] Strengthened liability and compensation regime for rail to come into force June 18, 2016, May 18, 2016, www.tc.gc.ca
[cxliii] Rail Transportation Regulations are finalized, July 10, 2019, www.cta-otc.gc.ca. The complete text of the regulations is available in Part II of the *Canada Gazette*. For more information on the regulations, please visit the Rail Transportation Consultation Web page.
[cxliv] Government of Canada seeking to mandate locomotive voice and video recorders (LVVR), May 16, 2017, www.tc.gc.ca
[cxlv] CP commends Transport Minister for leadership on LVVR, reviewing details of Transportation Modernization Act, May 16, 2017, www.cpr.ca
[cxlvi] Currently, 13 railway companies and 5 local railway companies are within the scope of the proposed Regulations. Steam locomotives, heritage locomotives used exclusively for tourist rail transportation services, locomotives in yard service used exclusively in switching, marshalling, humping, trimming and industrial switching, and locomotives used for testing and evaluation purposes are exempted from the requirements.
[cxlvii] "The Transportation Safety Board (TSB) has been recommending recording devices in locomotive cabs since 2003. The proposed Regulations would impose a total cost of $76.33 million, most of which would be carried by rail companies for the purchase and installation of the devices. The impacts of the proposed Regulations were evaluated using a break-even analysis approach, which aims to determine the minimum quantified benefit required for the benefits of the proposed Regulations to be equal to or greater than the estimated costs. In the central analysis, a reduction of 4.32% in the annual number of in-scope rail occurrences (e.g. accidents or incidents) would be required for the proposed Regulations to break even." Canada Gazette, Part I, Volume 153, Number 21: Locomotive Voice and Video Recorder Regulations, May 25, 2019, www.gazette.gc.ca
[cxlviii] New proposed regulations will better protect railway employees and Canadians along rail corridors, May 24, 2019, www.tc.gc.ca; and Feds lay out proposed new rules for voice, video recorders in locomotives, May 24, 2019, www.ctl.ca

[cxlix] Transport Canada publishes the Locomotive Voice and Video Recorder Regulations, September 2, 2020, www.tc.gc.ca
[cl] Government of Canada approves changes to improve rail safety, February 22, 2021, www.tc.gc.ca
[cli] The first Ministerial Order requires railway companies to maintain lower speeds in metropolitan areas for trains carrying large quantities of crude oil and liquefied petroleum gas i.e. higher risk key trains with further mandatory speed reductions everywhere during the winter months (from November 15 to March 15). This Order also directs companies to address the management of their track maintenance and inspection. The second and third Ministerial Orders were issued to direct railway companies to update the current industry rules governing track safety, and the movement of dangerous goods in Canada. The November 2020 Ministerial Order restricts train speeds based on cold temperature conditions, instead of restricting train speed based on a winter date range as required in the previous Ministerial Order. Railway companies will be required to develop and submit a Winter Operations Plan. Minister of Transport issues Orders to reduce derailments and improve rail safety, April 3, 2020, www.tc.gc.ca; and Minister of Transport issues revised Order to improve rail safety in the winter, November 6, 2020, www.tc.gc.ca
[clii] Government of Canada approves changes to improve railway track safety, May 31, 2021, www.tc.gc.ca
[cliii] Government of Canada approves changes to improve railway track inspections, December 15, 2021, www.tc.gc.ca
[cliv] Minister of Transport announces new measures to improve track conditions, reduce risks of derailments, June 1, 2022, www.tc.gc.ca
[clv] Order Pursuant to Section 32.01 of The Railway Safety Act (MO 21-06), July 16, 2021, www.tc.gc.ca; and Minister of Transport announces new measures to address extreme weather and climate change impacts on rail infrastructure, July 5, 2022, www.tc.gc.ca; New rules to help prevent destruction of rail infrastructure, July 6, 2022, www.insidelogistics.ca; Transport Canada on July 5 announced new fire-mitigation rules and a research-funding program to help railroads improve safety and security and build "climate resiliency", July 7, 2022, www.railwayage.com
[clvi] Strengthening handbrake requirements and preventing runaway trains, July 31, 2015, www.tc.gc.ca
[clvii] Building safer communities: Minister of Transport orders measures to further reduce the risk of serious rail accidents, March 10, 2021, www.tc.gc.ca; and Government of Canada takes action to further reduce the risk of uncontrolled movement of railway equipment, July 30, 2021, www.tc.gc.ca; and Transport Canada Updates Canadian Rail Operating Rules, August 2, 2021, www.railwayage.com
[clviii] Building safer communities: Minister orders measures to further reduce the risk of serious rail accidents, March 10, 2021, www.tc.gc.ca
[clix] Minister announces updated rules to strengthen rail safety and reduce the risk of uncontrolled movements, May 17, 2022, www.tc.gc.ca
[clx] Government of Canada takes steps toward implementing innovative technologies to improve rail safety, February 4, 2022, www.tc.gc.ca; and Transport Canada Eyes Enhanced Train Control, February 8, 2022, www.railwayage.com
[clxi] Minister of Transport announces updates to Duty/Rest Rules for Railway Operating Employees, November 25, 2020, www.tc.gc.ca; and Updated work/rest rules for railway operating employees, November 26, 2020, www.tc.gc.ca
[clxii] A new merger review provision will apply to all transportation undertaking under federal jurisdiction. In these cases, if the Governor-in Council, on the recommendation of the Minister of Transport, decides a merger is in the public interest, it may approve it. The Bureau will conduct the examination of the merger with respect to competition issues and will provide a report to the Minister of Transport.
[clxiii] Canada Transportation Act Amendments Introduced in Parliament, May 9, 2006, www.tc.gc.ca
[clxiv] Minister Garneau highlights proposed freight rail legislation at Edmonton Chamber of Commerce, May 18, 2017, www.tc.gc.ca
[clxv] CP reviewing details of Transportation Modernization Act, supports amendments that improve supply chain Canadian Pacific continues its review of the *Transportation Modernization Act*, or Bill C49, May 18, 2017, www.cpr.ca; and Canadian rail giants say Bill C-49 on long haul routes gives US carriers an advantage, September 13, 2017, www.financialpost.ca
[clxvi] Rail industry responds to proposed Canadian legislation, May 19, 2017, www.railwaygazette.com; and Chair and CEO Scott Streiner addresses the Canadian Association of Railway Suppliers' National Railway Day Conference on November 9, 2017, November 9, 2017, www.cta-otc.gc.ca
[clxvii] Feds response to Bill C-49 amendments 'disappointing': FMA, May 1, 2018, www.ctl.ca; and Farmers urge resolution to Commons Senate standoff over transport bill, May 10, 2018, www.ctl.ca
[clxviii] The interswitching provisions enable a shipper who has a dispute with a Class 1 railway company (local carrier) about a rate, a route, and/or terms of service, to make an application to the Agency for a Long- Haul Interswitching (LHI) order. To better help shippers determine their eligibility and apply for LHI, the Agency has developed a series of reference materials, found in: 1. Checking your eligibility; 2. Long-Haul Interswitching: A guide for freight rail shippers and federal railway companies; 3. LHI Application Form;175; 4. Proposed Rules of Procedures; 5. How to Provide an Undertaking to the Local Carrier; 6. How to Request Confidentiality; and 7. How to Authorize Someone Who is Not a Lawyer to Represent Your Company (published by the Agency) Long-Haul Interswitching reference materials now available, October 15, 2019, www.cta-otc.gc.ca
[clxix] Canadian Transportation Agency Launches Consultation on Rail Transportation, May 31, 2018, www.cta-otc.gc.ca
[clxx] Strengthening the *Port System and Railway Safety in Canada Act*: Minister of Transport introduces a new bill to make our supply chain stronger, November 17, 2022, www.tc.gc.ca; and New bill to focus on ports investment and rail safety, Nov. 18, 2022, www.insidelogistics.ca
[clxxi] Government of Canada proposes to include new freight rail data in Transportation Information Regulations to help strengthen Canada's supply chain infrastructure, May 6, 2022, www.tc.gc.ca; Transport Canada to require more data from railways, Jan. 10, 2023, www.insidelogistics.ca; and Canadian rail shippers praise feds' actions to collect more freight data, February 3, 2023, www.freightwaves.com
[clxxii] Based on the original article published by Joseph Monteiro, *Water Transportation Before and after Deregulation-current Issues Facing the Industry*, CTRF Proceedings 2011, May 2012-May 2012.
[clxxiiiclxxiii] Canada Shipping Act, 2001 Ushers in New Era of Safety and Protection of the Marine Environment, Jul3, 2007, www.tc.gc.ca
[clxxiv] Straight Ahead - A Vision for Transportation in Canada, David M. Collenette, 2003, p. 71, www.publications.ca
[clxxv] *Vision and balance*, report of the Canada Transportation Act Review panel, June 2001, p. 146. Also see pp. 142-145.
[clxxvi] Submission to the Canada Transportation Act Review Panel: Rail, air and marine transportation, February 27, 2015, www.competitionbureau.gc.ca
[clxxvii] Id.
[clxxviii] Submission # 2 to the Canada Transportation Act Review Covering Air, Marine, Truck Freight Transportation, July 21, 2015, p. 7 www.ontruck.org
[clxxix] Id. p. 8.
[clxxx] Canadian International Freight Forwarders Association Brief on Shipping Conference Exemption Act, December 13, 2022, www.ciffa.com
[clxxxi] Canada joins international group investigating freight competition, February 21, 2022, www.insidelogistics.ca
[clxxxii] Shifting the needle – Part three: FMA, June 9, 2023, www.insidelogistics.ca

[clxxxiii] The legislation included penalties of up to $400 per day for workers and $10,000 per day for the union or employer for contravening the legislation.

[clxxxiv] Uncertainty at B.C. ports continues as possible deal emerges in labour dispute, July 21, 2023, www.financialpost.ca; New tentative deal reached in B.C. port strike, July 31, 2023, www.nationalpost.ca; New settlement reached in BC ports strike, July 31, 2023, www.insidelogistics.ca; B.C. port workers vote on deal as businesses calculate losses, August 3, 2023, www.todaystrucking.ca; B.C. port workers ratify deal, end labor disruptions, August 5, 2023, www.todaystrucking.com; and B.C. labour dispute: It's time for an industrial inquiry commission into ports and automation, August 9, 2023, www.insidelogistics.com

[clxxxv] It is intended to: 1. clarify the December 2003 transfer of authorities respecting marine safety and security from the Department of Fisheries and Oceans to the Department of Transport; 2. consolidate policy responsibility for all aspects of marine safety in the Department of Transport; 3. improve the responsiveness, coherence and consistency of the marine regulatory framework for Canadians; 4. enhance service delivery in these matters for all stakeholders; 5. ensure that roles and responsibilities of the government remain the same, in whatever department they may be found; 6. preserve the authority of the Department of Fisheries and Oceans to carry out the operational role assigned to it; 7. ensure that the powers, duties and functions transferred from the Minister of Fisheries and Oceans to the Minister of Transport are unambiguous in order to prevent litigation or any contentious issues; and 8. preserve the logic and coherence of the relevant statutes. Bill C-3 An Act to amend the Canada Shipping Act, the Canada Shipping Act, 2001, the Canada National Marine Conservation Areas Act and the Ocean Act, introduced into the House of Commons, First Reading, October 8, 2004, www.parl.gc.ca

[clxxxvi] World-Class Tanker Safety System: Amendments to the Canada Shipping Act, 2001 (Safeguarding Canada's Seas and Skies Act), March 2013, www.tc.gc.ca

[clxxxvii] Ministers thank Tanker Safety Expert Panel for its recommendations, December 3, 2013, www.tc.gc.ca

[clxxxviii] Increasing monitoring of ships to detect pollution in Canada's waters, February 19, 2014, www.tc.gc.ca; and Harper government strengthens world-class tanker safety system, May 13, 2014, www.tc.gc.ca

[clxxxix] Notice to Industry: Changes to the Processing of Coasting Trade Applications, June 10, 2015, www.cta-otc.gc.ca

[cxc] Government of Canada introduces *Oil Tanker Moratorium Act, May 12, 2017*, www.tc.gc.ca

[cxci] Alberta's new premier urges Senate committee to scrap oil tanker ban bill, May 1, 2019, www.ctl.ca; Trudeau's Senate appointees save B.C. oil tanker ban bill from defeat, June 6, 2019, www.cbcnews.ca; and The Oil Tanker Moratorium Act receives Royal Assent, June 21, 2019, www.tc.gc.ca

[cxcii] Canada Moves to Further Protect its Sovereignty and Safeguard Arctic Waters from Pollution, December 3, 2008, www.tc.gc.ca; and Legislation aims to protect Arctic sovereignty, control over marine activity, December 9, 2008, www.ctl.ca.

[cxciii] Canada moves to further protect its sovereignty and safeguard Arctic waters from pollution, January 28, 2009, www.tc.gc.ca; The Government of Canada takes action to protect Canada's Arctic waters and enhance northern sovereignty, June 17, 2009, www.tc.gc.ca; and Legislation to protect Canada's arctic waters comes into force, August 6, 2009, www.tc.gc.ca

[cxciv] Transport Canada introduces new *Arctic Shipping Safety and Pollution Prevention Regulations*, January 10, 2018, www.tc.gc.ca

[cxcv] The Government of Canada receives the Office of the Auditor General's report on the surveillance of Arctic waters, November 15, 2022, www.tc.gc.ca; and Auditor general finds aging icebreakers, aircraft hamper monitoring of Arctic waters, Toronto Star, November 15, 2022, www.torontostar.ca

[cxcvi] Minister of Transport announces a domestic ban on the use and carriage of heavy fuel oil in the Arctic, June 28, 2024, www.tc.gc.ca

[cxcvii] Proposed Regulations to Prevent Pollution from Ships and to Control the Carriage of Dangerous Chemicals on Ships, June 16, 2006, www.tc.gc.ca

[cxcviii] Regulations to Prevent Vessels from Discharging Sewage in the Bras D'or Lake, July 6, 2006, www.tc.gc.ca

[cxcix] Canada works to cut pollution from shipping and improve safety standards for workers, November 24, 2009, www.tc.gc.ca

[cc] The Government of Canada ensuring that polluters pay for causing hazardous and noxious substances spills, May 1, 2018, www.tc.gc.ca

[cci] Government of Canada marks the one-year anniversary of the Oceans Protection Plan and introduces the *Wrecked, Abandoned or Hazardous Vessels Act*, October 30, 2017, www.tc.gc.ca

[ccii] Government of Canada marks the coming into force of the Wrecked, Abandoned or Hazardous Vessels Act, July 30, 2019, www.tc.gc.ca

[cciii] Transport Canada proposes requirements for ships to exchange their ballast water outside Canadian waters, June 13, 2005, www.tc.gc.ca; and Guide to Canada's ballast water regulations edition 9, TP 13617E, Transport Canada, June 1, 2019.

[cciv] Government of Canada Announces Ballast Water Regulations, June 28, 2006, www.tc.gc.ca

[ccv] Minister Garneau proposes new regulations on ballast water to better protect against aquatic invasive species, June 7, 2019, www.tc.gc.ca

[ccvi] Ballast Water Regulations, June 23, 2021, www.tc.gc.ca and Minister of Transport announces new regulations to help prevent spread of aquatic invasive species in Canada, June 23, 2021, www.tc.gc.ca

[ccvii] The Minister of Transport launches new program to further prevent aquatic invasive species in the Great Lakes and St. Lawrence River regions, February 22, 2023, www.tc.gc.ca

[ccviii] Canada orders vessels to reduce speed in Gulf of St Lawrence to save whales, August 21, 2017, www.transportweekly.com; Transport Canada issues Gulf of St. Lawrence speed restriction fine, September 8, 2017, www.tc.gc.ca; Transport Canada issues another fine for non-respect of the speed restriction in the Gulf of St. Lawrence, September 14, 2017, www.tc.gc.ca; and Transport Canada issues another fine for not respecting the speed restriction in the Gulf of St. Lawrence, September 27, 2017, www.tc.gc.ca**;** Human activity blamed for increase in right whale deaths: report, October 5, 2017, www.globalnews.ca; Transport Canada issues two more fines for not respecting the speed restriction in the Gulf of St. Lawrence, October 16, 2017, www.tc.gc.ca; Transport Canada issues three more fines for not respecting the speed restriction in the Gulf of St. Lawrence, November 21, 2017, www.tc.gc.ca; Transport Canada issues another fine for non-respect of the speed restriction in the Gulf of St. Lawrence, December 22, 2017, www.tc.gc.ca; and Transport Canada issues another fine for non-respect of the speed restriction in the Gulf of St. Lawrence, December 29, 2017, www.tc.gc.ca

[ccix] Federal government's new commitments to protect whales under the Oceans Protection Plan include support for port authority ECHO Program, March 22, 2018, www.metrovancouver.com; and The Government of Canada takes immediate action to protect endangered whales through the Oceans Protection Plan, June 22, 2018, www.tc.gc.ca.

[ccx] Government of Canada issues Interim Order and signs agreement with whale watching association to further support recovery of Southern Resident killer whales, May 27, 2019, www.tc.gc.ca;

[ccxi] Marine industry and government sign five-year commitment to continue voluntary measures to protect Southern Resident killer whales, May 10, 2019, www.portmetrovancouver.com; and Expanded voluntary ship slowdown through Haro Strait and Boundary Pass set to begin, June 4, 2019, www.portmetrovancouver.com

[ccxii] Government of Canada unveils 2020 North Atlantic right whales protection measures, February 27, 2020, www.tc.gc.ca; and Government of Canada announces second year of enhanced measures to protect Southern Resident killer whales, May 7, 2020, www.tc.gc.ca

[ccxiii] Important measures taken in 2020 to protect Southern Resident killer whales remain in effect, December 10, 2020, www.tc.gc.ca

[ccxiv] Government of Canada announces second year of enhanced measures to protect Southern Resident killer whales, May 7, 2020, www.tc.gc.ca; Important measures taken in 2020 to protect Southern Resident killer whales remain in effect, December 10, 2020, www.tc.gc.ca; and Government of Canada continues to strengthen measures to protect Southern Resident killer whales, April 14, 2021, www.tc.gc.ca

[ccxv] The Government of Canada will continue to protect Southern Resident killer whales, December 29, 2021, www.tc.gc.ca; Government of Canada puts important measures in place to protect Southern Resident killer whales, April 29, 2022, www.tc.gc.ca; The Government of Canada outlines 2022 measures to protect Southern Resident killer whales, April 29, 2022, www.tc.gc.ca; and Government of Canada launches request for proposal to develop "next generation" quiet vessel technologies, June 16, 2022, www.tc.gc.ca

[ccxvi] In general, the Government of Canada recognizes that Southern Resident killer whales face imminent threats to their survival. Our measures focus on addressing the three primary threats to Southern Resident killer whales: acoustic and physical disturbance, prey availability and accessibility, and contaminants. Acoustic and physical disturbances from vessels measures include: 1. Vessels must stay at least 400 metres away from all killer whales year-round in southern British Columbia coastal waters between Campbell River to just north of Ucluelet. 2. Commercial whale-watching and ecotourism companies that receive an authorization from the Minister of Transport will be able to view transient (Biggs) killer whales from 200 metres, given their expertise in identifying different types of killer whales. This provision does not apply to the Southern Resident killer whale population. 3. If a vessel finds itself within 400 metres of a killer whale, they are asked to turn off fish finders and echo sounders and put the engine in neutral when safe to do so to allow animals to pass. 4. If a vessel is within 1,000 metres of a killer whale, they are asked to reduce speed to less than 7 knots when safe to do so to lessen engine noise and vessel wake. The Government of Canada outlines 2023 measures to protect Southern Resident killer whales, April 26, 2023, www.tc.gc.ca

[ccxvii] Government of Canada announces new measures and funding to protect southern Resident killer whales, June 3, 2024, www.tc.gc.ca; and The Government of Canada outlines 2024 measures to protect Southern Resident killer whales, June 3, 2024, www.tc.gc.ca

[ccxviii] Statement by Minister Garneau regarding actions taken to address the recent deaths of North Atlantic right whales, June 26, 2019, www.tc.gc.ca;

[ccxix] Government of Canada introduces new, additional measures to protect the North Atlantic right whale, July 8, 2019, www.tc.gc.ca;

[ccxx] Transport Canada fines a vessel for contravening the speed restriction in the Gulf of St. Lawrence, July 19, 2019, www.tc.gc.ca; Transport Canada issues two fines for vessels who contravened the speed restriction in the Gulf of St. Lawrence, July 26, 2019, www.tc.gc.ca; Transport Canada fines vessels for breaking speed limit in Gulf of St. Lawrence, August 12 2019, www.tc.gc.ca; Transport Canada fines a vessel for contravening the speed restriction in the Gulf of St. Lawrence, August 20, 2019, www.tc.gc.ca; Canadians find save-the-whale speed limits put them in danger, August 7, 2019, www.transportweekly.com; Government of Canada adjusts measures to protect the North Atlantic right whales, August 2, 2019, www.tc.gc.ca; The Panama Canal implements speed limits to protect whales, August 2, 2019, www.ajot.com; and Government of Canada supports design of the world's first low-noise and low-emissions tanker to protect oceans health, August 30, 2019, www.tc.gc.ca

[ccxxi] Government of Canada unveils 2020 North Atlantic right whales protection measures, February 27, 2020, www.tc.gc.ca

[ccxxii] Significant action taken in 2020 to protect North Atlantic right whales in Canada, November 18, 2020, www.tc.gc.ca

[ccxxiii] Government of Canada unveils 2020 North Atlantic right whales protection measures, Feb. 27, 2020, www.tc.gc.ca; Significant action taken in 2020 to protect North Atlantic right whales in Canada, Nov. 18, 2020, www.tc.gc.ca; Government of Canada outlines its 2021 measures to protect North Atlantic right whales, Feb. 18, 2021, www.tc.gc.ca; and Backgrounder: Protecting North Atlantic right whales, www.tc.gc.ca

[ccxxiv] Government of Canada announces 2022 North Atlantic right whale protection measures, March 10, 2022, www.canada.ca

[ccxxv] 2023 traffic management measures to protect North Atlantic right whales in Canada, April 19, 2023, www.tc.gc.ca

[ccxxvi] Canada's New Government Announces New Regulations to Protect Marine Environment, May 8, 2007, www.tc.gc.ca

[ccxxvii] The Government of Canada and industry announce new environmental measures for cruise ships, April 4, 2022, www.tc.gc.ca; and Minister of Transport announces mandatory environmental measures for cruise ships, June 23, 2023, www.tc.gc.ca

[ccxxviii] The Government of Canada releases first results of environmental measures for cruise ships, August 18, 2022, www.tc.gc.ca

[ccxxix] Minister of Transport announces Canadian Green Shipping Corridors Framework and Canada joining the Zero-Emission Shipping Mission, November 7, 2022, www.tc.gc.ca

[ccxxx] Canada signs International Joint Ministerial Declaration to Strengthen Marine Safety, Transport Canada, November 3, 2004, www.tc.gc.ca

[ccxxxi] New Regulations Ensure Safer Practices for Cargo Vessels, June 27, 2007, www.tc.gc.ca

[ccxxxii] The Government of Canada introduces proposed new regulations to protect passengers and crew aboard vessels, October 23, 2009, www.tc.gc.ca

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[ccxxxiv] Canada ratifies new regulations to improve marine worker safety, June 30, 2010, www.tc.gc.ca

[ccxxxv] Government of Canada introduces regulations to require voyage data recorders on large Canadian vessels, November 3, 2011, www.canada.ca

[ccxxxvi] Updated: Ferry Accessibility for Persons with Disabilities - Code of Practice, November 6, 2014, www.cta-otc.gc.ca

[ccxxxvii] Government of Canada announces intention to defer the start of cruise ship season in Canada as COVID-19 response measure, March 13, 2020, www.tc.gc.ca

[ccxxxviii] The Government of Canada announces new measures for ferries and commercial passenger vessels capable of carrying more than 12 passengers, April 5, 2020 www.tc.gc.ca

[ccxxxix] Minister Garneau announces updated measures for cruise ships and passenger vessels in Canadian waters up to October 31, 2020, May 29, 2020, www.tc.gc.ca

[ccxl] Minister Garneau announces extended measures for cruise ships and pleasure craft in Canada, Oct. 29, 2020, www.tc.gc.ca

[ccxli] Minister Garneau announces updated measures for cruise ships and passenger vessels in Canadian waters up to Oct. 31, 2020, May 29, 2020, www.tc.gc.ca

[ccxlii] The Government of Canada, Gitga'at and Gitxaala Nations announce new guidelines to improve marine safety on the North Pacific Coast, November 22, 2022, www.tc.gc.ca

[ccxliii] Marine Safety Fees Regulations: SOR/2021-59, April 14, 2021, www.canadagazette.ca
[ccxliv] Minister of Transport announces amendments to the Marine Safety Fees Regulations, February 28, 2024, www.tc.gc.ca
[ccxlv] In 2016, Transport Canada Marine Safety and Security began to modernize fees found in different regulations made under the *Canada Shipping Act*, 2001, like the Board of Steamship Inspections Scale of Fees and the Port Wardens Tariff. Until recently, Transport Canada's fees have not factored-in inflation, the cost delivering services, new services, changes to international conventions and improvements in infrastructure and technology. The current fee regime for marine services is spread throughout various regulations and is very complex. This leads to confusion, inconsistency, and unpredictability for the industry. Finally, the *Service Fees Act* (SFA) recently changed the legal framework governing fee setting. The SFA represents the Government's commitment to modernizing its services and delivering value to Canadians. The SFA applies to all fees that currently exist and the ones that Transport Canada plans to introduce. *Marine Safety Fees Regulations* came into force on April 1, 2021.
In 2016, Transport Canada Marine Safety and Security began to modernize fees found in different regulations made under the *Canada Shipping Act*, 2001, like the Board of Steamship Inspections Scale of Fees and the Port Wardens Tariff. Until recently, Transport Canada's fees have not factored-in inflation, the cost delivering services, new services, changes to international conventions and improvements in infrastructure and technology. The current fee regime for marine services is spread throughout various regulations and is very complex. This leads to confusion, inconsistency, and unpredictability for the industry. Finally, the *Service Fees Act* (SFA) recently changed the legal framework governing fee setting. The SFA represents the Government's commitment to modernizing its services and delivering value to Canadians. The SFA applies to all fees that currently exist and the ones that Transport Canada plans to introduce. *Marine Safety Fees Regulations* came into force on April 1, 2021.
See "Implementing Marine Safety Fees Regulations (MSFR), April 19, 2012, www.tc.gc.ca
[ccxlvi] Transport Minister Announces Measures to Improve Fishing Vessel Safety, March 10. 2006, www.tc.gc.ca
[ccxlvii] Canada's New Government Announces New Marine Personnel Regulations, June 13, 2007, www.tc.gc.ca
[ccxlviii] Transport Canada Proposes Vessel Operation Restriction Regulations, August 21, 2007, www.tc.gc.ca
[ccxlix] The Government of Canada Rolls out Regulations for River Rafting and a New Shoreline Speed Limit in Nova Scotia, April 30, 2008, www.tc.gc.ca
[ccl] The Government of Canada to Restrict Navigation on Lakes in Quebec, Ontario and British Columbia, July 3, 2008, www.tc.gc.ca
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[ccliii] Statement by Member of Parliament David Graham on changes to *Vessel Operation Restriction Regulations*, December 13, 2017, www.tc.gc.ca
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[cclvi] Transport Canada Proposes Commercial River Rafting Regulations, August 14, 2007, www.tc.gc.ca
[cclvii] The Government of Canada introduces new regulations for small vessels, May 17, 2010, www.tc.gc.ca
[cclviii] Government of Canada amending Small Fishing Vessel Inspection Regulations to improve safety, July 13, 2016, www.tc.gc.ca
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[cclx] Minister announces new regs. to improve marine safety, security and the protection of marine envir. in Canada, Oct. 28, 2020, www.tc.gc.ca
[cclxi] Minister of Transport announces modernized vessel construction and equipment regulations, January 3, 2024, www.tc.gc.ca
[cclxii] Canada's Government takes action to protect environment with changes to the Marine Liability Act , June 25, 2009, www.tc.gc.ca; and Canada won't sign cargo shipping liability reform, September 28, 2009, www.todaystrucking.com. It is also worthwhile noting that Canada also decided not to sign the Rotterdam Rules, an international agreement, that attempts to set liability limits for lost or damaged marine cargo. The new rules are an attempt to replace the Hague Rules and modernize maritime carrier liability guidelines, which were first set out in the 1920s.
[cclxiii] Harper government reaffirms Canada's commitment to protecting Canada's coasts and shores, October 18, 2013, www.tc.gc.ca
[cclxiv] Minister Garneau announces new regulations to better financially protect marine passengers in the event of marine accidents, December 12, 2018, www.tc..gc.ca
[cclxv] New Proposed Regulations for Marine Safety Violations, Nov. 7, 2007, www.tc.gc.ca
[cclxvi] New Regulations Set Fines for Marine Safety Violations, April 16, 2008, www.tc.gc.ca
[cclxvii] Minister of Transport introduces new regulations for enhanced safety and enforcement in Canada's marine transportation system, July 10, 2023, www.tc.gc.ca
[cclxviii] Government of Canada increases marine shipping penalties to a maximum of $250,000 per violation, April 15, 2024, www.tc.gc.ca
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[cclxxi] New Marine Security Requirements Come into Force July 1, 2004, June 30, 2004, www.tc.gc.ca
[cclxxii] Transport Canada Announces Consultations on Marine Security Regulations, September 17, 2004, www.tc.gc.ca
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[cclxxv] The Government of Canada takes action to improve security of domestic ferries, October 5, 2009, www.tc.gc.ca
[cclxxvi] Canada announces news procedures for domestic ferries for detecting and preventing security threats, December 23, 2009, www.tc.gc.ca
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[cclxxxi] Changes to the Port Authorities Management Regulations, May 30, 2007, www.tc.gc.ca
[cclxxxii] Transport Minister Introduces Amendments to the Canada Marine Act, November 16, 2007, www.tc.gc.ca
[cclxxxiii] Bill amending the Canada Marine Act Receives Royal Assent, June 18, 2008, www.tc.gc.ca
[cclxxxiv] Canada's ports policy needs to move into the 21st century, October 25, 2018, www.ctl.ca

[cclxxxv] Ports Modernization Review, October 11, 2022, www.tc.gc.ca; The Government of Canada announces how it will change the way ports work to strengthen our supply chain and make life more affordable October 11, 2022, www.tc.gc.ca; and Feds to update ports' legislation, October 14, 2022, www.insidelogistics.ca

[cclxxxvi] Transport Minister introduces the Pacific Gateway Act, October 20, 2005, www.tc.gc.ca

[cclxxxvii] Government of Canada introduces new measures to ensure Canada is better equipped, better regulated, and better prepared to protect its marine environment and coastal communities, May 31, 2017, www.tc.gc.ca; and Government of Canada to improve local maritime situational awareness through the Oceans Protection Plan, December 8, 2017, www.tc.gc.ca

[cclxxxviii] Government of Canada releases the final report of the *Pilotage Act* Review undertaken as part of the Oceans Protection Plan, May 22, 2018, www.tc.gc.ca

[cclxxxix] The Government of Canada announces new measures in force with passage of Budget Implementation Act to modernize marine protection and safety as part of the Oceans Protection Plan, July 12, 2023, www.tc.gc.ca

[ccxc] Transport Canada Tables Amendments to the Pilotage Act, June 19, 2007, www.tc.gc.ca

[ccxci] Transport Canada Tables Amendments to the Pilotage Act, October 26, 2007, www.tc.gc.ca

[ccxcii] For example, on September 11, 2009, the Pacific Pilotage Authority made amendments to the regulation governing their tariffs which resulted in higher charges for fully laden cargo vessels than for cruise ships. The amended regulations equalized the charges by allowing a gross tonnage charge and by eliminating the current charge for navigating through the Seymour Narrows channel. In October 2009, the Great Lakes Pilotage Authority amended their tariff following consultation and discussion. The amendment resulted in a 15-per-cent temporary surcharge which will apply to shipping industry vessels transiting the Great Lakes until December 31, 2010.

[ccxciii] The recommendations were grouped as follows: 1. Purpose and Principles (2); 2. Governance (4); 3. Labour (4). 4. Safety Framework (17); 5. Tariff and Fees (5); and Technical Amendments (4). The recommendations for purpose and principles was made to enhance policy clarity, predictability and national consistency through an expanded statement of legislative purpose and governing policy principles, which are consistent with the Canada Transportation Act's National Transportation Policy. The recommendations for governance was made to provide for amalgamation of the four Pilotage Authorities into a single national entity to achieve cost-savings and improvements in service delivery. The recommendations regarding tariff and fees were made to grant the Pilotage Authorities complete authority to fix tariffs and other fees. In addition, clear directions and guidelines had to be established within the legislation to require proper notice and consultation with stakeholders. If changes are made to the tariff structure, consideration will need to be given to an objection process that ensures the checks and balances of the current system are maintained given the monopoly structure of pilotage.[ccxciii] The Report concluded with the statement "…it is now time for the legislation to be updated to reflect the realities of today, as well as the possibilities and innovations of the coming future).

[ccxciv] Federal government moves toward modernizing Navigable Waters Protection Act, May 8, 2009, www.tc.gc.ca

[ccxcv] Government of Canada introduces navigation law amendments, October 18, 2012, www.tc.gc.ca

[ccxcvi] New legislation protects Canadians' right to navigate on their waters: The Canadian Navigable Waters Act takes effect today, August 28, 2019, www.tc.gc.ca

[ccxcvii] This is based on the original article by Joseph Monteiro, *A Review of Trucking Transportation in Canada Before and after Deregulation*, CTRF Proceedings 2011, May 2011 – May 2011.

[ccxcviii] Statement by the Minister of Transport, September 28, 1984.

[ccxcix] Motor Vehicle Transport Act (*MVTA*) Review, Discussion Paper, Transport Canada, Motor Carrier Policy Branch and Road Safety Branch, April 1997, at p. 14.

[ccc] Review Of The Motor Vehicle Transport Act (*MVTA*) Review, Position Paper, Transport Canada, February 1998, at p. 18.

[ccci] Order In Council Number P.C./C.P. 1999-1469.

[cccii] TRANSPORTATION IN CANADA 1996, Annual Report, Transport Canada 1997, TP13012E, at p. 82.

[ccciii] See studies by Cairns and Kirk; Chow; Kahn; Bonsor; Oum and B.C.P.

[ccciv] A Historical Perspective on the Review of the TDG Act, Transport Canada, November 14, 2012, www.tc.gc.ca

[cccv] A Senate committee on transportation in its report "Time for a New National Vision - Opportunities and Constraints for Canada in the Global Movement of Goods" recommended that the federal government approve several crucial trucking initiatives urged by the industry. The report supported the adoption of new environmental technologies as demanded by the trucking industry through tax incentives and accelerated depreciation. It also suggested that Citizenship and Immigration Canada classify long-distance truck drivers as skilled labor to allow entry of more foreign workers into Canada. In addition, the Canadian Council of Motor Transport Administrators (CCMTA) should harmonize trucking regulations across the country which affects labour productivity. It also called for swift action in case of labour problems as occurred at the Port of Vancouver in 2005. Further, the marketplace should establish compensation rates for container trucking and the trucking officials made it clear that they do not approve of the way in which industry participants were driven to the licensing regime. Senate agrees with harmonized trucking regs, new technology incentives, July 21, 2008, www.todaystrucking.ca

[cccvi] Anti-theft immobilizing systems to become mandatory for new cars, March 9, 2005, www.tc.gc.ca

[cccvii] Amendments to the Motor Vehicle Transport Act, 1987, June 10, 2005, www.ctc.gc.ca

[cccviii] Government of Canada to Harmonize Bumper Standard, April 2, 2008, www.tc.gc.ca

[cccix] Government of Canada enhances tire safety regulations, November 20, 2013, www.tc.gc.ca

[cccx] House of Commons transport committee report recommends ELDs, electronic stability control for trucks, March 15, 2015, www.ctl.ca; and Minister Raitt supports two electronic technologies for trucks and buses, March 19, 2015, www.tc.gc.ca

[cccxi] Transport Canada Issues Final Rule on Electronic Stability Control for Heavy Trucks, June 14, 2017, www.ontruck.ca; and New regulations to make electronic stability control and electronic logging devices mandatory, December 18, 2017, www.tc.gc.ca

[cccxii] Statement by the Minister of Transport on electronic logging devices for commercial vehicles, March 2, 2021, www.tc.gc.ca

[cccxiii] Update: ELD Cross Country Enforcement Landscape January 2023, January 6, 2023, www.ontruck.ca; Quebec ELD mandate to be enforced April 30, January 23, 2023, www.todaystrucking.com; Provinces differ in ELD enforcement penalties, Feb. 3, 2023, www.todaystrucking.com; and Rollout of ELD Mandates Continue Across Canada, March 7, 2023, www.ontruck.org

[cccxiv] Ontario Lengthens B-trains; Gives Tow Trucks Right of Way, March 18, 2014, www.todaystrucking.com; and Proposed B-train Configuration Bill to Accommodate Safety, Environmental Enhancements, October 21, 2014, www.ontruck.ca

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[cccxvi] New regulations on weights and dimensions and inspections, October 3, 2014, www.ctl.ca; and CTA Welcomes Approval of Safety and Enviro-friendly Technology, October 7, 2014, www.cantruck.ca

[cccxvii] Amendments to Vehicle Weights and Dimensions Regulation in Manitoba, August 28, 2015, www.cantruck.ca

[cccxviii] MTO Approves Regulation Change for Smart Lift Axles on Trailers and Longer Tractors with Multi-Axle Trailers, July 9, 2019, www.ontruck.ca; and Ontario updates SPIF rules, July 5, 2019, www.todaystrucking.com

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[cccxx] Government of Canada intends to introduce legislation for new vehicle recall powers, June 1, 2015, www.tc.gc.ca

[cccxxi] New legislation protects Canadian consumers from vehicle defects, May 11, 2016, www.tc.gc.ca; and Strengthening Motor Vehicle Safety for Canadians, May 11, 2016, www.tc.gc.ca

[cccxxii] Speaking notes An Act to Amend the Motor Vehicle Safety Act, September 19, 2017, www.tc.gc.ca

[cccxxiii] See footnote 104 in Transportation Digest for January – June 2018 and footnote 102 in Transportation Digest for July – December 2018.

[cccxxiv] Proposed regulations improve rear visibility for drivers, save lives and prevent injuries, October 31, 2016, www.tc.gc.ca;

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[cccxxvi] Federal government making transit safer for Canadians, March 11, 2009, www.tc.gc.ca

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[cccxxxi] Ottawa unveils plan to reduce heavy duty truck GHG emissions, April 15, 2012, www.ctl.ca

[cccxxxii] Canada to align GHG regs with US, February 25, 2013, www.ctl.ca; and New GHG Regs Practical, But Can Be Improved, says Bradley, February 26, 2013, www.todaysgtrucking.ca

[cccxxxiii] Regulating Zero Emission Vehicles in Canada: The Final Federal Regulations are Now in Place, Timothy Cullen, Martin Thiboutot and Adelaide Egan * | April 2024 – Volume 12, Issue 1, 2024, Energy Quarterly Regulation.

[cccxxxiv] Canada introduces toughest testing ever for child car seats, October 10, 2009, www.tc.gc.ca

[cccxxxv] Canada strengthens vehicle safety standards, February 14, 2013, www.tc.gc.ca

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[cccxxxvii] Minister of Transport proposes changes to school buses to boost safety, July 6, 2022, www.tc.gc.ca

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[cccxliii] Proposed amendments will enhance safety for transportation of dangerous goods across Canada, December 13, 2021, www.tc.gc.ca

[cccxliv] Minister of Transport announces proposed changes to the Transportation of Dangerous Goods Regulations to enhance safety for transportation of dangerous goods across Canada, December 20, 2023, www.tc.gc.ca

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[ccclv] Ontario to fine high drivers as of Oct. 2, September 30, 2016, www.todaystrucking.com

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[ccclviii] Ontario Introduces Legislation to Keep our Roads Safe, Protect Frontline Workers, 8. Schoolchildren, and Motorcyclists, May 2, 2019, www.mto.gov.on.ca; and Ontario Passes the Getting Ontario Moving Act, June 4, 2019, www.mto.gov.on.ca

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[ccclx] MTO Announces Proposed Enhancements to Roadside Enforcement and Truck Driver Training, May 16, 2024, www.ontruck.ca

[ccclxi] Saskatchewan introduces mandatory truck-driver training for farmers, May 29, 2019, www.ctvnews.ca

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ccclxxi British Columbia permanently caps food delivery service fees, November 4, 2022, www.globalnews.ca; and First permanent delivery-fee cap in Canada to come into effect Jan. 1 in B.C., December 1, 2022, www.gloablanews.ca

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ccclxxiii North American Supply Chain Preparing for Border and Domestic Vaccination Mandates: CTA, January 5, 2022, www.ontruck.org; Unvaccinated cross-border truck drivers face quarantines and screening Jan. 15, January 10, 2022, www.todaystrucking.ca; ATA warns of continued shortages, bottlenecks, January 12, 2022, www.ajot.com; Feds Provide Details of Vax Mandate Enforcement Beginning January 15, January 12, 2022, www.ontruck.ca; BREAKING NEWS: Border-crossing Canadian truck drivers won't face quarantines, testing under vaccine mandate, January 12, 2021, www.todaystrucking.ca; CTA Update: Feds Clarify that Border Vax Mandate Remains in Effect for Canadian Truck Drivers as of Jan. 15, 2022, January 14, 2022, www.ontruck.ca; Vaccine rules for truck drivers entering Canada come into effect, January 17, 2022, www.insidelogistics.ca; U.S. confirms Canadian truckers will need to be vaccinated as of Jan. 22, January 20, 2022, www.todaystruck.ca; Trudeau, O'Toole stress need for truck drivers to get vaccinated, January 24, 2022, www.todaystrucking.ca; Business groups urge feds to walk back trucker vaccine mandate, January 25, 2022, www.insidelogistics.ca; Joint Statement by Ministers Alghabra, O'Regan and Qualtrough, and the President of the Canadian Trucking Alliance, January 25, 2022, www.tc.gc.ca; Trucker protest won't cause food shortages, government says, January 26, 2022, www.insidelogistics.ca; and Feds Confirm Border Vaccine Mandate Remains in Place for Truck Drivers; Domestic Mandate for Federally Regulated Sectors Suspended, June 14, 2022, www.cantruck.ca

ccclxxiv Govt of Canada to Remove Border Vaccine Mandate and Other COVID Measures on Oct 1, September 26, 2022, www.cantruck.ca; and Canada to lift vaccination requirements at border, September 26, 2022, www.todaystrucking.com

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ccclxxvi Truckers blocking U.S. border must go, Kenney says, January 31, 2022, www.insidelogistcs.ca; Statement by OTA President Stephen Laskowski on GTA Protests, February 5, 2022, www.cantruck.ca; Bigger fines coming to Ottawa protesters, city explores options to towing, February 9, 2022, www.todaystrucking.com; Auto industry crippled by border blockades, February 11, 2022, www.insidelogistics.ca; Border blockades may sour US feelings towards Canada, February 11, 2022, www.insidelogistics.ca; ODTA accuses Ford government of double standards during protests, February 11, 2022, www.todaystrucking.ca; Ambassador Bridge reopens, Coutts remains closed, Feb. 14, 2022, www.insidelogistics.ca; and Ambassador Bridge reopens as protests block other US-Canada border crossings, February 14, 2022, www.frreightwaves.com; Windsor limits access to bridge as blockade cleared, Feb. 15, 2022, www.insidelogistics.ca; CTA Statement on Government of Canada Invoking of Emergencies Act, February 15, 2022, www.cantruck.ca; and Truck traffic plunged during Canada-U.S. border blockades, February 22, 2022, www.todaystrucking.com

ccclxxvii Emergencies Act crackdown on 'Freedom Convoy' was justified: inquiry, February 18, 2023, www.todaystrucking.com

ccclxxviii Court rules Liberals' use of Emergencies Act was unjustified, unreasonable, January 23, 2024, www.nationalpost.ca

ccclxxix Government of Canada announces safety regulations to support the International Bridges and Tunnels Act, 2007, February 18, 2009, www.tc.gc.ca

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ccclxxxii Harper Government introduces *Administrative Monetary Penalties Regulations* to support the *International Bridges and Tunnels* Act, August 1, 2012, www.tc.gc.ca

ccclxxxiii WestJet in the west, Air Canada in the east: Why Canada's airlines are becoming more regional, February 23, 2023, www.cbc.ca

ccclxxxiv On July 29, 2024, the Competition Bureau officially launched its market study of competition in domestic air passenger services. The launch of the market study follows the completion of the consultation on its scope, and the Minister of Innovation, Science and Industry's approval of the final terms of reference. This market study will allow the Bureau to better understand what is driving the competition issues in the domestic airline industry. Specifically, the Bureau plans to examine three key topics: 1. the state of competition in Canada's airline industry; 2. the barriers to entry and expansion that exist in the domestic industry; and 3. the impediments to Canadians seeking to make informed choices for air travel. The Bureau will publish the results of the market study in a final report, which will make recommendations to improve competition for the benefit of Canadian air passengers, as well as the workers and entrepreneurs who enable these services. See Competition Bureau officially launches study of competition in Canada's airlines industry, July 29, 2024, www.competitonbureau.gc.ca

ccclxxxv On October 24, 2024, the Justice Department's Antitrust Division and the Department of Transportation jointly announced a broad public inquiry into the state of competition in air travel. The agencies are seeking public information on consolidation, anticompetitive conduct, and a wide range of issues affecting the availability and affordability of air travel options. The topics covered in the agencies' joint Request for Information (RFI) include previous airline mergers, exclusionary conduct, airport access, aircraft manufacturing, airline ticket sales, pricing, and rewards practices, and the experiences of aviation workers. Justice Department and Department of Transportation Launch Broad Public Inquiry into the State of Competition in Air Travel, October 24, 2024, www.dot.gov

ccclxxxvi a. The *Travellers Security Charge Act* of 2002 introduced a provision for passenger user security fees. The security fees were needed to fund the operation of the Canadian Air Transport Security Authority. The charges were levied for domestic, transborder and international flights. In 2010, the fees were increased and questions were raised whether the increase is neutral between the latter two types of flights. It has also been claimed that the government in 2008 collected more than it spent from these fees and that this surplus is not directed for commercial aviation purposes but goes into general government revenues. But more fundamental is the question whether the fees should be funded by air travelers or the general public as aviation is in the broader interests of the general public. These charges are also inconsistent with the medium and longer term interest of the national economy according to one study. b. In March 2001, the Greater Toronto Airports Authority imposed the Airport Improvement Fee which was supposed to be temporary. By 2010 the fees had risen 150% to $25. Similarly the Aeroports de Montreal increased their fees by 66% to $15 in 2008. Fees are also imposed at other Canadian airports. To add to this, there may be provincial and federal tax on these fees. These fees are considered to be excessive and discourage air travel and may tilt the competitive playing field in favour of US airports. c. The excise tax on aviation fuel imposed by the federal government has also attracted attention. Revenue collected from this source has jumped from $40 million in 2001-2 to $100 million in 2008. With the increase in fuel costs, the excise tax has become particularly punitive on air transportation as aviation fuel is not only an expensive type of fuel but is also one of the airlines largest costs. Further, this tax is four times higher than the aviation fuel tax imposed in the US. This it is argued has an adverse impact on the competitiveness of Canadian airlines.

[ccclxxxvii] IATA indicated that since the 1980s, many governments have required the airline industry to collect taxes, fees, and charges from consumers on their behalf. These amounts have increased from less than $1 billion (US) annually to more than $136 billion (US) in pre-pandemic days, resulting in significant administrative and financial burdens for the airline industry and higher costs for consumers.

[ccclxxxviii] Re: Increase of aeronautical rates and Airport Improvement Fee in 2023, Letter to Mrs. Deborah Flint, President of GTAA from Peter Cerdá Regional Vice President, The Americas, IATA, Nov. 1, 2022, www.iata.org

[ccclxxxix] "The report uses Toronto Pearson airport (YYZ) as an example, noting that in early 2021, the airport improvement fee increased from $25 to $30 for departing passengers, and from $2 to $6 for connecting passengers. Two years later, in January 2023, Toronto Pearson raised these fees again by a further $5 and $1, respectively." Report: Rising aeronautical fees at Canadian airports could hurt competitiveness, March 16, 2023, www.skiesmagazine.com

[cccxc] Canada's air passenger rights will get overhaul to tackle denied claims: minister, March 14, 2023, www.globalnews.ca

[cccxci] The U.S. Department of Transportation (DOT) on October 15, 2025 announced a $4 million penalty against Lufthansa for discriminating against Jewish passengers who were traveling from New York City through Frankfurt to Budapest in May 2022. Based on the alleged misconduct of some passengers, Lufthansa prohibited 128 Jewish passengers – most of whom wore distinctive garb typically worn by Orthodox Jewish men – from boarding their connecting flight in Germany. Despite many of the passengers not knowing each other nor traveling together, passengers interviewed by DOT investigators stated that Lufthansa treated them all as if they were a single group and denied them boarding for the alleged misbehaviour of a few. Today's penalty is the largest ever issued by DOT against an airline for civil rights violations. On October 23, 2024, the U.S. Department of Transportation (DOT) announced a $50 million penalty against American Airlines (American) for numerous serious violations of the laws protecting airline passengers with disabilities between 2019 and 2023. DOT's investigation into American Airlines uncovered cases of unsafe physical assistance that at times resulted in injuries and undignified treatment of wheelchair users, in addition to repeated failures to provide prompt wheelchair assistance. American also mishandled thousands of wheelchairs by damaging them or delaying their return, leaving travellers without the device they need for mobility. DOT Penalizes Lufthansa $4 Million for Violating Passengers' Civil Rights, October 15, 2024, www.dot.gov; and DOT Issues Landmark $50 Million Penalty Against American Airlines for Its Treatment of Passengers with Disabilities, October 23, 2024, www.dot.gov

[cccxcii] U.S. Rising number of lithium battery incidents on airplanes worry pilots, flight attendants, May 8, 2023, www.cbsnews.com

[cccxciii] Two cargo planes have crashed due to lithium battery fires. Two were killed after a Boeing 747-400F crashed after taking off from South Korea in 2011 and the other occurred in 2010 on a UPS plane in the United Arab Emirates, which also killed two crew members. 'They're difficult to put out': Aviation expert warns of mid-air lithium battery fire dangers, October 6, 2023, www.9news.com.au

[cccxciv] Rates of runway incursions double over the past decade in Canada, January 17, 2023, www.globalnews.ca; An increase in runway incidents is causing concern in Canada, U.S., December 4, 2023, www.skiesmag.com; and 'A miracle' no deaths as Air France flight skids off runway, burns in Toronto, August 2, 2005, www.cbc.ca

[cccxcv] Fox said the board has investigated 11 occurrences over the last 25 years involving commercial aircraft that operated with ice on them to the extent that it affected performance. Four of those were fatal accidents causing 19 fatalities, including one in Fond du Lac. The crash near the airport occurred shortly after takeoff on Dec. 13, 2017. The ATR-42 plane operated by Saskatoon-based West Wind Aviation plummeted to the ground and was destroyed.

[cccxcvi] Airplane de-icing options limited below -29 C: WestJet, Calgary airport, December 21, 2022, www.globalnews.ca

[cccxcvii] Germanwings crash: What happened in the final 30 minutes, March 23, 2017, www.bbc.com

[cccxcviii] The missing bolts are apparently not the only problem. Both Alaska Airlines and United Airlines said last month that inspections of their fleets that took place after the January 5 incident revealed loose bolts. "This is a somewhat complex issue with a lot of parts," NTSB Chair Jennifer Homendy told CNN in the week leading up to the release of the preliminary report. Boeing admits mistake over 737 Max 9 door blowout, January 9, 2024, www.bbcnews.ca; Everything you need to know about the Boeing 737 Max airplane crashes, March 22, 2019, www.theverge.com; Key bolts were missing from a Boeing door plug that blew out in mid-air, report says, February 7, 2024, www.cnn.com and Boeing still doesn't know how a plane missing four bolts was sent to Alaska Airlines, August 7, 2024, www.cnn.com

[cccxcix] Airships Market - Global Industry Analysis: Trends by 2031, Airship Market, www.transparencymarketresearch.com

[cd] The cargo drones industry is projected to reach USD 8.92 billion by 2030, from USD 1.53 billion in 2024, at a CAGR of 34.2%. The volume of cargo drones is projected to grow from 445 (in Units) in 2024 to 2,746 (in Units) by 2030. The market growth can be attributed to the rising demand for the faster and efficient shipment delivery along with the significant advancement. The market for cargo drones is expanding as companies are seeking ways to increase delivery and logistics effectiveness. These were the findings of the report **"***Cargo Drones Market by Solution (Avionics, Route Planning & Optimization, Ground Control Stations), Payload (10-49 Kg, 50-149Kg, 150-249 Kg, 250-449 Kg, 500-499 Kg, 500-999 Kg, >1,000 Kg), Industry, Range, Type, and Region – Global Forecast to 2030***"**, Cargo Drones Market worth $8.92 Billion by 2030, at a CAGR of 34.2%, October 10, 2024, www.cargonews.com

[cdi] SAF Deployment, www.iata.org

[cdii] Airlines' chief pleads for more green fuel to save air travel, February 19, 2024, www.ajot.com

[cdiii] "The CTA should be amended to grant shippers a right to request a CLR agreement from a railway, similar to the right to request a SLA provided pursuant to Bill C-52. In the event that a shipper and a railway are unable to reach mutually agreeable terms, arbitration under the existing FOA process or a separate arbitration process for such disputes should be mandated." Submission to the Canada Transportation Act Review Panel: Rail, air and marine transportation, February 27, 2015, www.canada.ca

[cdiv] FRA proposes to amend Safety Technology Regulations to establish strict safety standards while enabling railroad operations, October 25, 2024, www.ajot.com

[cdv] TSB launches safety issue investigation into higher rate of railway crossing accidents during winter in Canada, June 23, 2021, www.tsb.gc.ca

[cdvi] See Canada's 25 most accident-prone railway crossings plagued by widespread design flaws, Jacques Marcoux, Dave Seglins, Jeremy McDonald, CBC News, Posted: Apr 14, 2016 5:00 AM EDT | Last Updated: April 14, 2016, www.cbc.ca

[cdvii] Safety: Number 1 Concern of the Railroad Industry!, October 31, 2023, www.railwayage.com

[cdviii] 1. A final rule announced on June 24, 2024 that will improve public safety and protect firefighters and first responders by requiring railroads to proactively provide emergency personnel with real-time information about hazardous material shipments; 2. Two final rules to improve rail safety by requiring train dispatchers and signal employees receive adequate certification and training to ensure they are able to safely carry out their duties to better protect rail workers and communities; 3. A final rule to strengthen rail safety and hold railroads accountable by establishing minimum safety requirements for the size of train crews. 4. A final rule to require railroads to provide emergency escape breathing apparatuses for train crew members and other employees who could be exposed to an inhalation hazard in the event of a hazardous material release; 5. A final rule to reduce roadway and pedestrian fatalities by creating a new Federal Motor Vehicle Safety Standard that will make automatic emergency braking (AEB), including pedestrian AEB, standard on all passenger cars and light trucks; 6. A final rule to promote transit safety and protect transit workers by completing the first major update to FTA's Public Transit Agency Safety Plans regulation; 7. A final rule to require that charter airlines, commuter airlines, air tour operators, and aircraft manufacturers, to develop a Safety Management System (SMS); and 8. A final rule to update regulations surrounding the transportation of hazardous materials to improve safety during shipment and increase supply chain efficiency. See Getting Results: U.S. Department of Transportation's Efforts Early in Biden-Harris Administration Result in a Number of Final Rules to Improve Transportation Safety and Strengthen Consumer Protections, June 24, 2024, www.dot.gov

[cdix] Canada should bring in stronger rail cars for crude before 2025: official, August 23, 2018, www.ca.news.yahoo.com

[cdx] On Nov. 10, 1979, a Canadian Pacific (CP) freight train skidded off the tracks and exploded like a bomb, spewing clouds of poisonous gas over the suburban city. "That no one died is a miracle," said Mayor Hazel McCallion, who coined the phase "Mississauga Miracle." More than 200,000 people were forced to evacuate Mississauga after a 106-car freight train derailed carrying hazardous materials: Caustic soda, chlorine, propane, styrene and toluene. Mississauga Mayor-elect Bonnie Crombie said she wants current freight lines to be routed to the north so they aren't going through highly-populated cities. "We know it's possible. Freight traffic was moved off the south line for commuter traffic. If we have (the freight) trains moving dangerous goods travelling north of Brampton in less inhabited areas, there is less opportunity for disaster," Crombie said. Mississauga train disaster sparked safety improvements, November 9, 2014, www.torontosun.com

[cdxi] Adjusting Rail Car Safety Standards to Meet the Moment, October 26, 2023, www.bts.gov

[cdxii] The submission to Minister of Innovation, Science and Economic Development Canada stated that "Under this legislation a specific community of transportation service providers is exempt from the provisions of the Competition Act. … It is CIFFA's position that the rationale for this extraordinary measure has long been overtaken by economic realities and the benefits of vigorous competition have been denied to Canadian customers. In consideration of changes to Canada's competition regime, it's essential that this aberrant law be removed. … The main argument in favour of permitting collusion among ocean shipping firms was the supposed benefit of "stable prices." … through the crisis of Covid 19, Canadian customers would have avoided many billions of dollars in shipping fees. … Some members reported rates six times higher than they had paid in 2019. … Far from providing stable rates, the industry's ability to cooperate on pricing allowed an unprecedented extraction from customers, exacerbating an economic crisis. …Canadian International Freight Forwarders Association Brief on Shipping Conference Exemption Act, December 13, 2022, www.ciffa.com

[cdxiii] Shifting the needle – Part three: FMA, June 9, 2023, www.insidelogistics.ca

[cdxiv] Review of the Shipping Conferences Exemption Act [Transport Canada], September 2024, www.tc.gc.ca

[cdxv] "In summary, the record shows that, in relation to maritime cabotage, Canada has pursued a virtually unbroken policy of protection. The nearest that Canada has ever come to adopting a more liberalized regime was probably at the time of the Spence Commission. However, this brief endeavour to pursue a more relaxed cabotage regime was quickly reversed by Howard Darling, and by the modal symmetry expectations of the *1967 National Transportation Act*. Since the early 1970s, Canada has only chosen to expand, in terms of both activity and geographic scope, the definition of coasting trade and, hence, the associated protective regime. It is our conclusion that the course of action best suited for Canada's current position is one with four action items: 1. Immediately implement a plan to remove the 25% duty on the importation of foreign-built ships, the removal to include a phase-in period or a transition plan so that those who recently invested in ships are not unduly penalized. 2. Adopt a more liberalized access regime with like-minded States (e.g., European Union). 3. Investigate more liberalized access for NAFTA-flagged vessels as long as reciprocity is on the table. The Canadian government needs to invest in research to determine if the development of NAFTA cabotage or a NAFTA flag will damage Canada's beneficial owners of foreign flag shipping. Such work might take place under the umbrella of the *Memorandum of Cooperation*. 4. Provide the domestic shipping industry with fiscal and other aid (e.g. tonnage tax opportunities and relief for seafarer income tax, when, for example, engaged in international trade, including foreign cabotage), in line with equivalent measures adopted in much of the European Union. The authors believe that the process of discussion and debate, leading to adoption of some or all of the suggested courses of action, needs to commence without delay. Within the North American economic space, the political reality is that further amendment to NAFTA is unlikely, but both the Memorandum of Cooperation and the Security and Prosperity Partnership signed in 2005 with the US and Mexico offer avenues for the development of change." Towards a North American Cabotage Regime: A Canadian Perspective, J. R.F. Hodgson and Mary R. Brooks, www.ucalgary.ca

[cdxvi] Canada not prepared to face marine emergencies, says TSB investigation, August 1, 2024, www.insidelogistics.ca

[cdxvii] A landmark UN treaty is poised to curb exploitation of the ocean, March 5, 2023, www.ajot.com

[cdxviii] CSL leads maritime industry in biofuel adoption, achieving milestones in decarbonization efforts, December 8, 2023, www.ajot.com

[cdxix] Sails and satellite navigation could cut shipping industry's emissions by up to a third, December 5, 2023, www.insidelogistics.ca

[cdxx] Global shipping's $3.6 billion carbon bill is six weeks away, November 21, 2023, www.ajot.com

[cdxxi] IMO must take opportunity to reduce underwater noise by transitioning to cleaner ships, September 18, 2023, www.ajot.com

[cdxxii] Border issues, rising insurance costs discussed at TCA's Canadian event, November 20, 2020, www.trucknews.com

[cdxxiii] Meanwhile, Truck News report that carriers at the event also expressed frustration with a lack of progress in having regulators allow the movement of empty trailers from point to point in the U.S. Repositioning empty trailers has clear environmental and productivity benefits, but lawmakers are stubbornly resisting regulatory changes that would allow this. . "It makes no sense." Driver Inc Among Many Pressures Weighing Down Trucking: Panel, November 10,2023, www.cantruck.ca

[cdxxiv] Can autonomous vehicles prevent accidents and fatalities?, November 21, 2021, www.roboticsbiz.com

[cdxxv] Teamsters, CTA Suggest Enforcement Strategy for Driver Inc. Violators, December 19, 2022, www.teamster.ca

[cdxxvi] Research Shows Lane-Departure Warnings Prevent Crashes, August 21, 2017, www.consumerreports.org

[cdxxvii] How technology is being used to reduce truck accidents, 29 August 2023, www.volvotrucks.com

[cdxxviii] Why It's Time to Rethink Cargo Truck Tank Safety, July 12, 2018, www.assp.org; and Titanium trucking company fined $312K for fatal Highway 401 acid spill, January 17, 2019, www.cbc.ca

[cdxxix] Autonomous vehicles: Canada's existing regulatory framework, Michael Fekete, Zain Hemani, Sam Dobbin, Nov 21, 2023, www.osler.com

[cdxxx] Sleep Apnea and Trucking: Where Are We Now?, October 28, 2014, www.sleepreviewmag.com; The Connection Between Trucking Accidents and Sleep Apnea, September 25, 2023, www.baileyjavinscarter.com

[cdxxxi] The NTSB issued six new recommendations and reiterated three previous ones. New recommendations include: 1. The Federal Motor Carrier Safety Administration should strengthen ELD requirements to prevent opportunities for the creation of fake driver accounts. 2. The Commonwealth of Virginia should offer management safety guidance to new intrastate motor carrier licensees covering licence class, drug and alcohol testing, fatigue management, vehicle maintenance, and safe commercial vehicle operation. 3. Triton Logistics (which was involved in a crash) should implement a process to regularly verify the accuracy of drivers' records of duty, implement a robust fatigue management program, and proactively use onboard inward- and forward-facing video event recording to improve driver training. 4. The Commercial Vehicle Safety Alliance should use this crash to educate its members on the importance of safeguarding the electronic logging device system to prevent falsification of information. See Crash investigation results in NTSB safety recommendations, August 30, 2024, www.todaystrucking.ca

[cdxxxii] Intermodal/drayage is an early market segment of electrification if the two modes work together. Interim energy solutions such as renewable natural gas, renewable diesel, and green hydrogen may also keep vehicles moving on internal combustion engines, while concurrently reducing the impact of their emissions as technologies and regulations evolve. Shippers should look to intermodal to reduce transport emissions, NACFE says, December 14, 2023, www.insidelogistics.ca

[cdxxxiii] CTA White Paper to Discuss Decarbonization Realities and Journey Towards a Zero-Emission Future for Heavy Trucks, October 5, 2023, www.ontruck.ca