



## François Tougas\*

Co-Chair, Transportation, Co-Chair, B.C., Competition  
Vancouver

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\*Law Corporation

### education and year of call

- Called to the British Columbia bar - 1989
- University of British Columbia, LLB - 1988
- Brigham Young University, Provo, Utah, International Relations (Department of Political Science) - 1985
- Utah Technical College, Orem, Utah, (now Utah Valley University) - 1983

### practice areas

negotiated transactions  
dispute resolution  
competition and antitrust  
foreign investment review  
mergers  
government and public policy  
international trade  
administrative law

### industries

transportation  
rail  
terminals  
marine

### profile

François is listed in several domestic and international directories as one of the leading transportation and competition lawyers in Canada. He has been rated as AV® Preeminent™ by Martindale-Hubbell since 1996 and has been repeatedly listed in Chambers Global, Chambers Canada, LEXPERT and Best Lawyers.

He is a Band 1 rated lawyer by Chambers and Partners, who state: "*François Tougas of McMillan LLP receives sterling praise for his work in the rail sector, with one interviewee hailing him as a strategic thinker who gives very good, practical advice.*" A contributor states "*his strengths lie in his long experience in dealing with policy, regulatory and legislative issues. Most are complex in nature and he has established himself as one of the top transportation and regulatory counsel in the country.*"

François has written extensively on a variety of legal matters, and is particularly recognized for his work in competition issues in the railway industry. He has been instrumental in statutory reform in the transportation sector, has taught competition and antitrust law at Allard Hall School of Law at the University of British Columbia since 2006, transportation regulation in the MBA program at the Sauder School of Business at the University of British Columbia and is a frequent speaker in both transportation law and competition law.

### directorships and professional associations

- [Arbitrator, appointed by the Canadian Transportation Agency](#)
- Member, Canadian Bar Association (Competition Law Section), American Bar Association (Antitrust Section), Canadian Transportation Research Forum, Canadian

## representative matters

### Competition Matters (Publicly disclosed matters only)

- Acted for Paper Excellence in respect of competition and insolvency matters in their [acquisition](#) of Catalyst Paper Corporation
- Aurizon Mines (precious metals) in hostile takeover bid by Northgate Minerals (approx. \$400 million)
- Aurora Cannabis in acquisition of MedReleaf (\$3.2 billion)
- Aurora Cannabis in acquisition of CanniMed (\$1.2 billion)
- Aurora Cannabis in acquisition of Alcanna/Liquor Stores (\$103 million)
- Ballard Power Systems (fuel cells) in strategic alliance with Daimler Benz AG (approx. \$600 million)
- Ballard Power Systems (fuel cells) in formation of strategic alliance with DaimlerChrysler AG and Ford Motor Company (\$861 million)
- Ballard Power Systems (fuel cells) in acquisition of XCELLSIS GmbH and Ecostar Electric Drive Systems from DaimlerChrysler AG and Ford Motor Company
- Burcon International in acquisition of certain assets of Concord Pacific (former Expo lands)
- Canfor Corporation, Slocan Forest Products, Weldwood of Canada and West Fraser Timber in dealings with the Competition Bureau in sale of operations of British Columbia Railway to Canadian National Railway Company (\$1.02 billion)
- Crestbrook Forest Industries, MC Forest Investment and Kanzaki Paper in disposition of respective interests in Alberta Pacific pulp mill (amount not disclosed)
- Crown Packaging (paper packaging) in sale of Canadian divisions to Norampac, Paperboard Industries and Allpak Holdings (\$174 million)
- FreshPoint in merger of food service business (Pacific Produce) with Sysco Corporation (amount not disclosed)
- Glamis Gold in hostile take-over bid for Goldcorp (\$4.3 billion)
- Glamis Gold in the acquisition of Western Silver (\$1.2 billion)
- Glamis Gold in plan of arrangement with Goldcorp (US\$21.3

- billion combination)
- Great Canadian Gaming and Brookfield Business Partners in acquisition of Ontario Lottery & Gaming GTA Bundle (\$170 million)
  - Great Canadian Gaming and Clairvest Equity Partners in acquisition of Ontario Lottery & Gaming West GTA Bundle (\$134 million)
  - Great Canadian Gaming in acquisition of Ontario Lottery & Gaming East Bundle (\$51.3 million)
  - Great Canadian Gaming in acquisition of Flamboro Downs from Magna Entertainment (C\$50 million, plus US\$23.6 million, plus debt)
  - Great Canadian Gaming in acquisition of Casino Nova Scotia from Caesars Entertainment (US\$70 million)
  - IGI Resources (natural gas distribution) in sale to Amoco Energy (amount not disclosed)
  - Leavitt Machinery in acquisition of Interior Lift Truck from Finning (\$63 million)
  - Paper Excellence (pulp mills) in acquisition of Catalyst Paper Corporation (amount undisclosed)
  - Primary Metals Inc. (tungsten) in sale to Sojitz Corporation of Japan (C\$49 million)
  - Revelstoke Home Centres (retail home improvement) in acquisition of Lumberland Building Materials (amount not disclosed)
  - Revy Home Centres (retail home improvement) in acquisition of Lansing Buildall (amount not disclosed)
  - Revy Home Centres (retail home improvement) in sale of certain assets to RONA Inc. (\$221 million)
  - Sierra Systems Group Inc. (information technology) sale to Golden Gate Capital (\$93 million)
  - Teck Cominco (diversified mining) in unsolicited takeover bid for Inco Limited (nickel) (C\$16.8 billion)
  - Teck Cominco (diversified mining) in acquisition of Aur Resources Inc. (precious metals) (C\$4.1 billion)
  - VersaCold Corporation (public refrigerated warehousing) in acquisition of QF Distribution (amount not disclosed)
  - VersaCold Corporation (public refrigerated warehousing) in acquisition of Trans-Canada Freezers (\$110 million)
  - Waterous Energy Fund (oil & gas) in acquisition of Northern Blizzard Resources Inc. (\$244 million)
  - West Fraser Mills (integrated forest products) in acquisition of Chasm Division of Ainsworth Lumber (\$22 million)

- West Fraser Mills (integrated forest products) in acquisition of interest of Daishowa Paper interest in Quesnel River Pulp Company (amount undisclosed)
- West Fraser Mills (integrated forest products) in acquisition of certain assets of Zeidler Forest Products (Alberta Plywood)
- West Fraser Mills (integrated forest products) in sale of Babine and Decker Lake sawmills to Hampton Lumber (amount undisclosed)
- West Fraser Mills (integrated forest products) in the acquisition of timber tenures from Weyerhaeuser Company Limited (amount undisclosed)
- West Fraser Timber in connection with swap of timber tenures with Canfor Corporation (amount undisclosed)
- West Fraser Timber (integrated forest products) in acquisition of Weldwood of Canada from International Paper Company (integrated forest products) (\$1.26 billion)
- West Fraser Timber (integrated forest products) in acquisition of the forest products division of Alberta Energy (amount undisclosed)
- West Fraser Timber (integrated forest products) in acquisition of Eagle Hardware (retail home improvement)
- West Fraser Timber (integrated forest products) in acquisition of interest of Enso-Gutzeit Oy in Eurocan Pulp and Paper (amount undisclosed)

#### **Transportation Matters (publicly disclosed)**

- Canfor Corporation, Slocan Forest Products, Weldwood of Canada and West Fraser Timber (sale of the operations of British Columbia Railway to Canadian National Railway Company, 2003-2004)
- Canadian National Railway Company and Burlington Northern Santa Fe Railway Company v. Normerica Inc. (Federal Court, demurrage claims and service counterclaims, 2006)
- Canadian National Railway Company v. Western Canadian Coal Corp. (Final offer arbitration and application for judicial review, contesting operability of final offer arbitration provisions of Canada Transportation Act, 2004-2005)
- Canadian Pacific Railway Company v. Teck Coal Limited (defence of CP's application for leave to appeal decision of Canadian Transportation Agency to refer matter to final offer arbitration; application denied, 2009)
- Canpotex Limited and related entities in rail transportation services with Canadian National Railway Company

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- Canpotex Limited and related entities in rail transportation services with Canadian Pacific Railway Company
- Canpotex Limited and related entities in rail transportation services with Union Pacific Railroad
- Elk Valley Coal Partnership et al. v. Canadian Pacific Railway Company (final offer arbitration and related proceedings, 2004)
- Elk Valley Coal Corporation (before the Competition Policy Review Panel, 2008)
- Fortress Investment Group (NYSE:FIG) in connection with the formation of Central Maine & Québec Railway and purchase of the assets of bankrupt Montreal, Maine & Atlantic railway, following derailment at Lac-Mégantic, Québec (July 6, 2013)
- Mining Association of Canada, before the Standing Committee on Transport, Infrastructure and Communities in connection with Bill C-52 (Service Level Agreements) (2013)
- Normerica Inc. v. Canadian National Railway Company and The Burlington Northern Santa Fe Railway Company (Canadian Transportation Agency, level of service complaint, 2006)
- Seaspan International v. The Burlington Northern Santa Fe Railway Company (Canadian Transportation Agency, abandonment opposition, 2005)
- Teck Corporation, Weldwood of Canada, West Fraser Timber (before the Canada Transportation Act Review Panel, Transport Canada, 2000)
- Teck Coal Limited v Canadian Pacific Railway Company, final offer arbitration (May and June 2009)
- Teck Resources Limited, before the Canadian Transportation Agency in connection with its Consultation on Amendments to the Uniform Classification of Accounts (2013) and its Cost of Capital Review (2010)
- Teck Resources Limited, before the Federal Rail Freight Service Review, Transport Canada (2008-2013)
- Teck Resources Limited, supported by the Western Grain Elevator Association and the Canadian Canola Growers Association, before the Canadian Transportation Agency in connection with its Consultation on Capital Structure and Cost of Capital Methodology (2016)
- Teck Resources Limited, supported by the Western Grain Elevator Association, the Canadian Canola Growers Association and the Western Canadian Shippers Coalition, before the Canadian Transportation Agency in connection with its Consultation on the Agency Regulatory Costing

## Model (2017)

- Teck Resources Limited, supported by the Western Grain Elevator Association, the Canadian Canola Growers Association, the Mining Association of Canada and the Western Canadian Shippers Coalition before the Canadian Transportation Agency in connection with its Consultation on the Regulatory Modernization Initiative (2018)
- Teck Resources Limited, 10-year handling agreement with Ridley Terminals Inc. (2011)
- Teck Resources Limited, agreement with Westshore Terminals Limited (2010) and extension (2012)
- Teck Resources Limited, ten year agreement with Canadian Pacific Railway Company (2010)
- TransLink (Greater Vancouver Transportation Authority) re application in support of City of Port Coquitlam's Coast Mountain Overpass over Canadian Pacific Railway Company's Coquitlam Yard (2006)
- Weldwood of Canada, West Fraser Timber and Weyerhaeuser (legislative reviews of the Canada Transportation Act, 1999)
- West Coast Express re negotiations with Canadian Pacific Railway Company (2005) Canfor Corporation, Slocan Forest Products, Weldwood of Canada and West Fraser Timber (sale of the operations of British Columbia Railway to Canadian National Railway Company)
- Numerous submissions to federal legislative review panels and parliamentary committees in connection with the *Canada Transportation Act*
- (Not Publicly Disclosed) Numerous negotiations and final offer arbitrations on behalf of bulk shippers (forest, mining, mineral and agricultural products) and passenger/commuter rail operations with Canadian National Railway, Canadian Pacific Railway, The Burlington Northern Santa Fe Railway and Union Pacific Railroad; numerous negotiations with export, domestic and international cargo terminals

## awards and rankings

- Listed in the *Legal500 Canada 2020* as a "Leading Lawyer" – Transport
- Recognized by *Chambers Canada (2020)* as a leading lawyer in the area of Transportation: Rail and Road
- Leader in Competition/Antitrust Law in *Best Lawyers in Canada 2011 to 2020*
- Recognized in the 2019 *Canadian Legal Lexpert Directory* as a Repeatedly Recommended lawyer in the areas

- Competition Law and Transportation (Road & Rail)
- Recognized in the 2018 *Canadian Legal Expert Directory* as a Repeatedly Recommended lawyer in the areas Competition Law and Transportation (Road & Rail)
  - Leader in Competition Law in *Who's Who Legal Canada: 2019*
  - Leader in Transportation - Canada in *Chambers Canada 2016 to 2019*
  - Leader in Transportation Law: Rail & Road in *Chambers Global 2014 to 2017*
  - Leader in Competition Law, *The Canadian Legal LEXPERT Directory 2011 to 2017*
  - Leader in Transportation (Road & Rail) Law, *The Canadian Legal LEXPERT Directory 2011 to 2017*
  - "AV Preeminent" Peer Review Ranking, *Martindale-Hubbell 1996 to 2019*

## teaching engagements

- *Adjunct Professor*, University of British Columbia, Faculty of Law, "Competition Law & Policy" (2006 – 2016) and "Topics in International Law: International Business Transactions" (1994/98)

## media mentions

- "[Allard Law Students win Canadian Competition Law Moot](#)", Peter A. Allard School of Law, April 16, 2019
- "[Senate changes rail-ownership law to focus on farmers, shippers and airline passengers](#)", by Josh Wingrove and Frederic Tomesco, *Toronto Star*, April 13, 2018
- "[Proposed Canadian law opening CN Rail to Bill Gates faces delay](#)", by Josh Wingrove and Frederic Tomesco, *BNN*, April 13, 2018
- "['Captive' shippers call for more data to address 'rail service failures'](#)", by Jesse Snyder, *Financial Post*, Sept 15th, 2017
- "[Legislation to require tougher insurance for oil shipments by rail](#)", by Stephen Karmazyn, *Financial Post*, May 13, 2015
- "[De-railed](#)", by Angela Stelmakowich, *Canadian Underwriter*, March 1, 2015
- "[FERC wades into generators' coal delivery woes](#)", *Argus Rail Business*, Issue 20-50, December 22, 2014
- "[Peter Rozee named Western Canada GC of the Year](#)", by Jennifer Brown, *Canadian Lawyer*, November 14, 2011
- "[Abolish The Monopoly: Make Rail Services More Like Other Network Industries](#)", *National Post*, June 2008

## publications

### July 2019

Don't Count Your Efficiencies Before They Hatch: Exploring The Factors That Impact A Railway's Operating Ratio  
Transportation Bulletin

### May 2019

Operating Ratio as a Measure of Railway Operating Efficiency



### April 2019

Regulations Implementing the *Transportation Modernization Act*  
Transportation Bulletin

### May 3, 2018

House of Commons Debate

### June 2017

*Investment Canada Act* Threshold Increases to \$1 Billion (Cdn)  
Competition Bulletin

### June 2017

Bill C-49: Some Welcome Improvements to Rail Service Level Arbitration  
Transportation Bulletin

### May 2017

Bill C-49: Is the Line Haul Interswitching Remedy Really New?  
Transportation Bulletin

### May 2017

Bill C-49: Government of Canada Proposes to Amend the Canada Transportation Act  
Transportation Bulletin

### April 2017

*Investment Canada Act* Threshold Increase - \$1 Billion (Cdn)  
Competition Bulletin

### March 2017

Canadian Transportation Agency Closes Submissions on Regulatory Costing Model Consultation  
Transportation Bulletin

### January 2017

Government of Canada Provides Valuable Guidance on National Security Review of Foreign Investment in Canada  
Foreign Investment Bulletin



**January 2017**

Canadian Transportation Agency Closes Railway Capital Structure Consultation  
Transportation Bulletin

**September 2016**

Competition Bureau Issues Consent Agreement Template  
Competition and Antitrust Bulletin

**August 2016**

The Govt of Canada Extends the *Fair Rail for Grain Farmers Act*  
Transportation Bulletin

**May 2016**

Rail Level of Service Decisions and Shipper Service Requirements  
North American Transport Challenges in an Era of Change, Proceedings of the 51st Annual Conference of the Canadian Transportation Research Forum, Toronto, Ontario

**April 2016**

Will the Government of Canada Extend the *Fair Rail for Grain Farmers Act*?  
Transportation Bulletin

**April 2016**

Final Report: *Canada Transportation Act* Review – Part II (Rail Freight Traffic)  
Transportation Bulletin

**March 2016**

Final Report: *Canada Transportation Act* Review  
Transportation Bulletin

**May 2015**

Risk Shifting as use of Market Power: Transportation of Dangerous Goods  
Another 50 Years: Where To From Here?, Proceedings of the 50<sup>th</sup> Annual Conference of the Canadian Transportation Research Forum, Montreal, Quebec

**Spring 2015**

Canadian Regulation of Cross-Border Mergers and Acquisitions in the Transportation Sector  
American Bar Association's Transportation and Energy Industries Committee Newsletter

**February 2015**

Update: Government of Canada Proposes to Change Federal Railway Liability Regime  
Transportation Bulletin

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## **January 2015**

Tervita Corp v Canada – The Supreme Court of Canada's First Merger Decision in 17 Years: An Efficient Outcome  
Competition Bulletin

## **December 2013**

Group Buying - A Canadian Case Study  
The Antitrust Source

## presentations

### **February 18, 2018**

Proceedings of the Standing Senate Committee on Transport and Communications  
Senate of Canada, Ottawa, Ontario

### **September 13, 2017**

Standing Committee on Transport, Infrastructure and Communities  
House of Commons, Ottawa, Ontario

### **June 4, 2015**

Conspiracy & Bid-Rigging  
Presentation to the Association of Consulting Engineering Companies-BC, Annual General Meeting, Vancouver, BC

### **November 4, 2014**

Crude-by-Rail: *Regulatory Developments in Canada*  
Presentation to Energy Bar Association, in panel presentation with Roger Nober, General Counsel, BNSF Railway, and Dr. Madgy El-Sibaie, US Dept of Transportation, chaired by Gordon Kaiser, Energy Arbitration Chambers, Washington, DC

### **May 7, 2014**

Transportation of Coal: A Regulatory Perspective  
Presentation to Coaltrans, West Coast Conference, Vancouver, BC