

PANORAMIC

RAIL TRANSPORT

Canada



LEXOLOGY

Rail Transport

Contributing Editor

Matthew J Warren

Sidley Austin LLP

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Contributors

Canada

McMillan LLP

mcmillan

Ryan Gallagher

ryan.gallagher@mcmillan.ca

Lucia Stuhldreier

lucia.stuhldreier@mcmillan.ca

Julia Loney

julia.loney@mcmillan.ca

Conner Wylie

conner.wylie@mcmillan.ca

Carina Chiu

carina.chiu@mcmillan.ca

GENERAL

Industry structure

How is the rail transport industry generally structured in your country?

Canadian National Railway Company (CN) and Canadian Pacific Kansas City Railway (CPKC), both of which operate across Canada, dominate the freight rail industry in Canada. They control the most important segments of rail trackage in Canada and move the vast majority of Canadian rail freight. Many shortline freight railways also operate in Canada, often to connect branch lines to the networks of CN and CPKC. Railway companies typically, but not always, own the track over which they operate.

VIA Rail is a publicly-owned national rail carrier that provides passenger rail service, as do various regional commuter railways in major metropolitan areas. In some areas of the country, shortline railways provide rail tours.

Some American rail service providers such as BNSF Railway Company and CSX Transportation Inc. operate to a limited extent in Canada.

In general, federal jurisdiction extends to all railways that cross provincial or international boundaries, while railways that operate wholly within a province are subject to provincial jurisdiction. As CN and CPKC handle the majority of rail traffic in Canada, this section will primarily focus on federal statutes, regulations and rules.

Law stated - 11 janvier 2024

Ownership and control

Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

National passenger carrier VIA Rail is a Crown corporation wholly owned by the federal government. Regional commuter railways in the Montreal, Toronto, and Vancouver areas are also owned by their respective provincial governments. Most passenger operations occur over track owned by Canada's two major freight railways.

The Canadian federal government is not directly involved in providing freight rail service.

Law stated - 11 janvier 2024

Ownership and control

Are freight and passenger operations typically controlled by separate companies?

Freight and passenger operations are typically controlled by separate companies, with a few limited exceptions serving remote areas.

Law stated - 11 janvier 2024

Regulatory bodies

Which bodies regulate rail transport in your country, and under what basic laws?

The Canadian Transportation Agency is the primary economic regulator of federal railway companies under the [Canada Transportation Act](#). The provinces regulate provincial railways to varying extents.

The Minister of Transport, and his department, Transport Canada, regulate the safety of federal railway companies under the [Railway Safety Act](#) and regulations, rules and standards thereunder.

Law stated - 11 janvier 2024

MARKET ENTRY

Regulatory approval

Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

A person wishing to operate a federal railway in Canada must obtain both a certificate of fitness and a railway operating certificate before beginning operations.

Any person may apply to the Canadian Transportation Agency (the Agency) for a certificate of fitness. The application must include a completed certificate of insurance form along with a list of the termini and route of each operation. The Agency must be satisfied that there will be adequate third-party liability insurance coverage for passenger rail services, or the applicable minimum liability insurance coverage for rail freight railway companies, as defined in the Canada Transportation Act and its regulations.

Railway companies must also apply to the Minister of Transport for a railway operating certificate before commencing operations. The application must include a description of the proposed operations of the company, as well as all relevant safety rules and requirements applicable to those operations. The Minister may issue railway operating certificates subject to terms and conditions.

Individual provinces each have their own approval processes for railways under their jurisdiction that require similar information about operations, insurance and safety rules.

Law stated - 11 janvier 2024

Regulatory approval

Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

A proposed merger or acquisition that meets certain prescribed financial thresholds requires pre-merger notification filings under the Competition Act. Where a proposed notifiable transaction involves a 'transportation undertaking', the proposed acquirer must also notify the Minister of Transport, who may determine that the proposed transaction requires review to determine whether the transaction is in the public interest.

Law stated - 11 janvier 2024

Regulatory approval

Is special approval required for rail transport companies to be owned or controlled by foreign entities?

The Investment Canada Act applies to non-Canadians who seek to obtain control of any Canadian business, including railway companies. If the value of the acquisition meets certain prescribed thresholds, pre-closing approval is required. Any investment by a non-Canadian may be subject to national security review if the investment could be 'injurious to national security'. No special foreign investment rules apply to acquisitions of railway companies.

Law stated - 11 janvier 2024

Regulatory approval

Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

Railway companies must obtain the approval of the Canadian Transportation Agency before constructing new rail lines other than a rail line within the right of way of an existing rail line or within 100 metres of the centre line of an existing rail line for a distance of no more than three kilometres. Approval is generally granted if the Agency considers the location of the new rail line to be reasonable, taking into consideration requirements for rail operations and services and the interests of affected localities.

An application for approval must contain a detailed description of the proposed rail line construction and operations, as well as information about the location of the proposed rail line and any alternative locations that were considered. The company must also provide notice and information regarding the proposed construction to any relevant local or other government bodies, including any potentially affected Indigenous groups, and conduct engagement activities with impacted stakeholders. The company may also be required to conduct an environmental assessment with respect to the proposed project area.

Additionally, under certain circumstances, the railway company may be required to obtain approval for the construction of the rail line from other federal authorities such as Transport Canada, Fisheries and Oceans Canada, or territorial authorities.

Law stated - 11 janvier 2024

MARKET EXIT

Discontinuing a service

What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

Regulatory approval is not required to sell, lease or otherwise transfer a rail line, or an operating interest in a rail line, for continued operation.

However, if a railway company wishes to discontinue service on a rail line, it must comply with a series of prescribed steps.

First, the railway company must publish its intent to discontinue the line in a three-year plan. The company must notify the Canadian Transportation Agency, the federal Minister of Transport (Minister), and any provincial or local governments or urban transit authorities through whose territory the rail line passes, of any changes made to the plan. A railway company may not take steps to discontinue operating a rail line before the company's intention to discontinue operating the line has been indicated in its plan for at least 12 months.

Thereafter, if the company intends to proceed with discontinuance, it must advertise the availability of the line for transfer for continued operations and engage in good faith negotiations with any party expressing an interest in acquiring the line. This part of the process can take anywhere from 60 days (the time during which the company must remain open to receiving expressions of interest) to eight months (the time for expressions of interest plus a prescribed six-month period to reach an agreement with an interested party). Either party to such a negotiation can seek a determination by the Agency of the net salvage value (NSV) of the line.

If no transfer results from this process, the company may decide to continue operating the line, in which case it must amend its three-year plan accordingly. If the company still intends to proceed with discontinuance, it must offer to transfer the line at NSV to the governments and urban transit authorities through whose territory the line passes.

If no transfer results from the foregoing process, the railway may file a notice of discontinuance with the Agency and stop providing service on the railway line.

The discontinuance process does not apply to yard trackage, sidings or spurs. Before dismantling a siding or spur in a metropolitan area, however, a railway company may, depending on the location of the track be required to provide advance public notice and to offer to transfer it to specified public entities.

A modified discontinuance process applies to certain grain-dependant lines identified in the Canada Transportation Act.

Law stated - 11 janvier 2024

Discontinuing a service

On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

The Minister of Transport may suspend or cancel a company's railway operating certificate if the company no longer meets the requirements for obtaining the certificate, or if the company breaches any provision of the Railway Safety Act (RSA) or any regulations, rules, standards, orders, or emergency directives made under the RSA. Other enforcement measures short of suspension or cancellation of a railway operating certificate are possible. Any decision to suspend or cancel a railway operating certificate may be appealed to the Transportation Appeal Tribunal of Canada.

The Agency must suspend or cancel a certificate of fitness if it determines that the holder does not maintain the liability insurance coverage required by the Canada Transportation Act.

Law stated - 11 janvier 2024

Insolvency

Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

General bankruptcy and insolvency statutes, regulations and rules apply to federal railway companies. The Canada Transportation Act does not relieve a railway company from its service obligations during bankruptcy or insolvency.

Law stated - 11 janvier 2024

COMPETITION LAW

Competition rules

Do general and sector-specific competition rules apply to rail transport?

Under the Competition Act, the Commissioner of Competition (Commissioner) may review any merger (which is defined broadly to include direct and indirect leases of shares or assets, amalgamations, combinations or other transactions that result in control over, or significant interest in, the whole or a part of a business of a competitor, supplier, customer or other person) to assess its competitive impact.

Generally, and subject to narrow exemptions under the Competition Act, if a merger exceeds certain prescribed 'size-of-party' and 'size-of-transaction' thresholds, each of the parties to the merger must prepare and file a pre-merger notification (PMN) with the Commissioner that includes prescribed information. The parties also typically file a narrative description of the transaction that analyses any competitive overlap between the parties, the extent of which can vary significantly depending on the circumstances.

Following both parties' PMN filings, the parties are subject to a statutory obligation not to complete the transaction for 30 days, during which period the Commissioner may determine whether further information is required to assess the transaction. If further information is required, the Competition Bureau (Bureau) may issue a supplementary information request (SIR), whereby the parties must submit further information if they still wish to proceed, which triggers a further waiting period. Once the parties have submitted their SIR responses and certified their completeness, the Commissioner has a further 30 days within which to apply to the Competition Tribunal for a remedial order, during which time the parties are subject to a statutory obligation not to close the transaction.

The Canada Transportation Act applies to the rail industry in the context of a merger. If a proposed merger is notifiable under the Competition Act (ie, requires

the parties to prepare and file PMNs) and involves a 'transportation undertaking', such as a federal railway line, the parties must also notify the Minister of Transport (Minister) at the same time as the Commissioner. Following notification, the Minister may decide that a public interest review is necessary, in which case the Minister likely would consider the factors outlined in its [Guidelines for Mergers and Acquisitions Involving Transportation Undertakings](#), including economic, environmental, safety, security and social factors. If the transaction raises public interest issues related to national transportation, it cannot proceed without the approval of the Governor in Council, which may be granted subject to any terms and conditions that the Governor in Council considers appropriate.

Law stated - 11 janvier 2024

Regulator competition responsibilities

Does the sector-specific regulator have any responsibility for enforcing competition law?

The Commissioner of Competition and the Competition Bureau, and not the transportation regulators (Minister of Transport and the Canadian Transportation Agency), are responsible for enforcing competition law, except in the context of the Minister's review of the public interest in a notifiable merger involving a transportation undertaking, as explained above.

Law stated - 11 janvier 2024

Competition assessments

What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

Under the Competition Act, the Commissioner of Competition assesses mergers involving railways in the same manner as for other mergers; that is, to assess whether the merger prevents or lessens, or is likely to prevent or lessen, competition substantially.

The Competition Bureau has published [Merger Enforcement Guidelines](#) that outline the factors the Commissioner considers when assessing the competitive effects of a transaction. The Bureau will analyse the relevant product and geographic markets, including both downstream and upstream markets. Typical analysis includes the combined post-merger market share of the merged entity

(unilateral conduct), the post-merger four-firm concentration ratio (combined market shares of the largest four firms), the extent to which effective competition remains in the relevant product and geographic markets, the extent to which barriers to entry exist, the extent to which substitutes for the applicable products or services are available in the relevant markets, and other factors.

Law stated - 11 janvier 2024

PRICE REGULATION

Types of regulation

Are the prices charged by rail carriers for freight transport regulated?
How?

Federal railway companies can establish prices for the transportation of freight from origin to destination (rates) and related services (ancillary charges) either unilaterally by issuing and publishing tariffs of rates and charges or by entering a confidential contract with a shipper.

The rates a railway company may charge for transferring or 'interswitching' freight traffic between a point of origin or destination on its network and the connection with another railway within a prescribed radius are determined annually by the Canadian Transportation Agency. Rates differ based on distance 'zones' and size of shipment, with shipments in larger blocks of railcars attracting lower rates.

The transportation of grain grown in Western Canada is subject to revenue cap regulation. While railways are entitled to set their own grain rates, this regime constrains pricing by imposing a maximum revenue entitlement (MRE) on each of Canada's two major railways, Canadian National Railway Company and Canadian Pacific Kansas City Railway. The Agency determines each railway company's MRE annually using a formula that reflects changes in grain volumes transported, length of haul and railway input prices. Excess revenue and a penalty are payable if a railway exceeds its MRE.

The Canada Transportation Act also provides for several types of complaint-driven proceedings, in which rates or ancillary charges are determined on a case-by-case basis.

Law stated - 11 janvier 2024

Types of regulation

Are the prices charged by rail carriers for passenger transport regulated? How?

Federally regulated passenger railways are generally free to set their own prices but must publish them in tariffs that contain the information prescribed by regulation. In relation to the carriage of persons with disabilities, the [Accessible Transportation for Persons with Disabilities Regulations](#) prohibit a passenger railway from imposing any fare or other charge for certain services that the railway is required by the Regulations to provide to passengers with disabilities.

Law stated - 11 janvier 2024

Types of regulation

Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

A freight shipper who is dissatisfied with the freight rates charged or proposed to be charged by a federal railway company can submit the rates for the movement of goods and any conditions associated with that movement to the Canadian Transportation Agency for final offer arbitration (FOA). At the request of either party, FOA proceedings are confidential.

The Canada Transportation Act (CTA) mandates the steps in the FOA process and associated timelines. Subject to agreement between the parties, these may be supplemented by procedural rules established by the Agency ([Procedures for the conduct of final offer arbitration pursuant to part IV of the CTA](#)). The Agency acts as a clearing house for the exchange of the parties' final offers, appoints the arbitrator and adjudicates any preliminary railway objections to a referral to an arbitrator. It can also provide administrative, technical or legal assistance if requested by the arbitrator.

The arbitrator must select one of the two final offers in its entirety, having regard to whether there is available to the shipper an 'alternative, effective, adequate and competitive means of transporting the goods' to which the FOA relates. Unless the parties agree to an extension, the arbitrator must render a decision within 60 days after the shipper's initial submission. The decision is retroactive to the date of that submission and remains in effect for a period of up to two years, as agreed by the parties or, failing agreement, as requested by the shipper in its initial submission.

With respect to prices for incidental services, excluding freight rates, a shipper may apply to the Agency to challenge the reasonableness of charges for the movement of traffic and associated conditions contained in a tariff that applies to multiple shippers. In making its determination, the Agency must consider the objective of the charge or conditions, industry practice and the existence of an effective, adequate and competitive alternative to the provision of the incidental service. If the Agency finds the challenged tariff provisions unreasonable, it may establish new charges or associated conditions to remain in effect for up to one year. The process is governed by procedural rules established by regulation ([Canadian Transportation Agency Rules \(Dispute Proceedings and Certain Rules Applicable to All Proceedings\)](#)).

While the CTA contains a number of other remedies related to freight rates, these have either never been used or fallen out of use.

There is no procedure under Canadian federal law for challenging prices charged for the transportation of passengers by rail generally. In relation to the transportation of persons with disabilities, Part V of the CTA allows the Agency, on application, to determine that specific fees or charges constitute an undue barrier to mobility and to require the carrier to take appropriate corrective action.

Law stated - 11 janvier 2024

Types of regulation

Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

There is no such requirement under federal law.

Law stated - 11 janvier 2024

NETWORK ACCESS

Sharing access with other companies

Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Railway companies are generally not required to grant network access to other parties, subject to the narrow, and generally unused, exceptions in the Canada Transportation Act (CTA).

Section 138 of the CTA allows a railway company, defined as a person who already holds a certificate of fitness, but not a shipper or other interested party, to apply to the Agency for the right to operate its trains over and on any portion of the network of any other railway company.

The Agency may grant the right and impose any conditions as appear just or desirable to the Agency, having regard to the public interest. No contested running rights application under section 138 has ever succeeded, and few cases have been decided under predecessor statutes.

Section 139 of the CTA allows the Governor in Council to order that two or more railway companies allow joint or common use of a right-of-way. To our knowledge, no public decision has ever been issued under the current section 139 of the CTA.

Law stated - 11 janvier 2024

Access pricing

Are the prices for granting of network access regulated? How?

If a railway company agrees to grant access to its network to another carrier, the pricing for such access is not subject to regulatory oversight.

In theory, if a railway company were to succeed in obtaining running rights over the line of another railway company under section 138, the Canada Transportation Act (CTA) would require the Agency to fix the amount of the access charge. Similarly, if the Governor in Council orders that two or more railway companies allow joint or common use of a right-of-way, the Governor in Council may, by order, fix the amount to be paid. Given the failure of contested running rights applications and the lack of public orders for joint or common use under section 139 of the CTA, the potential access prices are unaddressed under Canadian law.

The CTA allows urban transit authorities and other specified public passenger service providers to apply to the Agency for a determination of any matter, including access prices, raised in the context of the negotiation of any agreement concerning the use of the railway company's railway, land, equipment, facilities, or services by the public passenger service provider. Other passenger rail service providers may use the final offer arbitration remedy in respect of rates or conditions associated with the provision of services by a railway company.

Law stated - 11 janvier 2024

Competitor access

Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

Canada does not have a declared policy on allowing access to existing rail networks. However, the national transportation policy set out in the Canada Transportation Act states that competition and market forces, both within and among the various modes of transport, are the prime agents in providing viable and effective transport services.

Law stated - 11 janvier 2024

SERVICE STANDARDS

Service delivery

Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

Sections 113 to 116 of the Canada Transportation Act (CTA) require federally regulated railway companies to provide 'adequate and suitable accommodation' for receiving all freight traffic offered for carriage on their railway. The service obligations extend to providing adequate facilities for connecting private sidings to the rail network and for transferring freight between rail carriers.

While a federal railway company accordingly cannot refuse to carry traffic, the service obligations are not absolute but have been described as requiring the railway company to provide the highest level of service that is reasonable in the circumstances. Jurisprudence going back more than 100 years has recognised exceptions in various circumstances beyond the railway's control and that it could not reasonably have anticipated and managed or avoided. The availability of such justification is driven by the facts of each case.

Federal legislation does not address passenger service obligations generally. The [Accessible Transportation for Persons with Disabilities Regulations](#) prohibit federal passenger railways from refusing certain services to passengers with disabilities, provided the services are requested within prescribed timelines. In the absence of advance notice, a carrier must make 'every reasonable effort' to provide those services.

Law stated - 11 janvier 2024

Service delivery

Are there legal or regulatory service standards that rail transport companies are required to meet?

Federally regulated freight railway companies must meet the standards enshrined in sections 113 to 115 of the Canada Transportation Act. A considerable body of jurisprudence addresses these standards in the context of specific disputes over railcar supply, frequency of service, embargoes and the rail infrastructure needed to accommodate traffic. Where these standards are particularised or modified by confidential contract, the terms of that contract are binding in any proceeding about service inadequacy, but the mere existence of a confidential contract does not set aside the statutory service standards.

Apart from the standards set out in the [Accessible Transportation for Persons with Disabilities Regulations](#), there are no federal legal or regulatory service standards for passenger transportation by rail.

Law stated - 11 janvier 2024

Challenging service

Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

The statutory service obligations in respect of freight transportation and any service-related terms in a confidential contract are enforceable on complaint to the Canadian Transportation Agency (Agency). Complaints may be brought by a shipper or another party in the rail logistics chain, such as a transloader. The process is governed by the [Canadian Transportation Agency Rules \(Dispute](#)

[Proceedings and Certain Rules Applicable to All Proceedings](#)). The Agency's remedial powers include the ability to direct the allocation of equipment, the acquisition of property and generally the manner in which service must be provided, in addition to the power to award compensation for out-of-pocket expenses incurred due a service failure. An Agency finding that a rail carrier has breached its service obligations also provides the basis for a court action for damages.

Since 2018, the Agency also has the ability to initiate a service investigation on its own motion.

While a complaint under section 116 is necessarily based on past or ongoing service shortfalls, a shipper may also require its rail carrier to offer to enter a forward-looking confidential contract dealing with service obligations. Where no agreement is reached, the shipper may initiate an arbitration before an arbitrator appointed by the Agency. The steps in this arbitration process and the relevant timelines are mandated by statute, supplemented by the [Rules of Procedure for Rail Level of Service Arbitration](#). The arbitrator's decision sets operational terms governing service for one year from the date of the decision (unless the parties agree otherwise) and is deemed to be a confidential contract.

Service obligations related to the transportation of persons with disabilities are enforceable by application to the Agency. The procedural rules are the same as for complaints in respect of freight. If the Agency finds an undue barrier to the mobility of persons with disabilities, it may order corrective measures as well as financial compensation.

Law stated - 11 janvier 2024

SAFETY REGULATION

Types of regulation

How is rail safety regulated?

The Railway Safety Act (RSA) governs safety of federal railway companies. It provides for the development of safety rules by the rail industry, subject to approval by the Minister of Transport (Minister), and requires federal railway companies to establish safety management systems. The Minister is responsible for railway safety regulation within federal jurisdiction.

Provincial governments are responsible for regulating the safety of railways under their jurisdiction. Provincial legislation often incorporates some or all of the requirements contained in federal statutes, regulations, rules and standards.

The Minister may enter into agreements with provincial ministers responsible for provincial railways regarding the administration of any law respecting railway safety and security.

Law stated - 11 janvier 2024

Competent body

What body has responsibility for regulating rail safety?

The Minister is responsible for railway safety regulation within federal jurisdiction. Provinces are generally responsible for railway safety regulation within the legislative authority of the province.

Law stated - 11 janvier 2024

Manufacturing regulations

What safety regulations apply to the manufacture of rail equipment?

The Railway Safety Appliance Standards Regulations apply to the manufacture of rail equipment. The Railway Locomotive Inspection and Safety Rules require new freight and passenger locomotives to be designed and constructed as a minimum in accordance with the latest revision of the 'Association of American Railroads Manual of Standards and Recommended Practices' or an equivalent standard. The Railway Freight Car Inspection and Safety Rules contain similar requirements for new freight cars.

Law stated - 11 janvier 2024

Maintenance rules

What rules regulate the maintenance of track and other rail infrastructure?

Part II of the Railway Safety Act regulates the maintenance of railway lines as well as road and utility crossings.

The Rules Respecting Track Safety prescribe minimum safety requirements for federally regulated standard gauge railway track, although a railway may adopt more stringent requirements. Railway companies must conduct track inspections in compliance with the Rules. Track inspectors, track supervisors, and track maintenance persons must have certain qualifications.

Law stated - 11 janvier 2024

Maintenance rules

What specific rules regulate the maintenance of rail equipment?

Rules regulating the maintenance of railway equipment and established under the Railway Safety Act include the Railway Freight Car Inspection and Safety Rules, the Railway Locomotive Inspection and Safety Rules and the Railway Passenger Car Inspection and Safety Rules.

Law stated - 11 janvier 2024

Accident investigations

What systems and procedures are in place for the investigation of rail accidents?

The Canadian Transportation Accident Investigation and Safety Board Act (CTAISBA) establishes the Canadian Transportation Accident Investigation and Safety Board (Board) and governs the investigation of rail accidents.

The Board may investigate any transportation occurrence (including in relation to rail) on its own initiative or at the request of a government department, the lieutenant governor in council of a province or the Commissioner of NWT, Nunavut or Yukon, and must do so if requested by the Governor in Council.

The Board may enter into an agreement with a province relating to investigations into transportation accidents.

Regulations under the CTAISBA govern investigations of transportation accidents, including in respect of the preservation of information and the rights and privileges of observers attending an investigation.

Reporting of certain types of accidents to the Board is mandatory.

Law stated - 11 janvier 2024

Accident liability

Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

The ordinary liability regime generally applies.

However, Division VI.2 of the Canada Transportation Act relates to liability for accidents involving crude oil and other designated goods. In such circumstances, the railway company is liable regardless of fault or negligence. Damages and costs are limited to the amount of the minimum liability insurance coverage the company is required to carry, unless the accident resulted from an act or omission that was committed either with intent to cause the accident or recklessly and with knowledge the accident would probably result.

Law stated - 11 janvier 2024

FINANCIAL SUPPORT

Government support

Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

The Canadian government provides both direct and indirect financial support to industry. Railway companies are eligible for and have received funding through various initiatives and programmes, including the Canada Infrastructure Bank, which uses equity loans and other products to invest in infrastructure generally, as well as direct grants under programmes that are more narrowly focused on trade and transportation, including the National Trade Corridors Fund (NTCF). In 2016 the federal government announced the allocation of C\$2 billion over 11 years to

the NTCF, with an additional \$5 billion to be invested in trade and transportation projects through the Canada Infrastructure Bank.

Law stated - 11 janvier 2024

Requesting support

Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

Rules governing various government funding initiatives apply generally.

Law stated - 11 janvier 2024

LABOUR REGULATION

Applicable labour and employment laws

Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

The Canada Labour Code (the Code) governs labour relations and employment standards for federally regulated industries, including railway companies. The Code allows for regulations or orders to apply to specific classes of employees or industrial development. Sector-specific regulations include regulations governing the safety of employees on moving trains and exempting railway running-trades employees from general hours of work standards.

Law stated - 11 janvier 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

Railway companies in Canada are subject to both federal and provincial environmental laws and specialised regulations, tailored to address the impacts associated with rail operations. The [Canadian Environmental Protection Act 1999-pan>](#) serves as a foundational law, ensuring the regulation of pollutants released into the environment and setting out penalties for non-compliance. This Act applies broadly to various sectors, including rail transport. The [Transportation of](#)

[Dangerous Goods Act 1992](#), also plays an important role in governing the safe transportation of dangerous goods across all transport modes.

In addition, railway companies must adhere to specific rules and regulations designed for their sector. For instance, the [Locomotive Emissions Regulations](#) under the Railway Safety Act (RSA) directly address the rail transport sector by regulating emissions from locomotives. Additionally, the [Railway Safety Administrative Monetary Penalties Regulations](#) allow for monetary penalties for contraventions of certain provisions of the RSA or its regulations, including those related to environmental protection.

Provincial environmental laws and regulations apply to railways within their legislative authority. Municipal and local laws and bylaws may also apply.

Law stated - 11 janvier 2024

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in your jurisdiction?

In its October 2022 final report, a National Supply Chain Task Force (NSCTF) established by the federal Minister of Transport, identified several rail-focused recommendations that would require changes to existing legislative and regulatory provisions applicable to freight transportation by rail.

Responding to one of these recommendations, the federal government introduced amendments to the Canada Transportation Act that expanded the availability of regulated interswitching. Under regulated interswitching, a railway company serving a point of origin or destination that is located within a prescribed radius of a connection with another railway must transfer freight traffic to or from the connecting railway at rates set annually by the Canadian Transportation Agency. The 2023 amendments expanded the prescribed radius in three Canadian provinces from 30 kilometres to 160 kilometres for a period of 18 months.

Other issues identified in the report of the NSCTF are part of a stakeholder consultation process Transport Canada launched in the summer of 2023. The consultation seeks input on a range of potential legislative changes in relation to such matters as: administrative monetary penalties to enforce railway company

obligations; recourse against certain railway surcharges and contracting practices; the Canadian Transportation Agency's power to act on its own initiative; the availability of regulatory costing data in freight rate arbitrations; transparency of rail capacity planning; the regulatory regime applicable to the transportation of grain; and measures to support the viability of shortline railways.

Law stated - 11 janvier 2024