



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## LEGISLATIVE SUMMARY



### **Bill C-49:**

## **An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts**

Publication No. 42-1-C49-E  
4 August 2017

**Jed Chong  
Zackery Shaver  
Nicole Sweeney**

Economics, Resources and International Affairs Division  
Parliamentary Information and Research Service

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2017

*Legislative Summary of Bill C-49*  
(Legislative Summary)

Publication No. 42-1-C49-E

Ce document est également publié en français.

# CONTENTS

1	BACKGROUND.....	1
1.1	Introduction .....	1
1.2	<i>Canada Transportation Act</i> Review and Transportation 2030.....	1
1.3	Key Concepts.....	2
1.3.1	Interswitching and the <i>Fair Rail for Grain Farmers Act</i> .....	2
1.3.2	Coasting Trade .....	2
1.3.3	Locomotive Voice and Video Recorders .....	3
2	DESCRIPTION AND ANALYSIS .....	3
2.1	Amendments to the <i>Canada Transportation Act</i> (Clauses 2 to 59).....	3
2.1.1	Changes Affecting the Airline Industry .....	3
2.1.1.1	Joint Ventures (Clauses 14, 78 and 87) .....	4
2.1.1.2	Foreign Ownership Limits of Canadian Airlines (Clauses 15, 16, 90 and 91) .....	5
2.1.1.3	Air Passenger Rights (Clause 19) .....	6
2.1.2	Changes Affecting the Rail Industry .....	6
2.1.2.1	Bankruptcy and Insolvency (Clauses 21, 82 and 89) .....	6
2.1.2.2	Long-Haul Interswitching (Clauses 29 and 79) .....	6
2.1.2.3	Maximum Grain Revenue Entitlement (Clauses 40, 41, 80 and 81) .....	7
2.1.2.4	Dispute Resolution (Clauses 5, 6, 23, 25, 49 to 52 and 92 to 94) .....	7
2.1.2.5	Transparency Measures (Clauses 24, 27, 29 and 32 to 34) .....	8
2.1.2.6	Service and Performance Measures (Clauses 9, 23, 42, 45, 76 and 77) .....	9
2.2	Amendments to the <i>CN Commercialization Act</i> (Clause 60).....	10
2.3	Amendments to the <i>Railway Safety Act</i> and the <i>Canadian Transportation Accident Investigation</i> <i>and Safety Board Act</i> (Clauses 61 to 67) .....	10
2.3.1	Locomotive Voice and Video Recorders .....	10
2.3.2	Use of Information .....	10
2.3.3	Additional Measures .....	11

2.4	Amendments to the <i>Canadian Air Transport Security Authority Act</i> (Clauses 68 and 69).....	11
2.5	Amendments to the <i>Coasting Trade Act</i> (Clauses 70 to 72).....	12
2.6	Amendments to the <i>Canada Marine Act</i> (Clauses 73 and 74).....	12
2.7	Transitional Provisions (Clauses 75 to 81).....	12
2.8	Related and Consequential Amendments (Clauses 82 to 94).....	12
2.9	Coordinating Amendments (Clauses 95 to 97).....	12
2.10	Coming Into Force (Clause 98).....	13
3	COMMENTARY .....	14
3.1	Air Transportation.....	14
3.2	Rail Transportation.....	14
3.2.1	Locomotive Voice and Video Recorders .....	15

# LEGISLATIVE SUMMARY OF BILL C-49: AN ACT TO AMEND THE CANADA TRANSPORTATION ACT AND OTHER ACTS RESPECTING TRANSPORTATION AND TO MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

---

## 1 BACKGROUND

### 1.1 INTRODUCTION

Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts (short title: Transportation Modernization Act),<sup>1</sup> was introduced in the House of Commons on 16 May 2017 by the Honourable Marc Garneau, Minister of Transport.

Bill C-49 requires the Canadian Transportation Agency (the Agency) to make new regulations regarding air passenger rights. The bill also addresses other aspects of air transportation, including changes to international ownership restrictions for Canadian air carriers; applications for joint ventures between two or more air carriers; and the screening services offered by the Canadian Air Transport Security Authority.

In addition, Bill C-49 contains a number of measures with respect to rail transportation, including a definition of adequate and suitable rail service, as well as data-reporting requirements for railways. Further, the bill also establishes long-haul interswitching and allows shippers, in their service agreements with railways, to seek reciprocal financial penalties and provides remedies for shippers regarding rates and service.<sup>2</sup>

Bill C-49 also amends the *Railway Safety Act*<sup>3</sup> to require the installation of locomotive voice and video recorders (LVVR) in locomotive cabs and prescribes limits for the use of data obtained through LVVR.<sup>4</sup>

Finally, although Bill C-49 addresses the aviation and rail sectors primarily, it also introduces some changes relating to commercial marine activity (coasting trade) and the capacity of port authorities to secure funding from the Canada Infrastructure Bank.

### 1.2 CANADA TRANSPORTATION ACT REVIEW AND TRANSPORTATION 2030

A review of the *Canada Transportation Act* (CTA)<sup>5</sup> was launched in June 2014. Chaired by the Honourable David Emerson, the review panel “looked forward 20 to 30 years to identify priorities and potential actions in transportation that will support Canada’s long-term economic well-being.”<sup>6</sup> Their report was submitted to the Minister of Transport in December 2015.<sup>7</sup>

Transport Canada’s “Transportation 2030” plan, presented in November 2016, responds to the recommendations of the CTA review and to the subsequent public consultations undertaken by the department.<sup>8</sup> Transportation 2030 sets out the government’s plan under five key themes:

- the traveller;
- safer transportation;
- green and innovative transportation;
- waterways, coasts and the north; and
- trade corridors to global markets.

The Minister of Transport has described Bill C-49 as “a first legislative step to deliver on early transportation 2030 measures.”<sup>9</sup>

### 1.3 KEY CONCEPTS

Some key concepts and statutes referred to in the bill are described briefly below.

#### 1.3.1 INTERSWITCHING AND THE *FAIR RAIL FOR GRAIN FARMERS ACT*

An interswitching agreement is a commercial agreement between railway companies under which a local carrier picks up railway cars from a shipper, municipality or other interested party and delivers them to another carrier that performs the majority of the linear distance of the overall railway movement.<sup>10</sup> Interswitching has been regulated in Canada since 1904 to ensure that captive shippers (i.e., customers with only one choice of railway carrier) have “fair and reasonable access” to the entire rail system at a regulated rate.<sup>11</sup>

The CTA authorizes the Agency to make regulations with respect to the terms and conditions for the interswitching of traffic, the rate to be charged for performing this operation, and distance zones within which the regulated rates apply.<sup>12</sup> Generally speaking, regulated interswitching is available to shippers located within a 30 km radius of an interchange with another railway, although the Agency is able to extend this limit in certain circumstances.<sup>13</sup>

In 2014, in response to the challenges associated with moving the record grain crop of 2013–2014, Parliament adopted the *Fair Rail for Grain Farmers Act*.<sup>14</sup> Among other things, the Act specified that the Agency can prescribe different interswitching distances for specific regions or goods.<sup>15</sup> Under the authority granted by the Act, the *Railway Interswitching Regulations*<sup>16</sup> were amended in 2014 to increase the interswitching limit for grain and all other commodities to 160 km in Alberta, Saskatchewan, and Manitoba. The interswitching provisions of the Act expired on 1 August 2017.<sup>17</sup> To replace these provisions, Bill C-49 introduces long-haul interswitching, a new, permanent mechanism designed to assist “captive shippers across different sectors and regions of Canada.”<sup>18</sup>

#### 1.3.2 COASTING TRADE

Coasting trade includes passenger and freight services between points in Canada, as well as any other marine activity of a commercial nature in Canadian waters. It also includes marine activity above the continental shelf of Canada related to the exploration, exploitation or transportation of resources on the continental shelf.

Broadly speaking, the *Coasting Trade Act*<sup>19</sup> limits Canada's domestic commercial marine activity (coasting trade) to Canadian registered ships, with some exceptions. By requiring foreign ship owners to obtain a coasting trade licence before being allowed to operate in Canadian waters, the Act is designed to protect Canadian ship owners from "unfair competition from countries that have lower wages or standards of safety."<sup>20</sup>

The *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act*,<sup>21</sup> which received Royal Assent on 16 May 2017, amends the *Coasting Trade Act* to open certain aspects of the Canadian shipping business to European competition.<sup>22</sup> Among other things, it introduces amendments allowing European operators to pick up empty shipping containers and transport them within Canadian waters.<sup>23</sup> Bill C-49 further opens up the movement of empty containers that are either owned or leased by a shipping company by allowing any foreign-registered vessel to complete such movements without a coasting trade licence.

### 1.3.3 LOCOMOTIVE VOICE AND VIDEO RECORDERS

A "watchlist" prepared by the Transportation Safety Board of Canada (TSB) identifies key safety issues that need to be addressed to improve the safety of Canada's transportation system. The installation of LVVR has been included on the TSB watchlist since 2012. The TSB suggests that installing LVVR would assist railway accident investigators in their work and facilitate proactive safety management. Voice recording technology is currently deployed in both the aviation and maritime sectors.<sup>24</sup>

In May 2015, the TSB launched a safety study on LVVR and invited Transport Canada, industry stakeholders and union representatives to participate.<sup>25</sup> The study addressed a range of issues, including the potential safety benefits of installing recorders in locomotives and the appropriate use of information obtained through LVVR.<sup>26</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill C-49 contains 98 clauses, amends seven statutes and introduces consequential amendments to a further six statutes. This summary highlights selected amendments brought by the bill; it does not review every clause.

### 2.1 AMENDMENTS TO THE *CANADA TRANSPORTATION ACT* (CLAUSES 2 TO 59)

Clauses 2 to 59 of Bill C-49 amend a number of CTA provisions relating to the airline industry and the rail sector.

#### 2.1.1 CHANGES AFFECTING THE AIRLINE INDUSTRY

The CTA amendments relating to the airline industry introduce three key changes intended to promote economic growth and improve air passenger experience.<sup>27</sup>

### 2.1.1.1 JOINT VENTURES (CLAUSES 14, 78 AND 87)

Clause 14 adds new sections 53.7 to 53.84 to the CTA. The new sections establish a framework allowing the Minister of Transport to authorize and oversee arrangements (often referred to as joint ventures) in the airline sector to ensure that they are considered from the perspective of both fair competition practices and the public interest.<sup>28</sup> Currently, joint ventures are subject to review only as agreements between competitors under the *Competition Act*.

Under the new framework, airlines have the option of seeking ministerial approval of a proposed arrangement. The authorization process begins when a person wishing to enter into an arrangement notifies the Minister of Transport of the proposed arrangement. A copy of the notice must also be given to the Commissioner of Competition (new section 53.71(1)). After receiving such notice, the minister must, within 45 days, inform the parties to the arrangement and the Commissioner whether the proposed arrangement raises significant considerations with regard to the public interest (new section 53.71(6) of the CTA). If, after the initial assessment, the minister is of the view that the proposed arrangement raises no significant considerations with respect to the public interest, no further action is taken (new section 53.71(7)). However, the arrangement could still be reviewed by the Competition Tribunal under the terms of the *Competition Act*<sup>29</sup> if the Commissioner has concerns about a possible lessening of competition in the industry (section 90.1 of the *Competition Act*).

Conversely, if the minister is of the view after the initial assessment that the proposed arrangement raises significant considerations with respect to the public interest, a review process is launched (new section 53.71(8)). The first two steps of the review process are conducted in parallel: the minister (or a person designated by the minister) examines the proposed arrangement (new section 53.73(1)) and communicates any public interest considerations to the parties to the arrangement and the Commissioner (new section 53.73(4)), and the Commissioner prepares a report for the minister and the parties on any lessening of competition that might occur as a result of the proposed arrangement (new section 53.73(2)). A period of dialogue involving the minister, the Commissioner and the parties then ensues to address concerns that have been raised (new sections 53.73(5) to 53.73(7)). After this process is complete, if the minister is satisfied that the proposed arrangement is in the public interest, he or she may authorize it and specify any terms and conditions relating to the public interest and competition he or she considers appropriate (new section 53.73(8)).

If the minister approves the agreement under new section 53.73(8) of the CTA, clause 87 provides that the Commissioner can no longer ask the Competition Tribunal to review the arrangement with respect to competition-related concerns (new section 90.1(9)(d) of the *Competition Act*). Nevertheless, there is a role for the Commissioner in the ongoing oversight process created by new section 53.77 of the CTA. This new process provides powers for the minister, who may, at any time after the second anniversary of the day on which an arrangement is authorized, notify the parties of any public interest or competition-related considerations (new section 53.77(1)). If, after consultation with the Commissioner, the Minister determines



that the arrangement is still in the public interest, the authorization is continued subject to any new terms and conditions made to address the concerns that were identified (new section 53.77(3)).

All terms and conditions relating to an authorization granted by the Minister are binding (new section 53.78), and failure to comply with them is an indictable offence punishable by a term of imprisonment of not more than five years, or a fine of not more than \$10,000,000, or both (new section 53.83(1)). However, any party subject to the terms and conditions of an authorization may apply to the minister to have those terms and conditions varied or rescinded (new section 53.75).

As mentioned above, airlines are under no obligation to notify the minister before entering into an arrangement (new section 53.71(1)); however, where notification is given, the authorization process is launched and the proposed arrangement must not be completed without the minister's authorization (new section 53.72). Failure to comply with this restriction constitutes an indictable offence punishable by imprisonment for a term of up to five years, or a fine of up to \$10,000,000, or both (new section 53.83(1)). Parties may, however, withdraw from the process at any time before a final decision is rendered (new section 53.8).

Finally, clause 78 provides that persons who entered into an arrangement before the coming into force of clause 14 may give notice of the arrangement in order to obtain ministerial authorization. In such instances, they will not be liable to punishment for having entered into an agreement, for which they are seeking approval, without first obtaining authorization.

#### 2.1.1.2 FOREIGN OWNERSHIP LIMITS OF CANADIAN AIRLINES (CLAUSES 15, 16, 90 AND 91)

Bill C-49 increases the foreign ownership limits for Canadian airlines operating a domestic service. Currently, at least 75% of these airlines' voting interests must be owned and controlled by Canadians. Clause 15 of the bill amends the definition of "Canadian" provided in section 55(1) of the CTA by reducing this threshold to 51%, subject to the following safeguards:

- No single non-Canadian investor (individually or by affiliation) may hold more than 25% of the voting interests of a Canadian airline.
- No combination of international air carriers may own more than 25% of the voting interests of a Canadian airline (individually or by affiliation).

The change does not apply to the 25% limit for Canadian operators of specialty air services (e.g., firefighting, heli-logging and aerial photography).<sup>30</sup>

Additionally, clause 90 amends the *Air Canada Public Participation Act*<sup>31</sup> to allow Air Canada to take advantage of these increased foreign ownership limits, while clause 91 amends the *Budget Implementation Act, 2009*<sup>32</sup> to repeal previous amendments to the CTA that were never brought into force but would have allowed the Governor in Council to issue exemptions to the current foreign ownership limits.

### 2.1.1.3 AIR PASSENGER RIGHTS (CLAUSE 19)

Bill C-49 adds new section 86.11 to the CTA to require the Agency to establish through regulations a new air passenger rights regime that will apply to flights to, from and within Canada, including connecting flights (new section 86.11(1)). This “passenger bill of rights” will be part of the carrier’s terms and conditions (new section 86.11(4)).

New section 86.11(1) stipulates that the list of subjects addressed in the air passenger rights regime must include

- the carrier’s obligation to make certain information, such as the terms and conditions of carriage, readily available to passengers in plain language;
- the carrier’s obligations in case of flight delay, flight cancellation or denial of boarding; and
- the carrier’s obligation to facilitate the assignment of seats to children under the age of 14 in close proximity to a parent or guardian at no additional cost.

### 2.1.2 CHANGES AFFECTING THE RAIL INDUSTRY

Bill C-49 proposes a number of amendments to the freight rail provisions contained in the CTA. Most of the amendments aim to promote transparency, system efficiency and private sector investment.<sup>33</sup> The reforms can be grouped into six main categories: bankruptcy and insolvency, long-haul interswitching, maximum grain revenue entitlement, dispute resolution, transparency measures, and services and performance measures. These categories are discussed below.

#### 2.1.2.1 BANKRUPTCY AND INSOLVENCY (CLAUSES 21, 82 AND 89)

Clause 21 repeals the bankruptcy and insolvency regime specific to railway companies set out in sections 106 to 110 of the CTA. Clauses 82 and 89 amend the definitions of “corporation” in the *Bankruptcy and Insolvency Act*<sup>34</sup> and of “company” in the *Companies’ Creditors Arrangement Act*<sup>35</sup> to make railway companies subject to the bankruptcy and insolvency regime of these statutes. These changes will also have the effect of removing bankruptcy and insolvency proceedings from the Federal Court’s jurisdiction.

#### 2.1.2.2 LONG-HAUL INTERSWITCHING (CLAUSES 29 AND 79)

Clause 29 introduces a long-haul interswitching mechanism for shippers to access service from a competing railway located beyond the designated distance zones when certain conditions are met and upon an application to the Agency (new sections 129 and 130 of the CTA).

The Agency has 30 business days to consider an application for a long-haul interswitching order (new section 134) and to rule in the case of a disagreement between the shipper and local carrier on certain matters, such as the applicable

long-haul interswitching rate (new section 134(1)(a)). In making its determination, the Agency must consider certain factors set out in new sections 135, 136 and 136.1. The Agency will dismiss an application unless the shipper can demonstrate that an attempt has been made to resolve the issue with the carrier (new section 133). Long haul switching orders made by the Agency may be made only for distances up to 1,200 km, or 50% of the total number of kilometres over which the traffic is moved by rail in Canada, whichever is greater (new section 134(2)). Any order issued by the Agency applies for one year, unless the parties agree otherwise (new section 136.3).

Existing interswitching rates set by regulation under section 128(1)(b) of the CTA will be continued as set out in clause 79.

#### 2.1.2.3 MAXIMUM GRAIN REVENUE ENTITLEMENT (CLAUSES 40, 41, 80 AND 81)

Under the current legislation, a mechanism referred to as the maximum revenue entitlement (MRE) limits the amount of revenue the Canadian National Railway Company (CN) and Canadian Pacific Railway Company (CP) can generate from the shipment of a tonne of western grain over any given distance.<sup>36</sup> A number of concerns about this mechanism were raised in the CTA review panel report (commonly referred to as the Emerson report); some of which are addressed in Bill C-49. The new measures are designed mainly to “encourage railway investment in infrastructure, including hopper cars”<sup>37</sup> and primarily amend the way in which the MRE is calculated.<sup>38</sup> Among the measure are

- excluding interswitching revenues from MRE calculations, a measure the CTA review panel contended would “prevent unfairness and financial harm to railways and remove a barrier to the use of interswitching”<sup>39</sup> (new section 150(3)(d));
- excluding any amount earned from the movement of grain in containers on flat cars. This would appear to address concerns that the current formula discourages grain from being shipped in containers<sup>40</sup> (new section 150(3)(e)); and
- creating an individual price inflation index for each railway. Currently, the railway price inflation index used to calculate the MRE is the same for CN and CP, and this can reportedly create distortions<sup>41</sup> (new section 151(4)).

Existing inflation indexing values will be continued and must be updated before 31 March 2021, as stated in the transitional provisions contained in clauses 80 and 81.

#### 2.1.2.4 DISPUTE RESOLUTION (CLAUSES 5, 6, 23, 25, 49 TO 52 AND 92 TO 94)

The existing legislation provides a number of measures, some collaborative and some adjudicative, to facilitate the resolution of rate and service disputes between a shipper and a railway.<sup>42</sup> Bill C-49 introduces some changes to the various dispute resolution mechanisms. Some examples are provided below:

- New section 36.11(1) requires the Agency to provide the public with information about the provisions of the Act relating to railway transportation (Part III) and with

information and guidance about remedies available in the event of a dispute related to those provisions (clause 5).

- New section 36.11(2) authorizes a member of the Agency or its staff to attempt to informally resolve a dispute between a railway company and a party to whom it has provided information and guidance (clause 5).
- New section 42(2.1) requires the Agency to include, in its annual report to Parliament, specific information about the arbitration and mediation applications it has received and addressed (clause 6).
- Section 116(1)(b) of the CTA grants the Agency 120 days from the receipt of a complaint to determine whether a company is fulfilling its obligations. New section 116(1)(b) reduces this interval to 90 days (clause 23).
- Final offer arbitration tasks an arbitrator with resolving a dispute by choosing between the final offer of the shipper and the final offer of the railway.<sup>43</sup> The arbitrator's decision currently remains in effect for one year, provided the parties did not previously agree on a shorter period (section 165(2)(c)). New section 165(2) increases the maximum period for which a decision is valid to two years (clause 49).
- If a shipper and a railway are unable to agree on how the railway company must fulfil its service obligations, a shipper may ask the Agency to arbitrate certain aspects of the disagreement. New section 169.37(3) requires the arbitrator to establish financial penalties in a manner that "encourages the efficient movement of the shipper's traffic and the performance of the railway system" (clause 52).
- Bill C-49 allows shippers and rail companies to seek reciprocal financial penalties for failure to comply with the service conditions of a confidential contract or the operational terms of an arbitration ruling (clauses 25 and 50). In contrast, the CTA does not currently provide for financial penalties payable to shippers in cases where a rail carrier fails to fulfil its obligations of carriage, although rail carriers may impose penalties on shippers.<sup>44</sup>
- Bill C-49 also makes permanent the temporary provisions within the CTA that were due to expire with the *Fair Rail for Grain Farmers Act*, dealing with shipper compensation in the event of a level of service dispute and the Agency's authority to define operational terms by regulation (clauses 92 to 94).

#### 2.1.2.5 TRANSPARENCY MEASURES (CLAUSES 24, 27, 29 AND 32 TO 34)

Bill C-49 includes a series of measures intended to improve transparency. These measures include the following:

- The CTA requires railway companies to keep up-to-date plans for each of their railway lines, specifying whether it intends to take steps to discontinue any lines (section 141(1)). New section 141(2) of the Act provides that this plan must be made accessible to the public on the Internet (clause 32).
- The CTA requires railway companies to comply with certain steps before discontinuing the operation of a railway line. New section 142(1) requires the railway company to publish a report on its Internet site, setting out the date that it commenced and completed each step (clause 33).

- Section 117 of the CTA addresses tariffs charged by railway companies for the movement of traffic and passengers. Currently, tariffs must be displayed publicly or made available for public inspection at the railway company's offices. New section 117(3) requires that tariffs be made available to the public through the company's Internet site (clause 24).
- New section 136.9 requires that a railway company publish an up-to-date list of the locations of the interchanges on the railway that the company operates (clause 29).
- New section 127.1(1) requires the Agency to determine the rate to be charged for interswitching traffic on an annual basis. New section 127.1(4) requires that the Agency publish the method it followed for determining the rate, while new section 127.1(5) provides that the rate must be published in the *Canada Gazette* no later than 31 December before the beginning of the calendar year for which the rate applies (clause 27).

#### 2.1.2.6 SERVICE AND PERFORMANCE MEASURES (CLAUSES 9, 23, 42, 45, 76 AND 77)

Bill C-49 contains a number of transparency measures specifically designed to foster a competitive and efficient freight system. Some of these new measures are outlined below:

- New section 50(1.01) allows the Governor in Council to require class 1 rail carriers<sup>45</sup> to provide information for the purposes of determining long-haul interswitching rates and communicating service and performance indicators to the public (clause 9). Until the new regulations are in place, clauses 76 and 77 itemize information that will be required to be disclosed by class 1 railway companies.
- Section 116 of the CTA addresses the process to be followed when a complaint is made that a railway company is not fulfilling its service obligations. New section 116(1.2) sets out factors the Agency shall consider in determining whether a company is fulfilling its service obligations. These factors include the reasonableness of the shipper's request with respect to traffic (new section 116(1.2)(b)) and the company's and the shipper's operational requirements and restrictions (new section 116.(1.2)(e)) (clause 23).
- New section 151.01(1) requires prescribed railway companies to report certain information to the minister so that he or she can assess the company's ability to move the grain it is required to move (clause 42).
- New section 151.01(2) requires that prescribed railway companies provide the minister with contingency plans for dealing with winter weather conditions (clause 42).
- New section 157(5) requires CN and CP to provide the Agency with certain financial information required to determine costs relating to railway transportation (clause 45).

## 2.2 AMENDMENTS TO THE *CN COMMERCIALIZATION ACT* (CLAUSE 60)

The *CN Commercialization Act*<sup>46</sup> currently limits any shareholder's equity to 15% of the voting shares in the CN. Clause 60 of the bill amends section 8(1)(a) to raise this limit, allowing a shareholder to hold up to 25% of voting shares in the company.

## 2.3 AMENDMENTS TO THE *RAILWAY SAFETY ACT* AND THE *CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION* *AND SAFETY BOARD ACT* (CLAUSES 61 TO 67)

Clauses 61 to 66 of Bill C-49 amend the *Railway Safety Act* and clause 67 amends the *Canadian Transportation Accident Investigation and Safety Board Act*<sup>47</sup> to require the installation of voice and video recorders in lead locomotives that operate on railway lines under federal jurisdiction and prescribe how this information will be used by railway companies, Transport Canada, the Transportation Safety Board of Canada and other affiliated agencies.

### 2.3.1 LOCOMOTIVE VOICE AND VIDEO RECORDERS

New section 17.31 of the *Railway Safety Act* requires railway companies to install instruments and equipment for locomotive voice and video recording (LVVR), as prescribed by forthcoming regulations.

### 2.3.2 USE OF INFORMATION

New section 17.91 of the *Railway Safety Act* allows railway companies to make use of information gathered from recording equipment in identifying safety concerns, as set out in the *Railway Safety Management System Regulations, 2015*,<sup>48</sup> provided that the information is randomly selected. Information from data recorders may also be used by railway companies to identify the causes and contributing factors of an accident or incident that they are required to report to the Transportation Safety Board of Canada.

New subsection 17.91(4) allows for the collection and dissemination of information from data recorders, notwithstanding provisions of the *Personal Information Protection and Electronic Documents Act*<sup>49</sup> or any similar provincial legislation that would otherwise restrict the collection of personal information.

New sections 17.92 and 17.93 allow both the Minister of Transport and railway safety inspectors to use information taken from data recorders to inform the development of policy. This authority is subject to the same random sample requirements as new section 17.91. The minister and railway safety inspectors may also audit information from LVVRs for the purpose of assessing the causes and contributing factors of an accident or incident, or to otherwise ensure compliance with the data recording requirements. Data recorder information used for policy purposes may also be used to address threats to the safety of railway operations, if such a threat arises.

New section 17.94 provides that information gathered from installed data recorders is admissible in proceedings related to a railway in limited circumstances, such as in the installation of the data recorder, the preservation of the recorded information or the contravention of any regulations established under new section 17.95.

New section 17.94(2) makes information taken from data recorders inadmissible in the prosecution of railway employees for *Railway Safety Act* offences and violations, with the exception of cases in which an employee tampers with the data recorder or recording equipment. Any information collected by random sample may also be used in connection with the prosecution of a violation or offense.

New sections 28(1.1) and 36(2) of the *Railway Safety Act* allow railway companies to communicate information recorded by data recorders to railway safety inspectors and the Minister of Transport.

New section 28 of the *Canadian Transportation Accident Investigation and Safety Board Act* authorizes the Transportation Safety Board of Canada to share relevant recordings with other organizations, as set out in the *Aeronautics Act*, the *National Energy Board Act*, the *Railway Safety Act* and the *Canada Shipping Act, 2001*.

### 2.3.3 ADDITIONAL MEASURES

New section 17.95 of the *Railway Safety Act* allows for the Governor in Council to make regulations specifying, among others

- criteria for data-recording equipment;
- exemptions that may be made for railway companies;
- categories of information to be recorded and the applicable preservation period; and
- “threats to the safety of railway operations” warranting the use or analysis of information collected.

New section 17.96 clarifies that voice or video recordings from the cab of a locomotive are to be defined as “on-board recordings” under the *Canadian Transportation Accident Investigation and Safety Board Act* and can be shared only in accordance with section 28 of that Act.<sup>50</sup>

New section 41(2)(a) makes the contravention of any regulations created for the purpose of LVVR an offence.

## 2.4 AMENDMENTS TO THE CANADIAN AIR TRANSPORT SECURITY AUTHORITY ACT (CLAUSES 68 AND 69)

Clause 68 revises the wording of the mandate of the Canadian Air Transport Security Authority (CATSA), without appearing to affect the mandate itself (new section 6(1) of the *Canadian Air Transport Security Authority Act*<sup>51</sup>).

Clause 69 authorizes CATSA, with the approval of the Minister of Transport, to enter into service agreements with third parties for the provision of security screening services on a cost-recovery basis (new section 30.1).

## 2.5 AMENDMENTS TO THE *COASTING TRADE ACT* (CLAUSES 70 TO 72)

Clause 70 to 72 amends the *Coasting Trade Act* to allow all foreign ships, not only ships from the European Union (EU), to move empty shipping containers that are either owned or leased by the ship's owner without a coasting trade licence (modified section 3(2.1)). Other provisions of the *Coasting Trade Act* that will be amended by the *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act* (not in force) remain applicable to EU vessels only (modified sections 3(2.2), 3(2.3), 3(2.4), 3(2.6), 3(7), 5.1 and 7).

## 2.6 AMENDMENTS TO THE *CANADA MARINE ACT* (CLAUSES 73 AND 74)

Clauses 73 and 74 allow port authorities and their subsidiaries to secure loans or loan guarantees through the Canada Infrastructure Bank. Currently, under the *Canada Marine Act*,<sup>52</sup> port authorities are individually incorporated, and Parliament is excluded from making loan guarantees on behalf of the port authorities.<sup>53</sup>

## 2.7 TRANSITIONAL PROVISIONS (CLAUSES 75 TO 81)

Clauses 75 through 81 are transitional provisions relating to the implementation of amendments to the CTA. All transitional provisions have been explained under their related subject headings above.

## 2.8 RELATED AND CONSEQUENTIAL AMENDMENTS (CLAUSES 82 TO 94)

Clauses 82 through 94 of the related and consequential amendments have been explained under the related subject headings above to provide context and ease of reference.

## 2.9 COORDINATING AMENDMENTS (CLAUSES 95 TO 97)

Clauses 95 through 97 set out the coordinating amendments that will apply in the event that certain Acts of Parliament come into force before or after some clauses of the bill – in particular, if the temporary amendments to the CTA contained in the *Fair Rail for Grain Farmers Act* are repealed before various provisions of the bill come into force.

Clause 95 ensures that interswitching provisions under the CTA will revert to the original 30 km interswitching distance contained in the legislation before the *Fair Rail*



for *Grain Farmers Act* came into force in 2014. Additional temporary protections that have also been continued include a provision that allows rail shippers to seek compensation in rail level of service disputes and the granting of authority for the CTA to make regulations with respect to operational terms. In the event that portions of clause 95 are enacted, clause 94, which seeks to maintain the same provisions on railway shipper compensation and operational terms and conditions, is withdrawn.

Clause 96 makes the contravention of orders related to railway level of service arbitration and failing to move minimum quantities of grain by CN or CP no longer subject to administrative monetary penalties. New section 178(1) of the CTA makes failing to provide railway operational information, as required under new section 50(1.01), subject to an administrative monetary penalty. New section 180(2) allows the Minister of Transport the authority to delegate the enforcement of data reporting requirement to the Agency.

Clause 97 provides that an agreement between affiliates does not constitute bid rigging under new section 47(3)(a) of the *Competition Act*.<sup>54</sup> This change gives effect to the airline joint venture provisions contained at section 2.1.1.1 of this Legislative Summary and excludes such ventures from these bid rigging provisions.

## 2.10 COMING INTO FORCE (CLAUSE 98)

Clause 98 sets out when various provisions come into force.

Clauses 14 to 16, 78, 83 to 88 (airline joint ventures), 61 to 67 (railway LVVR) and 90 and 91 (airline foreign ownership) come into force on a day fixed by order by the Governor in Council.

Clauses 26(2) and 28(2) (extended interswitching) come into force on the day on which section 7(2) of the *Fair Rail for Grain Farmers Act* comes into force, or, if it is later, upon Royal Assent of Bill C-49.

Clauses 70 to 72 (coasting trade) come into force on a day fixed by the Governor in Council, subject to sections 91 to 94 of the *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act* coming into force.

Clauses 73 and 74 (port authority financing) come into force on the first day that the *Budget Implementation Act, 2017, No. 1* (Bill C-44) and Bill C-49 have both received Royal Assent.

Clause 77 (railway information reporting requirements) comes into force one year after Bill C-49 has received Royal Assent.

### 3 COMMENTARY

#### 3.1 AIR TRANSPORTATION

The Public Interest Advocacy Centre expressed support for the air passenger rights provisions of Bill C-49, but cautioned that the CTA will need re-organization and more resources to respond to the expected volume of complaints generated by these legislative changes.<sup>55</sup>

The Canadian Automobile Association was also cautious in its support of the air passenger rights provisions in Bill C-49, stating that the association “welcomes [the] introduction of legislation to improve air passenger rights for Canadians, but warns a lot remains to be done to make sure the new system lives up to consumer expectations.”<sup>56</sup> Some commentators have also noted that the bill does not set out sanctions for failure to comply with regulations.<sup>57</sup>

The National Airlines Council of Canada also expressed support for the air passenger rights provisions of the bill, but suggested that more needs to be done to avoid delays in the security screening process (for example, by providing more funding to CATSA and the Canadian Border Services Agency, as well as by resolving problems with the electronic travel authorization system).<sup>58</sup>

Similarly, the Canadian Airports Council welcomed engagement on air traveller issues, but noted that security screening at airports is “the biggest source of complaints from air travellers today.”<sup>59</sup>

#### 3.2 RAIL TRANSPORTATION

CP has noted that the changes to the MRE “should promote hopper car investments” and that the “move to commercial, market-based fundamentals versus the current regulated approach to extended interswitching is a step in the right direction.”<sup>60</sup>

However, CP also stated that potential access to the Canadian railway network by American railroads by means of the bill’s proposed long-haul interswitching provisions, without reciprocity, “could create an uneven playing field and disadvantage Canadian railways.”<sup>61</sup>

Agriculture groups have generally expressed support for the bill, particularly the provisions related to the MRE program, railway data-reporting requirements, reciprocal financial penalties and increased dispute-resolution powers for the CTA.<sup>62</sup>

However, some of these groups expressed concerns about the gap between the expiry of the temporary interswitching regime on 1 August 2017 and the implementation of the new long-haul interswitching provisions. These groups recommended that the federal government continue the temporary interswitching regime until this new one is implemented.<sup>63</sup>

### 3.2.1 LOCOMOTIVE VOICE AND VIDEO RECORDERS

The Railway Association of Canada welcomed the LVVR provisions of Bill C-49, stating that this measure “will be instrumental in the rail industry’s efforts towards accident prevention.”<sup>64</sup>

However, Teamsters Canada has raised privacy concerns regarding the use of LVVR. The union does not want rail companies to have access to the LVVR recordings, suggesting that only Transportation Safety Board agents should be allowed such access.<sup>65</sup>

---

## NOTES

1. [Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. Transport Canada, [“Picking up steam: Growing Canada’s economy with modernized Rail Transportation,”](#) Backgrounder.
3. [Railway Safety Act](#), R.S.C. 1985, c. 32 (4<sup>th</sup> Supp.).
4. Transport Canada, [“Government of Canada seeking to mandate locomotive voice and video recorders \(LVVR\),”](#) Backgrounder.
5. [Canada Transportation Act](#) [CTA], S.C. 1996, c. 10.
6. Government of Canada, [Canada Transportation Act Review – Report](#).
7. The two-volume report, entitled *Pathways: Connecting Canada’s Transportation System to the World*, was tabled in Parliament on 25 February 2016.
8. Transport Canada, [Transportation 2030: A Strategic Plan for the Future of Transportation in Canada](#).
9. House of Commons, [Debates](#), 1<sup>st</sup> session, 42<sup>nd</sup> Parliament, 5 June 2017, 2215 (Honourable Marc Garneau, Minister of Transport).
10. [Regulations Amending the Railway Interswitching Regulations](#), in *Canada Gazette*, Part I, Vol. 146, No. 26, 30 June 2012, p. 1844.
11. Canadian Transportation Agency, [Interswitching rates](#).
12. Ibid.
13. Section 127(4) of the CTA provides that interswitching may be permitted for distances greater than 30 km if the Agency considers that the point of origin or destination is “reasonably close” to the interchange. In addition, section 128(1)(b) allows the Agency to establish distance zones for interswitching. This power was relied on when the *Railway Interswitching Regulations* were amended in 2014 to add the new 160 km zone.
14. [Fair Rail for Grain Farmers Act](#), S.C. 2014, c. 8; and *Canada Transportation Act Review Panel, Pathways: Connecting Canada’s Transportation System to the World – Volume 1*, 2015, p. 151.
15. Frédéric Forge and Alexandre Lavoie, [Legislative Summary of Bill C-30: An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures](#), Publication no. 41-2-C30-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 1 April 2014.

16. [\*Railway Interswitching Regulations\*](#), SOR/88-41.
17. Government of Canada, "[Government of Canada extends provisions for rail in the Canada Transportation Act](#)," News release, 15 June 2016.
18. Transport Canada, [Speaking Notes for the Honourable Marc Garneau, Minister of Transport at Edmonton Chamber of Commerce to discuss the Transportation Modernization Act and Freight Rail](#), 18 May 2017.
19. [\*Coasting Trade Act\*](#), S.C. 1992, c. 31.
20. Nils Goeteyn and Peter G. Pamel, [The impact of CETA on the coasting trade regime in Canada: brief analysis of Bill C-30](#), Borden Ladner Gervais, 21 December 2016.
21. [Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act](#), S.C. 2017, c. 6.
22. The Council of Canadians, [CETA and the Great Lakes](#), 20 September 2014.
23. [Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act](#), s. 92(1).
24. Transportation Safety Board of Canada, [Watchlist 2016 – On-board voice and video recorders](#).
25. Ibid.
26. Transportation Safety Board of Canada, "[TSB calls for implementation of voice and video recorders on locomotives in Canada](#)," News release, 19 September 2016.
27. Transport Canada, "[Minister Garneau introduces legislation to support Canadian travellers and promote economic growth](#)," News release, 16 May 2017.
28. Transport Canada, "[Travellers initiatives](#)," Backgrounder.
29. [\*Competition Act\*](#), R.S.C. 1985, c. C-34.
30. Transport Canada, "Travellers initiatives."
31. [Air Canada Public Participation Act](#), R.S.C. 1985, c. 35 (4<sup>th</sup> Supp.).
32. [Budget Implementation Act, 2009](#), S.C. 2009, c. 2.
33. Transport Canada, "Picking up steam: Growing Canada's economy with modernized Rail Transportation."
34. [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3.
35. [Companies' Creditors Arrangement Act](#), R.S.C. 1985, c. C-36.
36. Canadian Transportation Agency, [Q&A: Maximum Revenue Entitlement for the transportation of western grain](#).
37. Transport Canada (2017), *Speaking Notes for the Honourable Marc Garneau*.
38. Ibid.
39. *Canada Transportation Act* Review Panel (2015), p. 160.
40. Ibid., p. 159.
41. Ibid., p. 168.
42. Ibid., p. 136.
43. Canada Transportation Agency, [Final Offer Arbitration: A Resource Tool](#).
44. François Tougas, Lucia Stuhldreier and Ryan Gallagher, [Bill C-49: Some Welcome Improvements to Rail Service Level Arbitration](#), McMillan LLP, June 2017.

45. Clause 2 of Bill C-49 provides a list of railway companies classified as class 1 rail carriers.
46. [CN Commercialization Act](#), S.C. 1995, c. 24.
47. [Canadian Transportation Accident Investigation and Safety Board Act](#), S.C. 1989, c. 3.
48. [Railway Safety Management System Regulations, 2015](#), SOR/2015-26.
49. [Personal Information Protection and Electronic Documents Act](#), S.C. 2000, c. 5.
50. Under section 28(2) of the *Canadian Transportation Accident Investigation and Safety Board Act*, the sharing of on-board recordings, such as those collected using an LVVR, is subject to the limitations provided at section 28 of the Act.
51. [Canadian Air Transport Security Authority Act](#), S.C. 2002, c. 9, s. 2.
52. [Canada Marine Act](#), S.C. 1998, c. 10.
53. *Ibid.*, s. 26.
54. Bid rigging involves the collusion of two or more persons to affect the outcome of a request for bids or tenders. This definition is a paraphrase of section 47(1) of the Competition Act.
55. Public Interest Advocacy Centre, "[Proposed Air Passenger Rules Set for Take Off](#)," News release, 16 May 2017.
56. Canadian Automobile Association [CAA], "[Enhanced protection for air passengers progressing, but lots of work remains, says CAA](#)," News release, 16 May 2017.
57. See, for example, comments by Bruce Cran, president of the Consumers' Association of Canada, reported in Yvonne Colbert, "[New bill to protect airline passengers 'useless,' says consumer group](#)," *CBC News*, 18 May 2017.
58. National Airlines Council of Canada, "[Statement from the National Airlines Council of Canada on the Tabling of the Transportation Modernization Act](#)," News release, 16 May 2017.
59. The Canadian Airports Council, "[Canada's Airports Welcome Federal Engagement with Air Transport Sector](#)," News release, 19 May 2017.
60. CP [Canadian Pacific], "[CP reviewing details of Transportation Modernization Act, supports amendments that improve supply chain](#)," News release, 18 May 2017.
61. *Ibid.*
62. Canadian Federation of Agriculture, "[The Transportation Modernization Act addresses farmers' concerns on grain transportation](#)," News release, 17 May 2017; Alberta Wheat Commission [AWC], "[AWC commends the Federal Government on introducing historic rail transportation legislation](#)," News release, 16 May 2017; Canadian Canola Growers Association, "[Bill C-49 takes progressive steps in addressing longstanding concerns of farmers](#)," News release, 18 May 2017; Grain Growers of Canada, "[Rail Bill promises long-term solutions for grain shipping in Canada](#)," News release, 19 May 2017; and Western Canadian Wheat Growers, "[Wheat Growers statement on the Transportation Modernization Act](#)," News release, 16 May 2017.
63. See, for example: Canadian Canola Growers Association (2017); and Grain Growers of Canada (2017).
64. Railway Association of Canada, "[Canada's railways support mandatory installation of locomotive voice and video recorders to increase safety](#)," News release, 16 May 2017.
65. Teamsters Canada, "[Teamsters Demand Explanations from Minister Garneau on Bill C-49](#)," News release, 16 May 2017.