
HOUSE OF COMMONS

# *FREEDOM TO MOVE*

# CHANGE, CHOICE, CHALLENGE

**SIXTH REPORT**
**STANDING COMMITTEE**
**ON TRANSPORT**

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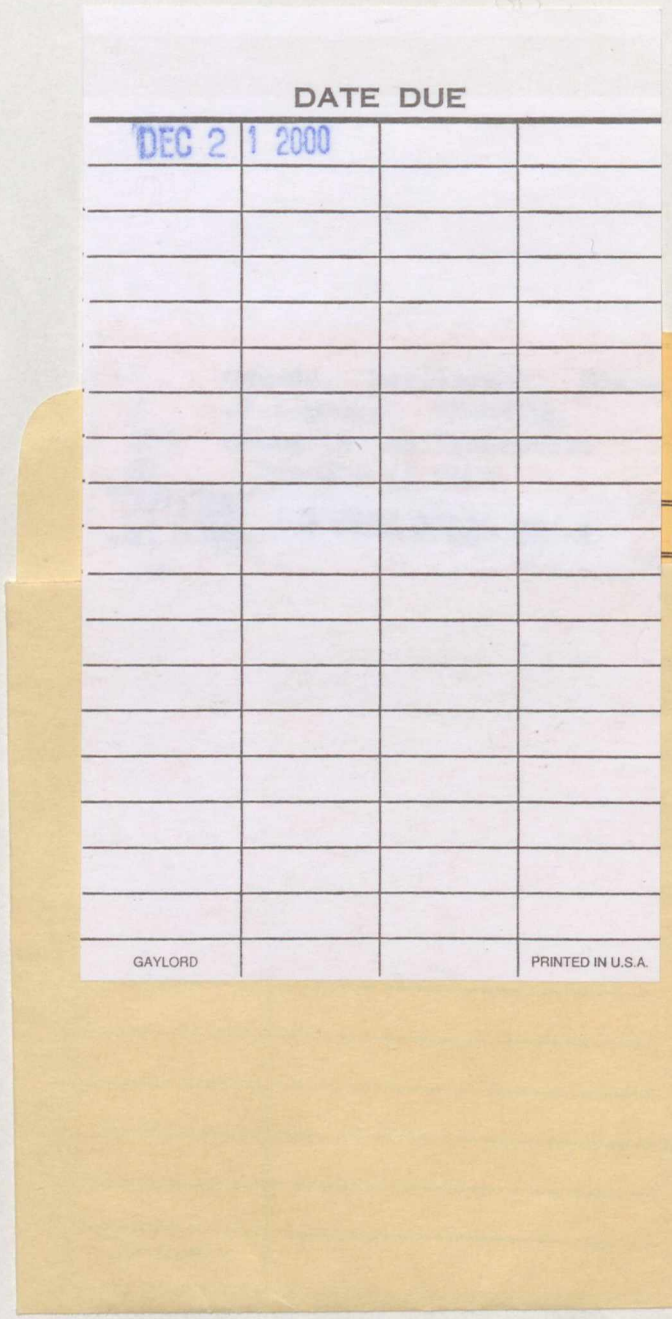

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**Président: J. Patrick Nowlan**

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Minutes of Proceedings and Evidence of the Standing Committee on

# Transport

Procès-verbaux et témoignages du Comité permanent des

# Transports

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RESPECTING:

Document entitled "Freedom to Move"

CONCERNANT:

Document intitulé «Aller sans entraves»

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INCLUDING:

The Sixth Report to the House

Y COMPRIS:

Le sixième rapport à la Chambre



First Session of the
Thirty-third Parliament, 1984-85

Première session de la
trente-troisième législature, 1984-1985

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Wednesday, December 18, 1985

The Standing Committee on Transport has the honour to present its

## SIXTH REPORT

On Monday, October 7, 1985, your Committee received the following Order of Reference:

That the document entitled: "Freedom to Move" (Sessional Paper No. 331-7/29), be referred to the Standing Committee on Transport;

That the Committee examine and report on the proposals contained therein and, in particular;

1. the role of transportation in

—improving Canada's trade position;

—developing employment opportunities; and

—complementing regional economic development in Canada;

2. the role of the transportation Crown corporations in an open and competitive transportation environment;

3. foreign control of Canadian transportation companies;

4. the ways and means of improving services in northern and remote areas in a new regulatory environment;

5. the issue of compensatory rail rates and suggested measures to discourage predatory pricing in a new regulatory environment; and

6. the measures to protect and/or enhance services to captive shippers;

That the Committee be empowered to travel within Canada; and

That the Committee report its findings no later than December 13, 1985.

On Friday, December 6, 1985, this deadline was extended to December 19, 1985.

The Committee's report is as follows.

# ACKNOWLEDGEMENTS

During October and November 1985, the Standing Committee on Transport held public hearings in Ottawa, Vancouver, Winnipeg and Halifax in accordance with its Order of Reference on the Government's paper entitled *Freedom to Move*. The Committee heard a total of 95 organizations comprising 177 individual witnesses, and received 152 submissions from concerned parties. The list of witnesses who appeared before the Committee as well as those who submitted briefs appears at the end of this Report. The contributions of those who participated in the hearings as well as those who submitted briefs were invaluable to the study.

The Committee received cooperation from the Minister of Transport, the Honourable Don Mazankowski, and his staff; from Mr. Keith Thompson, Q.C., Coordinator, and his staff in the Office of Economic and Regulatory Reform; from officials at Transport Canada and the Canadian Transport Commission, as well as contributions from numerous other individuals whose expertise was invaluable to the Committee's work.

The Committee wishes to express its appreciation to Nino Travella, Clerk of the Committee, who facilitated the administrative aspect of our work, particularly the arrangements for travel and the coordination of hearings and witnesses, and to Marie-José Brière, Cécile Fortier-Génier, Huguette Jean, Claude Leahey and Francine Nantel of the Translation Bureau for their efforts in translating this Report. The Committee is also indebted to its advisory staff comprised of John Christopher, Research Coordinator from the Research Branch of the Library of Parliament; Tom Maville, John Gibberd and Paul Juneau from the Canadian Transport Commission; and David Cuthbertson who acted as a consultant to the Committee.

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# INTRODUCTION

*Freedom to Move — a framework for transportation reform** is a philosophical paper setting out in broad terms the intentions of the Government for amendments to the framework of economic regulation of transportation in this country.

The Committee finds itself in agreement with the broad goals expressed in the paper: the reduction of Government regulation in the transport sector for the purpose of fostering competition that will generate more transportation services, at lower cost, for Canadians and for the movement of our products.

We recognize that ours is a vast, sparsely populated, trading nation far from many of the world's markets — and consequently highly dependent upon our transportation system. We agree with *Freedom to Move* that today we face a competitive global marketplace where our success depends to a great extent upon the efficiency of that system. No less do we need an efficient system for the domestic movement of our goods and people.

The instrument which *Freedom to Move* embraces for the achievement of new efficiencies in transportation is competition. And the balance which that paper tries to seek is one between the benefits of competition and the undesirable consequences of competition waged without limits. This tension between the good and the evil of competitive behaviour underlay all the evidence we received. The problems of where to regulate competition, where not to regulate it, and even where to regulate in order to create it were the stuff of our hearings.

In our own attempts to come to grips with the issues raised by *Freedom to Move*, we found it useful to recall the interplay of Government regulation and marketplace competition in Canadian transportation history.

As we will remark again in this Report, transportation has been used, and regulated, by Government as a tool for nation building since Confederation. The railways initially enjoyed, except on the coasts and in parts of central Canada where water transport was feasible, a virtual monopoly on the carriage of goods and persons over all but the very shortest of distances. Two important consequences were that the railway companies developed extensive

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* *Freedom to Move — a framework for transportation reform.* Ottawa: Transport Canada, July, 1985. Available free of charge from Public Affairs, Transport Canada, Transport Canada Building, Place de Ville, 330 Sparks Street, Ottawa, Ontario, K1A 0N5. Catalogue number: T 22-69/1985 E.

rail networks and the Government became deeply involved in the regulation of these companies in the public interest, for the railways held the economic life of industries and whole regions in their power.

By the middle decades of this century, this monopoly power of the railways was fracturing before advances in highway truck technology (including powerful diesel engines) and new highways, competition from ships plying the just completed Great Lakes-St. Lawrence Seaway system, pipelines that carried oil where railways once carried coal, and airplanes and intercity buses that carried passengers who previously travelled by rail. The shipper, the traveller — they now had options, and if speed was important, cost not too great a factor and, in the case of goods, the weight not too substantial, they increasingly turned to truck, bus, or 'plane instead of the train. The result was predictable. The rail system concentrated on those aspects, especially the heavy, long haul traffic where it had inherent advantages, while its branch line, local and passenger services withered before the advances of other modes of transport.

But the hand of regulation, visible from the heyday of the railroads when it had been a necessary check on their monopoly power, was slow to lift in recognition of changing transportation economics. The Government remained involved in setting detailed rail freight rates. The railways were expected to continue to pay for, by cross-subsidization among their operations, obligations which had been placed upon them in the national interest in the early days. These included especially the carriage of grain and grain products to export positions at statutory rates, the provision of unremunerative passenger service, and restrictions on branch line abandonments.

With their areas of monopoly power shrinking, but not the cost of performing the public policy duties, the railways found themselves having to extract the revenue for internal cross-subsidization from relatively fewer customers, principally those for whose goods alternative modes of transport were not available and who were therefore unable to resist price increases by threatening to turn to the railways' competitors.

These circumstances led to the establishment of the seminal Royal Commission on Transportation (the "MacPherson Commission") of 1959-62 from the recommendations of which flowed the *National Transportation Act* of 1967, Government decisions to pay subsidies directly to the railways as compensation for certain of the imposed duties they performed in the national interest (e.g., passenger rail service) and, one might even say, the *Western Grain Transportation Act* of 1983, which established new rates for the movement of grain under statute.

The *National Transportation Act* ended the detailed involvement of Government in the setting of rates. In a broad band between a minimum rate (set by Section 276 of the *Railway Act*) and a maximum rate (set by Section 278 of the *Railway Act*), it permitted the rail carriers to set their freight rates as they pleased. At the same time, it established a process for the abandonment of branch lines and for compensation if the right to abandon was denied. It brought about all these changes through amendments to the *Railway Act*. The results were impressive: new and specialized freight services sprang up. At a time when U.S. railways, operating under continued extensive Government regulation, were suffering a rash of bankruptcies, Canadian railways became increasingly competitive.

This competitiveness which the *Act* fostered by permitting pricing freedom was mainly intermodal: i.e., between the railways, on the one hand, and their competitors, principally

water and road transportation, on the other. The creation of increased intramodal competition (that is, competition among the railways themselves) was not an aim of the legislation. Indeed, the *Act* allowed (through its enactment of *Railway Act* Section 279) rail carriers to agree upon and charge common rates. This permission for collective rate-making shielded them from the reach of the *Combines Investigation Act* and, together with a requirement for the publication of freight rates, likely inhibited competition within the rail mode.

Thus, in pursuing its underlying objective — the substitution of competition for regulation — the *National Transportation Act* had not gone all the way. It had fostered intermodal competition, but left the stimulation of intramodal competition for another day.

*Freedom to Move* proposes to change that. In order to wring efficiencies from the transportation system, it has proposed a new *National Transportation Act* that would encourage intramodal, as well as further intermodal, competition. With respect to rail carriers, its proposals to legalize confidential contracts for the carriage of goods (including contracts that give secret rebates from published tariff rates), to outlaw collective rate-making by the railways, to fix rates for joint-line movements, and to repeal in five years' time the requirement for compensatory freight rates would all have this effect. In the airline and trucking industries, there would be increased opportunity for competition among the carriers as a result of the relaxation of entry restrictions and the elimination of detailed fare regulation.

Some pressure for these specific changes has developed in Canada as a result of U.S. deregulation of the transportation sector. Beginning in the mid-1970's, Congress passed reform legislation that included the *Railroad Revitalization and Regulatory Reform Act* (1976), the *Airline Deregulation Act* (1978), the *Staggers Rail Act* (1980), and the *Motor Carrier Act* (1980). The effects of this legislation spilled over into Canada. Suddenly, Canadian truckers could obtain 48-state operating authorities, but U.S. motor carriers wanted easier access to our markets in exchange. Invigorated by the *Staggers Rail Act*, which deregulated their pricing and costs, U.S. railways captured transborder rail traffic. Our railway companies asked for catch-up legislation that would let them compete. On the air side, Canadian consumers saw cheaper air fares in the U.S. after deregulation and asked for similar legislation here.

Fortunately, in our view, this pressure to place greater reliance on the forces of competition and less reliance on the restraints of regulation comes at a time when there is increased opportunity to do so. We agree with *Freedom to Move* that our transportation system has matured in most areas. Monopolies in air and surface transportation have in many areas been eliminated or reduced, so that the need for Government regulation, premised on monopoly power, is reduced. And in more cases competition, not Government, can be the effective regulator.

Few of the witnesses who appeared before us disagreed. Indeed, most of them said they agreed in principle with *Freedom to Move*. But we found that agreement in principle sometimes became objection in fact. So we found that "Yes, but...." was a frequent reaction to *Freedom to Move*.

The problem for us was to separate those cases where less regulation will lead to increased competition and greater efficiency from those cases where regulation will continue

to be needed (or even increased) in order to prevent abuse of market power or the occurrence of undesirable types of competition.

We well understand that competition — the instrument through which *Freedom to Move* proposes to achieve new efficiencies in the transportation sector — does not always and inevitably lead to economic efficiency or socially desirable consequences. Like fire, competition should be the servant, not the master.

Where a substantial degree of monopoly or oligopoly power continues to exist, the reduction of economic regulation may actually permit the monopolist or oligopolist to increase prices and decrease output to maximize his return to the detriment of society generally. In these cases, regulation will continue to be necessary. *Freedom to Move* recognizes this. One example of where it would limit the abuse of monopoly power is in its proposal to revise Section 23 of the *National Transportation Act* so that complaints can be made against excessive fare increases.

We are also aware that in some cases regulation will continue to be needed to prevent competitors from attempting to achieve or to retain monopoly positions by predatory pricing. (Predatory pricing is the use of artificially low prices to drive competitors from a market or to prevent them from entering it.) Just as regulation needs to be retained (or enacted) to limit prices charged in monopoly situations, so here regulation is needed for anti-competitive practices intended to eliminate competition. To this end, we recommend in this Report the continuation of an anti-predatory pricing provision in the *Railway Act*.

Finally, there are certain cases where a lack of Government involvement would be compatible with economic efficiency but not with our social or political values.

An example is in the area of safety. Although the relaxation of safety standards might result in economic efficiencies, to relax safety standards would generally be unacceptable. In this respect, *Freedom to Move* has made very clear that the economic regulatory reform with which it deals shall not take place at the expense of safety standards. This is a position the Committee adamantly shares. And if we do not discuss safety *in extenso* in this report, it is not because we do not think it is important. *On the contrary, it is because we do not think it is negotiable.*

Another example of where a lack of Government involvement might lead to economic efficiency but be contrary to more deeply held values is in the area of regional development. We are aware that Confederation is sometimes worth the candle. Regular air services to an outlying community might be inefficient and economically unsound in a perfectly working marketplace — but nonetheless politically appropriate. However, we believe such decisions should be made openly, as the political decisions they are, with open subsidies and no hidden costs to distort the transportation system.

Although we do not always use in our Report the terminology with which we have set out the issues above, we have attempted while writing, to keep in mind the underlying notions we have mentioned, particularly the need for balance between economic efficiency and social and political values.

Ultimately, the achievement of such a balance falls to us as legislators. We have tried in this Report to strike it, where balance seems appropriate. Yet we have borne in mind that an

efficient transportation system, upon which the future protection and increase of jobs and our economic well-being lies, cannot be achieved by giving in on all occasions to demands for special treatment. Not surprisingly, of course, we found quite a number of those demands in the course of our hearings — whether from any one of the transportation modes, regional interests, consumers, labour, or other interest groups such as the handicapped. Of these interest groups, labour appeared to us to be particularly troubled by the prospect of deregulation. *We recommend that the Government monitor the effects of deregulation upon this group and others, for adjustments are inevitable.*

We should mention one of the complaints of certain of these special interest groups. They said that the process of our review was too short, too quick, while others said new transportation legislation is needed now and that we should get on with our Report. We would simply say to all our witnesses, and to the many others who have assisted us in our study, that this Report represents the beginning, not the end, of the Parliamentary process on *Freedom to Move*.

In concluding this introduction, we should mention that we have found it convenient, indeed almost inescapable, to set out our thoughts according to the mode of transport involved. This was not only the pattern of *Freedom to Move*, but it was also the pattern of the *National Transportation Act* before it. The different modes involve different, although sometimes related, problems. Insofar as we deal with those particular topics singled out in our Order of Reference, their treatment occurs within this modal structure.

# I. AIR TRANSPORTATION

## Introduction

Parliament has given the Minister of Transport, the Canadian Transport Commission (CTC) and the Governor in Council extensive powers to regulate the air transport industry. These powers include the right to control the entry of firms to the industry, their exit, the services offered, the prices set, and the conditions of operation.

The Canadian Transport Commission, through its Air Transport Committee, enforces the main economic regulations, contained in Part II of the *Aeronautics Act*, which apply to air carriers and with which this Report is concerned.

Over the last decade, the economic regulation of air transport has been progressively relaxed in favour of competition.

In 1977, the *Air Canada Act, 1977*, was passed. It was intended to remove the special advantages and burdens the national carrier had enjoyed and been subject to as a result of being an instrument of Federal Government policy. Air Canada was now to operate, in the words of the *Act*, with "due regard to sound business principles and in particular the contemplation of profit" and be regulated by the Canadian Transport Commission like other carriers, whereas it had previously operated under the terms of special arrangements with the Government.

Passage of the *Air Canada Act, 1977* was followed by the removal of various restrictions on the services provided by the other main carrier, CP Air, on the transcontinental route. CP Air could now compete without restriction on this route. There was now head-to-head competition between Canada's two largest scheduled carriers in the most important domestic markets. Competition was further encouraged by the introduction of new types of charter and discount fares.

In 1978, the United States passed legislation deregulating the airline industry. The effects of this were to be felt in Canada increasingly in the following years.

In 1982, the Standing Committee on Transport issued a report entitled *Domestic Air Carrier Policy*. It recommended that economic regulation of the airline industry continue but allow for greater competition.

In 1984, a Federal Government policy statement was issued which liberalized air transport policy, within the existing regulatory regime. Air carriers, previously restricted in their operations by the Regional Air Carrier Policy were allowed to pursue opportunities anywhere in Canada. Licence restrictions were removed; greater price flexibility was allowed; and the administrative processes of the Canadian Transport Commission were streamlined.

It is clear to the Committee that these evolutionary changes, all of which took place within the existing legislative framework with the exception of the *Air Canada Act, 1977* resulted in "de facto" deregulation. And what *Freedom to Move* proposes are legislative changes necessary to reflect in law what is generally happening in fact. These proposals will bring to a conclusion the evolution of the domestic airline industry from one where economic regulation prevailed to one that is deregulated.

It was therefore no surprise to the Committee that most of the representatives of the airline industry who appeared before us supported the proposals in *Freedom to Move*, providing for freedom of entry by replacing the test of "public convenience and necessity" with that of "fit, willing and able", and allowing for freedom of exit (with notice) and pricing in southern Canadian markets. We were left with the impression that most of our airlines, large and small, are ready, willing and able to participate in a fully deregulated environment.

We agree with the thrust in *Freedom to Move* to continue the deregulation of the airline industry and welcome the positive response of most of the air carrier industry to it. However, there were some reservations and concerns raised regarding the impact of deregulation on the airline industry and air services. Using our Order of Reference as a benchmark, we would like to address three of these concerns: air services in the north and low density markets; the role of Air Canada in a deregulated environment; and foreign ownership in the airline industry.

## A. AIR SERVICES IN THE NORTH AND LOW DENSITY MARKETS

The 1984 policy statement which led to relaxed regulation of the airline industry differentiated between southern Canadian markets where deregulation would take place and northern Canada where regulation would continue substantially unchanged. It drew a line of demarcation north of which regulation would continue to apply not only to intra-northern routes but also on routes between the north and the south.

In the spring of 1985, after extensive hearings on the question of air services in northern and remote areas, the Air Transport Committee of the Canadian Transport Commission issued its *Final Report on the Adequacy of Air Services in Northern and Remote Areas*. The major recommendation was that air services in these areas should continue to be regulated but with greater emphasis on price and service competition. It did not recommend a direct Government subsidy program in connection with air services in these areas.

On June 13, 1985, the House of Commons referred the question of transportation services in northern and remote areas to this Committee. The Committee is still seized of this reference.

*Freedom to Move* proposes that northern air services be deregulated in the same manner as are air services in southern Canada. It draws no line and makes no distinctions. However, *Freedom to Move* does recognize that in a deregulated environment it may be necessary to provide direct subsidies in order to ensure adequate and essential services on routes that air carriers deem unprofitable.

Most of the evidence submitted to the Committee concerning air services in the North argued for continued economic regulation because of the sparse, far-flung population resulting in low density routes; the absolute requirement to provide year-round adequate air service which usually means the establishment of facilities in the North; the higher operating costs than in the South because of northern conditions; the difficult operating conditions such as weather and airport facilities; the total dependency upon a mix of traffic (passengers, freight, mail); and the necessity of serving several communities on each flight in order to obtain an adequate overall yield. In the witnesses' view, the current system of air services in the North is too fragile and immature to sustain wide-open competition. Deregulation would mean that carriers from the South, with no base of operations in the North, would "cream" the high yield summertime traffic causing diversion of that lucrative traffic from the established carriers that serve the North on a year-round basis, and thereby jeopardize the whole northern air system.

What became clear from the evidence, however, particularly that of some witnesses from Atlantic Canada, was that there are many peripheral and marginal markets in southern Canada which have some or all of the characteristics of northern air markets. Concern was expressed that a deregulated environment might well mean unreasonable fares, a deterioration in the quality of service, and perhaps a loss of air services for consumers living in smaller centres and remote areas. We were told that this proposed new national air policy should not be applied everywhere without some modifications to reflect local conditions and regional differences. What is required is an effective "safety net" for consumers living in smaller communities and peripheral areas who might be adversely affected by change.

The Committee is concerned that it has not had an opportunity to travel to the North to carry out its mandate. We think it is absolutely essential to do so before making a final recommendation on whether air services in the North should be deregulated in the same way as is proposed in the South.

Furthermore, at that time, the Committee will have another opportunity to study the recommendations made in the report of the Air Transport Committee of the Canadian Transport Commission on the adequacy of air services in the North. Generally speaking, we think many of the recommendations are interesting and merit serious consideration.

In the meantime, we believe that the status quo set out in the 1984 policy statement is the best approach to take regarding air services in Northern Canada.

The Committee also shares the concerns expressed regarding the possible adverse consequences of deregulation on air services in low density markets in southern Canada. We think safeguards are required to meet the concerns of those Canadians who live in small centres and the peripheral areas of southern Canada.

*Freedom to Move* proposes that air carriers be free to exit a market with "minimal notice — perhaps 60 days on monopoly routes, 30 days on others". We are not convinced this

notice is adequate, particularly for monopoly routes. However, we would like to go beyond that and suggest that air carriers serving monopoly routes at the time of proclamation of the new *National Transportation Act* would be required to apply to the new Regulatory Agency to terminate services on those routes. In other words, we would like to see a "grandfather" clause in the new legislation which would ensure some regulatory control over the cessation of services by a single carrier in low density markets and remote areas. Also we envisage that any other carrier that chooses to enter the market after the legislation becomes effective should also be subject to the "grandfather" clause.

Furthermore, we think the new Regulatory Agency should be given a mandate to monitor, from the beginning, the impact of the new policy on air transportation and particularly services to the remote areas and smaller communities. To do that job properly, the Agency must continue to be supplied with the appropriate data and information from the air carriers.

We also think that this ongoing monitoring function must be supported by a mandate to the new Regulatory Agency to administer an *Essential Air Services Subsidy Program*. This program should be clearly defined, particularly with respect to the criteria that will be used in deciding whether a marginal or uneconomic service is required in the public interest. The program should be introduced at the time legislation is tabled and provision for it should be embodied in that legislation. Careful consideration should be given as to how to pay the subsidy and to whom. *Freedom to Move* suggests a bid or tender process, as opposed to cost-plus formulae. We agree with this approach.

We note that *Freedom to Move* proposes the continued regulation of excessive price increases. The new Regulatory Agency will have the power "to review upward pricing, particularly where monopoly routes are concerned".

We agree with this proposal. It is a necessary safeguard, particularly for low density markets. In our view, this proposal coupled with the "family" of safeguards we have suggested should provide an adequate "safety net" for consumers of air services who live in the peripheral areas and the smaller communities of this vast country of ours, which makes efficient and safe air service more of a necessity than a privilege.

Finally, concern was expressed to the Committee by several witnesses from all parts of the country regarding the recent abolition of the $30 ceiling on the air transportation tax. Since September 1, 1985 the tax has been calculated as 9 per cent of the cost of the total ticket price and it was argued that this places an unfair burden on those people travelling from the more remote and distant parts of the country. It penalizes the long distance traveller which is patently inequitable in a large country like Canada where air travel is so essential.

The Committee is impressed with this argument and thinks something must be done to remedy this discrimination. We feel it would be more equitable to have a ceiling on the tax or perhaps a series of tax rates which would be progressively lower with longer journeys.

## RECOMMENDATIONS

**1. The Committee recommends that northern air services continue to be regulated on the basis of the 1984 policy statement until the Committee has had an opportunity to travel**

**to the North to study the adequacy of air services there and to report back to Parliament.**

2. **The Committee recommends that where a single carrier is serving a low density market in the South at the time deregulation comes into effect, a "grandfather" clause be included in the new legislation providing for regulatory control over the exit of that carrier from that market, or the exit of any other carrier that chooses to enter the market after proclamation of the new legislation.**

3. **The Committee recommends that the new Regulatory Agency be given a mandate to monitor the impact of air transportation deregulation, particularly on low density routes, and that the law require the air carriers to provide to the Regulatory Agency such information as is necessary for it to carry out this monitoring function.**

4. **The Committee recommends that legislation deregulating the air carrier industry establish an ESSENTIAL AIR SERVICES SUBSIDY PROGRAM and set out in detail the criteria for qualification for subsidies.**

5. **The Committee recommends that a fixed air transportation tax ceiling be reinstated or that a tax be established which is graduated downward as the length of a passenger's journey increases.**

## B. THE ROLE OF TRANSPORTATION CROWN CORPORATIONS — AIR CANADA

The Order of Reference instructed the Committee to examine and report on "the role of transportation Crown corporations in an open and competitive transportation environment". In the airline industry, the only Federal transportation Crown corporation is Air Canada.

In 1937, Trans-Canada Airlines — the forerunner of Air Canada — was created by the Federal Government as an instrument by which to provide national air services that the private sector was unwilling to provide. This role for Air Canada as an instrument of public policy has become less important with the maturing of the airline industry. Air service is now provided on most of the national carrier's routes not only by Air Canada but also by one or more competing carriers.

The *Air Canada Act, 1977* recognized that the public policy role for the airline was diminishing. By stipulating that Air Canada should operate with "due regard to sound business principles and in particular contemplation of profit", the *Act* confirmed the subordination of this role to commercial objectives.

*Freedom to Move* says that "Crown corporations in transportation will be expected to be effective and efficient while operating as good corporate citizens". Furthermore, the Minister of Transport has confirmed on more than one occasion that he expects Air Canada to pay its own way and that it will not receive infusions of equity.

No evidence was submitted to the Committee that Air Canada had acted other than according to sound business principles and in contemplation of profit since 1977, as required by its constituent *Act*. During this time Air Canada has not received any financial assistance from the Government and has paid dividends to the Government.

However, we heard testimony expressing concern regarding the dominant position of Air Canada in the domestic air transportation market. It was stated that this dominance is reinforced through financial assistance from the Government; control of the major national reservation system; favoured treatment in connection with access to air terminal facilities and the operation of the Government's central travel service.

On the role of Air Canada in a deregulated environment the Committee heard a whole range of opinions. Some witnesses said that Crown corporations should continue to be used as instruments of public policy, and to provide adequate levels of service where the services would not otherwise be provided. Other witnesses simply agreed with the statement in *Freedom to Move*. However, some were not prepared to agree that the statement in *Freedom to Move* was adequate to ensure that in the long-run, Crown corporations would adhere to sound business principles and practices and avoid anti-competitive behaviour. They suggested that specific guidelines for the conduct of Crown corporations should be put in legislation to ensure that transportation companies, whether Crown or privately owned, are subject to the same rules of competition and enjoy equitable financing opportunities. Finally, there were those witnesses who did not think it was possible to achieve a "level playing field" in a more competitive transportation industry until the transportation Crown corporations were privatized. There was, however, almost total agreement among the witnesses that in establishing the role for transportation Crown corporations, the Government must recognize those areas where they perform services in the public interest and provide adequate compensation for the performance of these services.

The issue the Committee has to address is whether there is any rationale for Air Canada remaining a Crown corporation.

As we have already pointed out, Government ownership of Air Canada is no longer needed to ensure availability of air services in the major markets of southern Canada. Moreover, it seems unlikely to the Committee that the Government will need — except in times of national emergency, in which case other legislation may be involved — to retain the power to direct Air Canada to provide services in particular cases. This directive power is now provided for in the *Financial Administration Act*.

The Committee recognizes that Air Canada, with its maple leaf symbol and substantial international presence, has a role as Canada's representative abroad. However, the Committee believes that Air Canada could continue to represent Canada in this way if it were privately owned. CP Air does this now on its international routes.

The Committee notes that the Minister of Transport has said that transportation Crown corporations will not have access to Government funds. This has been Government policy since 1977 and it has meant that Air Canada has had to rely upon its retained earnings and borrowings on the open market for its capital needs. This has resulted in an alarming deterioration in Air Canada's debt-equity ratio since 1977. The Committee is concerned about this. The question now is whether Air Canada will be able to generate sufficient earnings in the new competitive environment to provide for its capital needs, the major of which will be fleet replacement, without further weakening its debt-equity ratio.

This is the challenge for Air Canada. However, what concerns the Committee is whether, even if Air Canada is more profitable, it will still need an infusion of equity in order to satisfy its capital needs. It cannot continue to borrow indefinitely and since it is a Crown

corporation, it cannot apparently get its equity from the Government. The only other place it can go to obtain equity financing is to the open market which it could do only if it were privatized.

The Committee thinks that Air Canada must have "freedom to manage" in order to improve organizational efficiency to meet the new competitive challenge. Air Canada's dominant position in the domestic market makes it the number one target for existing competitors and new entrants. Obviously it will have to keep its cost structure under control and improve productivity. The Committee believes that if Air Canada were privatized it would have more flexibility to do this, particularly because it would be able to give its employees a stake in the company. The Committee notes that employee participation in the ownership of airlines in the United States appears to have enabled them to achieve cost reductions and improvements in productivity.

The Committee appreciates that privatization is not likely to be successful unless Air Canada can demonstrate that it is an efficient, well managed, profitable airline. Therefore, Air Canada must be allowed to pursue its commercial objectives vigorously. The Minister of Transport has said that this is what he wants Air Canada to do. We would simply add that, if at any time the Government wants Air Canada to provide services for reasons of public policy that it would not otherwise do for commercial reasons, then the cost of those services should be clearly identified and Air Canada compensated. This is recognized in the *Air Canada Act, 1977* which provides for the identification of and compensation for imposed public duties.

## RECOMMENDATIONS

6. **The Committee recommends that Air Canada should continue to operate on sound business principles in contemplation of profit.**

7. **The Committee recommends that Air Canada have the "freedom to manage" to improve organizational efficiency and to enable it to respond vigorously to the demands of a more competitive market place.**

8. **The Committee recommends that if the Government imposes public duties on Air Canada, they should be clearly defined and Air Canada compensated for them according to the *Air Canada Act, 1977*.**

9. **The Committee recommends that the Government give priority to the consideration of options for the privatization, or at the least, partial privatization of Air Canada with emphasis on the participation of its employees in the ownership of the company.**

## C. FOREIGN OWNERSHIP

The Order of Reference instructs the Committee to examine and report on the proposals contained in *Freedom to Move* on "foreign control of Canadian transportation companies".

There are three Federal statutes which enable the Government to control foreign ownership of Canadian airlines: the *National Transportation Act*; the *Aeronautics Act*; and the *Investment Canada Act*. Although the *National Transportation Act* and the *Aeronautics Act* do not make specific reference to foreign ownership, there are provisions in both which

However, we heard testimony expressing concern regarding the dominant position of Air Canada in the domestic air transportation market. It was stated that this dominance is reinforced through financial assistance from the Government; control of the major national reservation system; favoured treatment in connection with access to air terminal facilities and the operation of the Government's central travel service.

On the role of Air Canada in a deregulated environment the Committee heard a whole range of opinions. Some witnesses said that Crown corporations should continue to be used as instruments of public policy, and to provide adequate levels of service where the services would not otherwise be provided. Other witnesses simply agreed with the statement in *Freedom to Move*. However, some were not prepared to agree that the statement in *Freedom to Move* was adequate to ensure that in the long-run, Crown corporations would adhere to sound business principles and practices and avoid anti-competitive behaviour. They suggested that specific guidelines for the conduct of Crown corporations should be put in legislation to ensure that transportation companies, whether Crown or privately owned, are subject to the same rules of competition and enjoy equitable financing opportunities. Finally, there were those witnesses who did not think it was possible to achieve a "level playing field" in a more competitive transportation industry until the transportation Crown corporations were privatized. There was, however, almost total agreement among the witnesses that in establishing the role for transportation Crown corporations, the Government must recognize those areas where they perform services in the public interest and provide adequate compensation for the performance of these services.

The issue the Committee has to address is whether there is any rationale for Air Canada remaining a Crown corporation.

As we have already pointed out, Government ownership of Air Canada is no longer needed to ensure availability of air services in the major markets of southern Canada. Moreover, it seems unlikely to the Committee that the Government will need — except in times of national emergency, in which case other legislation may be involved — to retain the power to direct Air Canada to provide services in particular cases. This directive power is now provided for in the *Financial Administration Act*.

The Committee recognizes that Air Canada, with its maple leaf symbol and substantial international presence, has a role as Canada's representative abroad. However, the Committee believes that Air Canada could continue to represent Canada in this way if it were privately owned. CP Air does this now on its international routes.

The Committee notes that the Minister of Transport has said that transportation Crown corporations will not have access to Government funds. This has been Government policy since 1977 and it has meant that Air Canada has had to rely upon its retained earnings and borrowings on the open market for its capital needs. This has resulted in an alarming deterioration in Air Canada's debt-equity ratio since 1977. The Committee is concerned about this. The question now is whether Air Canada will be able to generate sufficient earnings in the new competitive environment to provide for its capital needs, the major of which will be fleet replacement, without further weakening its debt-equity ratio.

This is the challenge for Air Canada. However, what concerns the Committee is whether, even if Air Canada is more profitable, it will still need an infusion of equity in order to satisfy its capital needs. It cannot continue to borrow indefinitely and since it is a Crown

corporation, it cannot apparently get its equity from the Government. The only other place it can go to obtain equity financing is to the open market which it could do only if it were privatized.

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can be applied to a transaction involving foreign interests. Section 27 of the *National Transportation Act* provides that where objection is made to the Canadian Transport Commission, a proposed acquisition of certain types of transportation entities, including air carriers, by any person whose principal business is transportation, may be disallowed if the acquisition would unduly restrict competition or be prejudicial to the public interest. The Canadian Transport Commission has jurisdiction only if an objection is made and the proposed acquisition is by a person whose principal business is transportation. However, for those transactions involving air carriers not covered by Section 27, the Canadian Transport Commission can proceed pursuant to Sections 21 and 22 of the *Air Carrier Regulations* made under Section 14 of the *Aeronautics Act*.

The *Investment Canada Act*, which specifically deals with foreign investment in Canada, provides that transactions involving acquisitions of Canadian businesses with assets of $5 million or more, indirect transactions of Canadian businesses with assets of $50 million or more, and indirect acquisitions of Canadian businesses with assets between $5 million and $50 million which represent more than 50 per cent of the value of the total international transaction, are reviewable and may be disallowed if the Minister of Regional Industrial Expansion is not satisfied that the investment is likely to be of net benefit to Canada. Futhermore, all additional acquisitions or new businesses in designated types of business activities relating to Canada's cultural heritage or national identity are reviewable if the Governor in Council determines that a review is in the public interest.

The Committee notes that *Freedom to Move* does not consider Canadian control of commercial air services except to say that "the acquisition of control by foreign interests of transportation undertakings in Canada will generally be subject to review under the *Investment Canada Act*".

Representatives of the air carrier industry suggested to the Committee that the question of foreign ownership of Canadian airlines requires further consideration. They pointed out that other major aviation nations such as the United States and Great Britain restrict the degree of foreign ownership of their air transportation systems. The United States, for example, requires that 75 per cent of the equity of a commercial air service be owned by U.S. citizens and that two-thirds of the directors be U.S. citizens. In their view, this was sufficient justification to treat air transportation as a special case having its own unique legislative protection rather than letting the industry fall under the more general and permissive *Investment Canada Act*.

It was also pointed out to the Committee that the reviewable threshold of $5 million in the *Investment Canada Act* could mean that foreign interests could buy a small Canadian air carrier for less than $5 million, expand its operations in a deregulated environment, and thereby gain control of a major domestic service. This would mean that the foreign ownership provisions would be circumvented and Canada might be faced with foreign ownership situations against the national interest.

Finally, it was also brought to the attention of the Committee that foreign ownership and control is an important consideration in the context of international bilateral air agreements. Many of these agreements contain a clause that provides that each state party to the agreement can impose conditions on the licence granted to the airline of the other state party if it is not satisfied that the airline is owned and controlled by the nationals of the state party that designated the airline.

The question for the Committee is whether we should recognize foreign ownership in the Canadian airline industry as a special case or treat it, as *Freedom to Move* does, like most other businesses in Canada and leave it to the jurisdiction of the *Investment Canada Act*.

The Committee is impressed with the reciprocity argument: that Canada should treat an attempt by foreign interests to control a Canadian airline in the same way that the State of the foreign interests does. The Canadian approach should be as open or closed to foreign interests as that of the Government of those foreign interests. We think for this reason alone the airline industry deserves special treatment.

We have pondered how this should be done. We think the best approach is to extend the proposal in *Freedom to Move* to give the Governor in Council power "to disallow domestic mergers and acquisitions of control of major federally regulated transportation undertakings with gross assets valued at $20 million or more" in the national interest, to all foreign acquisitions of Canadian air carriers no matter the value of their gross assets. *Freedom to Move* does not set out how the review process for domestic mergers and acquisitions with gross assets of $20 million or more will be structured or whether the new Regulatory Agency will be involved. These are questions that will no doubt be clarified at the time the new legislation is introduced.

### RECOMMENDATION

**10. The Committee recommends that the *Freedom to Move* proposal to control domestic mergers and acquisitions of $20 million or more be extended to cover all proposed foreign acquisitions of Canadian air carriers no matter the asset value.**

## D. CONFIDENTIAL CONTRACTS

At the present time, regulation requires that all air carrier cargo tariffs must be filed with the Canadian Transport Commission and a copy of the tariff must be made available for inspection by the public at the carrier's place of business.

*Freedom to Move* proposes that the railways be allowed to negotiate confidential contract rates with their customers. Copies of the confidential contract will still have to be filed with the new Regulatory Agency but will not be available to the public for inspection. However, *Freedom to Move* does not make a similar proposal for the air carrier industry.

The Committee heard evidence from Air Canada that while regulation requires Air Canada to file all air cargo tariffs, courier companies, freight forwarders and brokers which use the services of air carriers are not required to file their rates. This puts Air Canada at a competitive disadvantage with its customers. Furthermore, in the United States, there are no restrictions on the business arrangements for the movement of air cargo.

This was the only evidence the Committee received on the question of confidential contracts in the airline industry. However, we will examine it in much greater detail in the

railway section of this Report. For now, the Committee believes that it is sufficient to say that it does not see any reason why the airline industry should not be permitted to negotiate confidential contracts.

## RECOMMENDATION

**11. The Committee recommends that the airline industry be permitted to negotiate confidential contracts for the movement of air cargo.**

# II. RAIL TRANSPORTATION

## Introduction

One of our challenges in writing this Report lay in assessing *Freedom to Move*'s attempt to find a new balance between measures that would, on the one hand, foster competition and, on the other hand, regulate undesirable competitive practices and abuses of market power. Nowhere was this challenge greater than with respect to railway freight rate regulation, the topic of this section.

We have little doubt that implementation of the proposals in *Freedom to Move* will change the balance of competition and regulation in the rail carrier industry. In particular, as we will point out, we see the legalization of confidential railway freight contracts and the elimination of collective rate-making by the railways as increasing competition both among the railways, and between the railways and alternative modes of transport, for the business of shippers.

These two changes would especially bring the benefits of increased competition home to shippers whose facilities have access to the line of more than one railway company, our witnesses said. But numerous witnesses also said the railways would seek to recover revenues lost in the fiercer competition for the business of these shippers by raising freight rates charged on the goods of shippers over whom they exercise monopoly power. In other words, the benefits to shippers enjoying the advantages of competition would be attained on the back of the "captive" shipper.

Indeed, we think that insofar as the railways could extract from such "captive" shippers their shortfall in revenue, they might attempt to do so.

Witnesses also said that confidential contracting and the elimination of the railways' right of collective rate-making would lead to predatory pricing by the railways — CN in particular — as they sought to gain market dominance and monopoly positions.

The first, and most important, issue we deal with in this section is whether confidential contracting is necessary on transborder and domestic traffic. In considering this issue and under subsequent headings, we consider the adequacy of the package of safeguards which *Freedom to Move* proposes. The purpose of these safeguards is to limit, in a commercial environment characterized by the existence of confidential contracts and the elimination of collective rate-making, the railways' monopoly (upward) pricing against the "captive"

shipper and their predatory (downward) pricing directed against competitors. Here we will recommend additions to the *Freedom to Move* package. At the end of the rail section, we also make recommendations regarding CN.

The recommendations in this section of our Report are intended generally to lower shipping costs and to force the railways to increase their efficiency while denying them the possibility (if it should exist) of compensating for their decreased revenues in one area simply by extracting more revenue in another area with no increase in service there.

Finally, although we will not deal with it in the body of the section which follows, we should mention here that if the railways are to become more efficient as we desire them to do, they must be able to reduce their costs. Neither we nor any witnesses who appeared before us were prepared to see safety standards compromised in this process. However, we urge the Government to work with both labour and industry to reach agreement on the elimination of the burden of unnecessary and outdated regulations and practices.

## A. CONFIDENTIAL CONTRACTS

The *Railway Act* prohibits railways and shippers from entering into confidential contracts for the carriage of goods by rail in Canada. Section 275 of the *Act* requires that tariffs of rates be published and filed with the Canadian Transport Commission, and Section 269 requires railways to charge only those tolls set out in the tariffs. Section 381 makes it an offense to depart from those tolls, and Section 380 makes it an offense to offer unpublicized rebates.

These requirements differ markedly from the situation that has existed in the United States since the *Staggers Rail Act* of 1980 was passed. *Staggers* permitted U.S. railways to enter into confidential contracts with shippers. This has had a damaging effect on Canadian railways competing on transborder traffic with U.S. railways because it allows them to undercut published Canadian rates and to short-haul Canadian railways by diverting traffic from the lines of Canadian railways to the lines of U.S. railways.

In 1984, the Canadian Transport Commission conducted hearings on the issue of whether Canadian railways should be allowed to enter into confidential contracts with shippers on transborder traffic. These recommendations were presented to the Minister of Transport in early 1985.

Subsequently, in 1985, at the request of the Minister of Transport, the Commission undertook further public hearings on the question of permitting confidential contracts for rail traffic moving entirely within Canada (domestic) and concluded that they should also be allowed.

*Freedom to Move* proposes that confidential contracts, including rebates, be allowed on all domestic and transborder traffic, except grain shipments governed by specific legislation. Also, a railway and a shipper will be allowed under a confidential contract to waive common carrier obligations to provide adequate facilities, equipment and service to a shipper. Those obligations are set out in Section 262 of the *Railway Act*. Parties to a confidential contract will not be allowed to appeal them to the Regulatory Agency. Finally, shippers who do not

wish to enter into confidential contracts will be able to continue to ship under published tariffs.

*Freedom to Move* states that this mixed system of confidential contracts and published tariffs will stimulate competition among Canadian railways and lead to a wider choice of services for shippers.

*Freedom to Move* proposes the repeal of Section 279 of the *Railway Act*, which would complement the introduction of confidential contracts. Section 279 allows railways in Canada to set common rates on traffic moving between centres served by two or more railways. It was the view of several witnesses that this provision simply results in the rates being set by the highest cost railway, with competing railways then setting their rates at the same level.

The Committee agrees that Section 279 of the *Railway Act* should be eliminated but notes that provision should be made to allow railways to set joint-line rates collectively.

The Committee found widespread acknowledgement that confidential contracts must be allowed on transborder traffic. We agree with numerous witnesses and with *Freedom to Move* that confidential contracts should be allowed on transborder traffic in Canada. We, like most of the witnesses, do not see how our railways can compete effectively with U.S. railways for transborder traffic unless they are permitted to negotiate confidential contracts.

The harder question for the Committee to answer was whether the right to enter into confidential contracts should be extended to cover domestic traffic. Many witnesses, in particular from the Atlantic region and especially representatives of our trucking industry, suggested allowing a two-tier system — confidential contracts for transborder movements but not for domestic traffic. Other witnesses argued for and against *Freedom to Move*'s proposal that domestic confidential contracts be permitted.

Many shippers testified that the use of confidential contracts will mean that the railways will have to compete more vigorously for a shipper's traffic. This should encourage additional efficiencies on the part of the railways and any reductions in rates to shippers will allow them to be more competitive in Canadian and world markets.

We heard from pulp and paper producers that they must compete with U.S. producers in export markets. The U.S. producers can, however, negotiate confidential contracts with U.S. railways at lower prices than the published rates which Canadian railways charge to move the Canadian product to export position. United States companies also enjoy the advantage of these lower confidential contract rates on imported goods. We think Canadian producers need to have the same advantages.

Other witnesses said that the failure to introduce confidential contracts for domestic movements would place Canadian manufacturers at a competitive disadvantage vis-à-vis U.S. producers in the Canadian marketplace. For example, an industry located in western Canada which forwards its product by rail to a Toronto buyer may be competing with a U.S. producer of the same product. The U.S. producer is able, however, to negotiate a confidential contract which allows him to undercut the published Canadian rail rate and thereby eliminate the Canadian producer from the Toronto market. Allowing Canadian

railways to establish confidential contracts with Canadian shippers will enable those industries to effectively meet U.S. competition and remain commercially viable.

We also heard testimony that confidential contracts may benefit smaller shippers. At present, railways may be reluctant to offer a smaller shipper a lower rate than the one published for a larger shipper because the larger shipper will see the lower published rate and also demand it. If the large shipper is able to do this, the railway will lose considerable revenue in view of the larger volume of traffic at stake. Under a system of confidential contracts it will be possible for a railway to offer a lower rate to small shippers to take advantage of efficiencies they offer the railways and without disturbing published rate relationships. Such efficiencies may include instances where the railway is able to use otherwise empty cars on a return movement or on traffic which fills out a train to an optimum length and capacity. Confidential contracts could therefore also be to the benefit of small shippers located on the line of a single railway. In essence, confidential contracts between a large or small shipper and a railway will permit rates to be tailored closer to the particular service, to the mutual advantage of both parties to the contract.

It was also stated by some witnesses that confidential contracts on domestic traffic will simply place a shipper's transportation costs in the same context of privacy as his other costs when setting a competitive market price for a product.

There was considerable testimony, particularly from the trucking industry, against allowing confidential contracts on domestic traffic. We also heard that confidential contracts will be of no benefit to smaller shippers or to those firms located in isolated or remote areas of the country who do not have the flexibility of negotiating with two railways for the lowest level of rates. Many small shippers located on the line of a single railway in the Atlantic Provinces and in other regions removed from central Canada believe that lower rate levels arrived at through confidential contracts in areas of the country where competitive rail service is dominant will require the railways to seek higher rates from shippers in areas where such service is absent.

Having heard both sides of the case argued at length, the Committee has come to the conclusion that confidential contracts should also be allowed for the domestic movement of goods by rail. We simply do not believe that a two-tier system could work effectively; we believe that such a system would mean that our railways and shippers would continue to be at a competitive disadvantage vis-à-vis their U.S. counterparts.

However, the Committee sympathizes with the concerns expressed by small shippers and the trucking industry regarding the introduction of confidential contracting. We think safeguards are required.

The concerns about the effects of confidential contracting (taken together with the elimination of collective rate-making by the railways) were two-fold. Firstly, that the railways would engage in predatory pricing to obtain market share. Secondly, that the railways would raise their rates to shippers against whom they enjoy monopoly pricing power. We believe safeguards are needed in respect of both these concerns.

With respect to predatory pricing, Section 276 of the *Railway Act* currently requires all freight rates to be compensatory (i.e., that they exceed the railway's variable cost for the product movement concerned). Section 276 was enacted as a check on predatory pricing.

*Freedom to Move* proposes the repeal of Section 276 in five years — that is, presumably, five years after the legislation is enacted. After the repeal of the Section, the railways would be able to set freight rates free from the compensatory requirement and subject only to whatever anti-combines legislation may then be in effect.

Witnesses expressed fear that the removal of the compensatory requirement would create an environment which would result in destructive rate wars between railways. While shippers captive to the line of a single railway are concerned about the possibility of paying higher rates because of the ultimate revenue shortfalls suffered by the railways, truckers are concerned that such anti-competitive behaviour may decimate much of their long-haul business.

Both the trucking industry and CP Rail are particularly concerned that CN Rail might be inclined to price its services below cost to a greater extent than its competitors in the absence of Section 276. They believe that CN enjoys special financial advantages as a Crown corporation as a result of which it would be able to undertake predatory pricing practices.

Several witnesses indicated that in the absence of Section 276, the *Combines Investigation Act* would not provide sufficient protection.

We agree that this *Act* is not adequate protection against predatory pricing. Indeed the Committee has concluded that the only effective mechanism currently in place to deter predatory pricing on the part of our railways is Section 276. Therefore, Section 276 should be maintained, and not repealed in five years as proposed by *Freedom to Move*. We see this as the first of a package of safeguards for shippers and competitors of the railways whose commercial interests might be harmed by anti-competitive behavior when confidential contracts are introduced.

The Committee also thinks that Section 276 should be strengthened by incorporating in new legislation, penalty provisions that would apply where non-compensatory rates have been charged.

A related safeguard we propose, but which is not set out in *Freedom to Move*, is the right of a third party to appeal to the Regulatory Agency on the grounds that a confidential contract violates Section 276 or restricts the railway's ability to meet its common carrier obligations (under Section 262 of the *Railway Act*) to provide the third party with adequate facilities, equipment and service. Furthermore, we think the Regulatory Agency should be able on its own motion to initiate an investigation into whether a confidential contract violates Section 276 or the railway's common carrier obligations.

Where rates are found to be non-compensatory either upon third party appeal or upon the Regulatory Agency's own motion, the Regulatory Agency should have the power to order the rates to be increased to compensatory levels.

Where the confidential contract is found to restrict the railway's common carrier obligations to a third party, the Regulatory Agency should have the power to order the parties to amend or to cancel the contract.

*Freedom to Move* proposes that all confidential contracts be filed with the Regulatory Agency. We agree. We see the requirement to file confidential contracts as necessary for the Regulatory Agency's monitoring of contracts to determine whether they are non-compensatory or impinge on a railway's common carrier obligations to third party shippers.

Furthermore, we think that summaries of confidential contracts should be filed with the Regulatory Agency *and published*. These summaries will provide some information about confidential contracts which may be set at predatory prices or which contain provisions affecting a railway's common carrier obligations to third party shippers. We suggest that the summaries should contain sufficient information to permit a competing carrier or shipper to compare traffic characteristics on shipments made under published rates with those under confidential contracts. Information such as the commodity, shipper, carrier, origin, destination, routing, volume and equipment involved in the movement will allow a third party shipper or carrier to compare movements under published rates with movements under confidential contracts, without divulging confidential rate levels and rebate provisions. On the basis of this information, the third party may decide to appeal to the Regulatory Agency on the grounds mentioned above.

*Freedom to Move* proposes that a review of confidential contracting take place after four years. We believe that as an additional safeguard for shippers and the railways' competitors, this evaluation should take place after the first two years as well as four years after the enactment of legislation permitting confidential contracting.

Finally, the ultimate safeguard for those who feel aggrieved by the railways' pricing activities under confidential contracts is that they can resort to a "family" of dispute-resolving mechanisms proposed in *Freedom to Move*. We discuss this "family" of dispute-resolving mechanisms later in this section of our Report. It includes mediation, final-offer arbitration, and a streamlined Section 23 of the *National Transportation Act*.

## RECOMMENDATIONS

**12. The Committee recommends that Section 279 of the *Railway Act* be repealed. The Committee, however, recommends that provision should be made to allow railways to set joint-line rates collectively.**

**13. The Committee recommends that railways be permitted to enter into confidential contracts for both the transborder and domestic movement of goods by rail.**

**14. The Committee recommends that Section 276 of the *Railway Act* be retained and strengthened by the incorporation in it of penalty provisions that would apply where non-compensatory rates have been charged.**

**15. The Committee recommends that a person not party to a confidential contract be entitled to appeal to the Regulatory Agency on the grounds that a confidential contract violates Section 276 or impinges on the railway's ability to meet its common carrier obligations (under Section 262 of the *Railway Act*) to provide the third party with adequate facilities, equipment and service.**

**16. The Committee recommends that the Regulatory Agency be empowered to order the rates increased to compensatory levels where rail freight rates are found to violate the new Section 276.**

17. **The Committee recommends that the Regulatory Agency be empowered to order the parties to a confidential contract to amend or to cancel the contract where it impinges on a third party's common carrier obligations.**

18. **The Committee agrees with *Freedom to Move* that all confidential contracts should be filed with the Regulatory Agency.**

19. **The Committee recommends that summaries of confidential contracts containing basic information (not including the rate agreed under the contract) be filed with the Regulatory Agency *and published*.**

20. **The Committee recommends that all confidential contracts for the movement of goods by rail in Canada be monitored by the Regulatory Agency and that confidential contracting be evaluated two and four years after the legislation is enacted permitting confidential contracts.**

## B. "CAPTIVE" SHIPPERS

What to do about the "captive" shipper was one of the most vexing questions we were called upon to consider during the course of our hearings. The reason for this is that it is very difficult to define exactly who is or is not a "captive" shipper. However, several criteria can be applied. These involve consideration of whether the shipper is captive to a mode of transport. An example would be a shipper of a relatively low-value, high-density bulk product which must move a long distance to market. If that shipper is served by only one carrier, he can be considered as captive to that carrier.

While this may appear to be a relatively simple definition of a "captive" shipper, in practice it is extremely difficult to apply. This often results from the fact that while there may exist an alternative mode of transport for that shipper, that alternative may be impractical to use from an economic perspective.

Shippers have long complained that where the nature of their business or location is such that they have no efficient alternative but to ship by one railway, they are captive to that railway company. As a result of the lack of competitive transportation services, "captive" shippers fear that the railway can charge them whatever it wishes for the transportation of their goods.

The existing legislative mechanism which addresses the concerns of captive shippers is contained in Section 278 of the *Railway Act*. That Section provides a formula-based mechanism for those shippers for whom there is no "alternative, effective and competitive service by a common carrier other than a rail carrier or carriers...". Shippers may apply to the Canadian Transport Commission to have a freight rate fixed if they are dissatisfied with the rate offered by the railway.

*Freedom to Move* recognizes that Section 278 has been widely criticized as being ineffective. Since it was enacted in 1967, there has been only one application under it that proceeded through all the steps set out in the legislation. This mechanism is unattractive to shippers because of the difficulties in the calculation of the costing formula. Therefore, *Freedom to Move* proposes the repeal of Section 278 in favour of a "family" of appeal provisions. In addition, it proposes to allow shippers captive to one rail line to have access to

the lines of competing rail carriers through provision in legislation for the setting of a joint-line rate from the traffic's origin to its destination.

The Committee will consider in the next section of the Report the proposal for a "family" of appeal provisions because they will be available not only to "captive" shippers but to all shippers. However, we wish to note at this time that most witnesses greatly preferred the "family" of proposed appeal provisions to a Section 278 maximum rate mechanism. Now, we will address the questions of legislated joint-line rates and interswitching.

Regarding the proposal for legislated joint-line rates, the Committee notes the strong support which exists among shippers for this approach for the protection of the "captive" shipper. They believe that it has great potential to ensure that their freight rates will be reasonable. Furthermore, the Committee was impressed with the evidence to the effect that many shippers would not be prepared to endorse the proposals in *Freedom to Move* regarding rail freight *unless* there was provision in the legislation for joint-line rates.

However, the railways argued that the setting of joint-line rates could lead to the general prescription of rates by the Regulatory Agency. They also said that it would result in shippers switching traffic from Canadian lines to United States railways at proximate interchanges and in so doing, deny Canadian rail carriers revenue they would otherwise earn. This loss of long-haul revenue could translate into lost Canadian jobs.

Furthermore, the railways stressed that implementation of this proposal could amount to an expropriation of the benefits of their investments in infrastructure and facilities.

The purpose of this proposal is clear. It is intended to break the local monopoly power of a railway. In so doing, it would prevent a railway from abusing its monopoly power in the setting of rates due to the absence of competition.

We agree that this fundamental safeguard is required. We would like to see the benefits of competition brought to more shippers, especially to those who are regarded as "captive".

With respect to interswitching, the Committee notes that it is not mentioned in *Freedom to Move*. Based on the evidence we heard regarding this question, it merits attention, especially in connection with the "captive" shipper.

Interswitching takes place when traffic which is carried by a railway from an industry on a siding in one city cannot be delivered by the same railway to its destination. The traffic must then be switched to a second railway for final delivery. At the present time, regulated interswitching limits are set at four miles, subject to the provisions set out under General Order T-12 of the Canadian Transport Commission. The regulations and mileage limits have remained largely unchanged since 1918.

In its appearance before the Committee, the Canadian Transport Commission outlined its proposal for expanded interswitching limits. Its proposal calls for a system based on zones. These zones would enlarge the limits beyond four miles by encompassing more industrial areas in or near urban centres.

The Committee recognizes that interswitching is a complex issue that requires careful and extensive study. While we are not in a position to say what the interswitching limits should be, we believe that the Canadian Transport Commission's proposal deserves further consideration.

## RECOMMENDATIONS

**21. The Committee recommends that Section 278 (the maximum rate provision) of the *Railway Act* be repealed.**

**22. The Committee agrees with *Freedom to Move* and recommends that provision be included in legislation for the setting of joint-line rates by the Regulatory Agency as an additional protection for "captive" shippers.**

**23. The Committee recommends that interswitching limits be increased in order to foster greater intramodal competition.**

## C. DISPUTE-RESOLVING MECHANISMS

As is evident from the previous sections, the Committee recognizes the concerns that have been expressed regarding confidential contracts and the "captive" shipper question. In each instance we have outlined a number of protective measures (e.g., third party appeals, legislated joint-line rates) that must be in place in order to assist all those in the transportation industry to better cope with the changes proposed in *Freedom to Move*. In addition, we have stressed the importance of the "package" of dispute-resolving mechanisms set forth in *Freedom to Move* as an essential part of the fabric of the "safety net" that we firmly believe is required to ensure that there is a balance between the new pro-competitive policy and the public interest.

The Government wants to make the dispute-resolution processes now in legislation less adversarial, more effective, efficient, accessible and less expensive to use. To this end, *Freedom to Move* proposes a family of problem-solving mechanisms which include mediation, final-offer arbitration and a streamlined Section 23 appeal mechanism. Also, a reparations provision will apply in the latter two cases.

### i) Mediation

At the present time, the mediation process that has been developed by the CTC is a simple and informal procedure whereby a shipper, carrier or the staff of the CTC who are handling a complaint may request mediation of a traffic or tariff dispute. Informal meetings are conducted, and negotiation of the dispute takes place and does not become part of the legal process.

*Freedom to Move* proposes that a mediation appeal mechanism be included in legislation as an informal means of resolving disputes between shippers and carriers. Although no change to the existing mediation format is proposed, it is believed that the incorporation of the provision in legislation will further publicize the availability of the mediation service, making it more attractive to shippers and carriers.

The Committee did not hear any criticism of the existing mediation procedure and witnesses expressed acceptance of the proposal in *Freedom to Move*. The Committee observes that the present mediation process appears to be successful because of its informality and flexibility. We would therefore caution against any measure in the new legislation which detracts from these attributes.

## RECOMMENDATION

**24. The Committee agrees with *Freedom to Move* and recommends that a mediation function be included in legislation as an informal means of resolving disputes between shippers and carriers.**

### ii) Final-Offer Arbitration

*Freedom to Move* proposes to establish a new appeal mechanism called "final-offer arbitration" for resolving rate disputes of private or narrow interest. A complainant in a dispute will have the option of either appealing under Section 23 or requesting final-offer arbitration, but not both. *Freedom to Move* emphasizes that it is critical that the arbitrator be independent, impartial and experienced in the relevant transportation matters because he/she will be expected to select one or the other of the final positions presented by the parties to the dispute. The necessity for the arbitrator to select one of the final positions is expected to encourage the parties to negotiate in good faith and to attempt to reach their own resolution.

*Freedom to Move* states that the entire proceeding must be completed within 90 days from either the request for arbitration or from the date the Regulatory Agency decides to resolve the dispute through this mechanism. Finally, it is proposed to include a reparations provision to permit a refund of overcharges plus interest when a rate is found to be too high.

Witnesses appearing before the Committee agreed in principle with final-offer arbitration but had some concerns as to how it would work. The point was made that railways have more knowledge and experience in rate negotiations than shippers and, therefore, shippers should be able to utilize outside experts or consultants in the arbitration process. It was further suggested that, rather than restrict the arbitration to a one person decision, it might be more appropriate to establish a tribunal system whereby each party would be allowed to select one individual to sit on the panel with an arbitrator employed by the new Regulatory Agency.

The Committee believes that final-offer arbitration is an essential aspect of the dispute-resolving mechanisms proposed in *Freedom to Move*. But like some of the witnesses, we wonder exactly how the process is going to work in practice. What rules and procedures will be developed? How will the arbitrator be chosen? Will the parties be entitled to have representation? However these and other questions of procedure and process are resolved, we wish to emphasize that we must not lose sight of the goal of a simple, efficient and fair appeal mechanism.

## RECOMMENDATIONS

**25. The Committee agrees with *Freedom to Move* that a final-offer arbitration mechanism be incorporated in legislation and that a reparations provision be included.**

**26. The Committee recommends that appeals made under this provision be limited to problems of a "narrow" or "private" interest nature and that the Government give consideration to clarifying the meaning of such terms, as well as the terms of "national" and "public" interest considerations in the new legislation.**

### iii) Section 23

At present, Section 23 of the *National Transportation Act* gives the CTC the power to remedy any situation where the public interest is considered to be prejudicially affected. Specifically, if a person has reason to believe that an act or omission of a carrier may be prejudicial to the public interest in respect of tolls or conditions of carriage, that person may apply to the CTC for leave to appeal. Once the Commission has been satisfied that a *prima facie* case has been made, it can undertake an investigation and make whatever orders are necessary or report its findings to the Governor in Council for appropriate action.

*Freedom to Move* proposes that Section 23 of the *National Transportation Act* be retained in a streamlined form as one of the family of dispute-resolving mechanisms. It is proposed, that it be amended, so that the requirement that a *prima facie* case be established before leave to appeal is granted and an investigation proceeds be eliminated, and that the Regulatory Agency be given the choice between a file hearing and a public hearing. Coupled with this is the proposal that time limits be placed on various stages of the appeal process to help ensure that Section 23 cases move at an expeditious pace. It is further proposed that an amendment be made to Section 23 to clarify that a shipper served by only one carrier of a single mode have access to the appeal process. This addition will offer specific protection to those shippers who do not have the benefit of intramodal competition. Finally, as was the case for final-offer arbitration, it is proposed that provision be made for reparations so that when a carrier's rate is disallowed, it must refund overcharges plus interest. At present, reparations are not available, and a tariff remains in effect, and must be paid, until a decision on the appeal is made.

Witnesses before the Committee generally supported the proposals for a streamlined Section 23. The Committee views this Section as the foundation of the dispute-solving mechanisms and agrees with the proposals made for its streamlining.

## RECOMMENDATION

**27. The Committee agrees with *Freedom to Move* and recommends that a streamlined Section 23 appeal mechanism, as outlined in *Freedom to Move*, be incorporated in the new legislation.**

## D. THE ROLE OF TRANSPORTATION CROWN CORPORATIONS — CANADIAN NATIONAL

The Order of Reference instructed the Committee to examine and report on "the role of transportation Crown corporations in an open and competitive transportation environment".

In the railway industry there are two Federal Crown corporations: Canadian National Railways and Via Rail. The Committee will only consider the role of Canadian National in a more competitive environment. The consideration of Via Rail's role is not part of the Committee's mandate. The Minister of Transport has announced that legislation regarding Via Rail is forthcoming and one of the issues that will be addressed then will be that of Via Rail's role in a more competitive environment.

In the 1920's the Government of Canada created Canadian National Railways by merging and rationalizing several bankrupt railways. From that rather inauspicious beginning, Canadian National has become a modern, large, diversified Crown corporation with more than $7 billion in net assets. CN's presence is significant in Canada and it provides employment for more than 60,000 people.

Generally speaking, Canadian National has served Canadians well but we have paid for it. The last recapitalization took place in 1978. The purpose was to once again give CN a reasonable balance sheet, placing it on a sound commercial basis by the conversion of $808 million of its debt owed to the Government, to equity. Unfortunately, since that recapitalization, CN's debt-equity ratio has deteriorated quite dramatically.

*Freedom to Move* says that "Crown corporations in transportation will be expected to be effective and efficient while operating as good corporate citizens". They "will be discouraged from engaging in non-business-like pricing and in loss-making commercial activities".

On the role of Canadian National in a more competitive environment the Committee heard a whole range of opinions. Some witnesses said that Crown corporations must continue to play an active role in transportation policy, not only to provide otherwise uneconomic services, but also more generally to ensure that transportation policy facilitates national economic goals. Other witnesses were content to accept, and agree with the statement in *Freedom to Move*. However, there was a substantial group of witnesses who were not prepared to accept the statement in *Freedom to Move* as adequate to ensure that in the long-run, Crown corporations would continue to act as good corporate citizens and not engage in unfair competition. They believe that because Crown corporations are not faced with the ultimate discipline of bankruptcy, they might well indulge in activities that would erode, rather than promote competition. This group suggested that specific guidelines should be put in legislation to ensure that financial accountability and market conduct will be equitable for Crown and private corporations. Finally there were those witnesses who did not think it was possible to achieve a "level playing field" in a less regulated environment unless the two major transportation Crown corporations were privatized. However, most of the witnesses agreed that where Crown corporations are used as instruments of public policy, then the cost involved must be clearly and openly defined, and the corporation compensated by the Government.

The Committee is concerned about the deterioration of CN's debt-equity ratio since 1978. So, of course, is management, and CN told the Committee that representations have been made to the Government to have residual debt of $265 million due to the Government reclassified as equity, rather than long-term loan investment.

We have the same problem with Canadian National as with Air Canada. That is, we wonder how Canadian National is going to be able to finance its substantial capital

requirements over the next few years. If CN cannot obtain an infusion of equity from its shareholder, it will have to depend on earnings, borrowings and internal cost restraint to generate the large amount of capital that will be needed to maintain and improve its vast railway system.

The Committee is not entirely convinced that CN can do this. However, we are convinced that one essential way to assist CN in this challenge to be a profitable and efficient railway is to give it the "freedom to manage" its own affairs on a sound business basis. This means that requirements to provide exemplary services, employment and purchasing practices, and the performance of services in the public interest should not burden CN in a way which is unfair or discriminatory in comparison to its private sector competitors. These imposed public duties should be recognized by the Government, their cost clearly defined, and CN should be compensated by the Government for them.

But by "freedom to manage" the Committee does not mean that CN, with its inherent advantages because it is owned by the Government, should be allowed to compete unfairly. In our view CN should be subject to the same financial yardsticks and commercial discipline as its private competitors. The Committee is aware that as a result of 1984 amendments to the *Financial Administration Act*, the Governor in Council may, on the recommendation of the appropriate Minister, give directions to a Crown corporation in the public interest under Section 99 of the *Act*. We think that the use of this power might be one way of establishing appropriate financial guidelines to govern CN's conduct in the market place. We do not think we are in a position to suggest the content of these guidelines; we leave that responsibility to the Government.

## RECOMMENDATIONS

**28. The Committee recommends that CN continue to operate in a commercial manner.**

**29. The Committee recommends that the Government require CN to meet private-sector standards of financial accountability in the form of financial guidelines set and evaluated by an independent party, (the Auditor General for example).**

**30. The Committee recommends that all uneconomic services and practices that CN is required to perform in the public interest be clearly defined by the Government and that CN be appropriately compensated.**

# III. EXTRAPROVINCIAL TRUCKING

In 1954 the Federal *Motor Vehicle Transport Act* conferred upon the Provinces the authority to regulate extraprovincial for-hire trucking activity. The major consequence of this was the development of a complicated and confusing regulatory framework across Canada, characterized by different rules and administrative procedures for the regulation of entry, exit and rates for extraprovincial trucking.

Over the past thirty years the for-hire trucking industry has experienced substantial growth. It has provided good and effective competition on long-haul routes for our two railways and has complemented their activities through intermodal operations. However, during the 1970's it became apparent that reform of the diverse and complicated provincial regulatory system was necessary.

The same conclusion had been reached in the United States and the result was the *Motor Carrier Act* of 1980 which deregulated the interstate and international for-hire trucking industry. This made access to the large American market easier for Canadian trucking firms and many took advantage of that.

In 1982 the United States placed a moratorium on the granting of United States operating authorities to Canadian-owned or-domiciled carriers. This was because the Americans did not feel they had the same ease of access to Canadian markets as Canadians did to American markets. In late 1982, after negotiations culminating in the Brock-Gotleib understanding, the moratorium was removed.

The Brock-Gotlieb understanding recognizes the importance to commerce of a competitive and healthy transborder for-hire trucking industry and establishes as a goal of both Governments that their respective regulatory authorities maintain a policy of non-discrimination. The understanding also recognizes that there are differences in the policies and economies of the two countries which may affect the competitive opportunities available to motor carriers. Consequently, provision is made that should these differences result in a major shift in the balance of trade in trucking services to the injury and detriment of an important segment of the industry, the relevant parties will resolve the matter by means of an established consultative mechanism. This mechanism is in place and has been used to good advantage since the understanding was concluded.

The moratorium and its aftermath provided the catalyst for regulatory reform in Canada which resulted in the conclusion of a Federal-Provincial Accord in February 1985,

setting out the framework for the establishment of a uniform and scaled-down extraprovincial regulatory regime for the trucking industry. The essential points of this Memorandum of Understanding are:

(i) the shifting of the burden of proof for an extraprovincial operating authority from the applicant to the objector: i.e., the reverse onus test;

(ii) the elimination of the requirement for the approval of motor carrier rates and charges;

(iii) the exemption of the transportation of certain commodities from economic regulation; and

(iv) streamlining the application process.

*Freedom to Move* points out that there was also a Federal-Provincial agreement to assess the "socio-economic effects of eliminating the test of 'public convenience and necessity' in favour of a 'fit, willing and able' test and eliminating rate filing".

*Freedom to Move* proposes to revise the *Motor Vehicle Transport Act* to reflect the Federal-Provincial February Accord and "to change the entry criterion in Part III of the *National Transportation Act* from a test of 'public convenience and necessity' to a 'fit, willing and able' requirement" as well as to remove the regulation of rates and fares.

Many of the witnesses the Committee heard on the issue of extraprovincial trucking applauded the Federal-Provincial Accord. This did not include the representatives of the for-hire trucking industry who appeared before the Committee. They seemed to be saying to the Committee that while they did not disagree with the need for substantial motor carrier regulatory reform, they were very disappointed with the way it has been handled to date and the lack of sensitivity towards the concerns of the industry.

The Committee welcomes this plan. We think the provincial regulatory framework for the control of extraprovincial trucking has become too complicated, restrictive, time-consuming and costly. We believe more freedom, flexibility and competition are needed. We urge the Federal Government to continue its role of vigorous leadership to ensure that economic regulatory reform occurs as soon as possible, and we encourage the Provinces to participate in a positive and progressive manner.

We recognize that the Federal Government has the power to assume its jurisdiction over extraprovincial trucking. The Committee is not prepared to suggest that this should be considered at this time. However, the Committee thinks it is important to emphasize that this power is there. We would certainly support the exercise of it if the Provinces and Federal Government cannot agree upon a smooth and expeditious implementation of the Federal-Provincial Accord. If it were necessary for the Federal Government to act in this manner, we think that a joint Federal-Provincial Agency should be established to control for-hire extraprovincial and international trucking activities.

All of the representatives of the trucking industry who appeared before the Committee expressed concern regarding the possibility of unfair competition by the railways in long-haul domestic markets. In their opinion, the introduction of confidential contracts will mean

that Section 276 of the *Railway Act* will not provide adequate safeguards against predatory pricing. They expressed particular concern that Canadian National might be prepared to indulge in predatory behaviour because it is a Crown corporation with a "deep pocket", that is to say, supported by the Federal Treasury.

The Committee has already considered Section 276 of the *Railway Act* and has recommended that the Section be retained and strengthened to address the issue of predatory pricing. The concerns of the trucking industry were very influential in the Committee's determination of this question.

With respect to the matter of the potential for anti-competitive activity on the part of Canadian National, we have already explained what we think Canadian National's role should be in a more competitive environment. Furthermore, we note the intention of Canadian National to sell its trucking interests soon which should, to a degree, allay the concerns of the trucking industry.

In connection with confidential contracts for the railways, the trucking industry argued that they should only apply to international movements. The Committee has considered this matter and reached the conclusion that it is not possible or appropriate to make an exception for the domestic market.

Representatives of the trucking industry were also very concerned that the proposed reduction in trucking regulation in Canada will result in the dominance of transborder markets by U.S. carriers. They argued that this would in turn lead to the development of domestic feeder networks by U.S. carriers which would mean that Canadian carriers would also be pushed out of the east-west Canadian trade.

The Committee recognizes that there are two issues here that must be addressed. One concerns the situation where an American carrier wishes to extend its operations to Canada, and the other is where an American carrier acquires control of a Canadian carrier.

Regarding the first situation, the Committee is sympathetic to the fears of the Canadian trucking industry that it could be swamped by American competition in Canada. However, we are concerned that any marked differences in approach to the control of entry between our system and that of the United States could result in further retaliatory actions against Canadian carriers attempting to obtain U.S. operating authorities.

We believe that the best way to balance and protect trucking interests on both sides of the border is through a permanent mechanism similar to that of the Brock-Gotlieb understanding. This could be achieved through bilateral negotiations which would lead to a formal bilateral agreement on transborder trucking operations.

With respect to the question of foreign ownership, the Committee is concerned about the effectiveness of the *Investment Canada Act*. As in the airline industry, a foreign company could acquire a Canadian trucking firm with assets of less than $5 million and expand its operations in the domestic market to the possible detriment of the national interest.

We share the Canadian trucking industry's concern regarding the question of foreign ownership. So much so that we believe special treatment is warranted for the industry. We think the same approach should be taken as we recommended for the airline industry: that is to say, the extension of the proposal in *Freedom to Move* to control domestic mergers and acquisitions to cover all proposed foreign acquisitions of Canadian trucking companies, no matter their gross asset value.

## RECOMMENDATIONS

**31. The Committee recommends that the Federal Government continue to take the initiative in the implementation of the Federal-Provincial Accord of February 1985 and pursue with vigor economic regulatory reform of extraprovincial for-hire trucking.**

**32. The Committee recommends that if, due to Federal-Provincial differences, the Accord cannot be implemented in a timely fashion, the Federal Government should repatriate the jurisdiction over extraprovincial trucking and establish with the Provinces a Federal-Provincial Agency which would control extraprovincial and international trucking activities.**

**33. The Committee recommends that the Federal Government give consideration to the negotiation of a bilateral trucking agreement with the United States which would recognize among other things the importance and need to maintain a fair and equitable balance of trade in transborder trucking services.**

**34. The Committee recommends that the *Freedom to Move* proposal to control domestic mergers and acquisitions of $20 million be extended to cover all proposed foreign acquisitions of Canadian trucking companies no matter the value of the assets.**

# IV. MARINE TRANSPORTATION

The Canadian marine transport industry may be considered to comprise seven sectors. They are the Great Lakes-St. Lawrence Seaway movement of bulk products; the West Coast tugboat and barge operations transporting predominantly bulk cargoes such as forest products; East Coast domestic activity encompassing mainly bulk transport, ferry operations and coastal community supply; the Mackenzie River and western Arctic community resupply and oil and gas exploration support; the eastern Arctic and Keewatin resupply; the international bulk trade; and the international container trade. In the last two categories, there is almost no participation by Canadian flag carriers.

The major pieces of Federal legislation dealing with maritime transportation are: the *National Transportation Act*, which empowers the Canadian Transport Commission to investigate matters involving shipping and provides for appeals against the licencing of carriers; the *Transport Act*, which empowers the Canadian Transport Commission to licence shipping and to set maximum tolls on those marine transport waterways in which it is proclaimed to apply (currently all marine services on the Mackenzie River system and passenger and package freight on the Great Lakes and western Arctic are regulated under this *Act*); the *Canada Shipping Act*, which through Part XV limits the coasting trade to Commonwealth vessels and Great Lakes shipping to Canadian vessels although waivers may be obtained for foreign vessels if suitable Canadian vessels are unavailable; the *Inland Water Freight Rates Act*, which empowers the Canadian Grain Commission to set the maximum rates for the carriage of grain on the Great Lakes; and the *Shipping Conferences Exemption Act (1979)*, which allows shipping lines involved in the liner trades to form associations — called conferences — with immunity from the *Combines Investigation Act*. These shipping conferences set uniform freight rates and coordinate services among their members. The *Shipping Conferences Exemption Act* was due to expire in March 1984, but its life was extended first to March 1985, then again until March 1986.

*Freedom to Move* proposes to revise the *Shipping Conferences Exemption Act*. "While shipping loyalty (patronage) contracts will still be possible, confidential contracts with individual conference members will also be permitted. Shipping conferences will be allowed to quote multi-modal rates, but safeguards against collusion in the setting of such rates will be implemented and independent carrier action encouraged."

*Freedom to Move* also proposes the revision of the *Canada Shipping Act* "to reserve the coasting trade for Canadian ships; to extend the jurisdiction of the Act to 200 nautical miles or to the limits of the continental shelf, whichever is greater; to expand the scope of the Act to include all commercial marine activities except for fishing; and to retain the waiver system, with specific provision for conditional exemptions."

Of all of the modes of transport in Canada, marine transportation has been the least regulated. Not surprisingly, therefore, the Committee heard less testimony about the effects of the proposed deregulation of marine transportation as set out in *Freedom to Move* than it did about any of the other modes. It seemed to the Committee that this was because the marine industry would not be significantly affected by the regulatory reform that is proposed.

However, the Committee would like to point out that all of the witnesses who referred to the proposed amendments to the *Shipping Conferences Exemption Act* generally accepted them. Most of them emphasized the importance of our legislation being compatible with that of the U.S. *Shipping Act* of 1984 and were pleased to see that the proposed amendments will put Canadian shippers back on an equal footing with U.S. shippers.

There was not so much agreement expressed regarding the proposed amendments to the *Canada Shipping Act* concerning the coasting trade. It was pointed out by some witnesses that reserving the coasting trade to Canadian ships is not consistent with the general thrust of *Freedom to Move* towards more competition. And the witnesses advocated that the inter-coastal trade be exempt from Canadian flag restrictions. However, most of the witnesses emphasized that if the proposed amendments go ahead then the waiver procedure to allow the use of non-Canadian vessels when no suitable Canadian vessel is available must be simple and expeditious. Furthermore, they argued that when a waiver is granted, it should not be subject to any duty, taxes or fees as is the case now.

The Committee understands that legislation to revise the *Shipping Conferences Exemption Act* and the coasting trade provisions in the *Canada Shipping Act* will soon be introduced. The Committee wishes only to highlight the points made to it regarding the amendments to both *Acts* to ensure that they will receive detailed consideration at the time these amendments are debated in Parliament.

# V. OTHER ISSUES

## A. THE ROLE OF TRANSPORTATION IN REGIONAL DEVELOPMENT

A statement of transportation policy objectives is contained in Section 3 of the *National Transportation Act*. There is no reference to the use of transportation as an instrument of regional economic development.

*Freedom to Move* proposes to revise this statement "so as to promote actively both intramodal and intermodal competition; greater efficiency and the lowering of total unit costs for all transportation services; the reduction of the burdensome intervention of Government in the marketplace by minimizing the extent and complexity of regulation imposed on carriers, shippers, and other users; and a regulatory process that is more open, flexible and accessible to all Canadians".

It was pointed out to the Committee by several witnesses that what is missing from this proposed statement of transportation objectives is a recognition of the use of transportation as a catalyst for regional economic development. In their opinion, the potential benefits of increased competition will likely accrue to those in the more populated, affluent areas of the country. However, they pointed out that regions where the population is dispersed, where economic growth is slow, and where distances to major markets are great may not enjoy the same level of benefits from a more competitive environment. Indeed they thought these regions might experience unacceptable levels of transportation services and costs so as to endanger economic development. In their view, this must not happen and because transportation is so vital to regional economic development, all these witnesses recommended that the revised statement of transportation policy objectives should recognize that transportation is a key to regional economic development.

It was also brought to the attention of the Committee by several witnesses that at the annual Premiers Conference in August 1985, the Premiers adopted a resolution emphasizing the role of transportation as a tool of regional economic development. They said:

> "Whereas the importance of regional economic development has been agreed upon by all Governments, we, the Provincial Premiers, call on the Government of Canada to incorporate in the proposed new *National Transportation Act*, in addition to an objective of commercial viability, the following:
>
> 1) Transportation is recognized as a key to regional economic development; and

2) Commercial viability of transportation links must be balanced with regional economic development objectives in order that the potential economic strengths of each region may be realised."

From colonial times until today, transportation has played an essential role in the settlement and development of Canada. From Confederation to the present, the Government of Canada has played an indispensable role in the development and regulation of our transportation system. The building of the Canadian Pacific Railway, the construction of the St. Lawrence Seaway and the TransCanada Highway, and the provision of aviation facilities and infrastructure all would not have happened without direct Government involvement. The result is a sophisticated transportation infrastructure which means that almost all parts of Canada now have access to appropriate transportation modes.

The near completion of these systems has shifted the focus of the debate regarding the role of transportation in regional development from questions of access to those of service and costs.

The Committee recognizes this shift, and appreciates how essential transportation is to the less affluent, less populated regions of the country. We heard how important it is for people in those regions to be able to get their goods to domestic and export markets quickly and efficiently and at the lowest cost possible.

The Committee's task throughout this Report has been to try and strike the appropriate balance between the proposed new national transportation policy and the public interest reflected by those Canadians who have valid concerns regarding its impact on them. We have tried in this Report to build in safeguards to allay these concerns and temper the impact of the new policy on local and regional interests.

We believe that the most effective and best way these concerns can be satisfied is through the statutory recognition of the principle that transportation is a *key* to regional economic development. We see this as the ultimate protection in our "family" of safeguards. It completes the "safety net" many before us asked for.

**RECOMMENDATION**

**35. The Committee recommends that in the legislation to amend the *National Transportation Act*, statutory recognition be given to the principle that transportation is a *key* to regional economic development.**

## B. THE HANDICAPPED/DISABLED

Witnesses appearing before the Committee stressed that no matter whether a passenger is disabled or not, transportation is a major focus and necessity of our lives.

The disabled are concerned that the new legislation being proposed under *Freedom to Move* will contain no safeguards for their right and access to suitable and adequate transportation facilities. They noted that the discussion of disabled consumers is conspicuous in its absence from *Freedom to Move*.

In addition, they are concerned with the fact that *Freedom to Move* proposes dismantling the Canadian Transport Commission and replacing it with a new Regulatory Agency. While they recognize that the Commission did not promote widespread change in transportation for the disabled, it did preserve and maintain the levels of accessibility and service standards disabled people have achieved. They are uncertain as to whether or not the new Regulatory Agency would be able to guarantee to the disabled the right of access to adequate transportation facilities at a reasonable price.

It was stressed by the witnesses that they are not seeking extraordinary facilities but rather, guarantees that a minimum level of transport services be available to the handicapped.

The basic question is: would their right of access to adequate transportation facilities be compromised under the legislation emanating from *Freedom to Move*?

The Committee noted the concerns expressed by the witnesses on this matter. Within the CTC there is a Coordinator for the Transportation of the Handicapped whose office pays special attention to their needs. This is an excellent initiative and we believe that such recognition should be maintained and enhanced in the new Agency.

The Committee is of the opinion that while *Freedom to Move* does not specifically contain guidelines designed to address this concern, it is not the Government's intent to discriminate against the handicapped. Notwithstanding this, it is the belief of the Committee that the concern be specifically addressed in the forthcoming legislation and provide for at least a minimum level of adequate transportation facilities for the handicapped and disabled.

## RECOMMENDATIONS

**36. The Committee recommends that the Government state its commitment to adequate and reasonable access to all modes of transport facilities and services within Federal jurisdiction for disabled consumers and to remove the barriers to equal access as soon as possible.**

**37. The Committee recommends that in order to demonstrate this commitment, the Government should take steps to ensure that a sufficient amount of regulation is provided to ensure that its goals are achieved.**

**38. The Committee recommends that the office of the Coordinator for the Transportation of the Handicapped recently established in the Canadian Transport Commission be maintained and enhanced in the new Regulatory Agency.**

## C. MINISTERIAL POLICY DIRECTION

There is no provision in the *National Transportation Act* which empowers the Minister of Transport to issue binding policy directives of a general nature to the Canadian Transport Commission. There is such a provision in the *Air Canada Act, 1977* but it has never been used.

*Freedom to Move* proposes to revise the *National Transportation Act* "to confer upon the Minister, with approval of the Governor in Council, the power to issue policy directives to the Regulatory Agency on matters falling within the jurisdiction of the Agency and will make such policy directions binding on the Agency in its consideration of matters before it". These policy directives, after approval by the Governor in Council, will be tabled in the House of Commons.

Most of the witnesses the Committee heard on this issue supported the proposal without much elaboration. They generally recognized that it is the right and duty of an elected representative government to make policy and to intervene from time to time on matters of policy. In their view, the Minister of Transport should have complete responsibility for making policy and then be held accountable for the results of that policy. However, some of those witnesses in favour of the directive power did express concern that it could be abused so as to compromise the independence and credibility of the Regulatory Agency. There were two witnesses who opposed the ministerial directive power. Their view was that such a directive power or the threat thereof means that the new Regulatory Agency would not be truly "independent", and that the proposal appears to be inconsistent with one of the stated objectives of *Freedom to Move* of "less Government interference".

The Committee agrees with the proposal in *Freedom to Move*. We think the role of the new Regulatory Agency should be to interpret Government policy, not make it. The roles of the policy-maker and the regulator should be clearly defined in the new legislation. In our view, there should not be any confusion as to who is accountable and responsible for transportation policy.

However, the Committee sympathizes with the concerns expressed regarding possible abuse of the ministerial directive power. We note that the policy directive, after approval by the Governor in Council, will be tabled in the House of Commons. We would like to go further than this as we believe Parliament should have an opportunity to review a policy directive. We think the best legislative mechanism to use is that of a negative resolution. We recognize there could be a problem if the directive were urgent, which we do not think is likely, and Parliament was not in session. However, provision could be made for such an eventuality.

It will be the task of the new Regulatory Agency to apply whatever policy direction it receives from the Minister to individual cases. The Committee thinks it is important that the Agency clearly understand the direction it has received. We would like to suggest that one way this could be ensured is to specify in the new legislation that the new Regulatory Agency will have the power to seek official clarification of a policy directive within a certain time limit, say 30 days.

The Committee recognizes that, within the ambit of its responsibility, the new Regulatory Agency is probably in the best position to anticipate areas where it would welcome policy direction. The Committee therefore thinks that consideration should be given to granting the new Regulatory Agency the formal right to request the Governor in Council to issue a policy directive.

## RECOMMENDATIONS

**39. The Committee recommends that ministerial policy directives, after approval by the Governor in Council, be the subject of a negative resolution of Parliament before they become law.**

**40. The Committee recommends that the new legislation permit the Regulatory Agency to seek official clarification of a policy directive within a certain period of time after the directive has become law.**

**41. The Committee recommends that the Government give consideration to conferring on the new Regulatory Agency the power to request policy direction from the Governor in Council.**

## D. TRANSPORTATION SAFETY AND SECURITY

In the preface to *Freedom to Move*, the Minister of Transport makes an emphatic statement regarding transportation safety. He recognizes that safety is a major priority for everyone involved in the transportation sector and then says:

> "I would like to indicate unequivocally that the Government will neither propose nor permit any economic regulatory reform that might be detrimental to safety standards."

*Freedom to Move* is concerned only with economic regulatory reform and therefore that is the mandate of the Committee as well. This point was often made to witnesses who wanted to discuss their views on the impact of deregulation on transportation safety. Some of them were convinced that safety would be sacrificed to competition and profits. Other witnesses said that they were in favour of various of the proposals in *Freedom to Move* so long as safety standards were not jeopardized. They pointed out that not only should our transportation system be effective and efficient but it should also be safe.

No one would disagree with that statement. So, even though safety is outside the Committee's Order of Reference, we feel compelled to state that whatever form the new national transportation policy finally takes, it must not in any way compromise safety. While economic regulatory reform will mean more "*Freedom to Move*", it does not mean "*Freedom to Move*" at the expense of safety. We would say the same regarding airport security. We welcome the recent initiatives by the Minister of Transport to tighten up security at our airports and to enhance inspection and enforcement procedures. We encourage him to continue to give this matter high priority.

Furthermore, the Committee believes that the necessary human and technical resources must at all times be made available to the Minister of Transport to ensure that he can carry out his responsibilities to maintain and improve upon the level of safety and security in the transportation sector.

Finally, it was suggested to the Committee that a reference to safety be put in a revised statement of transportation policy objectives which will be included in the new legislation. We think this has merit and suggest the Government should consider it.

## RECOMMENDATIONS

**42. The Committee recommends that the Government give priority to the provision of the necessary human and technical resources to the Minister of Transport to ensure that safety will not be compromised in a more competitive transportation industry.**

**43. The Committee recommends that considering the importance of having a safe transportation system, the Government give serious consideration to the inclusion of safety in the new statement of policy objectives to be included in the new legislation to amend the *National Transportation Act*.**

## E. THE REVIEW PROCESS

The Committee has recommended that the new Regulatory Agency monitor continuously the impact of deregulation on the air transportation system. We have also recommended a review in two years of the impact of the regulatory changes on the railway industry. These are two of the protective mechanisms we think are necessary for the transportation user who is small or who lives in a small community or remote area of this country.

*Freedom to Move* "proposes to review the effects of the legislative reform within four years of the new legislation coming into effect". *Freedom to Move* does not say what particular approach will be used to conduct this review nor how it will be done.

The Committee believes that four years is too long a period to wait before an in-depth review is undertaken. We think two years is more appropriate. It is time enough for the transportation industry to have adjusted but not too long if correction is required. Furthermore, the Committee thinks that it should have a role in the review process which might take the form of public hearings on the impact of the new policy throughout the country.

The Committee also believes that the new Regulatory Agency should play a major role in this review process. This, as well as the ongoing monitoring function, can only be done effectively if the Agency has the appropriate expertise and resources.

*Freedom to Move* acknowledges this to a degree when it says: "Many employees of the CTC possess invaluable knowledge and expertise on the national transportation system. The Government intends to draw on these resources in creating the new Agency". However, *Freedom to Move* is silent on what the role of research will be for the new Agency.

The *National Transportation Act* of 1967 gave the Canadian Transport Commission an extensive mandate to undertake studies and research into the economic aspects of all modes of transport in Canada. A Research Branch was formed and it has, over the years, produced a wide variety of studies for the use of the Commission, the Minister of Transport and the public. Some of their studies have been considered by this Committee and we have always appreciated the high standard and quality of the work, as well as the assistance we have received from the Branch.

This sentiment was echoed by several witnesses who emphasized the importance of the maintenance of a high-quality, mature body of transportation research expertise, after the new transportation policy takes effect. They expressed fears that the independent research capability of the Canadian Transport Commission might disappear and were concerned about the credibility and neutrality of transportation research if it was largely carried out by Transport Canada.

The Committee shares these concerns. We do not think the new Regulatory Agency will be able to carry out the functions we envisage it should, unless it has a solid and competent in-house research capability. Furthermore, we think this will enhance the independence of the Agency, as well as its ability to carry out its duties and responsibilities.

### RECOMMENDATIONS

**44. The Committee recommends that a review of the impact of the new national transportation policy take place in two years.**

**45. The Committee recommends that the Standing Committee on Transport participate in the review process.**

**46. The Committee recommends that the new Regulatory Agency monitor the impact of the new national transportation policy and report to the Minister of Transport.**

**47. The Committee recommends that provision be included in the new legislation for the establishment of a research function within the new Regulatory Agency.**

## F. THE LEGISLATIVE PROCESS

*Freedom to Move* is a philosophically-oriented document where general principles are articulated, accompanied by broad proposals for reform. The Committee recognizes that *Freedom to Move* grapples with some very complicated, tough, sensitive issues which are of national scope and essential to this country. Nevertheless in the Committee's view, *Freedom to Move* is a readable and cogent statement for a new national transportation policy.

What *Freedom to Move* does not do is describe in any detail how this new policy will be translated into legislation or implemented. This point was made to the Committee by many witnesses who appeared before it. Indeed, some were not prepared to express a final opinion on one or more of the more complicated and subtle proposals in *Freedom to Move* until they saw the legislation.

The Committee experienced the same problem as these witnesses. We did not have an opportunity to explore all of the proposals in *Freedom to Move*. Regarding those we did consider, we could not go much beyond a general assessment. We could not examine the "nuts and bolts" so vital to making them work.

However, during the hearings on *Freedom to Move*, and in our analyses of some of the proposals which are contained in this Report, the Committee acquired considerable knowledge and experience. Therefore, we believe that this Committee is the most

appropriate forum for detailed examination of what will clearly be complicated and important legislation: in fact, the most important since the passage of the *National Transportation Act* of 1967.

## RECOMMENDATION

**48. The Committee recommends that after approval in principle by the House of Commons of legislation to amend the *National Transportation Act* it be referred to the Standing Committee on Transport for clause-by-clause examination.**

# VI. SUMMARY OF RECOMMENDATIONS

## I AIR TRANSPORTATION

### A. AIR SERVICES IN THE NORTH AND LOW DENSITY MARKETS

1. **The Committee recommends that Northern air services continue to be regulated on the basis of the 1984 policy statement until the Committee has had an opportunity to travel to the North to study the adequacy of air services there and report back to Parliament.**

2. **The Committee recommends that where a single carrier is serving a low density market in the South at the time deregulation comes into effect a "grandfather" clause be included in the new legislation providing for regulatory control over the exit of that carrier from that market, or the exit of any other carrier that chooses to enter the market after proclamation of the new legislation.**

3. **The Committee recommends that the new Regulatory Agency be given a mandate to monitor the impact of air transportation deregulation, particularly on low density routes, and that the law require the air carriers to provide to the Regulatory Agency such information as is necessary for it to carry out this monitoring function.**

4. **The Committee recommends that legislation deregulating the air carrier industry establish an ESSENTIAL AIR SERVICES SUBSIDY PROGRAM and set out in detail the criteria for qualification for subsidies.**

5. **The Committee recommends that a fixed air transportation tax ceiling be reinstated or that a tax be established which is graduated downward as the length of a passenger's journey increases.**

### B. THE ROLE OF TRANSPORTATION CROWN CORPORATIONS — AIR CANADA

6. **The Committee recommends that Air Canada should continue to operate on sound business principles in contemplation of profit.**

7. **The Committee recommends that Air Canada have the "freedom to manage" to improve organizational efficiency and to enable it to respond vigorously to the demands of a more competitive market place.**

8. **The Committee recommends that if the Government imposes public duties on Air Canada, they should be clearly defined and Air Canada compensated for them according to the *Air Canada Act, 1977*.**

9. **The Committee recommends that the Government give priority to the consideration of options for the privatization, or at the least, partial privatization of Air Canada with emphasis on the participation of its employees in the ownership of the company.**

## C. FOREIGN OWNERSHIP

10. **The Committee recommends that the *Freedom to Move* proposal to control domestic mergers and acquisitions of $20 million or more be extended to cover all proposed foreign acquisitions of Canadian air carriers no matter the asset value.**

## D. CONFIDENTIAL CONTRACTS

11. **The Committee recommends that the airline industry be permitted to negotiate confidential contracts for the movement of air cargo.**

# II RAIL TRANSPORTATION

## A. CONFIDENTIAL CONTRACTS

12. **The Committee recommends that railways be permitted to enter into confidential contracts for both the transborder and domestic movement of goods by rail.**

13. **The Committee recommends that Section 279 of the *Railway Act* be repealed. The Committee, however, recommends that provision should be made to allow railways to set joint-line rates collectively.**

14. **The Committee recommends that Section 276 of the *Railway Act* be retained and strengthened by the incorporation in it of penalty provisions that would apply where non-compensatory rates have been charged.**

15. **The Committee recommends that a person not party to a confidential contract be entitled to appeal to the Regulatory Agency on the grounds that a confidential contract violates Section 276 or impinges on the railway's ability to meet its common carrier obligations (under Section 262 of the *Railway Act*) to provide the third party with adequate facilities, equipment and service.**

16. **The Committee recommends that the Regulatory Agency be empowered to order the rates increased to compensatory levels where rail freight rates are found to violate the new Section 276.**

17. **The Committee recommends that the Regulatory Agency be empowered to order the parties to a confidential contract to amend or to cancel the contract where it impinges on a third party's common carrier obligations.**

18. **The Committee agrees with *Freedom to Move* that all confidential contracts should be filed with the Regulatory Agency.**

19. **The Committee recommends that summaries of confidential contracts containing basic information (not including the rate agreed under the contract) be filed with the Regulatory Agency *and published*.**

20. **The Committee recommends that all confidential contracts for the movement of goods by rail in Canada be monitored by the Regulatory Agency and that confidential contracting be evaluated two and four years after the legislation is enacted permitting confidential contracts.**

## B. "CAPTIVE" SHIPPERS

21. **The Committee recommends that Section 278 (the maximum rate provision) of the *Railway Act* be repealed.**

22. **The Committee agrees with *Freedom to Move* and recommends that provision be included in legislation for the setting of joint-line rates by the Regulatory Agency as an additional protection for captive shippers.**

23. **The Committee recommends that interswitching limits be increased in order to foster greater intramodal competition.**

## C. DISPUTE-RESOLVING MECHANISMS

### i) MEDIATION

24. **The Committee agrees with *Freedom to Move* and recommends that a mediation function be included in legislation as an informal means of resolving disputes between shippers and carriers.**

### ii) FINAL-OFFER ARBITRATION

25. **The Committee agrees with *Freedom to Move* that a final-offer arbitration mechanism be incorporated in legislation and that a reparations provision be included.**

26. **The Committee recommends that appeals made under this provision be limited to problems of a "narrow" or "private" interest nature and that the Government give consideration to clarifying the meaning of such terms, as well as the terms of "national" and "public" interest considerations in the new legislation.**

### iii) SECTION 23

27. **The Committee agrees with *Freedom to Move* and recommends that a streamlined Section 23 appeal mechanism, as outlined in *Freedom to Move*, be incorporated in the new legislation.**

## D. THE ROLE OF TRANSPORTATION CROWN CORPORATIONS — CANADIAN NATIONAL

**28. The Committee recommends that CN continue to operate in a commercial manner.**

**29. The Committee recommends that the Government require CN to meet private-sector standards of financial accountability in the form of financial guidelines set and evaluated by an independent party, (the Auditor General for example).**

**30. The Committee recommends that all uneconomic services and practices that CN is required to perform in the public interest be clearly defined by the Government and the CN be appropriately compensated.**

## III. EXTRAPROVINCIAL TRUCKING

**31. The Committee recommends that the Federal Government continue to take the initiative in the implementation of the Federal-Provincial Accord of February 1985 and pursue with vigor economic regulatory reform of extraprovincial for-hire trucking.**

**32. The Committee recommends that if, due to Federal-Provincial differences, the Accord cannot be implemented in a timely fashion, the Federal Government should repatriate the jurisdiction over extraprovincial trucking and establish with the Provinces a Federal-Provincial Agency which would control extraprovincial and international trucking activities.**

**33. The Committee recommends that the Federal Government give consideration to the negotiation of a bilateral trucking agreement with the United States which would recognize among other things the importance and need to maintain a fair and equitable balance of trade in transborder trucking services.**

**34. The Committee recommends that the *Freedom to Move* proposal to control domestic mergers and acquisitions of $20 million be extended to cover all proposed foreign acquisitions of Canadian trucking companies no matter the value of the assets.**

## V. OTHER ISSUES

## A. THE ROLE OF TRANSPORTATION IN REGIONAL DEVELOPMENT

**35. The Committee recommends that in the legislation to amend the *National Transportation Act*, statutory recognition be given to the principle that transportation is a *key* to regional economic development.**

## B. THE HANDICAPPED/DISABLED

**36. The Committee recommends that the Government state its commitment to adequate and reasonable access to all modes of transport facilities and services within Federal jurisdiction for disabled consumers and to remove the barriers to equal access as soon as possible.**

37. **The Committee recommends that in order to demonstrate this commitment, the Government should take steps to ensure that a sufficient amount of regulation is provided to ensure that its goals are achieved.**

38. **The Committee recommends that the office of the Coordinator for the Transportation of the Handicapped recently established in the Canadian Transport Commission be maintained and enhanced in the new Regulatory Agency.**

## C. MINISTERIAL POLICY DIRECTION

39. **The Committee recommends that ministerial policy directives, after approval by the Governor in Council, be the subject of a negative resolution of Parliament before they become law.**

40. **The Committee recommends that the new legislation permit the Regulatory Agency to seek official clarification of a policy directive within a certain period of time after the directive has become law.**

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## D. TRANSPORTATION SAFETY AND SECURITY

42. **The Committee recommends that the Government give priority to the provision of the necessary human and technical resources to the Minister of Transport to ensure that safety will not be compromised in a more competitive transportation industry.**

43. **The Committee recommends that considering the importance of having a safe transportation system, the Government give serious consideration to the inclusion of safety in the new statement of policy objectives to be included in the new legislation to amend the *National Transportation Act*.**

## E. THE REVIEW PROCESS

44. **The Committee recommends that a review of the impact of the new national transportation policy take place in two years.**

45. **The Committee recommends that the Standing Committee on Transport participate in the review process.**

46. **The Committee recommends that the new Regulatory Agency monitor the impact of the new national transportation policy and report to the Minister of Transport.**

47. **The Committee recommends that provision be included in the new legislation for the establishment of a research function within the new Regulatory Agency.**

## F. THE LEGISLATIVE PROCESS

**48. The Committee recommends that after approval in principle by the House of Commons of legislation to amend the *National Transportation Act* it be referred to the Standing Committee on Transport for clause-by-clause examination.**

# APPENDIX A

## WITNESSES WHO APPEARED BEFORE THE COMMITTEE

| | ISSUE | DATE |
|---|---|---|
| **Acadia University:**<br>Léo Paul Dana, Professor. | 40 | November 25, 1985 |
| **Air B.C.**<br>Iain J. Harris, President | 36 | November 18, 1985 |
| **Air Canada:**<br>Claude Taylor, Chairman of the Board. | 26 | October 24, 1985 |
| **«Association québécoise des transporteurs aériens»:**<br>Brian Jenner, Executive Director;<br>Pierre Desbiens, President;<br>Michel Leblanc, Ex-Officio President. | 42 | November 27, 1985 |
| **Atlantic Canada, United Auto Workers:**<br>Larry Wark. | 40 | November 25, 1985 |
| **Atlantic Provinces Chamber of Commerce:**<br>Jeanne Geldart, President;<br>R. B. Des Brisay, Chairman, Elect. | 41 | November 26, 1985 |
| **Atlantic Provinces Economic Council:**<br>R. A. McCulloch, Chairman;<br>W. E. Belliveau, Vice-Chairman, Nova Scotia. | 40 | November 25, 1985 |
| **Atlantic Provinces Transportation Commission:**<br>George A. Key, Chairman;<br>Craig S. Dickson, General Manager;<br>Ramsay Armitage, Assistant General Manager. | 40 | November 25, 1985 |

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| **Atlantic Provinces Trucking Association:**<br>Don Drury, President;<br>Terry Ivany, Chairman;<br>Dale Elliott, Executive Director;<br>Graham Thompson, President, Thompson's Transfer. | 40 | November 25, 1985 |
| **B.C. Legislative Board Brotherhood of Locomotive Engineers:**<br>David S. Kipp, Chairman. | 36 | November 18, 1985 |
| **Board of Trade of Metropolitan Toronto:**<br>D. William Mutch, Chairman, Distribution and Customs Committee;<br>David R. Gillelan, Member, Distribution and Customs Committee;<br>Bernard (Bud) L. Maheu, Assistant Manager, International Trade Department. | 34 | November 6, 1985 |
| **Bradley Air Services Limited/First Air:**<br>John W. Crichton, Executive Vice-President. | 28 | October 25, 1985 |
| **British Columbia Motor Transport Association:**<br>Harry White, Secretary/Treasurer. | 37 | November 19, 1985 |
| **Brotherhood of Railway and Airline Clerks-Airline Division:**<br>Christine Micklewright. | 37 | November 19, 1985 |
| **Brunswick Mining and Smelting:**<br>Mike J. Buller, Manager, Rail and Truck Transportation;<br>Jim Stothart, Assistant Superintendent, Materials Handling — Fire Chief. | 41 | November 26, 1985 |
| **Canadian Air Line Employees Association:**<br>Tom Saunders, President. | 39 | November 21, 1985 |
| **Canadian Air Line Flight Attendants Association:**<br>Faye Douglas, General Chairperson. (Pacific Western Airlines Component) | 36 | November 18, 1985 |
| **Canadian Brotherhood of Railway Transport and General Workers:**<br>J.D. Hunter, President | 44 | November 28, 1985 |
| **Canadian Chamber of Commerce:**<br>Roger B. Hamel, President;<br>John F. Aspin, Chairman, Transportation Committee; | 46 | December 2, 1985 |

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| Eugene M. Ludwick, President, E.M. Ludwick & Associates Inc., Winnipeg. | | |
| **Canadian Chemical Producers Association:**<br>David Goffin, Senior Project Manager;<br>Donald Sandford, Commercial Services & Human Resources, Manager, Agriculture, C.I.L. Inc. | 42 | November 27, 1985 |
| **Canadian Fertilizer Institute:**<br>George Bishop, Assistant Managing Director. | 42 | November 27, 1985 |
| **Canadian Industrial Transportation League:**<br>J. David Long, President;<br>R.T. Beckwith, Chairman of the Board. | 30 | October 31, 1985 |
| **Canadian Labour Congress:**<br>Shirley Carr, Secretary-Treasurer;<br>Dick Martin, Executive Vice-President;<br>Dan O'Hagan, Senior Economist;<br>Dick Thomasson, Vice-President of Great Lakes and Inland Waters;<br>Tom Saunders, President, CALEA/UAW;<br>Louis Erlichmann, Research Director, IAMAW. | 44 | November 28, 1985 |
| **Canadian Manufacturers Association:**<br>J.E. (Ernie) Magee, Chairman, National Transportation Committee, Manager Rail Transportation and Warehousing, Procter and Gamble Incorporated;<br>M.J. (Mike) Buller, Chairman, Highway Subcommittee, CMA National Transportation Committee, Manager Rail and Truck Transportation Noranda Sales Corporation Limited;<br>D.W. (Dough) Montgomery, Vice-President, Government Relations, The Canadian Manufacturers' Association. | 30 | October 31, 1985 |
| **Canadian Marine Transportation Centre of Dalhousie University:**<br>Mary R. Brooks, Associate Professor, School of Business;<br>John Gratwick, Director. | 40 | November 25, 1985 |
| **Canadian National Railways:**<br>J. Maurice LeClair, Chairman and Chief Executive Officer;<br>Ronald Edward Lawless, President. | 26 | October 24, 1985 |
| **Canadian Pacific Air:**<br>Donald J. Carty, President and Chief Executive Officer. | 36 | November 18, 1985 |

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| **Canadian Pacific Railways:**<br>I.B. Scott, Chairman and Chief Executive Officer;<br>Russell S. Allison, President;<br>Robert J. Ritchie, Vice-President, Marketing and Sales;<br>John P. Kelsall, Vice-President, Operation and Maintenance. | 29 | october 29, 1985 |
| **Canadian Pulp and Paper Association**<br>Howard Hart, President;<br>T.J. Openshaw, Manager, Transportation and Distribution Section;<br>Don J. Wallace, Director, Transportation, Consolidated — Bathurst Inc., Vice-Chairman, Transportation Section;<br>Ellwood Dillman, Group Traffic Co-ordinator, Minas Basin Pulp and Power, Past Chairman, Transportation Section. | 43 | November 28, 1985 |
| **Canadian Railway Labour Association:**<br>E.G. Abbot, Executive secretary. | 29 | October 29, 1985 |
| **Canadian Shippers Council:**<br>A.H. Hall, Chairman and representing the Canadian Manufacturers' Association, Distribution Manager, Ford Glass Ltd;<br>G.E. Bennett, Vice-Chairman, and Chairman of the council's West Coast Committee, Vice-President, Transportation, Council of Forest Industries of B.C. | 46 | December 2, 1985 |
| **Canadian Transport Commission:**<br>J. David Thompson, Vice-President, Law;<br>David Hackston, Executive Director, Traffic and Tariffs;<br>John Heads, Executive Director, Railway Transport Committee;<br>Yves Dubé, Vice-President, Research;<br>David Jones, Chairman, Commodity Pipeline Committee;<br>John F. Walter, Chairman, Railway Transport Committee;<br>Robert Martin, Executive Director, Motor Vehicle Transport Committee. | 33 | November 5, 1985 |
| **Canadian Trucking Association:**<br>Wes Armour, President;<br>Pat McGuire, President, Inter-City Truck Lines Canada Inc.;<br>Ken Maclaren, Executive Director. | 29 | October 29, 1985 |

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| **Canpotex Ltd.:**<br>Rod Heath, Director, Corporate Affairs. | 38 | November 20, 1985 |
| **City Express:**<br>Victor Pappalardo, President. | 45 | November 29, 1985 |
| **Coal Association of Canada:**<br>R.T. Marshall, President;<br>D.I. Farrell, Chairman, Transportation Committee;<br>Giacomo Capobianco, President, Byron Creek Collieries;<br>Emile Dubois, Manager-Transportation, Luscar Ltd. | 36 | November 18, 1985 |
| **Coalition of Provincial Organizations of the Handicapped (COPOH):**<br>Allan Simpson, past Chairperson. | 39 | November 21, 1985 |
| **Commercial Travellers Association of Canada:**<br>Terry Ruffell, General Manager. | 39 | November 21, 1985 |
| **Consumers Association of Canada:**<br>Ken MacDonald, General Counsel and Director of the Regulated Industries Program;<br>Carman Baggaley, Researcher;<br>David McKendry, Policy Analyst. | 35 | November 7, 1985 |
| **Corner Brook Chamber of Commerce:**<br>David L. Gillard, President;<br>Brian K. Wentzell, Past President and Chairman, Transportation Committee. | 40 | November 25, 1985 |
| **Council of Forest Industries of B.C.:**<br>G.E. Bennett, Vice-President;<br>R.J. Toporowski, Manager, Transportation Planning, MacMillan Bloedel Ltd.;<br>R.K. Manifold, Corporate Traffic Manager, Eurocan Pulp & Paper Co. | 36 | November 18, 1985 |
| **Crown Forest Industries:**<br>James A. Powell, Distribution Manager. | 37 | November 19, 1985 |
| **Deer Lake Chamber of Commerce:**<br>A.M. Bloom, President. | 41 | November 26, 1985 |
| **Dominion Marine Association and the Canadian Shipowners Association:**<br>T. Norman Hall, President. | 25 | October 22, 1985 |
| **Garfield Sytems Inc.:**<br>Ralph Fishman, Vice-President and General Manager. | 32 | November 5, 1985 |

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| **Government of Alberta:** | 46 | December 2, 1985 |
| Clarence J. Roth, Deputy Minister, Planning & Services, Economic Development. | | |
| **From the Province of New Brunswick:** | 41 | November 26, 1985 |
| Frank McKenna, Leader of the Opposition. | | |
| **Government of New Brunswick:** | 41 | November 26, 1985 |
| The Honourable Richard Hatfield, Premier. | | |
| **Government of Newfoundland and Labrador:** | 41 | November 26, 1985 |
| The Honourable Ron Dawe, Minister of Transportation. | | |
| **Government of the Northwest Territories:** | 39 | November 21, 1985 |
| John Quirke, Deputy Minister, Department of Government Services;<br>Norm Phillpot, Chief, Supply and Services Division, Department of Government Services. | | |
| **Government of Yukon:** | 37 | November 19, 1985 |
| Terry Sewell, Director, Policy & Planning, Department of Community and Transportation Services. | | |
| **Grain Services Union:** | 38 | November 20, 1985 |
| Hugh J. Wagner, Secretary-Manager. | | |
| **Halifax Board of Trade:** | 40 | November 25, 1985 |
| John Landry, Chairman, Transport Committee;<br>Camille Gallant, Director of Liaison;<br>Jack Bathurst, Chairman, Port and Harbour Sub-Committee. | | |
| **Halifax-Dartmouth Port Development Commission:** | 41 | November 26, 1985 |
| John Grice, Chairman. | | |
| **Harmon Corporation:** | 41 | November 26, 1985 |
| Derek Hammond, Director of Development. | | |
| **ICG Liquid Gas Ltd.:** | 39 | November 21, 1985 |
| Bruce W. Wilton, Director, NGL Distribution;<br>Brian G. Tingley, Manager, NGL Distribution. | | |
| **Interior Lumber Manufacturers Association:** | 36 | November 18, 1985 |
| S. Grant Hiemstra, Traffic Manager and Chairman, ILMA Transportation Committee;<br>Howard Saunders, General Manager. | | |

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| **Northern Air Transport Association:**<br>John W. Crichton, President. | 28 | October 25, 1985 |
| **Nova Scotia Forest Products Association:**<br>Dale Sproule, First Vice-President;<br>Lorne Etter, Executive Director. | 40 | November 25, 1985 |
| **Nova Scotia League for Equal Opportunities:**<br>Raleigh Orr, Chairman;<br>Paul Shields, Provincial Coordinator. | 40 | November 25, 1985 |
| **Novacor Chemicals:**<br>Rolland G. Frakes, Senior Vice-President;<br>Stephen D. Sheperdson, manager, Distributing Planning. | 38 | November 20, 1985 |
| **Ontario Trucking Association:**<br>Raymond Cope, Executive Vice-President and General Manager;<br>John Sanderson, Vice-President, Public Affairs, CP Trucks. | 30 | October 31, 1985 |
| **Pem-Air Limited:**<br>Delbert A. O'Brien, President. | 43 | November 28, 1985 |
| **People in Equal Participation Inc.:**<br>Theresa Ducharme, Chairperson. | 38 | November 20, 1985 |
| **Potash Corporation of Saskatoon Sales Limited:**<br>Andrew Elliott, Manager, Distribution Planning. | 39 | November 21, 1985 |
| **Prince Edward Island Potato Marketing Board:**<br>John Robinson, Vice-President, Eric Robinson Inc.;<br>Gerry Fougere, Director of Transportation. | 40 | November 25, 1985 |
| **Province of Manitoba:**<br>John S. Plohman, Minister, Highways and Transportation. | 39 | November 21, 1985 |
| **Public Interest Research Centre:**<br>William A. Jordan, Professor of Economics, York University;<br>Andrew Roman, Executive Director. | 35 | November 7, 1985 |
| **Saint John Port Development Commission:**<br>Hugh H. McLellan, Chairman. | 40 | November 25, 1985 |
| **Southern Air Transport Association:**<br>Carmen Loberg. | 36 | November 18, 1985 |

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| **Stelco:**<br>W. H. Sheffield, Transportation Manager, Central Region. | 31 | November 4, 1985 |
| **Stephenville Transportation Commission:**<br>Bob Byrnes, Chairman;<br>John Burnham, Commission Member. | 40 | November 25, 1985 |
| **Thompson, Keith W.:**<br>Coordinator, Economic Regulatory Reform, Department of Transport. | 24 | October 15, 1985 |
| **Town of Channel—Port-aux-Basques:**<br>Marina Samms, Industrial Promotions Officer, Gateway Association for Transportation and Employment. | 40 | November 25, 1985 |
| **Trans North Air:**<br>T. A. Rapty, General Manager. | 37 | November 19, 1985 |
| **Transport 2000 Atlantic:**<br>John Pearce, President. | 41 | November 26, 1985 |
| **Transport 2000 (B.C.):**<br>James F. Rowell, President. | 37 | November 19, 1985 |
| **United Parcel Ltd.:**<br>Glenn C. Smith, President;<br>Max Rapoport, Q.C., Vice-President. | 43 | November 28, 1985 |
| **United Transportation Union:**<br>Richard Greenaway, Local Chairman, representing the General Committee of Adjustment CN West. | 39 | November 21, 1985 |
| **University of British Columbia:**<br>Trevor D. Heaver, Director, Commitee for Transportation Studies;<br>Michael W. Tretheway, Professor. | 37 | November 19, 1985 |
| **Wardair International Ltd.:**<br>Maxwell W. Ward, Chairman and Chief Executive Officer. | 39 | November 21, 1985 |
| **Westar Mining:**<br>Terence L. Garvey, Director, Transportation. | 46 | December 2, 1985 |
| **Weyerhaeuser Canada Ltd.:**<br>Raymond C. Norgren, Manager of Transportation. | 36 | November 18, 1985 |

# APPENDIX B

## LIST OF INDIVIDUALS OR ORGANIZATIONS THAT HAVE SUBMITTED BRIEFS

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Ace-Atlantic Container Express Inc.
Advocacy Resource Centre for the Handicapped
Air Atlantic
Air-North Charter and Training Ltd.
Air Transport Association of Canada
Air-Stop International Inc.
Alkan Air
Association du camionnage du Québec
Black, Jim
Bromlee, Douglas, D.C.
Brown, Alexander
Calm Air
Canadian Association for Community Living
Canadian Marine Transportation Centre
Canadian Paraplegic Association
Canadian Petroleum Association
Canadian Transport Lawyers' Association
Cargill Limited
Cebuliak, Jim A.
Crestbrook Forest Industries Limited
Economy Carriers Limited
Field, W.H.R.
Geltman, Harold
George Weston Limited
Goodwin, C.I.M.
Grocery Products Manufacturers of Canada (G.P.M.C.)

Groupe de transport Asbec Inc.

Hallet, Al

Johnson, The Mover Company

Laurentian Air Services Limited

Luscar Limited

Matheson, Rand H.

McDonald, Kwan & Lewis

McKinnon, Irvin

Motor Vehicle Manufacturers' Association

O'Donnell, Mr. J.

Patenaude, Gilles

Prairie Pools Inc.

Propane Gas Association of Canada

Ray, Dr. A.K., S.Sc., FIMA, FAAAS, AFAIAA, FRAeS, MCMOS

Read, Brendan B.

Saskatchewan Government
Highways and Transportation

Saskatchewan Trucking Association

Shell Canada Products Company

Sultran Limited

Sunatori, Go, Simon

Taylor, Mary

Traders Import Export Limited

Transportation Brokers of Canada Inc.

Travel Industry Association of the Northwest Territories

Trimac Transportation System

Watson, J.D.

West, Martin G.

Westburne

Winnipeg Chamber of Commerce

A copy of the relevant Minutes of Proceedings and Evidence (Issues 24 to 46 inclusive and Issue 47 which includes this report) is tabled.

Respectfully submitted,

J. Patrick Nowlan
*Chairman.*

# MINUTES OF PROCEEDINGS

TUESDAY, DECEMBER 3, 1985

(59)

The Standing Committee on Transport met *in camera* at Meech Lake, at 9:00 o'clock a.m. this day, the Chairman, J. Patrick Nowlan presiding.

*Members of the Committee present:* Iain Angus, Les Benjamin, Mike Forrestall, Darryl Gray, J. Patrick Nowlan, André Ouellet, Joe Reid, Gordon Taylor, Brian Tobin.

*Alternates Present:* Ross Belsher, Bill Gottselig, Thomas Suluk.

*In attendance:* David Cuthbertson, Study Director; Michael MacLeod, Research Officer. *From the Library of Parliament:* John Christopher, Research Officer. *From the Canadian Transport Commission:* Paul Juneau, Chief of the Rail Economic Analysis Branch; John Gibberd, Chief of the Economic Analysis Research Branch; Tom Maville, Chief of the Traffic and Tariffs Branch.

The Committee commenced consideration of a draft report.

At 12:20 o'clock p.m. the sitting was suspended.

At 1:00 o'clock p.m. the sitting resumed.

At 3:45 o'clock p.m. the Committee adjourned to the call of the Chair.

THURSDAY, DECEMBER 5, 1985

(60)

The Standing Committee on Transport met *in camera* at 9:30 o'clock a.m. this day, the Chairman, J. Patrick Nowlan presiding.

*Members of the Committee present:* Iain Angus, Les Benjamin, Terry Clifford, Dennis H. Cochrane, Mike Forrestall, J. Patrick Nowlan, Joe Reid, Gordon Taylor, Brian Tobin.

*Alternates present:* Ross Belsher, Jack Ellis, Moe Mantha, Thomas Suluk.

*In attendance:* David Cuthbertson, Study Director; Michael MacLeod, Research Officer. *From the Library of Parliament:* John Christopher, Research Officer. *From the Canadian Transport Commission:* Paul Juneau, Chief of the Rail Economic Analysis

Branch; John Gibberd, Chief of the Economic Analysis Research Branch; Tom Maville, Chief of the Traffic and Tariffs Branch.

On motion of Mr. Benjamin, it was agreed,—That reasonable travelling and living expenses be paid to selected witnesses who were invited to travel from Newfoundland to meet with the Committee in Halifax.

The Committee resumed consideration of its draft report.

At 9:40 o'clock a.m. the sitting was suspended.

At 11:00 o'clock a.m. the sitting was mesumed.

Debate on the draft report resumed.

At 1:02 o'clock p.m. the Committee adjourned until 3:30 o'clock p.m., this day.

## AFTERNOON SITTING
## (61)

The Standing Committee on Transport met *in camera* at 3:31 o'clock p.m. this day, the Chairman, J. Patrick Nowlan presiding.

*Members of the Committee present:* Iain Angus, Les Benjamin, Dennis H. Cochrane, Mike Forrestall, J. Patrick Nowlan, André Ouellet, Gordon Taylor, Brian Tobin.

*Alternates present:* Ross Belsher, Thomas Suluk.

*In attendance:* David Cuthbertson, Study Director; Michael MacLeod, Research Officer. *From the Library of Parliament:* John Christopher, Research Officer. *From the Canadian Transport Commission:* Paul Juneau, Chief of the Rail Economic Analysis Branch; John Gibberd, Chief of the Economic Analysis Research Branch; Tom Maville, Chief of the Traffic and Tariffs Branch.

The Committee resumed consideration of its draft report.

At 4:55 o'clock p.m. the sitting was suspended.

At 5:15 o'clock p.m. the sitting was resumed.

On motion of Mr. Belsher, it was agreed,—That the Committee sit until 7:30 o'clock p.m. this evening and that the Committee resume its meetings at 7:30 o'clock p.m. Monday, December 9, 1985 to complete discussion of the text of the report by 9:00 o'clock p.m. and to then proceed to vote on the recommendations in the report.

After debate thereon, the questions being put on the motion it was agreed to.

At 7:27 o'clock p.m. the Committee adjourned until 7:30 o'clock p.m. Monday, December 9, 1985.

(62)

The Standing Committee on Transport met *in camera* at 7:35 o'clock p.m. this day, the Chairman, J. Patrick Nowlan presiding.

*Members of the Committee present:* Iain Angus, Les Benjamin, Terry Clifford, Dennis H. Cochrane, Mike Forrestall, Darryl Gray, J. Patrick Nowlan, André Plourde, Joe Reid, Gordon Taylor, Brian Tobin.

*Alternates present:* Ross Belsher, Jack Ellis, Arnold Malone.

*In attendance:* David Cuthbertson, Study Director; Michael MacLeod, Research Office. *From the Library of Parliament:* John Christopher, Research Officer. *From the Canadian Transport Commission:* Paul Juneau, Chief of the Rail Economic Analysis Branch; John Gibberd, Chief of the Economic Analysis Research Branch; Tom Maville, Chief of the Traffic and Tariffs Branch.

The Committee resumed consideration of its draft report.

On motion of Mike Forrestall the report, as amended, carried.

Darryl L. Gray moved,—That the Chairman be authorized to make whatever typographical and editorial changes are necessary to render the report in proper parliamentary format.

After debate, the question being put on the motion it was agreed to.

On motion of Terry Clifford, it was agreed,—That 3,000 copies of the Committee's report be printed in the usual style of the Minutes of Proceedings and Evidence, but with a special green cover and a tumble format.

Ordered,—That the Chairman table the report in the House of Commons as soon as it is printed.

At 10:50 o'clock p.m. the Committee adjourned to the call of the Chair.

Nino A. Travella
*Clerk of the Committee*