

“Canada’s Statement on National Transport Policy”
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ABSTRACT

The 1967 National Transportation Act (NTA 1967) and all the subsequent Acts have a section which is a statement on national transportation policy. This section of the Act(s) sets out the principal motivation and guidance for Canada’s transportation policy directions. The statement has undergone various revisions over the years, but there have been some persistent underlying themes, particularly an emphasis on economic performance balanced with some basic social concerns such as accessibility needs of physically-challenged persons. Recent proposals to amend the Canada Transportation Act call for significant changes to the statement on national transportation policy, changes which could deviate sharply from the policy directions of the past three decades.

1.0 Introduction and Outline

Not all legislation carries with it a general statement of direction or intent. Legislation rarely can be absolutely explicit in the specification of laws or regulations. There is room for interpretation and even some “wobble room” for governments of the day as they face particularly pressing political issues. But one of the widely cited characteristics of the Canadian transport legislation has been a section that provides a statement of general policy direction. Part 2 of the paper reviews briefly the origin and particulars of this statement (introduced in the National Transportation Act NTA 1967). Part 3 of the paper reviews the major amendments to the statement of policy that have taken place over the years, including the recommendations of the Canada Transportation Act Review (CTAR, 2001). Part 4 examines a new statement of transportation policy introduced in 2005 but which is expected to be re-introduced in the new Parliament. This

paper raises concerns that the proposed statement represents a significant and inappropriate shift in the directions of Canada's transport policy.

2.0 Canada's Statement of National Transportation Policy

2.1 The MacPherson Royal Commission

The perceived need for a statement of policy direction emerged from the MacPherson Royal Commission of 1959-61. Many of us have forgotten what a different era it was pre-1960. This was an era when rail dominance of both freight and passenger transport was only just passing. Transport policy meant "railway policy." To an extent, rail rates were regarded as an instrument of public policy, although the desires of proponents of rail rate regulation could not be satisfied. Darling (1974) christened this a time of "railway age ideology."

By the 1950s railways were under financial strain as costs were increasing but increases in rail rates were resisted. The MacPherson Royal Commission was formed to evaluate the situation. The Commission recognized that a profound change was underway in transportation, that the development of new modes, as well as larger and longer distance markets, heralded both a necessity and opportunity to rely heavily on competition and markets to guide transportation rather than by government direction. Indeed, the latter was likely to be frustrated by an inability to impose public obligations on an industry where competitive forces were becoming the norm.

The MacPherson Commission drew a distinction between National Policy and National Transport Policy (NTP). The former refers to the really broad goals of society, whereas NTP should be more narrowly concerned with the contribution that transportation can make to our economy. They argued that the goal of NTP should be one of efficiency, that the most efficient transportation system is the one that would enable Canadians and Canadian regions to reach their greatest potential. It would be possible to rely on market forces to facilitate such a system, and where competition was inadequate, regulation

would be necessary but it should not be so intrusive as to interfere with the general functioning of the transportation system.¹

2.2 The National Transportation Act (NTA) (1967)

It took a few years before the legislation was passed, but it reflected most of the recommendations of the MacPherson Commission. In particular, Section 3 set out a statement of NTP, reprinted in Exhibit 1. As implied earlier, there is some unavoidable ambiguity to be expected, even magnified in some instances where ambiguity is the ‘grease’ that enables people with differing views to compromise and accept the legislation. The central phrases proclaim the goals to be “...economic, efficient, and adequate...” “Economic” and “efficient” were highly complementary phrases emphasizing the desirability of an economically efficient transportation system. The word “adequate” was a code word to acknowledge that transportation carriers had some obligation to provide service even to marginal customers, particularly those in outlying regions including most of the West. A need to balance efficiency with at least some social obligations have always been an element in Canadian transport policy.

Another key concept was “...making the best use of modes, at lowest total costs...” This is an important component in an economically efficient transportation system, that regulation or other government policies should try to treat the modes in a neutral manner, i.e., relying on markets and customers to choose the appropriate mode. In keeping with this was an admonition that “...regulation should not restrict the ability of a mode to compete...” In spite of the NTP statement, the anomaly of artificially low statutory rates on grain persisted for a couple decades, but change gradually -- and finally, rapidly -- came about consistent with the general policy direction.

Other important phrases were: “...users bear a fair proportion of resources...at public expense;” and “...receive compensation for an imposed public duty.” Both of these were important components of

¹ For further insight into the debates and formulation of the ideas in the MacPherson Commission, see Anderson (1974). For broader discussions of the evolution of Canada’s transport policy, see Studnicki-Gizbert (1992), Gratwick (2001) and Heaver (2001).

an efficient transportation system although the so-called user-pay principle would only be implemented slowly and partially over a couple of decades

One other phrase is that “...rates do not constitute an unfair disadvantage...” This was essentially a carry-over from earlier views that rail freight rates might systematically distort industrial diversification of Prairie regions in favour of low value-added activities. Although detailed rate control was no longer to be public policy, the Act at least had to forbid a practice that might cause distortions in regional development.²

3.0 Evolution of Canada’s Statement of National Transport Policy

Canada’s statement of NTP has lasted a long time with only moderate changes. There were proposals for drastic reforms in the 1970s, to bring back an environment of extensive government intervention, but these proposals proved unpopular and the NTA 67 was not amended. The majority of both shippers and carriers preferred reliance on market forces rather direct government intervention (Heaver 1978).

The other major development took place over several years, this was the reform of the “Crow Rates,” i.e., the statutory grain rates associated with the original Crow’s Nest Pass Agreement. The debates and reforms have been well-discussed and do not need repetition here. The key point is the anomaly of highly-regulated unremunerative rates – in sharp contrast to the pricing freedom in other rail rates – gradually were eliminated. Some residual restrictions and regulations persist to this day, but the sequence of Commissions, legislations and subsidies for a time all brought about substantial moves toward a commercial system for grain.

² The debate was whether rail rate structures *caused* a lack of diversification and manufacturing in the Prairies, or did the differential rate structure merely *reflect* the underlying structure of the economy (Waters, 1983).

3.1 The National Transportation Act (NTA) 1987

The NTA 1987 was the culmination of a White Paper “Freedom to Move” and associated consultations. Despite the emphasis on competition and market forces, and “...making the best use of all modes at lowest total costs,” the NTA 1967 was primarily associated with railways. The NTA 1987 formally extended greater reliance on competition and market forces to other modes, especially airlines. It sought to foster greater competition in the rail sector as well. Motor carriers remained *de facto* under provincial direction but the companion Motor Vehicle Transportation Act (MVTA) 1987 encouraged the provinces to reduce motor carrier regulation. The amended statement on NTP is in Exhibit 2.

One immediately evident change was the addition of “safe” to the opening statement of the goals of NTP. This was strategic wording to reassure Canadians that reducing economic regulation did not imply any reduction in safety. Indeed, safety regulation might rise in importance as traditional government roles in price and service regulation declined. The initial emphasis on economic, efficient and adequate remained, with some additional wording.

An increased emphasis on the role of competition was inserted in the statement of NTP: “competition and market forces are, whenever possible, the prime agents providing viable and effective transportation services.” The wording was amended to include an emphasis on intramodal competition in addition to intermodal.

A partly puzzling addition was a declaration of the importance of transportation in regional development. Ultimately this is an empirical and situation-specific issue and hence questionable in a general statement of policy direction. But the political history of regional desires for federal assistance via transport probably explains the reappearance of this concept even though it does not fit into the primary theme and direction of NTP since MacPherson.

The NTA 1987 statement added a paragraph (2) that authorized all manner of intervention by the Minister of Transport, providing authorized by Cabinet, although such “agreements” were linked to the

various provisions of the first paragraph of the NTP statement. (This paragraph was deleted in the 1996 CTA).

There were other important changes in NTA 87 (e.g., the introduction of final offer arbitration and “competitive line rates”), but the present paper is confined to the statement on policy.

3.2 Canada Transportation Act (CTA) 1996

A statutory review of the workings of the NTA 1987 was carried out by NTARC (National Transportation Act Review Commission) 1993 along with a Royal Commission on National Passenger Transportation (RCNPT) 1992. For the most part NTARC reported positively on the experience with the NTA 1987, but the delicate balance between shipper protection and rail regulatory freedom continued to be a source of debate. The CTA 1996 modified regulatory options for shippers but these details are not the focus of this paper.

The statement on NTP in 1996 was not changed much from NTA 1987 although the importance of transport in regional development was made more explicit to identify tradeoffs between financial viability and regional development goals (NTARC, 1993, recommended deleting this part of the statement). The underlying concepts of safety, economic, efficient and adequate remained as well as the admonition to make the best use of all modes at lowest total costs. But there was additional wording intended to give more specific direction although it may diluted the impact instead (Heaver, 2001). The importance of accessibility to persons with disabilities is a noteworthy principal already incorporated in the NTA 1987 statement, but now is mentioned twice in the opening statement as well as in one of the specific statements that follow.

The quite open-ended paragraph (2) authorizing potentially wide intervention by the Minister and Cabinet in NTA 1987 was removed.

3.3 Canada Transportation Act Review (CTAR) 2001

The CTAR Panel was a statutory review of the performance and direction of the CTA 1996 and other relevant legislation. They reviewed the statement of policy, reaffirming the underlying

directions of NTP that date back to MacPherson, and suggested the need to tighten and refocus the statement of NTP.³ The paraphrased suggestions (expressed to be consistent with existing wording in the Act) were as follows:

- Economic and efficient
- best use of modes, at lowest total costs...
- competition and market forces to guide...
- regulation where needed, to be neutral
- users pay for public resources as far as practicable
- highest practicable safety
- reasonable accessibility, govt assistance where uneconomic
- govt. intervention to be cost-effective and mode neutral
- compensation for public duty
- no undue obstacles ... to disabilities
- environmental costs to be recognised
- importance of international trade and ability to compete

The latter statement was to recognize the potential constraints on Canadian transport policy as it could be affected by policies pursued by trading partners especially the United States.

The CTAR suggestions were an attempt to retain the central directions of Canada's past NTP but sharpen them somewhat. CTAR noted that in some circumstances efficiency goals such as full cost recovery are not appropriate as in low density markets. Circumstances will arise where it is necessary to compromise from the overall direction of NTP. Nonetheless, the general statement of policy still provides a guideline to pursue even if some circumstances necessitate deviations from those targets.

4.0 Proposed Changes to the Statement of NTP

For whatever reasons, presumably because changes to the CTA were not high priority in Government for the past few years, new legislation has been introduced but has not been passed in Parliament.

A Bill C-26 was introduced in 2003. The proposed statement on NTP was largely consistent with the CTAR recommendations. It retained

³ Background reviews were prepared by Gratwick (2001), Heaver (2001).

the opening emphasis on "...economic and efficient..." added "safe secure and respects the environment," and simplified the wording overall. The "user pay" clause was replaced by a statement urging users to pay "the full cost...." of transport services. The statement on regional development was deleted, but also the directive that compensation be paid for imposed public duties (contrary to CTAR recommendations). A clause was added that "...governments and the private sector work together ...[to achieve] an integrated transportation system." The bill died when Parliament closed.

The most recent Bill C-44 in the 2005 Parliament recommended substantial changes to the statement on NTP, changes quite different from the recommendation of the CTAR Panel and previous C-26. At the time of writing, it is not known if there would be further changes to be introduced in 2006 or even if any Bill will be forthcoming.

The wording in Bill C-44 (2005) is shown in Exhibit 4, illustrating the changes from the existing CTA 1996 Statement. The phrase "...economic and efficient..." is still in the leading statement, but now preceded by "competitive" as a goal. The latter is inappropriate. This confuses means and ends. The goal or end has been to strive for an efficient transportation system. Competition is a preferred means to achieve that goal and this has been emphasized since NTA 1987. But there are market circumstances where competition might not work effectively. Transport may involve economies of scale or density that result in a limited number of suppliers, especially in infrastructure. Regulation or other forms of government intervention may be necessary in these circumstances. Promoting competition is desirable in many situations, but it can be uneconomic in some cases.

Including the goals of "safe, secure and respect the environment..." are understandable in a statement of goals, although the reference to environment might seem a bit vague. But the modifications to emphasize that transportation "...enable competitiveness and economic growth in both urban and rural areas throughout Canada" suggests a shift of emphasis to see transportation as a tool subservient to regional industrial strategies rather than as a more neutral efficient base upon which regions adapt to their strengths and weaknesses. This interpretation is supported further by noting the disappearance of

the directive that users should pay for resources supplied at public expense, that modes or carriers would no longer be entitled to compensation for imposed public duties, and the role of regulation would no longer be to correct for inefficiencies or inadequacies of the market system but rather “regulation and strategic public intervention occur...to achieve economic, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces....” The latter sounds like a *carte blanche* invitation to all manner of public intervention whenever the market outcomes are not what the Government desires. Democratic governments will intervene in an economy when the public pressures are strong, but for the past three-plus decades Canada’s statement of NTP served as a caution that an efficient transport system is vital to the Canadian economy and that public intervention should be done with minimum interference to the functioning of the efficient transportation system.

5.0 Conclusions

Canada’s statement on national transportation policy has served as a guideline for broad policy direction for almost four decades. An efficient transportation system remains vital to Canada’s economic and social well-being. Given Canada’s geography, low population density, and industrial structure, the performance of transportation probably is more important to Canada than it is to any other industrialized country. It is important to keep this focus in amending our transportation legislation.

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Exhibit 1

National Transportation Act (NTA) 1967

Statement of National Transportation Policy

3.(1) It is hereby declared that an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the users of transportation and to maintain the economic well-being and growth of Canada and that those objectives are most likely to be achieved when all carriers are able to compete, under conditions ensuring that, having due regard to national policy and to legal and constitutional requirements

- (a) regulation of all modes of transportation will not restrict the ability of any mode of transportation to compete freely with any other mode of transportation,

- (b) each mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that mode of transportation at public expense,
 - (c) each carrier or mode of transportation, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty,
 - (d) each carrier or mode of transportation, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute
 - (i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved,
 - (ii) an undue obstacle to the interchange of commodities between points in Canada, or an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports,
- and this Act is enacted in accordance with and for the attainment of so much of those objectives as fall within the purview of subject-matters under the jurisdiction of the Parliament of Canada relating to transportation.
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Exhibit 2

National Transportation Act (NTA) 1987 Statement of National Transportation Policy (showing major changes from NTA 1967)

3.(1) It is hereby declared that a **safe, economic, efficient and adequate transportation system network of viable and effective transportation services** making the best use of all available modes of transportation at the lowest total cost is essential to **serve the transportation needs of shippers and travelers** ~~protect the interests of the users of~~ transportation and to maintain the economic well-being and growth of Canada **and its regions** and that those objectives are most likely to be achieved when all carriers are able to compete, **both within and among the various modes of transportation**, under conditions ensuring that, having due regard to national policy and to legal and constitutional requirements

- (a) **the national transportation system meets acceptable safety standards,**
- (b) **competition and market forces are, whenever possible, the prime agents providing viable and effective transportation services,**
- (c) **economic regulation of carriers and all modes of transportation occurs only in respect of those services and regions where regulation is**

necessary to serve the transportation needs of shippers and travellers and such regulation will not unfairly limit ~~restrict~~ the ability of any **carrier or** mode of transportation to compete freely with any other **carrier or** mode of transportation,

(d) transportation is recognized as a key to regional economic development,

(e) each carrier or mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that **carrier or** mode of transportation at public expense,

(f) each carrier or mode of transportation, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty,

(g) each carrier or mode of transportation, so far as practicable, carries traffic to or from any point in Canada under **fares, rates** ~~tolls~~ and conditions that do not constitute

(i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved,

(ii) **an undue obstacle to the mobility of persons including those persons who are disabled,**

(iii) an undue obstacle to the interchange of commodities between points in Canada, or

(iv) an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports,

and this Act is enacted in accordance with and for the attainment of so much of those objectives as fall within the purview of subject-matters under the **legislative authority** ~~jurisdiction~~ of the Parliament of Canada relating to transportation.

(2) The Minister may, with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may specify, enter into agreements in support of the national transportation policy set out in subsection (1) or in respect of such transportation matters as the Minister considers appropriate.

Exhibit 3

**Canada Transportation Act (CTA) 1996
Statement of National Transportation Policy
Showing major changes from the NTA 1987**

5.(1) It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services **accessible to persons with disabilities and that** makes ~~making~~ the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travelers, **including persons with disabilities**, and to maintain the economic well-being and growth of Canada and its regions and that those objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under conditions ensuring that, having due regard to national policy, **to the advantages of harmonized federal and provincial regulatory approaches** and to legal and constitutional requirements,

- (a) the national transportation system meets **the highest practicable** ~~acceptable~~ safety standards,
- (b) competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services,
- (c) economic regulation of carriers and modes of transportation occurs only in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other carrier or mode of transportation,
- (d) transportation is recognized as a key to regional economic development **and that commercial viability of transportation links is balanced with regional economic development objectives so that potential economic strengths of each region may be realized**,
- (e) each carrier or mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that carrier or mode of transportation at public expense,
- (f) each carrier or mode of transportation, as far as practicable, receives **fair and reasonable** compensation for the resources, facilities and services that it is required to provide as an imposed public duty,
- (g) each carrier or mode of transportation, as far as practicable, carries traffic to or from any point in Canada under fares, rates and conditions that do not constitute
 - (i) an unfair disadvantage in respect of any such traffic beyond the disadvantage inherent in the location or volume of the traffic, the scale of operation connected **with the traffic** ~~therewith~~ or the type of traffic or service involved,
 - (ii) an undue obstacle to the mobility of persons, including persons **with disabilities** ~~who are disabled~~,

- (iii) an undue obstacle to the interchange of commodities between points in Canada, or
- (iv) an unreasonable discouragement to the development of primary or secondary industries, or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports, **and**
- (h) each mode of transportation is economically viable, and this Act is enacted in accordance with and for the attainment of ~~so much of those objectives to the extent they as~~ fall within the purview of subject-matters under legislative authority of the Parliament of Canada relating to transportation.

~~(2) The Minister may, with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may specify, enter into agreements in support of the national transportation policy set out in subsection (1) or in respect of such transportation matters as the Minister considers appropriate.~~

Exhibit 4

Bill C-44 (2005)

Proposed Statement of National Transportation Policy

Showing changes from the CTA 1996

- 5.(1) It is hereby declared that a **competitive, safe, economic, and efficient transportation system that is safe and secure and respects the environment** and ~~adequate network of viable and effective transportation services accessible to persons with disabilities and that makes the best use of all available modes of transportation at the lowest total cost~~ is essential to serve the transportation needs of **its users, shippers and travelers, including persons with disabilities, and to maintain the economic advance the well-being and growth of Canadians** Canada and **enable competitiveness and economic growth in both urban and rural areas throughout Canada.** ~~its regions and that Those objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under conditions ensuring that, having due regard to national policy, to the advantages of harmonized federal and provincial regulatory approaches and to legal and constitutional requirements,~~
- (a) ~~the national transportation system meets the highest practicable safety standards,~~
 - (a) competition and market forces, **both within and among the various modes of transportation,** are ~~whenever possible,~~ the prime agents in providing viable and effective transportation services,

- (b) ~~economic regulation and strategic public intervention of carriers and modes of transportation occur only if they are necessary to achieve~~ **economic, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and they do not unduly favour, or reduce the inherent advantages of any particular mode of transportation;** ~~in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other carrier or mode of transportation;~~
- (c) ~~transportation is recognized as a key to regional economic development and that commercial viability of transportation links is balanced with regional economic development objectives so that h potential economic strengths of each region may be realized;~~
- (d) ~~each carrier or mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that carrier or mode of transportation at public expense;~~
- (e) ~~each carrier or mode of transportation, as far as practicable, receives fair and reasonable compensation for the resources, facilities and services that it is required to provide as an imposed public duty;~~
- (f) ~~each carrier or mode of transportation, as far as practicable, carries traffic to or from any point in Canada under fares, rates and conditions that do not constitute~~
 - (i) ~~an unfair disadvantage in respect of any such traffic beyond the disadvantage inherent in the location or volume of the traffic, the scale of operation connected with the traffic or the type of traffic or service involved;~~
- (c) **the transportation system is accessible without** ~~undue obstacle to the mobility of persons, including persons with disabilities;~~
 - (iii) ~~an undue obstacle to the interchange of commodities between points in Canada, or~~
 - (iv) ~~an unreasonable discouragement to the development of primary or secondary industries, to export trade in or from any region of Canada or to the movement of commodities through Canadian ports, and~~
- (h) ~~each mode of transportation is economically viable, and this Act is enacted in accordance with and for the attainment of so much of those objectives to the extent they fall within the purview of subject matters under legislative authority of Parliament relating to transportation.~~
- (d) **governments and the private sector work together for an integrated transportation system.**