
Chapter III

GOVERNMENT INSTITUTIONS AND RAIL SAFETY

GOVERNMENT INSTITUTIONS AND RAIL SAFETY

GOVERNMENT INSTITUTIONS

Comparison between the U.S. and Canada's rail safety legal and regulatory provisions can only be made with some recognition of the major differences between the two countries' Government institutions. Primary among these differences is that Canada has a parliamentary system of government in which the legislative and executive functions overlap. The United States has complete separation of the executive and legislative branches. Canada's form of government has evolved over many years from the English constitutional monarchy and parliamentary system. Canada, however, has also drawn from the American system as a separate government model. While Canada does not have a formal "constitution," it does have a series of laws and customs that make up the Canadian "constitution," which is primarily embodied in the British North America Act of 1867.

The executive branch of the Canadian Government has "formal" and "political" institutions. The former is composed of the Crown, the Governor General (formerly the Crown's representative in Canada), and the Governor General presiding over his advisors in the Privy Council. The latter is the Cabinet, being the heads of Canadian ministries or departments and certain other senior advisors to the Prime Minister. It is headed by the Prime Minister.

The Prime Minister, the political head of the Government, is the chosen leader of the majority political party and is always a member of the House of Commons, one of Canada's two legislative bodies. He selects each of his Cabinet members or ministers from members of the majority party in the House of Commons. Cabinet ministers retain their elected posts in the House of Commons. The functions of the Cabinet are to: 1) establish Government policy and influence Parliament to legislate that policy, 2) coordinate the various Government departments,

and 3) supervise the administration of policy as legislated by the Parliament. It is this merging of legislative and executive functions in the Cabinet that is one of the major differences between Canadian and U.S. Government structures.

The ministries of Canada are much like the executive departments of the United States. They are headed by a Minister (in the United States, by a Secretary) and are staffed primarily by civil servants who are not part of the political system. In addition to the Canadian Federal agencies, there are "crown corporations" which are organizationally independent, though generally subject to the policy guidance of a ministry. Canada's first crown corporation was the Canadian National Railway.

As in the United States, the legislative branch of the Canadian Government is bicameral. The Senate is composed of 102 members on a regional basis appointed by the Governor General on the advice of the Prime Minister. The House of Commons is composed of 263 members divided among the provinces primarily on a population basis (with one each from the Yukon and Northwest Territories). The House is by far the more powerful of these two bodies because its members are elected and are considered to represent the body politic. The House, which originates all public bills, carries on its business in much the same manner as our Congress. The Senate's function is to review House-enacted legislation, handle private bills, and oversee the executive agencies. Once a bill passes both bodies, it is presented to the Governor General for royal assent in the Queen's name.

The judicial branch of the Canadian Government is quite similar to the U.S. court system. There are separate and multitiered provincial and Federal systems, each of which has trial and appellate divisions. However, the Province of Quebec differs from the other provinces in that

it follows Roman or civil law concepts rather than English common law. (The State of Louisiana in the United States is similar to Quebec in this regard.)

The Supreme Court of Canada has nine judges, selected on geographical and minority group representation principles. The court hears most cases in small panels (three members), rather than en banc, as in the United States. At the request of the Governor-in-Council, the Supreme Court is required to render advisory opinions on matters of law. This procedure is not followed in the United States.

Transportation Agencies

Canadian agencies responsible for transportation matters and railroads in particular are more closely allied to each other than in the United States. The major Canadian agency is the Transportation Ministry, called the Department of Transport (also called Transport Canada), whose head is a member of the Cabinet. The

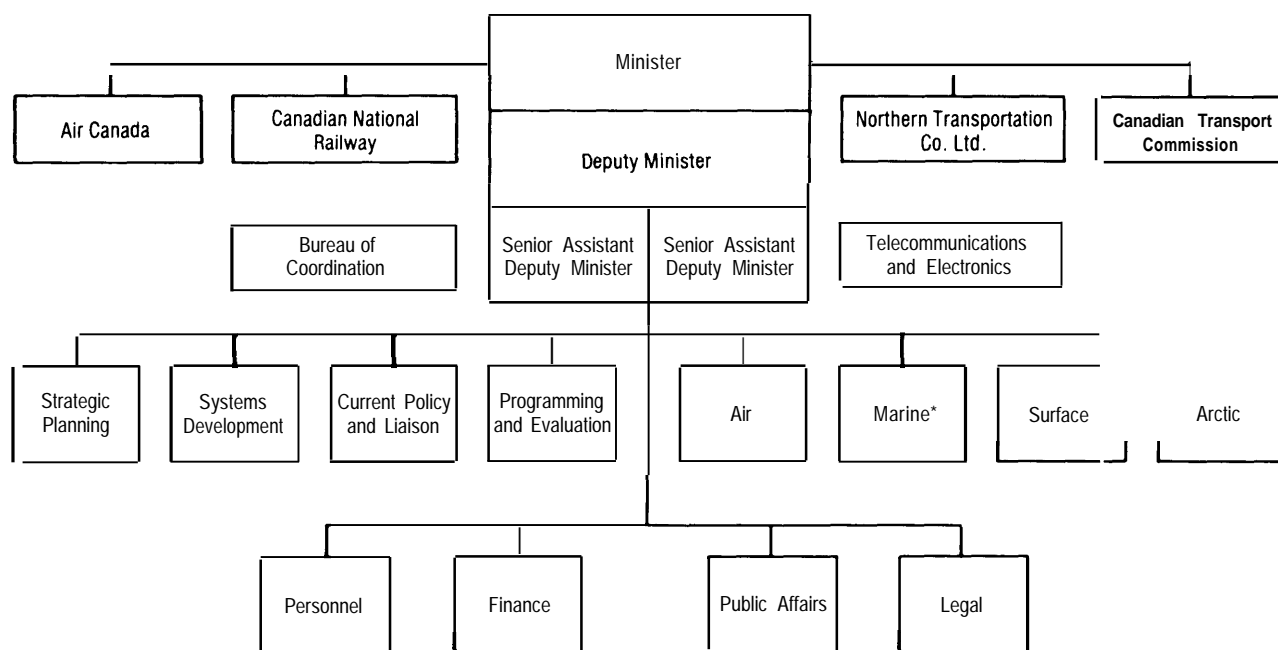
Ministry is responsible for development of policy and Government programs 'or all modes of transportation. It provides the central link among all of the transport agencies. Figures 1 and 2 show the relationships of Government transport entities.

One of the agencies under the Transport Canada umbrella is the Canadian Transport Commission (CTC), established by the National Transportation Act of 1967.¹ It has responsibility for economic regulation of all modes of transportation subject to Federal jurisdiction (i.e., excludes intraprovince transportation). Railroads are the only mode for which CTC regulates both economic and safety matters.

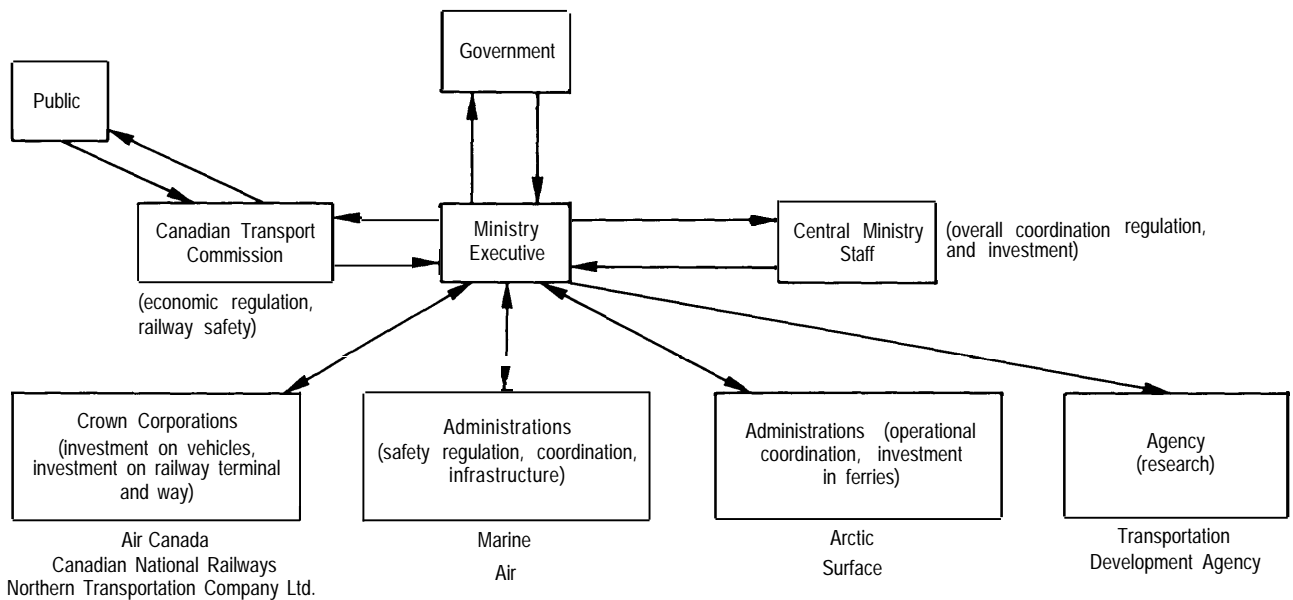
CTC has 17 Commissioners, including a president and two vice-presidents, who are appointed for 10-year terms. CTC is divided into seven committees, each with specific regulatory responsibilities. One of these committees, the

¹Ch. N-17, R.S.C., 1970.

Figure 1.—Transport Canada



*Includes St. Lawrence Seaway Authority, National Harbours Board, Atlantic Pilotage Authority, Great Lakes Pilotage Authority, and Pacific Pilotage Authority.
SOURCE: Transport Canada

Figure 2.—Relationship of Ministry “Family” to Transportation Regulation

SOURCE Transport Canada

Railway Transport Committee (RTC) handles all railroad matters. The railroad responsibilities of CTC have been exercised by similar non-partisan commissions since the enactment of the Railway Act in 1903.

The third Canadian entity with railroad responsibility is the Canadian National Railway

(CN), a crown corporation. CN is a result of the Government takeover of certain rail operations in 1923. Since it is owned by the Government, it is subject to the policy guidance established for it by the Transport Ministry. It is also subject to the rail regulation of CTC in the same manner as the Canadian Pacific Railway (CP).

LAWS DIRECTLY AFFECTING RAIL SAFETY

Four basic statutes affect Canadian rail safety. The oldest is the Railway Act,² originally enacted in 1903. It prescribes most of the economic, safety, and other operational requirements. Its U.S. analog would be a combination of part I of the Interstate Commerce Act³ and all of the rail safety statutes.

The second of these laws is part IV of the Canada Labour Code.⁴ Part IV 'establishes the authority for workplace safety regulations for interprovincial rail operations. Its counterpart

U.S. statute is the Occupational Safety and Health Act of 1970.⁵

The third law is the National Transportation Act (NTA), enacted in 1967. It established CTC, and transferred to CTC the functions previously assigned to a number of modal regulatory boards. It also proclaims a new national transportation policy. The law details the functions, powers, duties, and procedures of CTC.

The fourth law is the Railway Relocation and Crossing Act,⁶ enacted in 1974. This Act goes

²Ch. R-2, R. S. C., 1970.

³49 U.S. C. 1 et seq.

⁴Ch. L-1, R. S. C., 1970.

⁵29 U. S. C. 651 et seq.

⁶Ch. 12, 23 Elizabeth II.

well beyond existing U.S. legislation on this subject by providing: 1) financial assistance for preparation and implementation of "urban development and transportation plans," with respect to railway relocation in urban areas, 2) special grants for grade separations, and 3) a continuing fund for grade-crossing safety improvement projects.

Canadian railroad casualty compensation laws are established at the provincial level, rather than at the Federal level. These laws are no-fault in concept, and generally allow for full medical treatment without time limits and major tax-free disability compensation. Provincial compensation boards oversee payments and ensure treatment and rehabilitation adequate for the injured employee. These provincial laws are in significant contrast to the U.S. statute. The Federal Employer's Liability Act⁷ depends on legal determination of negligence to establish compensation. The Canadian compensation plans are discussed further in chapter VIII.

The National Transportation Act

As in the United States, railroads in Canada were initially viewed as monopolies because of the absence of competition. They were regulated as such. In the middle of this century, railroads met increased competition from other modes, which eliminated their dominant position. In 1959, a royal commission studied this change and recommended that the Government's regulatory approach be changed to encourage competition among and between modes. The result was the **1967** enactment of NTA.

This law placed the regulation of all transportation modes in one entity—CTC. One of its primary purposes is to coordinate the regulation of all of the modes under a policy that will allow competition to be the primary regulating force.

While the **1967** Act curbed numerous economic regulatory restrictions, some still remain. One example is the limitation on grain tariffs established by the Crow's Nest Pass Agreement. This agreement between the Government and

CP subsidized the extension of CP lines into the interior of British Columbia in return for a fixed rate for transportation of grain in certain areas. In **1925**, these rates became statutory and were extended to additional parts of Canada and to CN.⁸

CTC has authority to prescribe rates in monopolistic situations (the "captive" shipper) and to intercede when rates are prejudicial or not in the public interest if satisfactory rates cannot be negotiated between the railroads and shippers.

CTC has jurisdiction to hear complaints from any interested party or to act on its own motion, and to hear and determine all matters of law or fact consistent with its jurisdiction. CTC can act as a superior court by taking evidence. Having heard or considered a matter, it can issue a final order mandating or restricting particular action. If a regulation, order, or decision is published in the Canada Gazette (the Canadian equivalent to the U.S. Federal Register) for 3 weeks, the order has the effect of a statute. However, the Governor-in-Council may at any time vary or rescind any order, rule, or decision of CTC. The rescinding order is binding on CTC. This power is rarely exercised.

Within the scope of its statutory authority, CTC can adopt regulations or orders on any matter. It can establish penalties for violation of any order or regulation to the extent that those penalties are not otherwise established by statute. Moreover, CTC has jurisdiction to hear and resolve disputes between parties concerning any aspect of a railroad line, whether construction, maintenance, or operation, or concerning any structure, appliance, or equipment used in connection with a railroad. CTC can request that the Ministry of Justice provide counsel in matters for which it feels the public interest needs specific representation.

NTA has two special limitations with respect to safety matters. First, if a law requires approval of CTC before particular work can be conducted and if the work affects the safety of employees or the public, that approval cannot be given without "due notice and hearing."⁹

⁷45 U.S. C. 51 et seq.

⁸Sec. 271, ch. R-2, R. S. C., 1970.

⁹Sec. 52, ch. N-17, R. S. C., 1970.

Similarly, where any work that affects the safety of the public or employees is required by regulation, order, or decision of CTC within a specified time, that time limit cannot be extended by CTC without "hearing or notice."¹⁰

NTA grants CTC and the Ministry broad investigatory powers. It can request that any person make a report or inquiry on any matter within its jurisdiction. Its agents may enter on any property the agent thinks necessary for the purpose of investigation. The agent or committee may inspect any rolling stock, or summon witnesses, or require submission of documents, or take oaths or otherwise act as a court in a civil case.

The importance of this Act in the context of rail operations is twofold. First, it substantially revised the approach to economic regulation, which had a particularly significant impact on the economic condition of the railroads. By providing the railroads a greater opportunity to compete freely, the Act may have provided them more resources to carry out maintenance and make improvements consistent with safe and efficient operations. Second, it brought together in one body a number of agencies with transportation powers. In theory, at least, this should enable a more coordinated approach to the entire range of problems facing Government and transportation industries.

In comparison to U.S. laws, NTA provides substantially greater powers to CTC than those provided to the U.S. Department of Transportation (DOT) or the Interstate Commerce Commission. NTA is generally more flexible concerning the manner in which powers are exercised. For example, outside the labor law context, U.S. law does not generally provide parties involved in a dispute on a railroad matter (e. g., a loss and damage claim or an interline settlement claim), a forum other than a court for resolution of such a dispute, whereas in Canada, CTC can resolve such a dispute. Moreover, there appear to be fewer procedural constraints on the CTC's ability to exercise its power such as are provided in the United States by the Administrative Procedures Act and related laws.

As the final arbiter of facts in matters under its jurisdiction, and having the power to determine matters of law under the Railway Act, CTC's orders and regulations appear less likely to be the subject of litigation than those of a U.S. agency.

The Railway Act

The Railway Act, originally adopted in 1903, is the seminal law for the information, construction, operation, and safety of Canadian railroads. It covers the CP and CN railroads with respect to their Canadian operations and all other railroads that cross provincial or international boundaries. Its provisions and the regulations and orders issued under them apply specifically to: 1) internal corporate matters of any railroad incorporated under a special act of the Parliament; 2) engineering and location of railroad lines; 3) operation of railroad equipment, including safety matters; 4) treatment of uneconomic branch lines; 5) requirements for accommodating shipper demand for service; 6) investigation of accidents, penalties, and treatment of damages caused by breach of the Act or rules or orders under it; and 7) railroad accounting.

The comprehensiveness and detailed treatment of many of its subjects distinguishes the Canadian Railway Act from any single rail statute in the United States. Much of what appears to be treated in the Canadian Railway Act is not the subject of Federal statute in the United States, but rather is covered by internal railroad rules or by interrailroad agreement such as the rules for interchange of traffic between carriers. The following discussion describes the contents of designated sections of the Railway Act that relate directly to rail safety.

Safety and Care of the Roadway "¹¹—Some of the provisions under this subpart of the law reflect the early origins of the Act and the essentially rural nature of the then rail environment. It prohibits animals from running-at-large near a grade crossing, requires weeds to be removed, and requires certain safeguards against roadway fires. Violation of those provisions subjects the

¹⁰Sec. 53, chN-17, R S C., 1970.

¹¹Secs. 218-224, ch. R-2, R.S.C., 1970.

violation to relatively insignificant monetary penalties. In the United States, these matters are essentially left to State law.

In a broadly drawn provision (sec. 223), CTC may direct an "inspecting engineer" to inspect railway (the Canadian term for right-of-way) that may be "dangerous to the public using the railway" and can order any repairs, reconstruction, etc., that appear to CTC to be necessary or proper. ¹² CTC can limit or prohibit the use of railway that is subject to such an order, pending execution of the order's requirements. CTC can also forbid use of rolling stock that it considers unfit for either use or repair. An inspecting CTC engineer may also limit or prohibit the use of track or equipment if he finds its use would be "dangerous." Notice must be given to the railroad and to CTC of this action and the reasons for it must be stated. CTC may modify or override the action of the engineer. Violation of these orders or the notice of the inspection engineer subjects the company to a penalty of up to \$2,000 and subjects any person willfully and knowingly aiding or abetting the violation to a penalty of \$20 or \$200.

There are two provisions in U.S. law that can be used to stop operations or equipment use. Both are contained in the Federal Railroad Safety Act of 1970 (FRSA).¹³ One provision permits the Federal Railroad Administration (FRA) to issue an order directing compliance with particular safety requirements established under FRSA. Such an order can include a direction to stop operations or equipment use until compliance is achieved. In addition, there is the power to order track or equipment out of service upon a determination that there is "an emergency situation involving a hazard of death or injury to persons affected by it." In the United States, neither of these powers has been delegated to the inspector discovering the violation. The maximum penalty for each violation of an emergency order in the United States is \$2,500, but no penalty can be assessed against an individual as in Canada.

The Canadian statutes do not set forth specific safety requirements with respect to the roadway, which is also the case in the United States. As discussed in chapter VI, the United States does have extensive regulatory requirements for track safety. Canada requires that plans for construction, diversion, or modification of track be submitted in advance to CTC for its review and approval, a power not established under U.S. law. Thus, CTC has far greater control than its U.S. counterpart of the original safety of rail lines and, one might suppose, greater knowledge of the condition of the system's track.

Accidents¹⁴—The Railway Act requires that a railroad, immediately after informing its officers, give notice of any accident in which an injury occurs to a person using the railroad or to any railroad employee, or of any occurrence whereby a bridge, culvert, viaduct, or tunnel is impassable or unfit for use. Employees in charge of a train also have the duty to notify CTC of an accident. CTC has the power to: 1) regulate the manner and form of accident notices and the information required, 2) conduct inquiries into the cause of the accidents or accident situations in general, and 3) investigate the means of preventing accidents. Failure to give notice of an accident may result in a penalty of \$200 per day for the railroad, and up to \$100 for a willful or negligent failure of an employee to so report.

In the United States, the Accident Reports Act¹⁵ requires monthly (although the regulations prescribed under other authority require immediate notification for most types of accidents) reports to DOT of accidents resulting from rail operations that cause death or injury to any person or damage to equipment or roadbed. The carrier is subject to a fine of up to \$100 per day for failure to so report.

Operation and Equipment¹⁶—The Act gives CTC very broad rulemaking authority covering among other things:

- speed of trains in populated areas,
- coupling of cars,

¹²Sec. 223, ch. R-2, R. S. C., 1970.
¹³45 U.S.C. 421 et seq.

¹⁴Secs. 225-226, ch. R-2, R. S. C., 1970.

¹⁵45 U.S.C. 38.

¹⁶Secs. 227-251, ch. R-2, R. S. C., 1970.

- provision of shelter to employees on duty,
- length of track sections required to be kept in repair by employees and the number of employees per section "so as to ensure safety to the public and its employees, "
- the number of "men" employed on trains "with a view to the safety of the public and of employees, "
- hours of service of employees, and
- other matters affecting safety in the operation of trains or their speed and use of engines.¹⁷

While CTC has adopted regulations on some of these subjects, such as speed limits in populated areas, coupling of cars, and other matters affecting operational safety, it has not adopted regulations concerning employee shelter, hours of service, or the number of men employed on a train, which are presumably left to collective bargaining.

CTC is also directed to "endeavor to provide for" uniformity of construction of equipment used on the roadway.¹⁸ Railroads are granted authority to adopt bylaws, rules, and regulations concerning many operational matters but these must be sanctioned by the Governor-in-Council acting on the advice of CTC.

With respect to safety appliances, the Railway Act directs that railroads have "modern and efficient apparatus, appliances, and means" for: 1) communication among employees, 2) checking speed of the train, 3) coupling devices that couple upon impact and do not require employees to go between the cars to uncouple, and 4) power or train brakes that do not require use of handbrakes to stop the train. The brake system is required to be continuous throughout the train. Ladders and handholds are required for box cars. Draw bars must be of a standard height fixed by CTC, and locomotives are forbidden to have valves that require oiling from outside the cab while in motion. CTC is given power to determine what constitutes compliance with this legislative direction through regulation of general applicability or by order applicable to a particular case. An improved method of brake

testing is at an advanced stage toward promulgation.

The Act also specifies a variety of rather detailed requirements in connection with operation of the trains, e.g., regular schedules printed on timetables in English and French, stopping of trains before entering onto a swing- or draw-bridge, stopping at railroad switches for signal to proceed unless there is a switch-signal interlocking device or similar device, and using the train whistle continuously from 80 rods before a grade crossing until the engine has passed the crossing. A train cannot exceed 10 miles per hour in a "thickly populated area" unless the track is fenced or otherwise protected or unless CTC otherwise approves a greater speed. Trains must observe that speed limit at a grade crossing in such an area unless, in the view of CTC, the crossing is adequately protected. In the event of a crossing accident involving death or injury, a train cannot exceed 25 miles per hour unless the speed restriction is removed by RTC. If a train is traveling in reverse, except in a switching or yard movement, and is traveling along or across a highway, someone must be stationed in the lead car or other piece of equipment to warn persons in the train's path. Finally, a train may not block a highway by standing still or shunting cars for more than 5 minutes.

Penalties of up to \$200 a day are provided under Canadian law for failure to equip a train properly. Failure to stop at a draw- or swing-bridge can produce a penalty of up to \$400. Employees who do not observe company rules are liable for a penalty of up to \$400 or 6 months in jail or both. Failure to observe the grade-crossing requirements (except the whistle requirement) can result in a penalty of \$100. The penalty for blocking a highway is \$50 for the engineer and \$50 for the company. However, employees can be exempted if they can show they were following company rules.

It can be seen that both Canada and the United States recognize the same subjects as worthy of consideration from a safety point of view, though the approach is often quite different. For example, whereas the Railway Act authorizes CTC to establish regulations for

¹⁷Sec. 227, ch. R-2, R. S. C., 1970.

¹⁸Sec. 228, ch. R-2, R. S. C., 1970.

¹⁹Sec. 238, ch R-2, R.S.C., 1970.

employee hours of service it has not established any particular requirements in this regard. In the United States, very specific requirements are established by statute and little regulatory power is granted to FRA.²⁰ The Canadians also impose by statute a variety of limitations on the manner in which a train is operated, whereas in the United States this subject is not covered by statute but rather by agency (FRA) regulation and in the absence of such regulation (which is generally the case) the railroads are free to adopt through their own operating rules. On the other hand, many of the safety appliance requirements are treated in a similar manner by both countries, e.g., automatic couplers, driving wheel brakes, and draw bars.

Another area of comparison is the treatment of power or train brakes. In Canada, the statute mandates that "such a number of cars in each train be equipped with such brakes as to permit the engineer to control its speed or bring it to a stop in the quickest and best possible manner" without requiring use of the common hand brake.²¹ In addition, on passenger trains such a brake system must be continuous and self-applying in the event of any failure in their continuity of action. Inspection requirements are not specified. In the United States, the law originally required one-half of all cars to be so equipped with power or train brakes²² but this percentage has been increased administratively to include all cars in a train.²³ No distinction is made between passenger and freight trains. Finally, U.S. law mandated the adoption of the Association of American Railroads (AAR) power brake maintenance and inspection standards.

Dangerous Commodities—The Railway Act contains two short provisions concerning transportation of dangerous commodities .24 The first prohibits passengers from carrying such goods except in conformity with CTC rules. It also requires a shipper to mark clearly the nature of such goods on the outside of the packing and

give identical notice to the station agent or whoever receives them for shipment. The second provision prohibits a railroad from carrying such goods except in conformity with CTC rules and permits it either to refuse to handle, except in accordance with CTC rules, a parcel containing goods it suspects to be dangerous or to require that the parcel be opened. Violation of the first provision carries a fine of up to \$2,000 or 2 years in jail or both; violation of the second provision can result in a maximum penalty of \$500.

There is considerable difference in the statutory approach to regulation of the transportation of these commodities in Canada and the United States. The United States has both criminal and civil penalties of substantial dimensions for violations of hazardous cargo regulations, whereas Canada has relatively mild penalties, particularly for the railroad. Moreover, the U.S. statute seems to envision regulation of a broad scope of activity concerning such materials from labeling, packaging, and handling through transportation. The Canadian statute dealing with hazardous materials seems to envision regulation of a more limited scope of activity with those materials, although CTC may be able to take the same steps as the comparable U.S. agency due to the broad powers otherwise available to it.

Offenses, Penalties, and Other Liabilities²⁵—
In addition to the penalties for violation of particular statutory or regulatory requirements, the Railway Act also specified a penalty of \$20 to \$5,000 for any company that does not obey a CTC order. Moreover, if the company is proven to have so disobeyed CTC rules, the president, each vice-president, and each director and managing director of the company is subject to a penalty of the same range and/or up to 12 months in prison unless they can prove that they did everything in their power to see that the order was carried out, and they were not at fault for the violation. Canadian Government officials indicated that these penalties are levied infrequently, if at all. U.S. law does not impose such personal penalties on officers of railroads.

²⁰45 U.S.C. 64 et seq.
²¹Sec. 238(3), ch. R-2, R. S.C., 1970.

²²45 U.S.C. 65 et seq.

²³49 CFR.

²⁴Secs. 295-296, ch. R-2, R. S.C., 1970.

²⁵Secs. 343-399, ch. R-2, R. S.C., 1970.

The Railway Act provides for a summary procedure before a justice of the peace, if a penalty is less than \$100. If the penalty is between \$100 and \$500, the summary procedure must be before two such justices or other officials with equivalent power. CTC can also seek enforcement through the offices of the Attorney General or in his name.

The Canada Labour Code—Part IV

The Canada Labour Code establishes the framework for Federal regulation of workplace safety. It applies to interprovincial railroads rather than intraprovincial companies. However, the Labour Code does not apply to employment “upon or in connection with the operation of . . . trains”²⁶ CTC has jurisdiction for the safety of train operations.

The Labour Code places a general duty upon employers to conduct business in a manner that will not endanger the health or safety of their employees, and to adopt and carry out reasonable procedures and techniques designed to reduce the risk of workplace injury. The employee likewise has a duty to take reasonable measures and precautions to protect his own safety and to use protective devices provided by the employer. The Code provides a specific procedure through which employees can refuse to work when they believe to continue to work would constitute an “imminent danger” to themselves or other employees. The Code also grants broad regulatory authority to the Governor-in-Council. This authority is exercised by the Minister of Labour.

The Code’s mechanism used to oversee safety in the workplace is to require or authorize industries or companies to establish safety and health committees, with at least half of committee membership comprised of employees. These committees handle all health and safety matters between the employers and employees. Included among committee responsibilities are handling complaints, conducting inquiries, developing safety programs, recordkeeping, and cooperation with appropriate Government agencies.

²⁶Sec. 80(2), ch. L-1, R. S. C., 1970.

The Code provides for appointment of “safety officers” to enforce its provisions. These officials have authority to enter the premises of an employer “at any reasonable time” to conduct inspections, inquiries, and tests. If something constitutes a “source of imminent danger to the safety or health” of employees or is contrary to the Code or regulations, the “safety officer” may direct an employer or person in charge, in writing, to take certain safeguarding actions or direct that the place, matter, or thing not be used until directions are complied with.²⁷ A procedure for industry appeal of such a direction is provided. The employer is subject to a penalty of up to \$5,000 or 1 year in prison or both for the following: 1) a violation of the Code, or regulations issued under the Code; 2) violation of the direction of a safety officer; 3) industry discrimination against employees who participate in or provide information for a safety inquiry; 4) adverse action from industry against employees who stop work because they believe they are in imminent danger; or 5) failure to provide requested information to a safety committee. Employees and managers can also be punished personally.

The approach of the United States and Canada to occupational safety and health appears to be generally similar. With respect to railroads in particular, FRA has accepted responsibility for safety of railroad operations (meaning the safe movement of equipment over rails) including health matters related to such operations, and ceded the balance to the Occupational Safety and Health Administration (OSHA) of the Department of Labor. While the area covered by FRA appears to be somewhat broader than the safety and health matters under CTC jurisdiction, both countries divide safety and health regulation, especially in the case of railroads, between two agencies and generally along the same lines. Both countries establish general responsibilities for employers and employees, and have broad regulatory power to establish minimum safety and health requirements. In addition, they have a similar enforcement structure of inspections coupled with a power to order abatement of the hazard

²⁷Sec. 94, ch. L-1, R. S. C. , 1970.

or levy of a monetary penalty. Both countries have procedures for administrative review of the order. However, when the Canadian and U.S. occupational safety and health provisions are examined in detail, many differences appear. These differences do not relate to the treatment of railroads per se, and therefore are not examined in detail here.

In sum, it can be said Canada's statutory approach is one that appears to be based both on inspection and intracompany safety awareness through safety and health committees, whereas the U.S. approach is based more on inspection and enforcement. The difference in these two approaches is that the Canadian system is directed more at resolution of the safety problems at the company level through joint and equal participation of labor and management but with a strong residual enforcement power granted to the Government. The U.S. system is more adversarial in nature pitting employer against the Government and the employee. However, the enforcement powers for OSHA violations in the United States are not as comprehensive as those in Canada.

Railway Relocation and Crossing Act

Since 1955 Canada has recognized the special safety problems of rail-highway grade crossings. The Railway Act established a railway grade-crossing fund to provide financial assistance for the improvement of grade crossings.²⁸ In 1974, this provision was replaced by the Railway Relocation and Crossing Act. A more comprehensive approach was taken to the physical relationship between railroads and highways. The new Act retained the original railway grade-crossing fund administered by CTC. This fund is used on a cost-sharing basis for: 1) work done for public protection, safety, and convenience on grade crossings existing for at least 3 years; 2) work done to reconstruct or improve a grade separation in existence for at least 15 years; 3) placing reflective markings on the sides of rail cars; and 4) placing revolving lights on locomotives. The Federal share of the cost of such work varies from 50 to 80 percent.

²⁸S.C. 202, ch. R-2, R.S.C., 1970.

The Railway Relocation and Crossing Act provided two types of assistance. The first is financial assistance provided by the Minister of Transport and the Minister of State for Urban Affairs for up to one-half of the cost of transportation plans and urban development plans respectively. The former is a plan for control of transportation of all types and modes within a defined area and the latter is a plan for land use and development within or adjacent to an urban area. Where such plans have been developed and agreed to by provincial and municipal authorities, they can apply to CTC for a special order that will permit abandonment of lines, removal of structures, sharing of trackage rights, relocation of railway lines, building of new lines, elimination of grade crossings, and limitations on rail traffic. The plans, including the related financial plans, showing that no affected railroad will receive burdens or benefits greater than the corresponding receipts or costs, must be acceptable to CTC before it can issue such a special order. In addition, CTC can recommend that the Minister of transport provide a "relocation grant" to meet up to one-half of the net costs of railway relocation.

The other new form of assistance is provision for special grants for construction or reconstruction of a grade separation that costs more than **\$1,250,000**. The total amount obtainable for such a grant ranges from \$1,150,000 to \$3,250,000 plus 40 percent of the costs in excess of \$5 million for new construction, with substantially lesser amounts for reconstruction projects. This latter provision is intended to meet the many situations needing assistance that were not eligible under the earlier railway grade-crossing fund.

It should also be noted that the Railway Act, gave CTC authority to control the protections at grade crossings and order any necessary changes including grade separation.

The United States has generally financed grade-crossing improvements from the Highway Trust Fund and on a cost-sharing basis with State highway authorities.²⁹ It has also provided substantial sums under the Federal Aid High-

²⁹22 U.S.C. 130.

way Act for a series of demonstration projects which have included relocation of some urban rail lines.³⁰ However, the United States has not

³⁰Turner, Laws 93-87, 93-643, 94-280, and 94-387.

provided any generally available funding for the marking of rail cars or lights on locomotives although it is currently conducting a demonstration project with four railroads providing for use of strobe lights on locomotives.

SUMMARY

The laws affecting railway safety in Canada are comprehensive in scope, touching at least generally all of the same subjects as U.S. laws. However, a comparison of the statutory framework of these laws for each country indicates several differences in emphasis and detail. First, the Canadian laws are considerably more restrictive concerning the design and engineering of a railroad when first constructed but Canada does not regulate its subsequent maintenance. In the United States, the law does not cover design and engineering but subsequent maintenance is regulated. Second, the Canadians have numerous detailed statutory requirements for operating the railroad of which the United States has very few. Third, the Canadians have more comprehensive penalty provisions for violation of its legal requirements that are applicable to officers and employees as well as companies. However, the penalties are apparently not gen-

erally invoked and do not seem to be a major part of the enforcement structure. In the United States, the penalties appear to be somewhat higher, and do provide an integral part of the enforcement scheme, but are not applicable to railroad officers and employees. Fourth, the Canadians do not appear to have mandated by law or regulation particular requirements for hours of service or employee quarters or other such subjects that are considered part of what should be left to collective bargaining. In the United States, specific legislative requirements have been established on such subjects. Finally, the Canadians have been considerably more comprehensive in their legislative approach to the grade-crossing problem both in terms of establishing requirements for train operations and installation of protections at crossings as well as providing funding mechanisms.