

**TRANSPORTATION AMENDMENT ACTS:  
NOTABLE DIFFERENCES BETWEEN BILL C-44  
AND ITS PREDECESSOR, BILL C-26**

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**INTRODUCTION**

This paper points out the most notable differences between Bill C-44, the Transportation Amendment Act (1<sup>st</sup> Session, 38<sup>th</sup> Parliament), currently before Parliament, and its predecessor, Bill C-26 (2<sup>nd</sup> Session, 37<sup>th</sup> Parliament). Bill C-26 was at the committee stage after second reading in the House of Commons when it died on the *Order Paper* with the prorogation of Parliament. Although the bills are similar in most aspects, there are a number of notable differences. In pointing out the main differences, this paper will refer to relevant clauses of the respective bills. For further details regarding a particular clause that proposes to amend or repeal a specific section(s) of the *Canada Transportation Act* (CTA), or to add a new section(s), the reader is referred to the description and analysis of the clause that appears in the legislative summary of the relevant bill.<sup>(1)</sup> The paper will generally follow the numerical order of the sections of the CTA.

**CTA APPLICATION AND PART I – ADMINISTRATION**

**A. National Transportation Policy**

Section 5 of the CTA contains a declaration of National Transportation Policy based on a set of principles enunciated by Parliament. Bill C-26 (clause 3) would have amended the section to highlight the key objectives to be pursued, including a new provision dealing with

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(1) See: David Johansen, Legislative Summary on Bill C-26, Transportation Amendment Act (2<sup>nd</sup> Session, 37<sup>th</sup> Parliament), LS-451E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 March 2003; and David Johansen, Legislative Summary on Bill C-44, Transportation Amendment Act (1<sup>st</sup> Session, 38<sup>th</sup> Parliament), LS-504E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 19 April 2005.

respect for the environment, and the conditions under which those objectives are most likely to be achieved. Bill C-44 (clause 3) would further amend the section in light of representations made to Transport Canada by rail shippers and the provinces, to better reflect the importance of competition within and among modes of transportation and to recognize the essential role of transportation in enabling competitiveness throughout Canada.

### **B. Composition of Agency**

Clauses 4 and 5 of Bill C-44 would amend sections 7 and 8 of the CTA to reduce the number of members of the Canadian Transportation Agency (hereinafter referred to as the Agency) from seven to five, and clause 6 would amend section 18(2) to require that all members (instead of just the chairperson, as is currently the situation) reside in the National Capital Region. These amendments were not contained in Bill C-26.

### **C. Enforcement of Agency Decision or Order**

Section 33(1) of the CTA currently provides that a decision or order of the Agency may be made an order of any superior court and is enforceable in the same manner as such an order. Clause 8 of Bill C-44 would amend section 33 to provide that a decision of the Agency may also be made an order of the Federal Court. This amendment was not included in Bill C-26.

### **D. Mediation**

In both Bill C-44 (clause 9) and its predecessor, Bill C-26 (clause 5), a proposed new section, 36.1, concerning mediation, would be added to the CTA, giving the Agency the power to refer a dispute to mediation if both parties agree. However, whereas under Bill C-26 the Agency could, *on its own initiative*, have referred for mediation a dispute concerning any matter before it, it could not do so under Bill C-44.

## **E. Transportation Information**

Bill C-44, like Bill C-26, proposes a number of amendments to the provisions dealing with the reporting of transportation information to the Minister of Transport to ensure that the Minister can collect and share the required information, and has the tools to ensure that the information is actually provided.

Bill C-44 (clause 10) would amend section 50(1) of the CTA to specify that the information required to be provided does *not* include personal information as defined in section 3 of the *Privacy Act*. This amendment was not included in Bill C-26 (clause 6), nor was the amendment that is proposed in Bill C-44 to add security programs in section 50(1)(d) to the list of purposes for which the Minister of Transport may collect data. Bill C-44, like Bill C-26, would clarify section 50 by adding section 50(1.1) to specify the stakeholders and parties from whom information can be obtained by the Minister. However, one of those parties, included in Bill C-44, namely “intermediaries involved in transportation movements who are specified in the regulations” (proposed section 50(1.1)(d)), was not included in Bill C-26.

## **F. Industry Review**

The CTA, in section 52, currently requires the Minister, *each year* before the end of May, to lay before Parliament a report on the state of transportation in Canada in respect of the previous year. Bill C-44 (clause 13) would amend section 52 so as to require the Minister, every *three* years, to lay before the Senate and the House of Commons, within the year after the end of the three-year period, a report briefly reviewing the state of transportation in Canada. Under Bill C-26 (clause 9), the proposal was for the report to be laid before each House of Parliament every *two* years within the year after the end of the two-year period.

## **G. Review of Act**

Section 53 of the CTA currently requires the Minister “*no later than four years after the day this Act comes into force*” to appoint one or more persons to carry out a statutory review and specifies that the review must be completed within *one year* after the appointment. A statutory review of the Act was therefore completed in 2001. Bill C-44 (clause 14) would amend the relevant provision (section 53(1)) so as to require the Minister “*no later than eight years after the day this subsection comes into force*” to appoint one or more persons to

carry out the review and to specify that the review must be completed within *18 months*. Under Bill C-26 (clause 10), the proposal was for the Minister “*no later than 2010*” to appoint one or more persons to carry out the review.

## **CTA PART II – AIR TRANSPORTATION**

### **A. Domestic Service Provider Licences**

Bill C-26 (clause 12) would have amended section 55 of the CTA to define a “domestic service provider” in order to explain proposed new provisions that would have been added to the Act to create a new class of service provider. This definition has not been included in Bill C-44, nor have the provisions concerning domestic service provider licences that were included in Bill C-26 (clause 24 – proposed sections 68.1 to 68.4).

### **B. Complaints to Agency**

Section 65 of the CTA concerns complaints to the Agency regarding non-compliance with section 64 concerning the discontinuance or reduction of air services by a carrier. Bill C-44 (clause 21) would change the time period referred to in the section from 60 to 120 days, an amendment that was not proposed in Bill C-26.

Sections 66(1) and (2) of the CTA concern complaints made to the agency in writing *by any person* concerning unreasonable fares or rates and an inadequate range of fares or rates, respectively; and as a result thereof, based on an Agency finding, a subsequent possible Agency order. Bill C-26 (clause 20) would have amended the provisions to permit the Agency to also make the order *on its own motion*. Those amendments have not been included in Bill C-44.

Section 67.2 currently provides that the Agency may, on complaint in writing to it, make a finding that the terms and conditions of carriage applied by a domestic licensee to its domestic service are unreasonable or unduly discriminatory, and the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place. Bill C-26 (clause 22) would have amended the section to also permit the Agency to exercise, *on its own motion*, the authority to make such a finding. This amendment has not been included in Bill C-44; the normal complaints-based function of the Agency in the existing legislation would therefore continue.



### **C. Air Service Price Advertising**

Bill C-26 (clause 16) would have added to the CTA a number of new provisions, proposed sections 60.1 to 60.4, specifically concerning air service price advertising. Those same specific provisions have not been included in Bill C-44. Instead, Bill C-44 (clause 30) would add a new section 86.1 to the Act, empowering the Agency, on the recommendation of the Minister, to make *regulations* respecting advertising in all media (including on the Internet) of prices for air services within, or originating in, Canada. Further particulars regarding the contents of the regulations are set out in the proposed provision. They include the following requirements: the advertised price must include all costs to the carrier of providing the air service; all fees, charges and taxes collected by the carrier on behalf of another person must be indicated in the advertisement; and the advertisement must provide all the information necessary to enable the purchaser to readily determine the total amount to be paid for the service.

### **D. Non-scheduled International Service**

Section 73 of the CTA sets out the requirements that must be met in order for the Agency to issue a licence to an applicant to operate a non-scheduled international service. Bill C-26 (clause 25) would have added proposed new sections 73(1.1) and (2.1) to the Act to provide the Agency with the power to refuse to issue a licence for a non-scheduled international service to either a Canadian or non-Canadian applicant if, in the opinion of the Agency, it was in the public interest to do so. A similar clause has not been included in Bill C-44.

An operator of a non-scheduled international service must have a licence under section 73 of the CTA in order to operate the service, as well as a permit for each particular charter program that it operates. Bill C-26 (clause 26) proposed to add two new sections, 75.1 and 75.2, pertaining to the issuance of international charter permits. Proposed section 75.1 would have provided that the issuance, amendment or cancellation of a permit for the operation of an international charter to a licensee would have to be done in accordance with regulations made pursuant to section 86(1)(e). Proposed section 75.2 would have provided the Agency with the power to refuse to issue the permit if, in the opinion of the Agency, it was in the public interest to do so. Bill C-44 (clause 27) would add only proposed section 75.1 to the Act.

### **E. Air Travel Complaints**

The current position of the Air Travel Complaints Commissioner, as provided for in section 85.1 of the CTA, would have been retained, with slight modifications, under the amendments proposed in Bill C-26 (clause 27). However, Bill C-44 (clause 28) would replace the current section 85.1 with a new provision that would no longer provide for the designation of an Air Travel Complaints Commissioner and instead would incorporate his or her functions into the everyday operations of the Agency. It would also eliminate the previous semi-annual reporting requirement. This amendment would make transparent and permanent the functions of the Agency in responding to and attempting to resolve air travel complaints.

### **F. Regulations**

Both Bill C-26 (clause 29) and Bill C-44 (clause 29) would amend section 86(1) concerning the Agency's regulation-making powers for purposes of managing the air service licensing regime. Some of the proposed amendments are the same. However, Bill C-26, unlike Bill C-44, would have added a new paragraph (d.1) to give the Agency power to make regulations respecting the terms and conditions to be included in a contract between a domestic service provider and a holder of a domestic licence for the provision of a domestic service. As well, Bill C-44, unlike Bill C-26, would amend the Agency's power under section 86(1)(h) to make regulations respecting traffic and tariffs, rates and charges, and terms and conditions of carriage for international service by amending paragraph (iii) under that provision to make reference to a carrier as well as a licensee.

### **G. Agreements**

Bill C-26 (clause 28) proposed to add a new section, 85.2, to the CTA providing the Agency with the power, in the circumstances specified in the provision, to order the holder of a domestic licence or a domestic service provider licence to enter into an agreement with another holder of a domestic licence or a domestic service provider licence with respect to matters specified in that provision. This amendment applied to such areas as access to loyalty marketing programs and agreements between carriers regarding interlining, joint fares and pro-rates. Bill C-44 does not propose to add these provisions.

## **CTA PART III – RAIL TRANSPORTATION**

There are a few minor changes in Bill C-44 from the previous proposals in Bill C-26 to amend the rail transportation provisions in Part III of the CTA.

### **A. Tariffs**

Bill C-44 (clause 39) would amend section 119 to require a railway company that proposed to change a tariff, other than by reduction of rates or charges, to publish a notice of the change at least 30 days before the effective date. During that same time frame, the railway company would have to send a copy of the notice to any shipper with whom it had a confidential contract that referred to the tariff. The section would also be amended to reflect the taking effect of the changed tariff. Bill C-26 did not include that amendment.

### **B. Transferring and Discontinuing the Operation of Railway Lines**

Bill C-44 (clause 53) provides in proposed section 146.4 that proposed sections 146.2 and 146.3 (concerning lists of metropolitan sidings and spurs to be dismantled, offer to governments, time limits for acceptance, determination of net salvage value, etc.) would apply, with such modifications that the circumstances require, to *railway rights of way* that are located in metropolitan areas and in respect of which sidings and spurs have been dismantled, that a railway company plans to sell, lease or otherwise transfer. Bill C-26 did not include that provision.

### **C. Maximum Grain Revenue Entitlement**

Bill C-44 (clause 54) proposes a couple of amendments to section 151 concerning the calculation for a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year. These amendments were not included in Bill C-26.

### **D. Priority of VIA Trains**

Clause 56(3) of Bill C-44 would enable VIA to apply to the Agency to resolve disputes under its current agreements with respect to train priority. That provision was not included in Bill C-26.

### **E. Agreements to Apply Transportation Law to Provincial Railways**

Section 157.1 of the CTA currently allows the Minister to enter into an agreement with a provincial minister responsible for transportation matters providing for the administration, in relation to persons who operate provincially regulated railways, of any law respecting railway safety, accident investigation and railway crossings. Bill C-44 (clause 57) would amend that provision to also include reference to the administration of any law respecting railway noise or the economic regulation of railway companies to the extent that those matters are governed by the CTA. That amendment was not included in Bill C-26.

## **CTA PART IV – FINAL OFFER ARBITRATION**

### **A. Joint Offer of Several Shippers**

Bill C-44 (clause 62) proposes to add new sections 169.1 to 169.3, concerning the joint offer of several shippers, to the CTA. There have been a number of changes from Bill C-26 (clause 58), including the specifying of time limits for the submission of final offers, and for the arbitrator to make a decision, etc. As well, Bill C-26 did not propose to include the mediation provision that is included as proposed section 169.3 in Bill C-44. That provision would allow the parties to a final arbitration offer to, by agreement, refer to a mediator (which could be the Agency) a matter that had been submitted to a final offer arbitration. Details are spelled out in the proposed provision.

## **CTA PROPOSED PART V.1 – INTERNATIONAL BRIDGES AND TUNNELS**

While Bill C-26, like Bill C-44, proposed to add a new Part V.1 concerning international bridges and tunnels to the CTA, the provisions in Bill C-44 are much broader; in addition to covering the alteration and construction of international bridges and tunnels, they would also cover the regulation of their operation, maintenance, safety and security.

### **A. Definitions**

Bill C-26 (clause 59), for purposes of proposed Part V.1 of the CTA, would have defined an “international bridge or tunnel” to mean a bridge or tunnel, or any part of it, that connects any place in Canada to any place outside Canada. Bill C-44 (clause 63) would further add to the end of the definition “and includes the approaches and facilities related to the bridge or tunnel.”

### **B. Schedule III**

Unlike Bill C-26, Bill C-44 includes a Schedule III listing federal bridges and tunnels Acts. Bill C-44 (unlike Bill C-26) also includes a provision (proposed section 172.02(1)) that in the event of an inconsistency or conflict between proposed Part V.1 or the regulations made under it and any Act listed in Schedule III, proposed Part V.1 and the regulations prevail to the extent of the inconsistency or conflict. Unlike Bill C-26, it also provides (in proposed section 172.02(2)) that the Governor in Council may, on the recommendation of the Minister, make regulations amending Schedule III by adding, changing or deleting the name of an Act.

### **C. Works for the General Advantage of Canada**

Unlike Bill C-26, Bill C-44 includes a provision (proposed section 172.03) declaring international bridges and tunnels to be works for the general advantage of Canada.

### **D. Regulations Regarding the Maintenance, Operation, Safety and Security of International Bridges and Tunnels**

Bill C-44 in proposed sections 172.12 to 172.14 authorizes the Governor in Council, on the recommendation of the Minister, to make regulations respecting the maintenance and repair, the operation and use, and the security and safety, respectively, of international bridges and tunnels. In each case the relevant section specifies a list of possible matters in respect of which regulations may be made, without limiting the generality of the regulation-making power. These provisions were not included in Bill C-26.

### **E. Emergency Directions**

Unlike Bill C-26, Bill C-44 contains a number of provisions (proposed sections 172.15 to 172.2) regarding emergency directions in cases of an immediate threat to the security or safety of an international bridge or tunnel.

### **F. Incorporation by Letters Patent**

Another provision that was not included in Bill C-26 is the provision in Bill C-44 (proposed section 172.21) that authorizes the Governor in Council, on the recommendation of the Minister, to issue letters patent of incorporation for the establishment of a corporation for the purpose of constructing an international bridge or tunnel.

Other relevant provisions in Bill C-44 concerning the above corporations (and that were not contained in Bill C-26) include those respecting: the Governor in Council's regulation-making powers concerning them (proposed section 172.23); their capacity and powers (proposed section 172.24); their authority to charge tolls, fees or other charges for the use of an international bridge or tunnel (proposed section 172.25); the power of their directors to manage their activities and affairs (proposed section 172.26); duty of care of their officers and directors (proposed section 172.27); and the power of their directors to make by-laws regulating the affairs of the corporation (proposed section 172.28).

### **G. Shares of a Corporation**

Bill C-44, unlike Bill C-26, provides in proposed section 172.29 that, for the purposes of section 90 (transactions requiring Parliamentary authorization) in Part X (entitled *Crown Corporations*) of the *Financial Administration Act*, the federal Crown, or a "parent Crown corporation" within the meaning of section 83 of that Act, is authorized to acquire, hold, dispose of and otherwise deal with the shares of a corporation that owns or operates an international bridge or tunnel.

### **H. Enforcement**

Unlike Bill C-26, Bill C-44 contains a number of detailed enforcement powers (in proposed sections 172.3 to 172.32) for the purposes of the provisions that it would include in proposed Part V.1.

## **AMENDMENTS TO THE *RAILWAY SAFETY ACT***

### **A. Emergency Directives**

Section 34 of the *Railway Safety Act* currently provides that an order or emergency directive made by the Minister may be made an order of the court of any *superior court*, and must be enforced in the same manner as an order of the court. Bill C-44 (clause 72) would amend the provision to make reference to the *Federal Court* as well as a superior court. That provision was not included in Bill C-26.