

1989

CHAPTER R-1.2  
An Act respecting Railways in Saskatchewan

(Assented to August 25, 1989)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I

Short Title, Interpretation and Application

- Short title                   1 This Act may be cited as The Railway Act.
- Interpretation           2 In this Act:
  - "authorization certificate"           (a) "authorization certificate" means an authorization certificate issued pursuant to section 6;
  - "board"                               (b) "board" means the Highway Traffic Board continued pursuant to The Highway Traffic Act;
  - "department"                       (c) "department" means the department over which the minister presides;
  - "inspector"                         (d) "inspector" means a person employed or retained by the minister pursuant to section 23;
  - "minister"                         (e) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
  - "operating authority certificate"   (f) "operating authority certificate" means an operating authority certificate issued pursuant to section 15;
  - "professional engineer"           (g) "professional engineer" means an engineer licensed pursuant to The Engineering Profession Act;
  - "provincial highway"             (h) "provincial highway" means a provincial highway as defined in The Highways and Transportation Act;
  - "public highway"                 (i) "public highway" means a public highway as defined in The Highways and Transportation Act;
  - "railway"                         (j) "railway" means a railway that is subject to the legislative authority of Saskatchewan and includes:
    - (i) all depots, wharfs, trains, equipment, stores, real or personal property and works connected with the railway;
    - (ii) the railway line of the railway;
  - "railway company"               (k) "railway company" means a railway owner or railway operator;

- "railway line" (l) "railway line" means the land, track and structure:  
(i) on which a railway may be operated; and  
(ii) that is subject to the legislative authority of Saskatchewan;
- "railway operator" (m) "railway operator" means the holder or proposed holder of a valid and subsisting operating authority certificate;
- "railway owner" (n) "railway owner" means the owner or proposed owner of a railway line;
- "temporary operating authority certificate" (o) "temporary operating authority certificate" means a temporary operating authority certificate issued pursuant to section 16;
- "train" (p) "train" means any engine, locomotive and vehicle designed for movement on its wheels on the rails of a railway line.

Compliance with Act

3 No person shall construct, acquire, alter or operate a railway except in accordance with this Act.

PART II

Authority to Construct, Etc.

Minister's approval required

4 No person shall:  
(a) construct or cause to be constructed;  
(b) alter or cause to be altered; or  
(c) acquire or cause to be acquired;  
a railway line without the prior written approval of the minister.

Application for approval to construct, acquire or alter

5(1) Any railway company who wishes to construct, acquire or alter a railway line shall apply to the minister in accordance with this section.  
(2) An application pursuant to subsection (1) shall:  
(a) include any information and details; and  
(b) be in the form;  
that the minister may require.  
(3) The minister may require a railway company, at the time it makes an application pursuant to subsection (1) to construct or acquire a railway line, to submit to the minister:  
(a) an operating authority certificate with respect to that railway line;  
(b) an order of the board confirming that, in the opinion of the board:  
(i) the railway owner is a fit owner for the railway line;  
(ii) the railway operator is a fit operator for the railway;  
(iii) in the case of application to construct a railway, it is in the public interest to grant an operating authority certificate to the railway operator with respect to that railway;  
(iv) the railway owner and railway operator are adequately insured against

- claims arising from the operation of the railway; or
- (v) all or any combination of the things mentioned in subclauses (i) to (iv); or
- (c) both the operating authority certificate mentioned in clause (a) and the order mentioned in clause (b).
- (4) A person who makes an application pursuant to subsection (1) shall give written notice of the application, in the form and manner specified by the minister, to those persons that the minister directs.

## Approval

- 6(1) Where the minister is satisfied that the information provided pursuant to section 5 is complete and accurate and that the proposal includes all necessary steps to ensure the safety of the public, the minister may:
- (a) authorize the person to proceed with the construction, alteration or acquisition of the railway line by issuing an authorization certificate; and
- (b) make any order that the minister considers necessary to ensure the safety of the public, including an order requiring the person who made the application pursuant to section 5 to install an interlocking switch, signal system or other apparatus at crossings or junctions, as the case may be.
- (2) An authorization certificate may contain authority, for any period that the minister considers appropriate, to transport over the railway line materials required for construction of the railway line.
- (3) Where:
- (a) an application pursuant to section 5 is to construct or alter a railway line and:
- (i) the railway line crosses; or
- (ii) the construction or alteration of the railway line is likely to affect; a public highway, pipe line, water course or telecommunication, electrical or other utility; or
- (b) an application pursuant to section 5 is to alter a railway line and where the alteration of that railway line is, in the opinion of the minister, in the public interest; the minister may make orders:
- (c) requiring any person to do any thing necessary to permit the desired construction or alteration;
- (d) subject to section 13, apportioning the costs of:
- (i) the construction or alteration;
- (ii) maintenance of the construction or alteration;
- between those persons that the minister decides; or
- (e) doing both of the things mentioned in clauses (c) and (d).

## Deviations, changes and alterations

- 7(1) A railway owner shall ensure that the centre line of the railway line does not deviate from the approved centre line by more than five metres.
- (2) Where a railway owner proposes to deviate from, change or alter the plan for the proposed railway line in a manner that goes beyond five metres from the approved centre

line, the railway owner shall apply to the minister in accordance with section 5 for approval of the change, and this Act applies, with any necessary modification, to the proposed change and to the change once approved.

#### Filing requirements on completion

8(1) Subject to subsection (2), within six months after the completion of the construction or alteration of the railway line, the railway company shall file with the minister detailed plans of the railway line as constructed, certified by a land surveyor registered in Saskatchewan to be correct.

(2) Where the minister considers it to be appropriate, the minister may waive the requirements of subsection (1) with respect to any railway company.

#### Crossings

9(1) No person shall construct a crossing:

(a) of a railway line for the purposes of access to and from land adjacent to the railway line; or

(b) for pipelines, water courses, telecommunications, electrical power or any other utilities;

without the prior written approval of the minister.

(2) No public highway authority shall construct any crossing of a railway line without the prior written approval of the minister.

(3) An application for approval pursuant to this section shall include the description of the place and mode of the crossing that the minister may require.

(4) Notice of an application pursuant to this section shall be given to the railway owner whose railway line is to be crossed and to all railway operators using the railway line that is to be crossed.

(5) No person shall alter any crossing approved pursuant to this section without the prior approval in writing of the minister.

#### Minister's orders re crossings

10(1) Where a person who has an interest in land adjacent to a railway line and the railway company owning or operating the railway line are unable to agree with respect to the:

(a) location of; or

(b) apportionment of costs to construct and maintain;

a crossing that will provide access to the land, the person or the railway company may apply in writing to the minister for an order respecting the crossing.

(2) Where the minister receives an application pursuant to subsection (1) and is satisfied that it is appropriate to do so, the minister may make an order:

(a) directing the railway owner to provide a crossing;

(b) fixing the location of a crossing;

(c) apportioning the costs of constructing and maintaining the crossing between the person having the interest in the land, the railway owner and the railway operator; or

(d) doing all or any combination of the matters mentioned in clauses (a) to (c).

## Minister's approval

11(1) Where the minister is satisfied that the information provided pursuant to section 9 with respect to a proposed crossing is complete and accurate and that the proposal includes reasonable steps to ensure that the railway is safe, the minister may:

- (a) approve the application; and
- (b) make any order that the minister considers necessary to ensure the safety of the public, including an order requiring the installation of a crossing protection, signal system or other apparatus at the crossing.

(2) Subject to section 13, where the parties affected by an order made pursuant to subsection (1) fail to agree on the proportion of the costs to be paid by each with respect to the construction and maintenance of the crossing, the minister shall, by order, determine the proportion of the costs to be borne by each party.

## Bridges, tunnels, etc. not owned by railway

12(1) Subject to section 13, where construction of or alteration to a bridge, tunnel or other structure not owned by a railway owner is necessary, the minister may:

- (a) on the application of the railway company or other interested party; and
- (b) after receiving the information that the minister may require;

make any order that the minister considers appropriate with respect to the construction or alteration of the bridge, tunnel or other structure and with respect to the apportionment of the costs associated with that construction or alteration between the affected parties.

(2) A person who makes an application pursuant to subsection (1) shall give written notice of the application, in the form and manner specified by the minister, to those persons that the minister directs.

## Order as to costs

13(1) Where:

- (a) the minister is the authority responsible for a public highway for the purposes of section 6 or 11; or
- (b) the bridge, tunnel or other structure mentioned in section 12 is part of a public highway for which the minister has responsibility;

the minister shall not make any order pursuant to section 6, 11 or 12 with respect to apportioning costs.

(2) In the circumstances described in subsection (1), any of the parties mentioned in section 6, 11 or 12, as the case may be, may apply to a judge of Her Majesty's Court of Queen's Bench for Saskatchewan for an order to apportion costs and the judge shall, on the application, make any order that the judge considers appropriate.

PART III  
Operating Authority

## Certificate required

14(1) Subject to subsection 6(2), no person shall operate a railway unless:

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- (a) the minister has approved the opening of the railway pursuant to section 24;
  - (b) the person has obtained an operating authority certificate or temporary operating authority certificate; and
  - (c) the person complies with the terms and conditions of the operating authority certificate or temporary operating authority certificate.
- (2) In accordance with any criteria that may be prescribed in these regulations, the board may issue operating authority certificates authorizing the transportation of goods and passengers by railway.
- (3) If the railway owner does not agree to terms and conditions:
- (a) pursuant to which a person may operate on a railway line owned by the railway owner; or
  - (b) on which a railway operator may renew an agreement to operate on a railway line owned by the railway owner;
- the railway owner or the person who has obtained an operating authority certificate or temporary operating authority certificate may apply to the board for a review of the terms and conditions.
- (4) The board may make orders, on an application pursuant to subsection (3), fixing the terms and conditions mentioned in subsection (3) if it is satisfied that it is in the public interest:
- (a) to grant the person an operating authority certificate pursuant to this Act with respect to that railway line; or
  - (b) to ensure that the railway operator is able to continue to operate pursuant to the operating authority certificate.
- (5) Where an application has been made pursuant to subsection (3), the railway owner may notify in writing the person or railway operator seeking an operating authority certificate and the board that the railway owner wishes to sell the railway line for the net salvage value of the railway line.
- (6) If the railway owner and the applicant pursuant to subsection (3) are unable to agree on the net salvage value, either party may apply to the board to determine the net salvage value of the railway line, and the board shall determine that net salvage value within 45 days of receiving the application.
- (7) The board shall not grant an operating authority certificate without the consent of the railway owner where the board has been notified pursuant to subsection (5).
- (8) Where the applicant pursuant to subsection (3) is willing to purchase the railway line for the net salvage value as determined by the board, the railway owner shall sell the railway line to the applicant at that net salvage value.

#### Application and issuance

15(1) An application for an operating authority certificate, an amendment to an operating authority certificate or an order for the purposes of subsection 5(3) is to be made to the board in any form and manner that the board may require and is to be accompanied by any fees that may be prescribed in the regulations by the Lieutenant Governor in Council.

- (2) In considering an application for an operating authority certificate or an amendment to an operating authority certificate, the board may consider, among other things, the fitness of the applicant.
- (3) Where an application for an operating authority certificate or an amendment to an operating authority certificate is made to the board, the board may:
- (a) approve the application in whole or in part; or
  - (b) deny the application.
- (4) Where an application is approved for:
- (a) an operating authority certificate, the board shall issue an operating authority certificate;
  - (b) an amendment to an operating authority certificate, the board shall issue an amendment to the operating authority certificate or may cancel the existing operating authority certificate and issue a new certificate;
  - (c) an order for the purposes of subsection 5(3), the board shall issue the order.
- (5) Any financial information provided to the board by an applicant for an order pursuant to this section is deemed to be a report for the purposes of section 11 of The Highway Traffic Act and shall not be made public except in accordance with that Act.

#### Temporary certificates

- 16(1) An application for a temporary operating authority certificate is to be made to the board or a person authorized by the board in any form and manner that the board may require.
- (2) The board or a person authorized by the board may, after inquiring into the circumstances, issue a temporary operating authority certificate authorizing the transportation of any goods or passengers.

#### Exclusive rights not granted

17 No operating authority certificate or temporary operating authority certificate confers exclusive rights on the holder or precludes the board in any way from issuing any other operating authority certificates or temporary operating authority certificates that the board considers appropriate.

#### Insurance

- 18(1) No applicant for an operating authority certificate or temporary operating authority certificate is entitled to have the certificate issued until the applicant files with the board any insurance policies or bonds and certificates of insurance that may be required by the board with respect to:
- (a) the railway owner;
  - (b) the railway operator; or
  - (c) both the railway owner and railway operator.
- (2) A certificate of insurance filed with the board is deemed to be a conclusive admission by the insurer that the policy has been issued in accordance with the terms of the certificate.
- (3) Every insurer shall notify the board in writing of the cancellation or expiration of any

policy with respect to which a certificate of insurance has been filed with the board at least 30 days before the effective date of the cancellation or expiration.

(4) In the absence of notice pursuant to subsection (3), the policy remains in full force and effect.

(5) The board may review the insurance policies, bonds and certificates of insurance filed by a railway company pursuant to subsection (1).

Suspension, etc.

19(1) The board may, for cause:

- (a) suspend;
- (b) alter;
- (c) amend; or
- (d) revoke;

an operating authority certificate or temporary operating authority certificate.

(2) The board shall give the holder of the operating authority certificate or temporary operating authority certificate an opportunity to be heard before making an order pursuant to this section unless it is, in the opinion of the board, in the public interest to suspend, alter, amend or revoke the certificate immediately, in which case it shall notify in writing the holder of the certificate of that fact and shall give the holder an opportunity to be heard within 15 days of the date of the suspension, alteration, amendment or revocation, as the case may be.

(3) Notwithstanding subsection (2), where an insurance policy or bond mentioned in section 18:

- (a) is filed with or accepted by the board; and
- (b) expires or is cancelled or suspended;

and another policy or bond has not been filed with the board in its place, the board or any person designated by the board may, without giving the holder an opportunity to be heard, suspend or revoke the operating authority certificate with respect to which the expired, cancelled or suspended policy or bond was filed or accepted.

(4) Without limiting the generality of subsection (1), the board may refuse to issue or may suspend or cancel an operating authority certificate or temporary operating authority certificate:

- (a) when:
  - (i) the holder of the certificate has been convicted of a violation of any Act, any Act of another jurisdiction in Canada, any part of an Act or an Act of another jurisdiction in Canada or any regulations made pursuant to an Act or an Act of another jurisdiction in Canada that deals with the transport of goods or passengers; and
  - (ii) the time for an appeal has expired or, if an appeal is taken, the appeal is dismissed;
- (b) that is issued in error;
- (c) if it is satisfied that the holder has not paid a fee or charge imposed pursuant to this Act or the regulations; or



(d) where it is found that a material statement that is false has been made in the application for the operating authority certificate or the temporary operating authority certificate, as the case may be, or in any information, report or document required by this Act to be furnished by the applicant or the holder of an operating authority certificate.

- (5) A person designated by the board may:
- (a) exercise the power of the board pursuant to subsection (4) to suspend an operating authority certificate for a period not exceeding 30 days; and
  - (b) when the person exercises the power to suspend mentioned in clause (a), shall immediately notify the board of the suspension.

#### Suspension, etc., of order

20(1) Where the board suspends or cancels an operating authority certificate, it shall immediately give the minister notice of the suspension or cancellation.

(2) On receipt of a notice pursuant to subsection (1), the minister may:

- (a) refuse to issue;
- (b) suspend for any period that he considers appropriate; or
- (c) cancel;

an authorization certificate.

#### Prohibitions re certificate

21 No person shall wilfully deface or alter any authorization certificate, operating authority certificate or temporary operating authority certificate.

#### Discontinuing service prohibited

22(1) No holder of an operating authority certificate shall discontinue in whole or in part the service authorized by his certificate except in accordance with this section.

(2) The holder of an operating authority certificate shall give notice in writing to the board of not less than:

- (a) 90 days; or
- (b) any shorter period that the board may allow;

of its intention to discontinue in whole or in part, as the case may be, the service authorized by that operating authority certificate.

(3) At the time the holder of an operating authority certificate gives a written notice pursuant to subsection (2), the holder shall submit to the board the information it intends to rely on to establish that:

- (a) the services authorized by his certificate cannot be provided in a manner that is economically viable; or
- (b) the only goods shipped on the railway are goods owned or consigned by the railway owner or the holder of the operating authority certificate.

(4) Where:

- (a) an application is made on the grounds specified in clause (3)(a); and
- (b) the board is satisfied that the information provided pursuant to that clause establishes, in the absence of other evidence, that services authorized by an operating authority certificate cannot be provided in a manner that is, in the opinion of the board, economically viable;

the board may hold hearings and receive evidence from persons that are, in the opinion of the board, interested in the matter for the purpose of assisting the board in deciding whether the services can or cannot be provided in a manner that is economically viable.

(5) Where the board is satisfied that the holder of the operating authority certificate is unable to provide the services authorized by his certificate in a manner that is, in the opinion of the board, economically viable, the board may authorize the discontinuation of the service or any part of the service.

(6) Where the board is satisfied that it is, in its opinion, economically viable for the holder of an operating authority certificate to continue to provide the service authorized by his certificate, the board may order him to continue to provide that service or any part of that service.

(7) Where:

- (a) an application is made on the grounds specified in clause 3(b); and
- (b) the board is satisfied that the information provided pursuant to that clause establishes that the only goods shipped on the railway are goods owned or consigned by the railway owner or the holder of the operating certificate;

the board shall authorize the discontinuation of the service or any part of the service.

#### PART IV

##### Safety

Inspectors

23(1) The minister may cause to be employed or retained any persons, at least one of whom is a professional engineer, as inspectors for the purposes of this Act.

(2) Every railway company shall co-operate with an inspector in any manner that may reasonably be required to assist the inspector to carry out his duties pursuant to this Act.

(3) No person shall obstruct an inspector while the inspector is carrying out the inspector's duties pursuant to this Act.

Opening

24(1) No person shall open a railway without the prior approval of the minister.

(2) Every person who seeks the approval of the minister to open a railway shall submit to the minister a certificate of a professional engineer, in a form acceptable to the minister, certifying that the railway is safe and adequate for the railway operations as specified in the certificate.

(3) The minister may, before authorizing the opening of a railway, direct an inspector to:

- (a) examine the railway; and
- (b) provide a report to the minister regarding the safety of the railway.

- (4) Where the report of the inspector indicates, with reasons, that a railway is unsafe, the minister shall, by order, refuse to authorize the opening of the railway until any changes that are, in the opinion of the minister, required to make the railway safe are made.
- (5) Where the report of the inspector indicates that the railway is safe, the minister may, by order, authorize the opening of the railway.

## Safety

- 25(1) No railway company shall fail to maintain its railway in a safe condition.
- (2) The minister may make orders requiring any railway company to file a certificate of a professional engineer, in a form acceptable to the minister, certifying that the railway is safe and adequate for specified railway operations at those intervals that the minister considers appropriate for each railway or part of the railway.

## Examination

- 26(1) Where the minister:
- (a) receives a complaint about the state of repair of any part of a railway; or
  - (b) for any reason considers an inspection of a railway to be necessary;
- the minister may direct an inspector to examine the railway and provide a report to the minister with respect to the state of repair of the railway.
- (2) Where as a result of the examination of a railway conducted pursuant to subsection (1), an inspector is of the opinion that the railway is unsafe, the inspector shall immediately advise the minister of that fact.
- (3) On being advised pursuant to subsection (2), the minister may, by order, prohibit or limit the operation of the railway and require any repairs that the minister considers necessary to render the railway safe.
- (4) The minister shall not authorize the re-opening of a railway repaired pursuant to this section until the railway company submits to the minister a certificate of a professional engineer, in a form acceptable to the minister, certifying that the railway is safe and adequate for the intended use.

## Regulations

- 27 The Lieutenant Governor in Council may make regulations:
- (a) prescribing the speeds at which trains may be operated;
  - (b) prescribing the use of warning devices in various aspects of a railway's operation;
  - (c) prescribing fire safety requirements along rights of way of railways;
  - (d) prescribing the qualifications required of persons who operate engines on railways, requiring those persons to be licensed and providing for the suspension and cancellation of those licences;
  - (e) prescribing hours of service of railway companies;
  - (f) respecting any utility passing over or under a railway line;
  - (g) respecting any matter that the Lieutenant Governor in Council considers necessary to govern the activities of railway companies during the construction of a railway line;
  - (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to ensure the safe operation of railways.

## Minister's orders re safety

28(1) The minister may make any orders that the minister considers necessary to ensure the safe operation of a specific railway including an order prescribing or respecting any of the matters described in clauses 27(a) to (h).

(2) An order made pursuant to subsection (1) is valid for the period that is stated in the order.

(3) The minister may renew an order made pursuant to subsection (1) for an additional period stated in the renewal of the order and may amend, vary, rescind or repeal an order or renewal of an order.

(4) If there is a conflict between the provisions of an order made pursuant to this section and the regulations, the provisions of the order prevail.

## Standing and shunting

29 Where any railway line crosses any public highway at rail level, neither the railway company nor its officers, agents or employees shall wilfully permit any train to unnecessarily interfere with public traffic.

## Obstruction of view

30(1) The minister may, for the purpose of diminishing the danger at any railway crossing with a public highway or another railway line, order:

(a) any trees, buildings, earth or other obstruction to the view that may be on the railway or the highway or any trees on any adjoining lands to be removed; and

(b) that nothing obstructing the view shall be placed at the crossing or nearer to the crossing than the minister may direct in the order.

(2) For the purposes of an order made pursuant to subsection (1), the minister has power to authorize or direct:

(a) the expropriation of any land in accordance with The Expropriation Procedure Act;

(b) the acquisition of any interest in land;

(c) the apportionment of costs associated with the carrying out of the order between parties who are affected by the order; and

(d) the doing of anything that the minister considers necessary for the purposes of subsection (1).

## Accidents

31(1) The Lieutenant Governor in Council may make regulations:

(a) prescribing the classes of accidents that shall be reported by a railway company immediately to the minister and requiring them to be reported;

(b) prescribing the contents of accident reports and the manner and form in which those accident reports are to be provided to the minister.

(2) Every railway company shall file with the board once in each year at a time specified by the board a statutory declaration setting out details regarding accidents and injury to persons

or property that have occurred on the railway owned or operated by that railway company during the preceding 12 months.

(3) The statutory declaration filed pursuant to subsection (2) shall include:

- (a) a description of each accident and the causes of it;
- (b) an indication of where and when the accident occurred; and
- (c) all particulars relating to the accident.

(4) No information filed pursuant to this section is available for public inspection but the information filed pursuant to subsection (1) is the property of the minister and the information filed pursuant to subsection (2) is the property of the board.

(5) Information filed pursuant to this section is admissible in evidence only for the purpose of proving compliance with this section and for no other purpose.

#### Investigation

32(1) The minister may investigate or cause to be investigated by any person or the board any accident that takes place on a railway.

(2) The railway company and its agents and servants shall co-operate fully with and comply with any reasonable request of any person conducting an investigation pursuant to this section or the board, as the case may be.

(3) The minister may make any order that the minister considers appropriate during an investigation of an accident, including prohibiting any person from operating a train during the period of that investigation.

#### Fire prevention

33 Every railway company shall at all times:

- (a) maintain and keep its right of way free from dead or dry grass, weeds and other combustible matter; and
- (b) take any other measures necessary to prevent fire and the spread of fire.

#### Defective railway

34 No railway company or officer or employee of a railway company shall knowingly use or operate a railway that is defective in any way.

#### Trains have right of way

35(1) Subject to subsection (2), every train operating on a railway line is deemed to have the right of way at every public highway crossing.

(2) This section does not apply to those classes of trains that may be exempted in the regulations.

### PART V

#### Tolls

#### Tolls

36 Subject to section 37, each railway company may determine the tolls to be charged for the carriage of traffic on its railway and the manner in which those tolls are to be paid.

#### Regulations re tolls

37 The board may make regulations:

- (a) prescribing the maximum tolls that may be charged for the carriage of any traffic or class of traffic;
- (b) requiring the filing of tolls with the board and prescribing the manner and contents of that filing;
- (c) requiring the publication of tolls and prescribing the manner of publication;
- (d) requiring the filing with the board of any agreement between one or more railway companies and a shipper respecting the movement of traffic at rates other than published tolls.

#### Joint tariffs

38(1) Where traffic is to move over any continuous railway line, portions of which are operated by two or more railway companies, those companies shall, at the request of the shipper intending to move the traffic, agree on:

- (a) a joint tariff for the continuous route; and
- (b) the apportionment of the rate set out in the joint tariff.

(2) Where the railway companies operating a continuous route fail to agree on a joint tariff or the apportionment of a rate set out in a joint tariff pursuant to subsection (1), any shipper intending to move traffic over that continuous route or portion of that route may apply to the board for an order:

- (a) determining the route;
- (b) fixing the rate for the route;
- (c) apportioning that rate among those companies; and
- (d) determining the dates, no earlier than the date of receipt of the application by the board, when the rate fixed pursuant to clause (b) shall come into effect.

(3) Subject to subsection (4), where the board receives an application pursuant to subsection (2), it may make the order requested.

(4) Where the board makes an order pursuant to subsection (3), it shall do so within 90 days after the date the application was received by the board.

#### Contracts limiting liability

39(1) A railway company shall not limit or restrict its liability to a shipper with respect to the transportation of traffic of the shipper otherwise than by means of a written agreement signed by the shipper or by an association or other body representative of shippers.

(2) In the absence of an agreement mentioned in subsection (1), the extent to which a railway company's liability may be limited or restricted with respect to any traffic and the terms and conditions of the limitation or restriction shall be those:

- (a) that the board, by order, on the application of the railway company, may specify with respect to that traffic; or
- (b) where no order pursuant to clause (a) has been made with respect to that traffic, that are generally applicable to a common carrier.

#### Obligations as carrier

- 40(1) Where reasonable, every railway company shall provide adequate and suitable accommodation for:
- (a) the receiving, carrying and delivering of traffic;
  - (b) the interchange of traffic without delay or disadvantage between its railway lines and the railway lines of other railway companies; and
  - (c) the return of rolling stock.
- (2) For the purposes of clause (1)(b), other railway companies include railway companies that:
- (a) are incorporated pursuant to the laws of the Parliament of Canada; and
  - (b) desire to receive, carry, deliver or interchange traffic and return rolling stock with a railway company within the meaning of this Act.
- (3) For the purposes of subsection (1), adequate and suitable accommodation includes reasonable facilities for the receiving, carrying and delivering by the railway company:
- (a) at the request of any other railway company, of through traffic and, in the case of goods shipped by carload, of the car with the goods shipped in it, to and from the railway of that other company, at a through rate; and
  - (b) at the request of any person interested in through traffic, of that traffic at through rates.
- (4) Every railway company that has or operates a railway line that forms part of a continuous line of railway with or that intersects any other railway line, or that has any terminus, station or wharf near to any terminus, station or wharf of any other railway line, shall afford all reasonable facilities for delivering to that other railway line, or for receiving from or carrying by its railway line, all the traffic arriving by that other railway line without any unreasonable delay, so that:
- (a) no obstruction is offered to the public desiring to use those railway lines as a continuous line of transportation; and
  - (b) all reasonable accommodation, by means of the railway lines of those companies, is at all times afforded to the public for that purpose.
- (5) Where subsections (1) to (4) have not been waived pursuant to subsection (6), any person who suffers damage as a result of a breach of this section by a railway company may bring an action against the railway company to recover damages.
- (6) The board may by order waive any of the requirements of subsections (1) to (4) on the application of a railway company.
- (7) On the application of:
- (a) a person seeking carriage of the person's traffic by a railway company that has received an order pursuant to subsection (6); or
  - (b) a person who is aggrieved by a decision of a railway company described in clause (a);
- and where the board considers it to be appropriate, the board may revoke the order in whole or in part or may amend or vary the order.

## PART VI

## Land Acquisition and Entry

Expropriation

41 No railway company shall take any land for the purposes of a railway line without the consent of the owner of the land unless it first complies with The Expropriation Procedure Act.

Appropriation of land

42(1) Subject to the approval of the Lieutenant Governor in Council, a railway company may take as much of the lands or interest in the lands of:

- (a) the Crown, other than a public highway; or
- (b) other persons including railway companies;

as may be necessary for the building, constructing or operating of its railway.

(2) The Lieutenant Governor in Council may make any order that the Lieutenant Governor in Council considers appropriate regarding an expropriation made pursuant to subsection (1) with respect to land owned by another railway company and may impose any conditions or restrictions on either company that the Lieutenant Governor in Council considers to be just in the circumstances.

(3) Notwithstanding any provision of The Northern Municipalities Act, The Rural Municipality Act or The Urban Municipalities Act, 1984, a railway company may, subject to having first obtained the written consent of the minister responsible for the administration of The Highways and Transportation Act and to any conditions prescribed by him, construct, maintain and operate its railway on, across, over or under any public highway.

(4) The manner in which and the terms on which a railway company shall enter on and use any land, other than a public highway, shall be as set forth in any agreement between the company and the owner of the land.

(5) In the absence of an agreement, the railway company may, without the consent of the owner, enter on the land and survey and take levels of the land or take any samples and borings and sink any trial pits that it considers necessary with respect to the construction of a railway line.

Snow fences, etc.

43(1) At any time during the period commencing on November 1 in one year and ending on April 30 in the next year, a railway company may by its agents or servants enter on land adjoining a railway line to:

- (a) erect snow fences on that land and maintain and remove them;
- (b) make snow ridges on that land.

(2) A person who:

- (a) obstructs or interferes with an agent or servant of the railway company engaged in exercising on behalf of the railway company any of the powers conferred by subsection (1); or
- (b) takes down, removes or otherwise interferes with a snow fence erected or snow ridge made pursuant to subsection (1);

is liable to the railway company for the amount of damage caused.

(3) Where a railway company causes damage to land pursuant to subsection (1), it is liable



to the owner of the land for the amount of that damage.

(4) No railway company that has erected a snow fence on land pursuant to this section shall fail to remove that snow fence on or before April 30.

#### Entry on land

44(1) A railway company may, by its agents or servants, enter on land that is within 200 metres of the railway line for the purpose of constructing or repairing the railway and maintaining the railway in safe condition.

(2) Where an owner denies a railway company access to his land pursuant to this section, a judge of Her Majesty's Court of Queen's Bench for Saskatchewan may, on the ex parte application of the railway company, order the land owner to grant access to the railway company as provided for in subsection (1).

(3) Where a railway company causes damage to land as a result of any action taken pursuant to subsection (1), it is liable to the owner of the land for the amount of those damages.

### PART VII General

#### Regulations re returns

45 The Lieutenant Governor in Council may make regulations respecting the returns required to be filed by railway companies with the board, including regulations:

- (a) prescribing the classes of returns required;
- (b) prescribing the form and manner in which returns are to be made;
- (c) prescribing the financial information and detail regarding the financial transactions of the railway company required to be filed with the board;
- (d) declaring information provided to the board pursuant to this section to be confidential and inadmissible in evidence.

#### Examination on oath

46 The board may:

- (a) summon and examine under oath any officer or employee of a railway company or other person regarding a return mentioned in section 45; and
- (b) require the production of any books or documents in the possession or under the control of the railway company or an officer or employee of the railway company for the purpose of verifying information provided to the board pursuant to regulations made under section 45.

#### Transfer, etc., prohibited

47(1) No person shall capitalize, sell, assign, lease or transfer an operating authority certificate or an authorization certificate in whole or in part without the prior approval of the board.

(2) A person seeking to obtain the approval of the board pursuant to subsection (1) shall apply to the board for the approval.

(3) The board may require any corporation that owns a railway or that is the holder of an operating authority certificate or authorization certificate to report to the board any issue, cancellation, conversion, surrender or transfer of its securities.

(4) Where the board is of the opinion that an issue, cancellation, conversion, surrender or transfer of securities:

(a) has affected the control of a corporation described in subsection (2); and

(b) has not received the prior written approval of the board;

the board may issue an order deeming the issue, cancellation, conversion, surrender or transfer to be a transfer contrary to subsection (1) of all operating authority certificates and authorization certificates held by the corporation.

(5) Where the board makes an order pursuant to subsection (4), it may review the certificate and may suspend, alter or revoke it.

(6) The board may review any operating authority certificate or authorization certificate that has been capitalized, sold, assigned, leased or transferred contrary to this section and may suspend, alter or revoke the certificate.

#### Obligations continue on transfer

48 Where there is a change in the ownership of a railway line, the new owner is deemed to assume all of the obligations of the previous owner with respect to owners of land adjacent to the railway line.

#### Liability of railway company

49 No provision of this Act and no inspection conducted or action authorized pursuant to this Act in any way relieves a railway company of any responsibility it would otherwise have at law.

#### Liability for contravention

50 Any:

(a) railway company that; or

(b) director, officer or employee of a railway company who;

contravenes any provision of this Act or the regulations is liable for any damage caused to person or property as a result of that contravention.

#### Immunity

51 No action or proceeding lies against the minister, the department, any officer or employee of the department, the board or any officer or employee of the board for any matter or thing in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them, pursuant to or in exercise of or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations.

#### Offence and penalty

52 Any person who contravenes:

- (a) any provision of this Act or the regulations for which no other penalty is specifically provided;
- (b) an order of the board; or
- (c) an order of the minister;

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 and, where the offence is a continuing offence, a further fine of not more than \$200 for each day during which the offence continues.

#### Regulations

53 The Lieutenant Governor in Council may make regulations:

- (a) prescribing matters respecting:
  - (i) the crossing of public highways and other roads by railway lines;
  - (ii) the operation of trains near, on or across public highways;
- (b) prescribing the classes of crossings and safety features required by railway lines and requiring the maintenance of those crossings and safety features;
- (c) prescribing matters respecting the provision of access to private property that is adjacent to a railway line;
- (d) determining who shall pay any costs associated with the requirements of regulations made pursuant to clauses (a) to (c);
- (e) prescribing requirements to be met with respect to bridges, tunnels or other structures over, through or under which railway lines pass;
- (f) prescribing specifications for all equipment and devices to be used on railways;
- (g) prescribing and requiring the payment of fees and charges that are payable to the minister or the board in connection with carrying out of the minister's or the board's duties pursuant to this Act;
- (h) prescribing the extent of authority granted by operating authority certificates and temporary operating authority certificates;
- (i) prescribing the terms and conditions pursuant to which operating authority certificates and temporary operating authority certificates may be issued;
- (j) prescribing any other matter respecting operating authority certificates or temporary operating authority certificates that the Lieutenant Governor in Council considers necessary;
- (k) prescribing classes of trains that are exempt from section 35;
- (l) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (m) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act.

#### Powers of board

54 In carrying out its duties and exercising its powers pursuant to this Act, the board has all of the powers, duties and functions set out in Part II of The Highway Traffic Act.

#### Order re compliance

55 Where:

- (a) a railway company is not complying with this Act;
  - (b) a person seeking to have a service required to be provided pursuant to this Act provided by the railway company mentioned in clause (a) applies to the board for an order; and
  - (c) the board considers it appropriate to issue an order;
- the board may issue an order directing the railway company to comply with this Act.

Board orders

56(1) A certified copy of any order of the board made pursuant to section 21 may be filed in the office of a local registrar of Her Majesty's Court of Queen's Bench for Saskatchewan and on that filing is enforceable in the same manner as a judgment or order of the court.

(2) Notwithstanding that an order has been filed pursuant to subsection (1), the board may rescind or vary that order.

(3) In an application to a court arising out of the failure of a holder of an operating authority certificate to comply with an order of the board, the court may refer any question concerning compliance to the board.

(4) An application to enforce an order of the board may be made to a court by and in the name of the board.

(5) On application pursuant to subsection (4), the court:

- (a) is bound by the findings of the board; and
  - (b) shall make any order that may be necessary to cause every holder of an operating authority certificate with respect to whom the application is made to comply with the order of the board.
- (6) The board may in its own name appeal any judgment, decision or order of any court affecting any of its orders or decisions.

## PART VIII

### Repeal, Transitional and Coming into force

R.S.S. 1978, c.S-33 and certain private Acts repealed

57(1) The Saskatchewan Railway Act is repealed.

(2) The following private Acts are repealed:

- (a) An Act to incorporate the Canadian Central Railway Company;
- (b) An Act to incorporate the Canadian Northern Saskatchewan Railway Company;
- (c) An Act to incorporate Central Canada Saskatchewan Railway Company;
- (d) An Act to incorporate Central Provinces Railway Company;
- (e) An Act to incorporate The Farmers' Railway Company;
- (f) An Act to incorporate The Grand Trunk Pacific Saskatchewan Railway Company;
- (g) An Act to incorporate The Moose Jaw and Suburban Rapid Transit Railway Company;
- (h) An Act to incorporate the Moose Jaw Electric Railway Company;
- (i) An Act to incorporate The Moose Jaw Transportation Company Limited and to

confirm a certain Agreement between the City of Moose Jaw and The Moose Jaw Electric Railway Company limited;

- (j) An Act to incorporate The Regina and Saskatchewan Railway Company;
- (k) An Act to incorporate The Regina Inter-Urban Tramway Company;
- (l) An Act to incorporate the Regina-Moose Jaw Interurban Railway;
- (m) An Act to incorporate The Regina Southern Railway Company;
- (n) An Act to incorporate The Saskatchewan and Alberta Railway Company;
- (o) An Act to incorporate The Saskatchewan and Hudson Bay Railway Company;
- (p) An Act to incorporate The Saskatchewan and Southern Railway Company;
- (q) An Act to incorporate The Saskatchewan Central Railway Company;
- (r) An Act to incorporate The Saskatchewan Midland Railway Company;
- (s) An Act to incorporate The Saskatchewan North-Western Railway Company;
- (t) An Act to incorporate The Saskatoon Electric Railway and Power Company;
- (u) An Act to incorporate The Saskatoon Transfer Railway Company;
- (v) An Act to incorporate The Shaw Lumber and Railway Company;
- (w) An Act to incorporate The Watrous Radial Railway Company.

#### Transitional

58(1) Every person who operates a railway on the day on which section 16 of this Act comes into force is deemed to have a temporary operating authority certificate for a period of six months after that date.

(2) Every railway which exists on the day section 24 comes into effect is deemed to have the approval of the minister pursuant to section 24.

(3) Where the minister considers it appropriate, the minister may require a person who owns a railway described in subsection (2) to file detailed plans of the railway line as constructed, certified by a land surveyor registered in Saskatchewan to be correct in accordance with section 8.

(4) Where the minister has required a person who owns a railway to file plans with the minister pursuant to subsection (3), that person shall comply with the requirement.

#### Coming into force

59 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.