

# INTRODUCTION

The central role played by railways in the economic and political history of Canada is amply reflected in our law books. In a century and a half of railway history several thousand companies have been chartered to build railways, and the pages of our statutes depict the origins, growth and vicissitudes of virtually all of them.

Railway charters in effect established local monopolies in a commercially strategic, political sensitive and in most cases publicly subsidized field of business. Legislatures showed little inclination to part with direct control over the chartering of railway companies by delegating it to government departments, as they did for other kinds of corporations, or by enacting schemes of self-chartering, as did some of the US states. Railway charters and their numerous amendments have, with few exceptions, taken the form of Acts of legislative bodies. In the latter part of the nineteenth century it was not uncommon to find a quarter or more of the Acts in any volume of federal or provincial statutes devoted to the affairs of private railway companies.

As a result we have a record, in a relatively uniform and accessible form, of many facets of the conceptual, legal and corporate development of Canada's railways from the earliest times down to the present day. The purpose of this work is, first to present a practical synopsis of this voluminous body of legislation and certain related documents and, second to serve as a finding aid that will enhance access to the original sources.

## Federal and Provincial Legislation

Since 1867, legislative jurisdiction over railways has been shared by the Dominion or national government and the provinces. The division between their respective spheres is set out in general terms in the British North American Act, 1867 (re-named the Constitution Act, 1867), a statute of the United Kingdom and Canada's basic constitutional document. It accords to the Parliament of Canada exclusive power to make laws in relation to railways, telegraphs and other works connecting two or more provinces or extending beyond the limits of one province. The provincial legislatures have exclusive authority over all the remaining works and undertakings. In other words, those wholly within one province. In its interpretation by the courts, this distribution of powers has given rise to interesting questions, leading to judicial refinement of the bare terms of the Act.

Beyond this primary allocation, the BNA Act contains an unusual provision allowing the federal Parliament to appropriate jurisdiction for itself over an otherwise provincial railway. This is accomplished merely by a declaration, in a statute, that the railway is "a work for the general advantage of Canada." Such a device has been employed on many occasions, sometimes to extend federal jurisdiction over existing, provincially chartered railways, or at other times to enable an intra-provincial railway to be built under a federal charter in the first place.

The BNA Act, of course, only applied within a province after that province joined Confederation. As a separate colony, it was free to legislate for all railways and portions of railways within its boundaries, even though they might extend beyond. The first provinces to participate in the federal union were Canada, New Brunswick and Nova Scotia in 1867. At the same time, the Province of Canada, formed in 1841 by the merging of Upper and Lower Canada, was divided into Ontario and Quebec. Subsequent parties to the federation were British Columbia in 1871, Prince Edward Island in 1873 and Newfoundland in 1949. The three prairie provinces were created out of the Northwest Territories, Manitoba in 1870, Saskatchewan and Alberta in 1905.

## Corporate Evolution and Consolidation

Most of the railway companies that were chartered in Canada did not reach the stage of laying track or running trains. Few of those that did were rewarded with corporate longevity. The majority of the lines built passed through a series of owning or operating entities, both private or governmental.

The proprietary evolution of railways has been characterized by two principal tendencies. On one hand, smaller railways have tended to be absorbed into larger systems, by purchase, lease,

acquisition of shares or outright amalgamation. On the other hand, railway companies both small and large have often fought a losing battle to remain solvent. The inevitable consequence of default was a change or restructuring of ownership. (At a time when railways were the principal mode of transportation, the dismantling of a going concern was less viable an alternative than finding new owners.)

The pattern of insolvency and subsequent reorganization appeared early in the development of railways. Assets of a company were commonly mortgaged to trustees for the bondholders in order to provide security for the payment of interest as well as the ultimate repayment of the principal. In the event of a default on either interest or principal, events were set in motion which culminated in one of several outcomes, depending on the circumstances and the terms of the mortgage. The trustees could have a receiver appointed to oversee the company's operations in the interests of the bondholders. They could foreclose and take over direct operation of the railway themselves. Or they could compel a public sale of the property to the highest bidder. Although company charters usually contemplated such mortgages with their potential consequences, the bondholders or other new owners almost always sought the assurance of legislative sanction. There are numerous special Acts "confirming" the changing of hands, or reconstituting an earlier charter. Apart from the change in management and (often) a modified corporate name, such crises could be weathered without a major transformation of the railway in its day-to-day operations.

Railway operations were, however, significantly affected by the process of consolidation. Here a number of other familiar legal devices were available. Physical assets of one company could be acquired by another, by purchase or long-term lease. Alternatively, one company could acquire control of another by the purchase of shares, while the two properties were left separate. Yet again, two companies could amalgamate into a single company with common shareholders and common assets, perhaps retaining the name and identity of one of the constituents. Often more than one of these techniques were employed during the course of a single corporate courtship.

In acquiring possession of the assets of a solvent railway, a lease was usually preferred to outright purchase as it required no capital investment yet assured the lessee of control of the lessor's property, usually for decades if not in perpetuity. The amount of the annual rent was sometimes fixed and sometimes depended on earnings. The other terms varied from lease to lease. At one extreme, the lessee not only assumed direct operation of the lessor's railway as part of its own system, but also took on the payment of fixed charges such as bond interest and taxes, while the lessor receded totally from public view, merely collecting the rent and distributing dividends to its own share-holders. At the other end of the spectrum, the lessor continued to operate under its own separate identity, though operations were more or less integrated into the lessee's system.

A more indirect means of acquiring control of another company is to purchase shares of its stock. Ownership of a majority of shares by the parent enables it to control the election of the directors of the subsidiary. However, minority shareholders enjoy certain rights that may prove an obstacle to the parent, and ownership of all of the shares is in some cases desirable, as when amalgamation or a purchase or lease of the property is resisted. The acquisition of shares may take place all at once as soon as they are issued at the time of the subsidiary's incorporation, or gradually as existing shareholders become disposed to sell. But the subsidiary continues to exist as a separate corporation, and its operations do not necessarily become assimilated with those of the parent without a lease or other arrangement to that effect.

Two companies that are otherwise unrelated may enter into an agreement for common use of a particular track segment in order to avoid duplication of their facilities between two points. The company having ownership or possession of the line grants running rights, also called trackage rights, to another company, with or without access to fuelling facilities, stations and industrial sidings. In a variation sometimes found in terminal areas, two (or more) companies share running rights over the tracks of a joint subsidiary whose shares are held by them in equal proportions. Common ownership of the right-of-way itself by different companies has been employed only rarely.

## **Scope of Entries**

The railway companies listed in this volume are based on Dorman's A Statutory History of the Steam and Electric Railways of Canada, 1836-1937, and the extensive research carried out by Doug Stoltz. Additional information was taken from the Canadian National Railways Synoptical History of Organization, Capital Stock, Funded Debt and Other General Information as of December 31, 1960, compiled by A.B. Hooper and T. Keamey, and from the Finding List of Canadian Railway Companies before 1915, compiled by Noel G. Butlin for the Association of American Railroads in 1953. Further information has been included as the result of research conducted at Queen's University in 1984. The identification of statutory citations is reasonably complete to the late 1970s, but somewhat incomplete for the early 1980s.

This work is intended for use as a reference, as a starting point for research. The synopses of legislation are meant to outline the salient features. It is assumed that those who require more than rough approximations will refer to the original materials. The information included in notes will facilitate understanding of the legislation and, in some cases, complete an outline of a particular company's history. A complete history of each of the companies listed is beyond the scope of this work.

Not all the companies with powers to build or acquire and operate railways in Canada up to 1973 inclusive are included. In general, only significant companies are listed. Similarly, not all statutory citations have been included, and, in some cases, it has not been possible to identify the exact chapter of the relevant legislation cited. These are indicated by citations such as S.C. 1933, c. XX.

## **Company Names**

Many company names given in English have been slightly modified in this work. The definite article "the" has been omitted where appropriate and abbreviations have been substituted for "Railway", "Company", and "Limited". Those company names which appear in headings with "Ltd" may appear in synopses without. In general, however, the spellings and abbreviations used in the original legislation have been maintained.

Where a company name appeared in English and French in legislation, only the English equivalent (or a slightly modified version) has been used. Company names given only in French have not been translated.

There are some instances where a particular company name has been chartered more than once. In the original Dorman, some such instances were indicated by appending a "Number 1" and "Number 2" to the company names. This convention has not been followed here. For each instance of the use of a duplicate company name, a separate corporate entry has been made. These entries appear in chronological order. There are multiple entries for the following railway company names

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British Columbia Central Ry Co.  
Canada Eastern Ry Co.  
Manitoba Central Ry Co.  
Manitoba Southern Ry Co.  
Montreal and James Bay Ry Co.  
Ontario Central Ry Co.  
Ottawa and Gatineau Valley Ry Co.  
Ottawa River Ry Co.  
Ottawa Valley Ry Co.  
Pacific and Peace River Ry Co.  
Peterborough and Chemong Lake Ry Co.  
Port Arthur Street Ry Co.  
Quebec and James Bay Ry Co.  
Quebec and New Brunswick Ry Co.  
Quebec and Saguenay Ry Co.  
Quebec Bridge Co.  
Quebec Oriental Ry Co.  
St. Francis Valley Ry Co.  
Saint John Valley Ry Co.  
Saskatchewan Central Ry Co.  
Selkirk Electric Ry Co.  
South Shore Ry Co.  
Sussex, Studholm and Havelock Ry Co.  
Sydney and East Bay Ry Co., Ltd.  
Sydney and Louisburg Ry Co.  
Western Counties Ry Co.  
Windsor and Annapolis Ry Co.  
Yarmouth and Digby Electric Ry Co., Ltd.

### **Frequently Used Terms**

**ACT, STATUTE:** a written law enacted by a legislature. Statutory law may be distinguished from common law, the body of principles applied and developed by the courts in the course of resolving specific disputes. By the enactment of statutes, legislative bodies have the capacity to bring about abrupt changes or innovations in the underlying policy and the practical working of law. This may include the imposition of a scheme of public regulation of specified activities such as the construction and operation of railways.

Acts are public or private depending on whether they apply to a whole class of persons and activities, such as the general Railway Act of Canada or province, or relate to specific individuals or a particular project, such as an Act incorporating a railway company. In either case they begin life as a Bill introduced in the legislature. A private Bill must be petitioned for by its promoters, who must appear before a committee to argue the necessity of the Bill. Such Bills are sponsored by private members of the legislature, whereas most of the public Bills that become law are sponsored by Ministers of the Crown. Bills relating to Crown corporations are generally treated as public Bills.

**ORDINANCES:** laws enacted by an appointed governor or legislative council as opposed to an elected assembly. The term continues to be used for enactments of the legislative assemblies of the territories in view of their subordinate character.

**ORDERS-IN-COUNCIL:** instruments enacted by Cabinet, that is, by the Governor General or the Lieutenant Governor in Council. The authority to make them is conferred by statute, with certain exceptions not relevant to the present context.

**CHARTERS:** the formal instruments constituting a corporate body, regulating its internal organization and defining the extent of its corporate powers. In the case of railway companies, the charter and subsequent amendments constitute the legal authority to construct and operate lines on specified routes. The authority to construct railways was generally subject to prescribed time limits, which accounts for the numerous amending Acts that provide extensions to time. Corporate charters take different forms, from letters patent issued by or on behalf of the Crown to articles of incorporation issued routinely upon simple application under a general corporations Act. Railway charters in Canada have almost invariably taken the form of special Acts, a technique once available to all companies but now restricted mainly to those requiring extraordinary powers such as expropriation. Individual charters must always be read in the light of the general railway legislation of the enacting jurisdiction, which are the host of rules that apply to railways and railway companies in common. These are found in Railway Acts enacted by legislatures and in the detailed regulation issued by regulatory agencies in carrying out the terms of the Acts.

**COMPANY, CORPORATION:** a social, economic and legal entity by which persons associate together for a common purpose. A "company" or "firm" may or may not be incorporated but ordinarily has a business purpose unlike an "association" or "society", terms which usually connote charitable or recreational objectives. Any organization may have the status of a "corporation" whether it has business, charitable or governmental purposes. The essential feature of a corporation is its distinct legal existence and capacity, separate from the persons who constitute or manage it. Railway companies are invariably incorporated.

A corporation may hold title to property, enter contracts in its own name and pursue its rights in court. Although it can only act through individuals, the law recognizes it as a separate "person". The directors of a corporation may authorize the borrowing of money, an officer of the corporation may sign the loan agreement, and the share-holders may approve it at a general meeting, yet only the corporation is liable for the debt. In order to alert prospective creditors of this limited liability, general corporations statutes required the word "Limited" to appear in the corporate name. However, this practice was not as a rule carried over into special Acts of incorporation such as those establishing railway companies. Such a badge of corporate status was probably unnecessary. It would simply be assumed for enterprises as commercially prominent and physically extensive as railways.

**CAPITAL, SHARES, BONDS:** The capital of a corporation consists of the funds raised by it to invest in the acquisition and development of land, equipment and other assets. Capital is raised by the issue of shares of capital stock to shareholders and the issue of bonds to lenders. Shareholders are the joint owners of the company in the sense that they normally receive a share of any profits and would be entitled to participate in the distribution of assets if the company were dissolved. Preferred shares have a prior claim to dividends over common shares.

In the early decades of railway construction, shares were subscribed for by means of a small deposit, which then entitled the company to make regular calls on the shareholders for further instalments as construction proceeded.

Additional funds are raised by borrowing, with the company's property being employed as collateral. As evidence of the debt and to render it easily transferable, certificates known as bonds or debentures are issued to the creditors or bondholders as share certificates are issued to shareholders. Once issued by the company, both may be bought and sold on the open market. Interest must be paid on the company's bonds as on "all its other debts before the profits, if any, can be calculated and dividends paid to the shareholders.

Debenture stock resembles debt capital in that it bears fixed interest, but as with capital stock the principal is not repayable so long as the company remains in business and meets its interest payments.

**COMMON CARRIER:** one who holds himself out either by express words or by conduct as being willing to carry all traffic offered, whether generally or of a particular kind. In English common law, such a carrier incurred liability for damages suffered by a traveller or shipper as the result of this refusal to

carry. He also incurred liability for injury to passengers and goods or for the loss of goods entrusted to him for carriage whether or not negligence was proved. Although these rules have now been largely supplanted by legislation, the term is still employed loosely to distinguish carriers serving the public at large from private carriers operated by or for individual shippers.

**STEAM RAILWAYS, ELECTRIC RAILWAYS, TRAMWAYS:** the classification of railways for statistical purposes as either steam or electric followed the development of electric streetcars and their eventual extension onto suburban ("radial") and interurban routes. Electric railways were distinguishable from steam railways not only by their mode of propulsion but by their generally lighter construction, frequent sharing of rights of way with public highways, and short but frequent trains of self-propelled cars. Following the decline of most such operations, concurrent with the demise of steam locomotion, the distinction became obsolete.

A tramway generally speaking, is any railway of lighter than ordinary construction. The term has been used to differentiate wooden and iron railways, horse-powered and steam-powered ones, and street railways operated with streetcars ("trams") from conventional "mainline" railways carrying locomotive-hauled trains. In legislation in which the term appears, the distinction between tramway and railway is hardly clear.

**RIGHT-OF-WAY:** the strip of land occupied by a railway line. In Canada the title acquired by a railway company is the freehold itself and not merely an easement or limited right of occupancy. With a few exceptions, where a company abandons the operation of a line as part of its railway, it is free to dispose of the land in any way it sees fit.