The Evolution of Canadian Transportation Policy

Research conducted for the Canada Transportation Act Review

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Introduction

Any national transportation system should have an accepted and comprehensive policy statement. Legislated policy statements are parliament's instructions to the public service and regulatory bodies, enabling them to control, guide, encourage, and assist all the participants in transportation, in both the public and private sectors. The policy instruments — legislation, regulations, programmes, and actions that flow from the policy should reflect and reinforce its intent.

Policy instruments, and in particular, regulations, should not be directed at the particular processes or procedures of transportation — that is the task of management, not government.

In 1996, the Canada Transportation Act came into force, replacing the 1987 National Transportation Act, which in turn had replaced the first NTA of 1967. All three Acts open with a 'Declaration' a statement (sometimes known as the 'purpose clause') titled National Transportation Policy. While each successive version has incorporated both substantive and cosmetic additions, the current version (S.5), embodies, virtually intact, all the policy objectives that were first enunciated in the 1967 NTA.] Canada can be said, therefore, to be continuing a consistent federal policy direction that began over thirty years ago. It was not always so.

For much of Canada's history, there was no such explicit, legislated transportation policy. The National Transportation Act of 1967 contained the first formal statement of an all-embracing policy that derived from principles and assumptions about transportation rather than from other national or regional interests.

Transportation Policy before 1967

Both before and after Confederation, governmental involvement in transportation was predicated almost entirely on non-transportation issues and concerns. Transport was seen as a means of furthering national policies and objectives in a variety of different areas.

The first significant transport investment, for strategic military purposes, was in the canals of the early part of the 19th century. Built by British army engineers to provide secure supply routes invulnerable to US attack, it was some years before civil vessels were allowed to use either the canals or the Great Lakes for commercial transportation purposes.

The coming of the railways in the mid-19th century offered the first possibility of a national transportation service. It was seen by successive governments primarily as a tool for achieving national policies and objectives and, in particular, as a powerful bargaining chip in bringing several provinces into Confederation. Extensive concessions were granted to the promoters and entrepreneurs willing to build new lines; land grants, far beyond the immediate needs for provision of right of way, together with government-backed loans, were used to encourage builders and operators. With little or no perception of the true needs of the country, the inevitable outcome was an enormous excess and duplication of rail line capacity. Most of this excess has only recently been eliminated.

With the transcontinental lines in place, and with large tracts of land given to them by the Crown, the railways became major immigration agents. With government support, they moved European migrants to the Prairies, settling them on land that, when cleared and developed for farming, ensured they would be captive customers of the railway.

Early efforts were directed to getting a trans-continental railway built at any cost. Even though extensive government support mechanisms were required to encourage the early builders to go ahead, an essentially private enterprise mentality prevailed in the country. This dedication to competitive private enterprise, coupled with a keen desire to open up the Northwest, was clearly evident in the government's encouragement of a second, and later a third, transcontinental line resulting in rail capacity greatly in excess of any foreseeable needs, merely to avoid a monopoly situation.

The consequent, and inevitable, commercial failures that followed forced the government into an ownership role, primarily to protect Canada's image on international financial markets; much of the private investment in railways had been through bonds, guaranteed by the government, issued in Europe. The whole period of railway growth and development during the latter part of the 19th century and the restructuring after the bankruptcies in the early 20th century, was typified by government pragmatism, both in terms of the initiatives that it encouraged, and in the manner in which it dealt with the problems that resulted.

The rapid growth of the railways and their virtual stranglehold on transportation soon led to a formal regulatory process for rates. A commodity classification and tariff structure had been copied from Britain and the Railway Act of 1903 resulted in the establishment the next year of a Railway Commission to control rates and service. This process of rate regulation, steadily aligned with the Interstate Commerce Commission in the US, evolved into the *de facto* transport economic policy that remained in place until 1967.

The regulatory mechanisms over this period also underwent some structural changes. The Board of Railway Commissioners, when it was first formed, covered most of the commercial transport activity that existed at that time. When the need for a degree of regulation of the air mode became apparent in the 1930s, the name of the Board was changed to the Board of Transport Commissioners, and it assumed responsibility for air regulation.

This arrangement did not work; the Board was unable to respond appropriately or adequately to the fast-growing and dynamic young airline industry. This was not particularly surprising; the Board's whole expertise was oriented towards the rail mode, and it retained a strong railway bias (a bias that clearly has been transmitted to the Board's successor bodies, the CTC, the NTA and the current Canada Transportation Agency through the Acts of 1967, 1987 and 1996) In addition, the Board was responsible for telephone rate regulation, a function it had automatically acquired in 1906 as an extension of its jurisdiction over railways' commercial telegraph services. The Board's thinking and philosophy was thus attuned to monopolistic services with high fixed infrastructure costs.

This clearly did not suit the young and rapidly changing aviation scene (grass airfields, and railway tracks as the primary navaid, meant low infrastructure costs). To remedy this situation, the Air Transport Board was formed in 1944, taking over responsibility for regulating the air mode. From the outset it was much more an advisory than a judicial regulatory body, thus differing markedly from its parent. Aircraft certification and aircrew licensing functions were retained by the Department of Transport.

Similarly, the Board of Transport Commissioners was ordered to take into consideration marine transportation in addition to its regulation of the railways, However, in 1947 the Canadian Maritime Commission was established as a separate entity. Like the Air Transport Board, its function was largely advisory.

The National Transportation Act of 1967

The first National Transportation Act arose from what had been perhaps the most far-reaching of all the royal commissions on transportation, the MacPherson Commission. This Commission sat from 1959 to 1961, and the three volumes of its report and findings still have considerable relevance to the consideration of today's transport policy, as no comparable analysis has been undertaken since the Commission's work.

An underlying reason for setting up the MacPherson Commission was to find a way of adjusting the Canadian rail freight transportation system to the post-war reality of trucking. Competition between the rail and truck modes, on comparatively equal terms, was seen, not necessarily as the preferred solution, but as the only practicable direction in which to go.

Transport regulation before 1960 was dominated by the Board of Transport Commissioners' preoccupation with railway freight rates together with body of technical regulation aimed at operating consistency and safety. The Act aimed to shift the emphasis from a purely railway policy that had served as a surrogate for transport policy since Confederation. It introduced the idea of competition between the modes as the cornerstone of the new (or more correctly, the first) clearly enunciated transport policy, together with a multimodal regulatory commission that would apply the new policy consistently across the whole transport spectrum.

The heart of the Act was the opening policy statement; the remaining sections were all aimed at implementation of that policy. The policy statement opens with what has become an almost universal invocation ..."an economic, efficient and adequate transport system making best use of all available modes is essential ..." It is interesting to note that the equivalent, and very comparable, US. statement also included the adjective ***rapid***; this is perhaps more a reflection of the difference between the two national psyches than it is a substantive addition to their policy statement.

The Act also defined the following key principles that should underpin this policy:

- free competition between the modes;
- all modes should bear a fair proportion of the costs of services provided to them at public expense;
- regulation should not be restrictive
- compensation should be paid for services provided in the public interest; and,
- rates should not be unfair

While these principles stemmed from the MacPherson Commission, one of the key recommendations that was not transferred into the Act was related to subsidies. The Commission had recognized that transport is not normally considered to be of ultimate value, but serves a variety of other objectives. It proposed, therefore, that subsidies provided for national or regional policy purposes should not be disguised as support to the transport industry. Subsidies should be identified for what they really were and delivered in a manner that would leave the intended beneficiaries free to decide how they would use them. This change did not appear in the NTA of 1967 and is a serious policy deficiency that has still not been fully rectified.

The NTA of 1967 engendered much change in Canadian transportation. It did a number of things. It set out, for the first time in Canada's history, a comprehensive policy statement for Canadian transportation;

it created a single regulatory body; it provided a possible mechanism to bring extra-provincial trucking under federal control (but this Part of the Act was never proclaimed); it made extensive changes to existing modal legislation.

Rather surprisingly, the Act went further. It attempted to prescribe a mechanism for future policy development. Under Section 22, the Canadian Transport Commission (CTC), which was established by the Act, was given broad policy advisory powers. In fact, the Act did not merely authorize; it required that the CTC undertake research into policy questions; it was also empowered to initiate hearings on policy issues and to give policy advice to the Minister of Transport. It is not unreasonable to say that this policy-making mechanism failed completely during the life of the Act. It had been crafted with an eye to the personalities of the day rather than to an understanding of the realities of the governmental process. (Jack Pickersgill, the Minister of Transport responsible for the legislation, resigned from the government and his seat in the House almost as soon as the Bill was passed, in order to become the first President of the CTC. He clearly planned to keep control over transport policy from his new position.) While the policy role was eliminated from the 1987 legislation, it is somewhat ironic that some of the key architects of NTA 1987 came from the CTC, and subsequently joined the new Agency.

The 1967 -1987 Period

In the mid-seventies there was an attempt to modify the 1967 Act in the opposite direction from its original main thrust, away from the concept of competition. The argument revolved around the adjective 'adequate' in the policy statement of the NTA. While the word had been first proposed by the MacPherson Commission, there had been no attempt to define or restrict it. It had influenced the CTC in its assessment of 'public convenience and necessity' and in determining service and route recommendations. Pressure to redefine or extend the term 'adequate' to encompass both 'equity' and 'accessibility' of transportation services built up in some provinces and received support from elements in Transport Canada.

It was felt that transport should fulfill social and regional objectives rather than merely responding to market and economic forces. A Bill (C-33) amending the NTA stalled after first reading in Parliament in January, 1977. It was realized that opening up the NTA would also result in opening the Railway Act and would thus allow debate on many other parts of it. Discretion was seen as the better part of valour; the amending bill was quietly dropped. By the late seventies, its proponents had moved on, and such interest as there had been in the proposed changes had waned. The move toward deregulation had begun.

The 1967 Act had primarily benefited the railways, or redressed some of their previous disabilities. In the years since the Act was passed air and truck services matured and grew significantly. It was clearly becoming necessary to reassess needs and to decide whether or not any mode, or component of transport, still required any separate treatment in policy terms.

From its beginnings, the airline industry had been considered an 'infant industry' requiring government support and protection. This treatment no longer seemed appropriate or necessary, and a fair degree of *de facto* deregulation without recourse to legislation had taken place since 1984 on the initiative of the then Minister, Lloyd Axworthy.

Trucking regulation, a provincial responsibility, varied considerably from province to province, making interprovincial services cumbersome and uneven. One result was the rapid growth of private and contract operators that avoided the entry, routing and price constraints that applied to the for-hire truckers.

Regulation of transport prices and service levels came about originally because of the railways' natural monopoly (i.e., where barriers to entry are such that an efficient scale of production can only be achieved

by one or two firms). However, transport has few scale economies, particularly for trucking, and economies of density and scope do not support a need for extensive regulation.

Regulation tends to stifle both technological and service innovations, thus keeping rates higher than necessary. It is essential that there be no barriers to the most effective services and prices, particularly for export traffic, where transportation is a large (and for some commodities, the largest) cost component in the delivered price of some of Canada's major exports.

All these factors were combining to make a review of Canadian transport policy highly desirable. Even more significantly, economic deregulation of transportation in the United States had started in the late 1970s and had encompassed all modes of transport. This was having an increasing, and deleterious, impact on Canadian shippers and carriers, and a succession of studies and hearings by the CTC (in effect, an exploration of some policy issues) tended to confirm that fact.

Initially, it was thought that regulations could be eased, or modified in various ways, just for transborder and import/export traffic, the area where most of the difficulties due to the US - Canadian regulatory differences were arising. However, it was soon realized that having different regulatory regimes for the three categories of traffic, transborder, import/export and domestic, would create an unworkable mess.

Not only are the groups not mutually exclusive, but much traffic could be 'converted' from one category to another if there was a significant advantage in so doing. It was becoming painfully obvious that a more complete change to Canadian transportation policy was necessary

Freedom to Move and the National Transportation Act, 1987

Freedom to Move, the discussion paper issued by Don Mazankowski, then Minister of Transport, in June, 1985 to initiate the process of revising the NTA of 1967, gave a fairly clear view of the intended direction that Canadian transportation policy was to take. The document provided the basis for a series of cross-country hearings by the Standing Committee on Transport of the House of Commons, and a variety of other gatherings of interested parties. Before the discussions were over, bill C-126 emerged in June, 1986.

The Bill contained virtually all the ideas that had been enunciated in Freedom to Move.. The Bill was passed by the House of Commons in June of 1987 and by the Senate shortly after, given royal assent in August, and proclaimed on January 1, 1988.

One of the uncertainties about the policy statement is the extent to which it can be considered truly to be national. As the last lines of Section 3.(1) state, the legislation only has application to those pieces of the transportation system for which the federal government has legal responsibility. Clearly, some of the new policy provisions make little sense unless they are pursued consistently across all transportation activity in the country. The new clause 3.(2) was clearly meant to provide the opportunity, and perhaps the encouragement, for federal-provincial cooperation in transportation policy. The companion piece of legislation to the new NTA, the Motor Vehicle Transport Act, and the federal-provincial agreement on the development of a national Truck Safety Code, were significant first steps in the direction of a true national transportation policy. The provinces, within the Transport Association of Canada, are continuously working towards the consistency and uniformity of highway standards and regulations.

The policy principles of the old NTA were retained in the new version: competition, compensation to carriers for services performed in the public interest and equitable contributions for services provided at public expense. These all remained, together with the intent of ensuring economic, efficient and adequate services. They are, however, reinforced or amended by several new policy objectives. The concept of competition is extended to require competition within, as well as between modes; it serves as the primary

mediating force across the whole transport spectrum. Transport safety is specifically mentioned, as is the role of transportation in regional development and the needs of the disabled are recognized.

The parts of the Act covering the individual modes reflect, for the most part, these general policy principles. The *de facto* deregulation of the air mode that had been achieved by the government's actions in reversing CTC decisions was enshrined in the legislation.

As expected, many of the proposed changes were in response to the major deregulation moves in the US in recent years. The primary impact of the US deregulation on Canada had been on transborder and international traffic; Canadian freight carriers are at a significant disadvantage as they were not free to compete with, or participate in, confidential contracts

Competition was widened. Pricing restraints were largely removed; greater emphasis was put on both intra- and inter-modal competition. Common rates set by agreement among carriers within a mode were no longer permitted; confidential contracts between carrier and shipper were allowed. A procedure was introduced by which other railways could have access to customers served by only one railway's trackage.

Entry criteria for new transport undertakings are changed significantly. In place of the former proof of "public convenience and necessity", a "fit, willing and able" test will be applied.

The former regulations governing mergers and acquisitions that required an assessment and possible hearing by a CTC committee were eliminated for small- and medium-sized companies; the government retains some discretionary control over larger mergers. Investment Canada, the successor to the Foreign Investment Review Agency (FIRA), examines transportation company acquisitions by foreign corporations, using the same judgment criteria as for any other foreign corporate takeover.

The Motor Vehicle Transport Act, 1987

The failure to proclaim and implement Part III of the old NTA (which would have brought regulation of extra-provincial highway transport, both truck and bus, under the CTC) had been a serious defect in the implementation of the 1967 legislation. It has meant that both policy and the regulatory process have operated rather lop-sidedly, particularly for freight transportation. It also contributed to the inability of the CTC to operate effectively as a truly integrated transportation regulator.

This difficulty has been overcome to some extent. A federal-provincial agreement was signed in 1985, and the Motor Vehicle Transport Act (MVTA) became effective in January 1988, simultaneously with the new NTA. Effectively, this should result in extra-provincial trucking and bus operators being treated more uniformly across the country.

Licensing and entry was to be determined by the 'fit, willing and able' test introduced for the other modes under the NTA. While the provinces agreed to make this change, for some of them it appeared to be too radical to be achieved overnight. Accordingly, an intermediate step was introduced, the so-called 'reverse onus' clause, applied to the public interest test. This meant that an applicant for a new trucking license no longer had to provide proof that the public interest will be served by the proposed new service; those wishing to oppose the application (generally other truckers) had to justify their opposition. The pressure to introduce this interim process rather than moving to full deregulation came from established trucking organizations; this would seem to indicate that the old regulatory structure had become a rather comfortable crutch for those who were not so keen to see full competition in the industry. The provinces also agreed to eliminate the commodity and route restrictions that were attached to some truck route permits. This interim step ended on Jan 1 1993 and the Act then became fully in force.

The federal and provincial governments also cooperated on the development of a uniform National Safety Code for trucking. With the loosening of entry controls, and the resulting increased pressure on price competition, considerable concern was expressed from different quarters that safety might be compromised in the efforts to reduce costs. The uniform Code was slowly introduced with the aim of maintaining at least some minimum common safety standard. It did not, however, address the larger issue raised by the new clause 3.1.(a) of the NTA, i.e., how national uniform safety standards across all modes might be developed, and how the 'highest practicable standard' might be identified.

The Canadian Transportation Act, 1996

No significant changes were made to the policy declaration in the 1996 version of the Act. The regulatory agency was restructured and renamed; the *fit, willing and able* test was extended to applicants for domestic air licenses anywhere in Canada, with an added requirement to demonstrate prescribed financial requirements.

The most significant changes were in Part III of the Act, applying to the railways; a faster and easier process was introduced for the abandonment of unprofitable lines. Railways must offer the lines they wish to dispose of to other potential short line operators; failing that, to the various levels of government. If there are no takers, the line can be abandoned. The Act also made provision for the eventual treatment of grain transportation as any other commodity, consequent on further studies. This did not come about, and an amendment to the Act last year, retained and extended the cap on the railways' grain revenues.

Residual powers in the 1987 Act to regulate motor vehicle traffic were removed, consequent on the successful delegation of the powers under the MVTA to the provinces. Residual water transport regulation (on northern resupply) were dropped; mergers and acquisitions of transport undertakings are now covered by the Competition Bureau, rather than the Agency.

The next four pages contain the National Transportation Policy Declaration from each of the three Transportation Acts of 1967, 1987, 1996. They are set out clause by clause so that they can be compared.

The notes that follow on page 13 are cross-referenced by letter (A B C ...) to the clauses of Sec. 5 of the 1966 CTA

THE PURPOSE CLAUSE
NATIONAL TRANSPORTATION POLICY
1967 - 1987 - 1996

NTA '67	NTA '87	CTA '96
Sec.3. It is hereby declared that an economic, efficient and adequate transportation at the lowest total cost is essential to protect the interests of users of transportation and to maintain the economic well-being and growth of Canada, and that these objectives are most likely to be achieved when all modes of transport are able to compete, under conditions ensuring that having due regard to national policy and to legal and constitutional requirements	**Sec.3.** (1) It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services making the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travellers and to maintain the economic well-being and growth of Canada and its regions and that those objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under conditions ensuring that, having due regard to national policy and to legal and constitutional requirements	**Sec. 5. Declaration.—** It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities and that makes the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travellers, including persons with disabilities, and to maintain the economic well-being and growth of Canada and its regions and that those objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under conditions ensuring that, having due regard to national policy, to the advantages of harmonized federal and provincial regulatory approaches and to legal and constitutional requirements, **A**
	(a) the national transportation system meets the highest practicable safety standards,	(a) the national transportation system meets the highest practicable safety standards, **B**

NTA '67	NTA '87	CTA '96
	(b) competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services,	(b) competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services, **C**
	(c) economic regulation of carriers and modes of transportation occurs only in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other mode of transportation,	(c) economic regulation of carriers and modes of transportation occurs only in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and that such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other carrier or mode of transportation, **D**
	(d) transportation is recognised as a key to regional economic development and commercial viability of transportation links is balanced with regional economic development objectives in order that the potential economic strengths of each region may be realized,	(d) transportation is recognized as a key to regional economic development and that commercial viability of transportation links is balanced with regional economic development objectives so that the potential economic strengths of each region may be realized, **E**
(a) each mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that mode of transportation at public expense,	(e) each carrier or mode of transportation, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that carrier or mode of transportation at public expense,	(e) each carrier or mode of transportation, as far as is practicable, bears a fair proportion of the real costs of the resources, facilities and services provided to that carrier or mode of transportation at public expense, **F**

NTA '67	NTA '87	CTA '96
(b) each mode of transportation, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty, and	(f) each carrier or mode of transportation, so far as practicable, receives fair and reasonable compensation for the resources, facilities and services that it is required to provide as an imposed public duty, and	(f) each carrier or mode of transportation, as far as is practicable, receives fair and reasonable compensation for the resources, facilities and services that it is required to provide as an imposed public duty **G**
(c) each mode of transportation, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute	(g) each carrier or mode of transportation, so far as practicable, carries traffic to or from any point in Canada under fares, rates and conditions that do not constitute	(g) each carrier or mode of transportation, as far as is practicable, carries traffic to or from any point in Canada under fares, rates and conditions that do not constitute **H**
(i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved,	(i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved,	(i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, **I**
	(ii) an undue obstacle to the mobility of persons including those persons who are disabled,	(ii) an undue obstacle to the mobility of persons, including persons with disabilities, **J**
(ii) an undue obstacle to the interchange of commodities between points in Canada, or	(iii) an undue obstacle to the interchange of commodities between points in Canada, or	(iii) an undue obstacle to the interchange of commodities between points in Canada, or **K**
(iii) an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports,	(iv) an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports,	iv) an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports, **L**

NTA '67	NTA '87	CTA'96
		And (h) each mode of transportation is economically viable, **M**
and this Act is enacted in accordance with and for the attainment of so much of those objectives as fall within the purview of subject-matters under the legislative authority of the Parliament of Canada relating to transportation.	and this Act is enacted in accordance with and for the attainment of so much of those objectives as fall within the purview of subject-matters under the legislative authority of the Parliament of Canada relating to transportation.	and this Act is enacted in accordance with and for the attainment of those objectives to the extent that they fall within the purview of subject-matters under the legislative authority of Parliament relating to transportation. **N**
	(2) The Minister may, with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may specify, enter into agreements in support of the national transportation policy set out in subsection (1) or in respect of such transportation matters as the Minister considers appropriate.	**O**

Canada Transportation Act 1996
Section 5. Declaration
Notes and commentary
[capital letters reference each clause]

A.

1. This opening clause, in the first version in 1967, introduced intermodal competition as the key policy change from the former status of full price regulation. In 1987, competition was extended to apply intramodally, which removed modal tariffs. This remains unchanged in the current (1996) version.

2. 'Safe' was added in the 1987 Act as there was concern that deregulation and competition would encourage carriers to take undue risks in order to cut costs. Safety became a major preoccupation for Transport Canada, primarily in the rail and air modes, with a significant move to industry self-regulation. By any measure, the road mode is the leading source of transport accidents and fatalities, but is primarily a responsibility of the provinces. Additionally, recreational transport - surface, water and air - appears to be a growing problem

3. economic, efficient and adequate.....at lowest total cost These words have been in the declaration from the beginning. It is hardly correct to say without qualification that economy and efficiency of transportation services are essential to serve transportation users needs. Freight shippers need to meet their production and distribution requirements and standards at the lowest cost to them; this does not necessarily mean lowest transport costs.
For passenger transportation, the predominant choice is the automobile; it is the highest cost mode and is operated and used inefficiently (private automobiles are used about 5% of their available time). Scheduled air, bus and rail services are preferred, but scheduled services are generally less efficient than charter services.

4. network of viable and effective services This is a new descriptor that was added in this version. It does not apply to commercial carriers; they go out of business if they are not viable. It implies full cost recovery if it is intended to apply to all infrastructure and presently subsidized passenger services.
A 'variety of linked regional networks' might be more appropriate than a single network.

5. persons with disabilities This was an addition to the 1987 version [see clause (g) (ii)] to give legitimacy to the NT Agency's efforts to draw up regulations that would require carriers to provide facilities for assisting the disabled (now called persons with disabilities). Definition is difficult; while it is practicable for some modes of transport to accommodate persons with certain types of disabilities; an open-ended statement implying all transportation will handle all types of disability is not feasible.
In addition, it is not clear whether the cost of modifications and additional equipment that a carrier may have to provide comes under clause (f) *q.v.*

6. with due regard to national policy It may be desirable to identify specific national policies that effect transportation directly, e.g. sustainable transportation.

7. with due regard.....to the advantages of harmonized federal and provincial regulatory approaches
The 1987 version had a stronger statement in S.3 (2) It was inserted at that time to strengthen the Minister's hand in negotiating the introduction of the Motor Vehicle Transportation Act with the provinces. This current statement is too weak to be of much use, particularly if there is an intention to aim for a truly national transportation policy.

B. 1. This clause was introduced in the 1987 version and is unchanged.

2. There are clearly differences in ‘ acceptable and practicable’ levels of safety (or risk) across the Canadian spectrum; between passenger and freight services; between commercial and private operators; between acceptable risks to customers, the general public and employees; between northern , remote and southern services; between different seasons of the year.

3. ‘Practicable’ itself can imply technical/operational feasibility, or economic feasibility, or both.

C. 1. This clause was introduced in the 1987 version and is unchanged.

2. Market forces are the prime agents for effective services; competition should help to keep carrier costs at reasonable levels. Infrastructure, with appropriate user charges, can produce effective services; like any utility, infrastructure charges will need to be independently monitored.

D. 1. This clause was introduced in the 1987 version and is unchanged. It was probably directed to air services in the North.

2. It is not clear what the significance is of the separate identification of 'carriers' and 'modes of transportation'. It could be to cover infrastructure as well as carriers, or to imply that certain carriers within a mode might be regulated and others not.
In any case, modes do not compete, carriers do.

E. 1. This clause was introduced in the 1987 version and is unchanged. In 1987, with the significant deregulation , particularly of the railways, there was strong pressure from some provinces to maintain a measure of control to ensure that railways would be required to meet perceived local needs. It was also a hangover from the attempt, in the early ‘70s, to move away from competition as the main driving principle.

2. The clause was not effective, and serves no purpose, other than a cosmetic one.

F. This is, and has been since its initial appearance in the 1967 Act, an ambiguous statement, and is deliberately so. It is unclear whether the carriers' "fair proportions" are supposed to add up to the <u>total</u> real cost, or only to a "fair proportion" of the total. In any case, it has been effectively ignored. Variation of treatment within and between modes will probably continue.

G. This clause has been in place from 1967. Since that time, most major subsidies have been removed, and in some instances, there has been (as the MacPherson Commission originally recommended) a shift of government support programs to beneficiaries, rather than delivery through transportation subsidies.

H. Carriers do the carrying; the word ‘modes’ is unnecessary.

I. This clause, in place since 1967, was originally directed to the railways. Since 1987, the great majority of rail freight moves under confidential contracts, and the clause is not enforceable. It may still have some relevance and application in the air mode.

J. See **A.** 5 above. The Royal Commission on Passenger Transportation covered this issue extensively, but did not address the question of how additional costs to carriers were to be met.

K. & L. Both clauses were in the original 1967 version and have been carried forward without change. Equivocal in 1967, they do not appear to have any relevance today.

M. This clause was introduced in the 1996 Act. In referring to modal economic viability, rather than carrier viability, it seems to suggest that no mode, (or its infrastructure) should be subsidized. While this may well be a desirable goal, ferries, passenger rail and urban transit are unlikely to reach it in the foreseeable future.

N. This standard clause, virtually unchanged across all three Acts, confirms that Section 5. is a declaration of federal, rather than national transportation policy.

O. This clause, only in the 1987 version, is referred to in **A**. 7. above. It could well be repeated in the next version, with 'The Minister may...' being changed to 'The Minister shall...'.

A national transportation policy for the future

Some considerations:

1. The first question is whether there is a real desire to establish a true national transportation policy that has been designed and agreed to by the federal and provincial governments. There is a precedent for this; some years ago the then federal Minister of Science and Technology and the appropriate ministers of all the provinces and territories signed a joint Declaration of the National Sience and Technology Policy. [Unfortunately, requests to the successor federal department have not yet yielded a copy]
The reasonable success with the acceptance of the MVTA, although it was a slow process, suggests that it would be possible to arrive at a common policy.

2. If a national policy could be achieved, it would then be incorporated by reference into subsequent federal and provincial legislation as the 'purpose' clause.

3. It can be expected that a new, or amended, federal Canada Transportation Act will emerge in the next year or two, to accommodate the recommendations of the Review. This would be well before any national initiative. A revised Declaration should include a directive to the Minister to actively pursue that initiative.

4. As indicated in the clause by clause analysis, through the successive Acts a number of elements have accumulated in the policy Declaration which are more cosmetic than substantive. They could well be removed in a future version.

5. There is a pressing need to move to more consistent and equitable approaches to cost recovery, (from users and beneficiaries) for infrastructure and facilities provided by governments (federal, provincial and municipal) particularly in the case of highways and roads. Tackling this issue may well be a the route to a national transportation policy.

6.Continued subsidization of the Newfoundland ferry can be justified under the current policy because it is a constitutional obligation. Support money to VIA cannot be accommodated under the policy.The government's announced plan to become involved in urban transit will raise further questions. Some policy change will be required.

7. Specific policies, mostly within a single mode, abound in Transport Canada. A few are expressed in legislation, many are not. They should be consistent with the policy declaration in the CTA, but it is not clear that this test is ever applied.

8. It has been suggested that a 'Vision' statement is needed as a precursor to the policy declaration. Policy says 'how'; Vision would provide the 'why'. Again this approach may be of assistance in approaching a cooomon policy with the provinces.