

McCarthy Tétrault *Advance*TM : Transportation and Logistics Seminar

The Regulatory Impact of Technology and Cannabis
on the Freight Transportation Industry

Tuesday, May 22, 2018

Seminar Materials



Programme

Le programme *Progresser*^{MC} de McCarthy Tétrault :
Séminaire sur le transport et la logistique :

L'impact de la réglementation de la
technologie et du cannabis sur l'industrie du
transport de marchandises

Le mardi 22 mai 2018

HEURE (HNE)	SUJET	PRÉSENTATEUR(S)
11 h 30 à 12 h	Inscription et dîner	
12 h à 12 h 5	Mot de bienvenue	<u>David F. Blair</u>
12 h 5 à 12 h 25	Cannabis sur les lieux de travail	<u>Gérald Gauthier</u>
12 h 25 à 12 h 45	Enregistreurs électroniques de bord obligatoires	<u>Andreea Crisan</u>
12 h 45 à 13 h	Véhicules commerciaux autonomes	<u>Kosta Kalogiros</u>
13 h à 13 h 15	Risques criminels et réglementaires	<u>Brian Lipson</u>
13 h 15 à 13 h 25	Période de questions	
13 h 25 à 13 h 30	Mot de la fin	<u>David F. Blair</u>



Agenda

McCarthy Tétrault *Advance*TM: Transportation and Logistics Seminar

The Regulatory Impact of Technology and Cannabis on the Freight Transportation Industry

Tuesday, May 22, 2018

TIME (EST)	TOPIC	PRESENTER(S)
11:30 – 12:00	Registration and Lunch	
12:00 – 12:05	Opening Remarks	<u>David F. Blair</u>
12:05 – 12:25	Cannabis in the Workplace	<u>Gérald Gauthier</u>
12:25 – 12:45	Mandatory E-Logs	<u>Andreea Crisan</u>
12:45 – 1:00	Autonomous Commercial Vehicles	<u>Kosta Kalogiros</u>
1:00 – 1:15	Criminal and Regulatory Risk	<u>Brian Lipson</u>
1:15 – 1:25	Q&A Session	
1:25 – 1:30	Closing Remarks	<u>David F. Blair</u>



Speaker Biographies

McCarthy Tétrault *Advance*[™]: Transportation and Logistics Seminar

The Regulatory Impact of Technology and Cannabis
on the Freight Transportation Industry

Tuesday, May 22, 2018



David F. Blair

Profil



TITRE

Associé

BUREAU

Québec

FACULTÉ DE DROIT

Université Laval, LL. B.,
1979

LIGNE DIRECTE

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ADMISSION AU BARREAU

Québec, 1980

COURRIEL

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Biographie

David F. Blair est associé au sein du groupe du droit des affaires. Il pratique le droit des transports et est reconnu pour son expertise dans les domaines du transport interprovincial et international, de la réglementation des normes de sécurité, de la responsabilité des transporteurs et des questions afférentes à l'ALENA. M^e Blair représente divers clients canadiens et américains des secteurs du camionnage, des autobus et des chemins de fer, de même que du secteur minier. Il intervient régulièrement devant des organismes gouvernementaux et plaide devant les tribunaux administratifs et judiciaires relativement à des affaires de réglementation, de responsabilité et de comportement en sécurité. Dans le cadre de sa pratique, M^e Blair participe à des opérations de fusion et acquisition de sociétés fermées et à des dossiers du secteur du commerce de détail.

M^e Blair est reconnu comme un avocat de premier plan dans le domaine des transports (routier et ferroviaire) et du droit des sociétés du marché intermédiaire dans la dernière édition du répertoire juridique *Canadian Legal Expert Directory*. Son nom figure parmi les chefs de file dans le domaine du droit des transports depuis 2011 dans le guide *Best Lawyers in Canada* publié par Woodward/White. Il est également mentionné dans l'édition 2016 du guide *Chambers Global* pour son expérience en droit des transports. De plus, Il est classé dans le groupe de tête («Band 1») de l'édition 2017 du guide *Chambers Canada* dans le domaine du droit des transport (routier et ferroviaire) pour la région du Québec.

M^e Blair a été président de l'Association canadienne des avocats en transport. Il est membre du conseil d'administration de la Transportation Lawyers Association des États-Unis. Il est également engagé auprès de la communauté anglophone de la région de Québec en tant que directeur ou administrateur de nombreuses organisations socioculturelles. Il est en outre chancelier du diocèse anglican de Québec.

M^e Blair a été décoré de l'Ordre du Canada en décembre 2013.

M^e Blair a obtenu un LL. B. de l'Université Laval en 1979. Il a été admis au Barreau du Québec en 1980. Il est membre de l'Institut des administrateurs de sociétés, de l'Association du Barreau canadien, de l'Association canadienne des avocats en transport et de la Transportation Lawyers Association des États-Unis.

David F. Blair

Lawyer Profile



TITLE
Partner

OFFICE
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LAW SCHOOL
Université Laval, LLB,
1979

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BAR ADMISSIONS
Québec, 1980

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Biography

David F. Blair, is a Partner in our Business Law Group. He focuses his practice on transportation law. Mr. Blair is known for his expertise in interprovincial and international transportation, safety standards regulation, carriers' liability and NAFTA-related issues. He represents various Canadian and U.S. clients in the trucking, bus, rail industries as well as the mining sector. He regularly appears before administrative tribunals, agencies and the courts in regulatory, safety compliance and liability matters. His practice includes private M&A and retail sector transactions.

Mr. Blair is ranked in the 2017 edition of *Chambers Canada* in the area of transportation (rail and road) as a «Band 1» for the region of Quebec. He is also recognized in the most recent edition of the *Canadian Legal Expert Directory* as a leading lawyer in the areas of transportation (road and rail) and corporate mid-market. He is listed as a leading lawyer in the area of transportation in *The Legal 500 - Canada*. He has been named since 2011 as a leading transportation law practitioner in *Woodward/White's Best Lawyers in Canada*. Furthermore, he was recognized in the 2016 editions of the *Chambers Global* and *Chambers Canada* for his experience in transportation law. Mr. Blair is a former president of the Canadian Transport Lawyers Association and a former director of the Transportation Lawyers Association of the United States. He is involved in Québec's Anglophone community as a director and administrator of numerous socio-cultural organizations. He is also the Chancellor of the Anglican Diocese of Québec.

He was awarded the Order of Canada in December 2013.

Mr. Blair received his LLB from Université Laval in 1979 and was called to the Québec Bar in 1980. He is a member of the Institute of Corporate Directors, the Canadian Bar Association, the Canadian Transport Lawyers Association and the Transportation Lawyers Association of the United States.

Andreea Crisan

Profil



Biographie

Andreea Crisan occupe le poste de chef de l'exploitation et vice-présidente exécutive au sein du groupe d'entreprises Andy Transport et elle est membre du Barreau du Québec depuis 2015. En plus de jouer un rôle actif et stratégique dans le développement et la croissance des entreprises, elle a le mandat de représenter ces entreprises dans la communauté.

Sous sa gouverne, Andy a connu une croissance marquée pour l'ensemble de ses activités et s'est retrouvé quatre années de suite au classement PROFIT 500, publié dans le magazine Maclean's et CanadianBusiness.com

Andreea est membre du conseil d'administration du Club de trafic de Montréal et du Women in Trucking (WIT) et membre de deux conseils consultatifs de TruckingHR Canada.

Coup de cœur du Jury lors du Gala des Grand Prix de la Relève d'Affaires du RJCCQ (2017)

Lauréate 2017 du prix Top 100 des Canadiennes les plus influentes du Réseau des femmes exécutives (WXN)

Gérald Gauthier

Profil



Biography

Gérald Gauthier is the Railway Association of Canada (RAC) Acting President since December 2017. Until then, he was Vice President, after having been Vice President of Public and Corporate Affairs since November 2013. He was responsible for communications (with the public, governments and other stakeholders), policy research and industry human resource planning.

He joined the RAC in the fall of 2000 as Director, Industry Liaison, and quickly organized the first Canadian Local and Regional Railway Conference, which led to the creation of the RAC Shortline Committee that has been very active in promoting the interests of this sector of the industry. At that time and since then, he always made sure that the various, and sometimes conflicting interests of the diversified members of the Association were well represented in all RAC material, particularly policy documents directed to any level of government.

Prior to joining the RAC, he worked for Canadian Pacific Railway, initially in the Québec Law Department, then their General Solicitor's Office and finally for their Public Affairs Department. Prior to joining t CPR, he worked for a law firm that specialized in civil and commercial law in Québec.

Mr. Gauthier holds a licence in Law from the University of Sherbrooke in Québec, an MBA from L'École des Hautes Études Commerciales de Montréal, and is a member in good standing of the Québec Bar Association.

Kosta Kalogiros

Lawyer Profile



TITLE

Associate

OFFICE

Toronto

LAW SCHOOL

Osgoode Hall Law School, J.D., 2010

DIRECT LINE

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BAR ADMISSIONS

Ontario, 2011

E-MAIL

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Biography

Kosta Kalogiros is an associate in our Litigation Group in Toronto. He maintains a broad litigation practice, with experience in various practice areas and industries, such as corporate/commercial matters, domestic and international arbitration, professional negligence, commercial leasing and real property, product liability, telecommunications, and estates.

Kosta has particular expertise advising key players in the automotive sector and is a leader in the firm's Automotive Industry Group. He has expertise in autonomous vehicles, artificial intelligence, and deep learning, particularly in the infrastructure and transportation contexts. In addition to advising clients on risk management strategies and the disruptive impact of these technologies, he has particular experience and perspective on the evolving Canadian and international regulatory frameworks for autonomous vehicles and other artificial intelligence applications.

Kosta has appeared before all levels of the Ontario courts. He has also appeared before administrative bodies, including the College of Physicians and Surgeons, the Health Professions Appeal and Review Board, and the College of Physiotherapists. As well, he has acted for claimants and respondents in private domestic and international arbitration matters.

In addition to traditional litigation mandates, Kosta's experience includes providing real time strategic risk management advice, public relations and pre-litigation assistance, and due diligence/liability opinions in all manner of industries and contexts. As well, he keeps abreast of, and is engaged in, developments in the AI and deep learning space.

Kosta received his JD from Osgoode Hall Law School in 2010 where he graduated in the top five percent of his class and now occasionally participates as an outside negotiations instructor. He is a member of the Law Society of Upper Canada, the Advocates' Society, the Canadian Bar Association, and the Ontario Bar Association.

Kosta is also actively involved in the Hellenic legal community, serving as the President of the Hellenic Canadian Lawyers Association. He is conversationally proficient in Greek.

RECENT MANDATES & CASES

advising on the regulatory landscape of autonomous vehicle operation and testing in Canada;

acting for the claimant in a \$5,000,000 private shareholder arbitration;

acting for a communications company in a multi-million dollar private arbitration;

successfully resisting multiple reviews/appeals to the Health Profession Appeal and Review Board;

acting for wind farm developers throughout the regulatory approval process and in relation to third party opposition/obstruction;

Allen v. Aspen Group Resources Corporation, 2012 ONSC 3498;

2156384 Ontario Inc. v. C&K Property Management Inc., 2012 ONSC 6759;

Kara v. Arnold, 2014 ONSC 2647, 2015 ONCA 871;

Fram Elgin Mills 90 Inc. v. Romandale Farms Limited, 2015 ONSC 7308;

Fram Elgin Mills 90 Inc. v. Romandale Farms Limited, 2016 ONCA 404.

Brian Lipson

Profil



TITRE

Sociétaire

BUREAU

Québec

FACULTÉ DE DROIT

Université de Laval, LL. B.
2013

LIGNE DIRECTE

418-521-3037

ADMISSION AU BARREAU

Québec, 2014

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Biographie

Brian Lipson est sociétaire au sein du groupe du droit des affaires au bureau de Québec. Sa pratique porte sur le droit des transports. Ainsi, M^e Lipson représente des entités canadiennes et américaines œuvrant dans le transport routier et ferroviaire. Il fournit notamment des conseils aux exploitants de véhicules lourds afin de prévenir et gérer leur risque relatif aux accusations portées en vertu des lois et règlements fédéraux et provinciaux s'appliquant à ces véhicules. À ce titre, il représente régulièrement des propriétaires, exploitants et conducteurs de véhicules lourds devant les tribunaux à travers le Québec.

M^e Lipson fournit également des conseils relativement aux enquêtes criminelles et pénales en matière de camionnage, de transport par autobus et de transport ferroviaire, telles les infractions reliées aux véhicules à moteur, les délits d'initié, la fraude, les commissions secrètes et autres infractions provinciales et fédérales pouvant découler d'une transaction d'affaires.

M^e Lipson a obtenu un baccalauréat en droit civil de l'Université Laval en 2013 et a été admis au Barreau du Québec en 2014. Il est titulaire depuis 2001 d'un baccalauréat en arts (composition et improvisation de musique) décerné par l'Université du Michigan à Ann Arbor. Il œuvre depuis 1999 comme compositeur de musique et trompettiste. D'ailleurs, la bande originale qu'il a composée pour la pièce de théâtre The Bacchae a remporté le prix Outstanding Sound Design aux Montreal English Theatre Awards en 2013.

M^e Lipson est membre de l'Association du Barreau canadien, de la Criminal Lawyers Association (Ontario), de l'Association canadienne des avocats en transport (CTLA), de la Transportation Lawyers Association (É.-U.), de l'Association québécoise des avocates et avocats de la défense, ainsi que de l'Association des avocats de la défense de Québec. De 2014 à 2015 il était membre du conseil d'administration du Jeune Barreau de Québec.

Brian Lipson

Lawyer Profile



TITLE
Associate

OFFICE
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LAW SCHOOL
Université Laval , LL.B.,
2013.

DIRECT LINE

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BAR ADMISSION

Québec, 2014

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Biography

Brian Lipson is an associate in the Business Law group in Quebec City. His practice focuses on transportation law. Mr. Lipson provides advice to Canadian and U.S. clients in the trucking, bus and rail industries. As defence counsel, he assists the firm's motor carrier clients in preventing, handling and contesting moving and other violations under federal and provincial laws and regulations, regularly representing those clients and their drivers before courts throughout Quebec.

Mr. Lipson also provides advice in respect of criminal and regulatory investigations related to trucking, bus and rail transportation as well as white-collar crime, including motor vehicle offences, insider trading, fraud, secret commissions, and other provincial and federal offences related to transportation and business transactions.

Mr. Lipson obtained a Bachelor of Laws (LL.B.) degree from Université Laval in 2013 and was called to the Quebec Bar in 2014. He also received, in 2001, a Bachelor of Arts (B.A.) in Music Composition and Improvisation from the University of Michigan (Ann Arbor), and has been working as a composer and trumpet player since 1999. His original score for the play *The Bacchae* received the 2013 Montreal English Theatre Award for Outstanding Sound Design.

Mr. Lipson is a member of the Canadian Bar Association, the (Ontario) Criminal Lawyers Association, the Canadian Transport Lawyers Association, the (U.S.) Transportation Lawyers Association, the Association québécoise des avocates et avocats de la défense (Quebec Defence Lawyers Association) and the Association des avocats de la défense de Québec (Quebec City Defence Lawyers Association). From 2014 to 2015, Mr. Lipson served on the board of directors of the Jeune Barreau de Québec (Quebec City Young Bar Association).

Marijuana Legalization and Railway Safety in Canada

The Regulatory Impact of Technology and Cannabis on the Freight Transportation Industry.

Gérald Gauthier

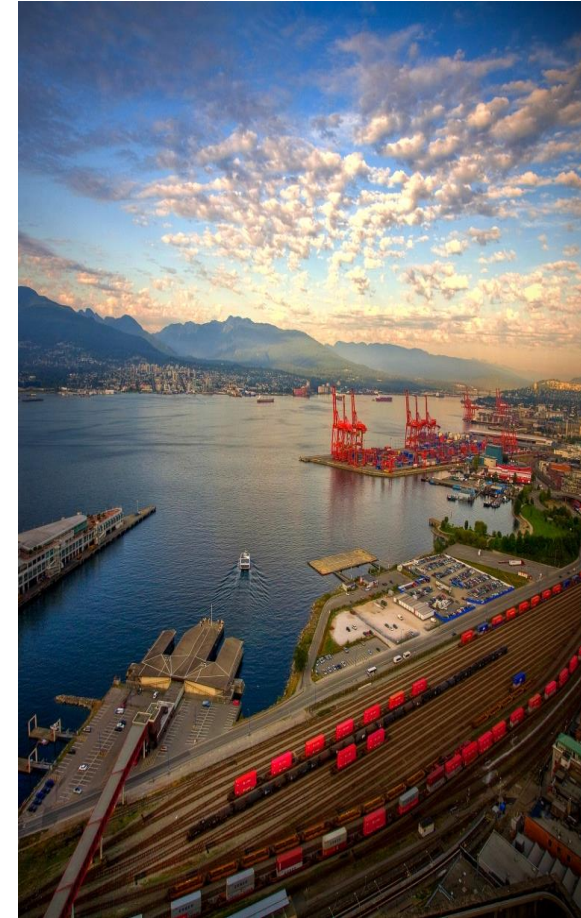
May 22, 2018

RAC and Canada's Railways

- RAC represents Canadian rail industry
- Core rail representation from all sectors
- RAC = One Industry Voice

Role of Rail in Canada: An Economic Enabler

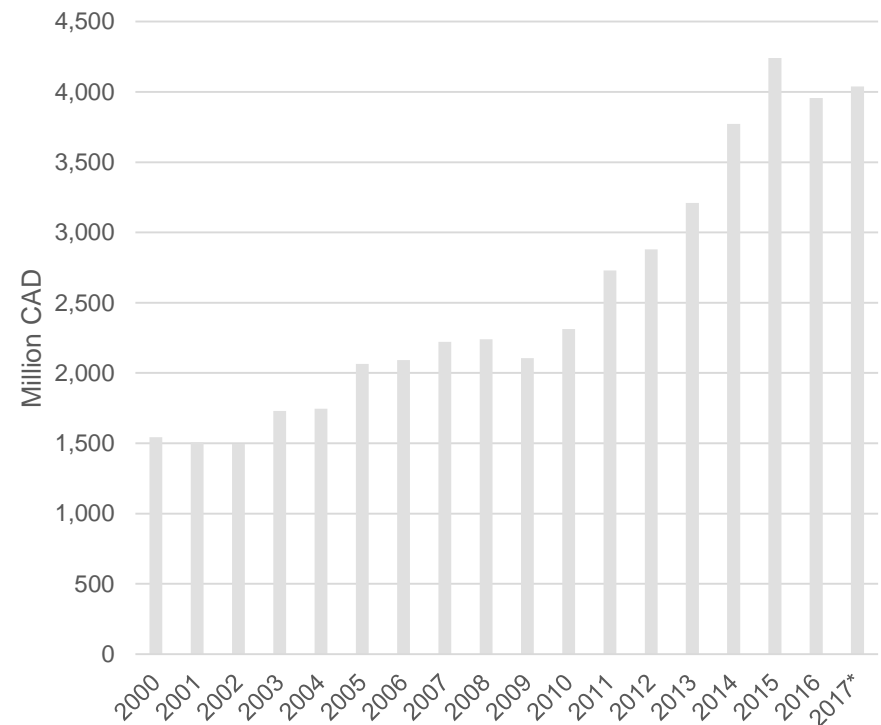
- Coast to coast national carriers: vital to Canada's economy, supply chains and society
- Contributes more than \$14 billion annually to the Canadian economy
- Moving people from A to B



Role of Rail in Canada: An Economic Enabler

- Regulatory environment has greatly benefited the rail supply chain
- Railways are constructive partners in gateway and trade corridor initiatives
- New developments going forward
- Bottom Line: Railways must earn adequate returns to invest in and maintain their networks and serve their customers

Canadian Class 1s - North American Capital Expenditures



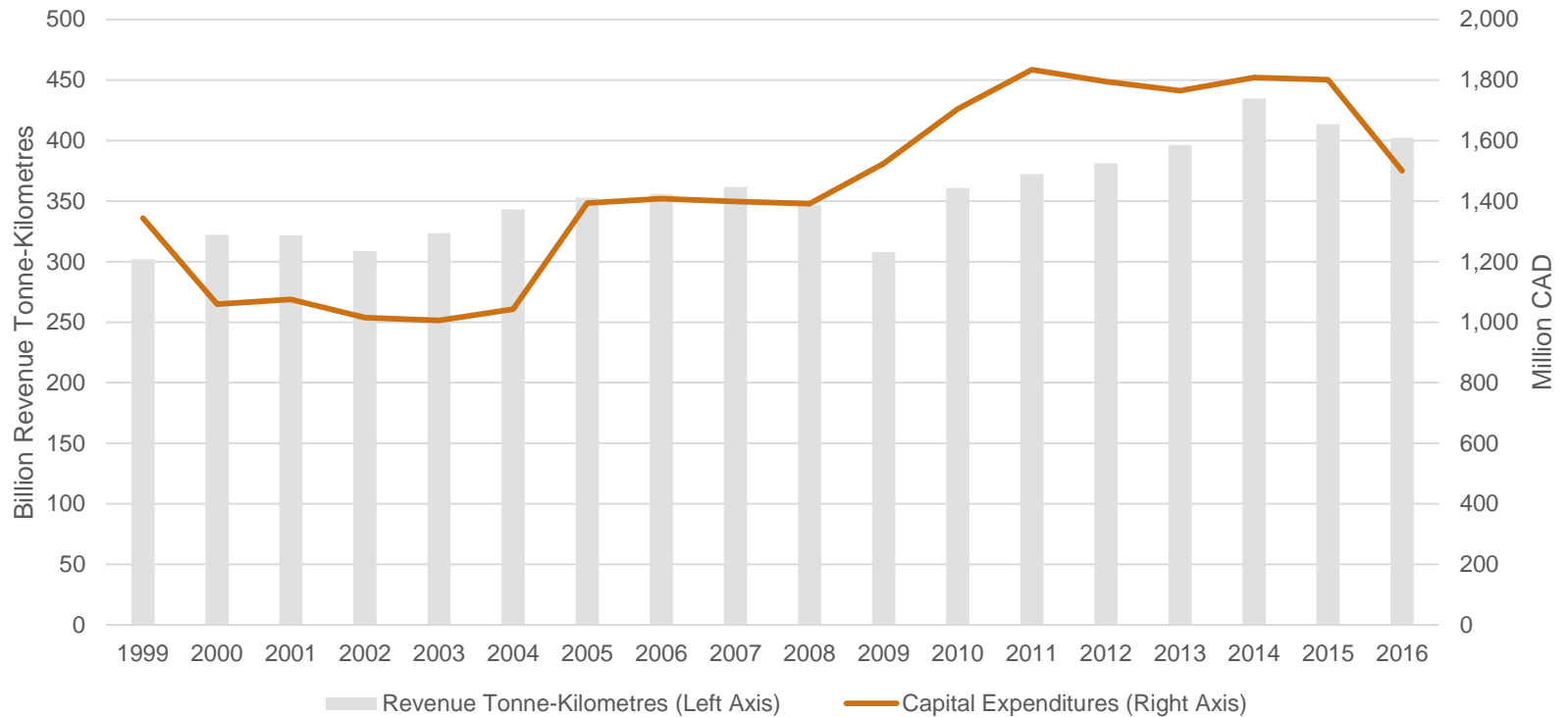
*: Preliminary Figure

Source: CN & CP Annual Reports, Various

Years

A Capital Intensive Industry

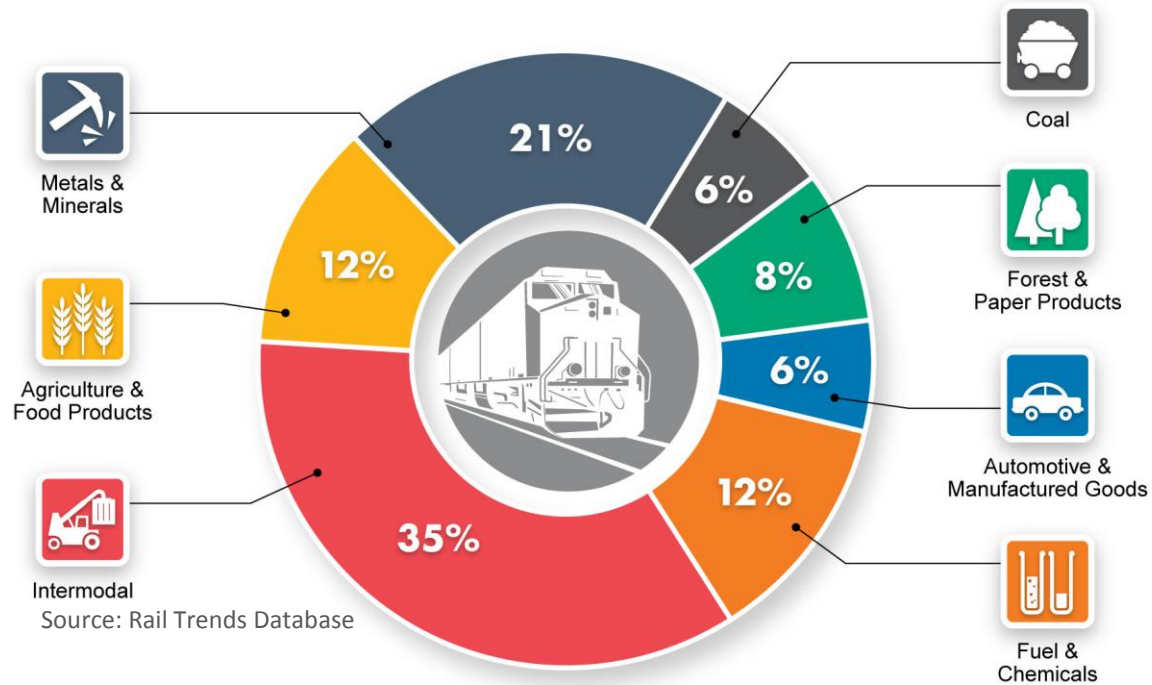
Canadian Railways - Revenue Tonne-Kilometres & Capital Expenditures in Canada



Source: Rail Trends Database

2016 Carloads Originated by Commodity Group

Canadian Railways – 2016 Traffic Mix*

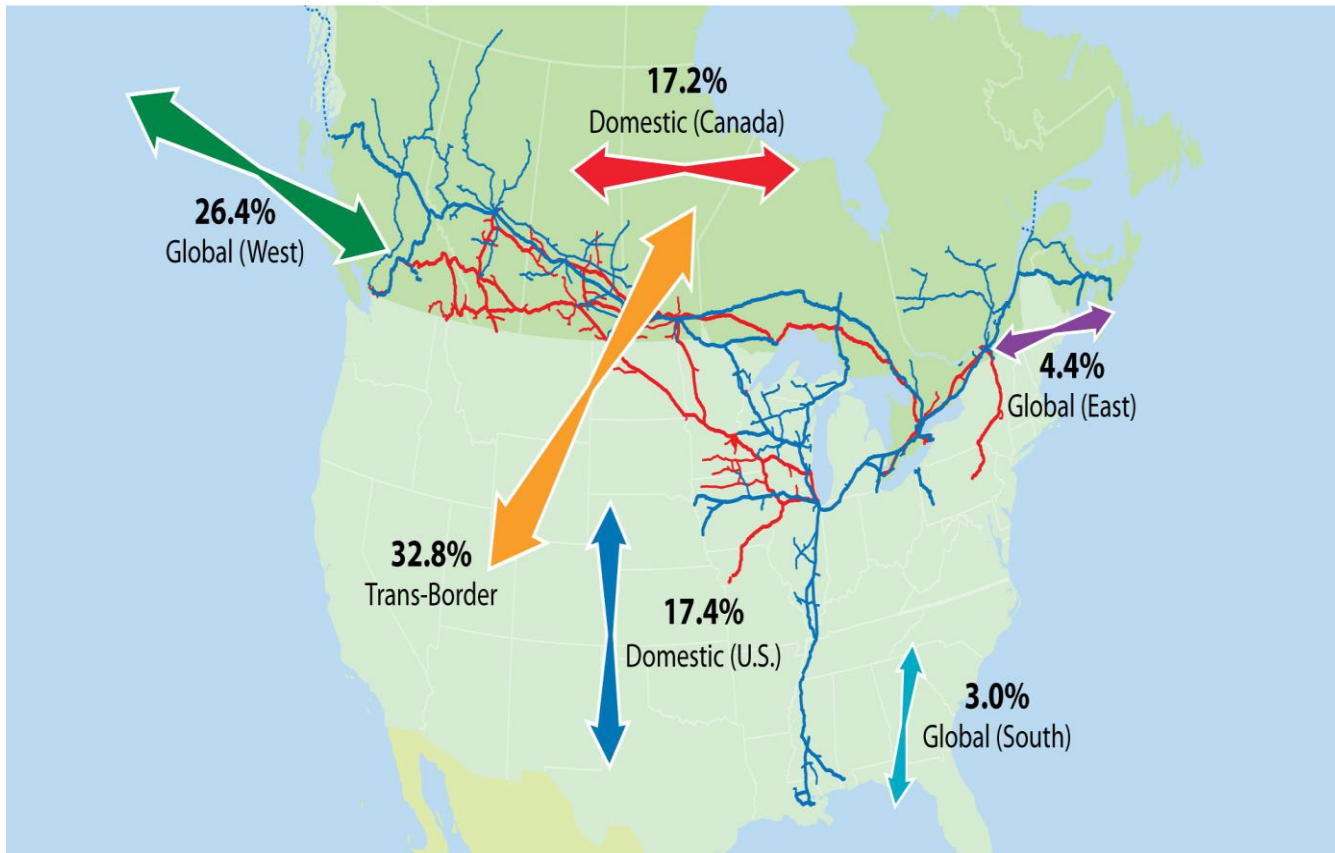


*based on carloads

Continental Reach

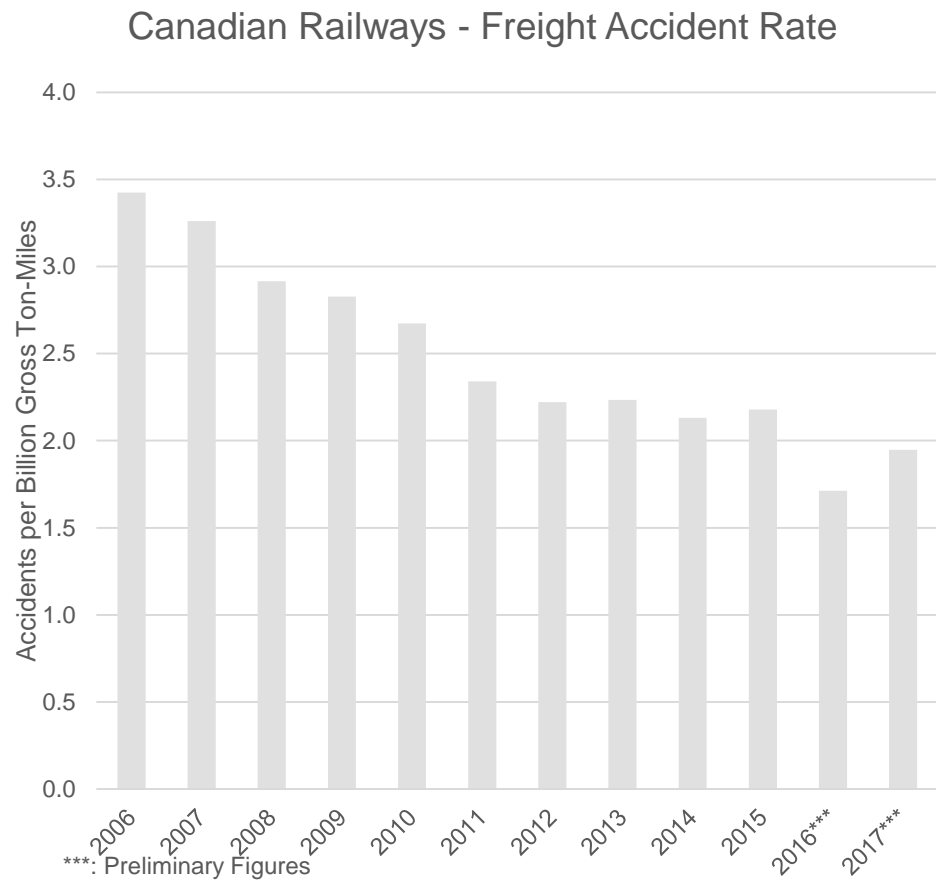


Market Reach



Safety Performance

- Noteworthy Improvements:
- Total accidents for freight railways decreased from 1,574 in 2006 to 1,097 in 2017.
 - For freight railways, total accidents per Billion gross ton-mile decreased from 3.42 to 1.95 between 2006 and 2017
 - There were 69 accidents involving passenger trains in 2016 compared to 72 in 2007



Source: Transportation Safety Board, Railway Association of Canada, 2018

Safety Management

- Measurements & communication
- Standards & operating practices
- Technological improvements
- Accident investigation
- Process improvement
- Employee training
- Operations testing & audits
- Qualification standards & requalification
- Fatigue management
- Awareness – Operation Lifesaver



The Government's Marijuana Legislation

- **Bill C-45**
 - The Cannabis Act
 - Legalizes recreational marijuana in Canada
- **Bill C-46**
 - An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts
 - Seeks to reduce instances of impaired driving
- **Both bills are currently being considered by Senate committees**

The Colorado Experience: Potential for Increased Use

- History
 - 2006-2008: early medical marijuana era
 - 2009-today: expansion of commercialization era
 - 2013 to present: recreational use era
- Colorado statistics regarding marijuana use over past 30 days*:

	Colorado	United States
Youth (12-17)	11%	7%
Young Adult (18-25)	29%	19%
Adult (26+)	10%	5%

*The Legalization of Marijuana in Colorado, Volume 3, September 2015 – Rocky Mountain High Intensity Drug Trafficking Area

The Colorado Experience: Safety Impacts

- Retail businesses began operating in 2014*:

Marijuana traffic related deaths in 1 year	+32%
Marijuana traffic-related deaths (2010-2014)	+92%**
THC toxicology results for DUI in 1 year	+45%
Marijuana-related emergency room visits in 1 year	+29%
Marijuana-related hospitalizations in 1 year	+38%

*The Legalization of Marijuana in Colorado, Volume 3, September 2015 – Rocky Mountain High Intensity Drug Trafficking Area

** Compared to an 8% increase across all traffic deaths

The Colorado Experience: Safety Impacts

- Traffic/hospital marijuana-related statistics*:

Marijuana traffic-related deaths 2013 (55) vs. 2016 (125)	+125%
Marijuana-related emergency room visits: 2011-2012 vs. 2013-2015	+35%
Marijuana-related hospitalizations: 2009-2012 vs. 2013-2015	+72%

- Adult past month marijuana used increased 71% in three-year average (2013-2015) since Colorado legalized recreational marijuana compared to the three-year average prior to legalization (2010-2012).

*The Legalization of Marijuana in Colorado, Volume 3, September 2015 – Rocky Mountain High Intensity Drug Trafficking Area

Canadian Rail Operating Rule G

- Rules in place today to help deter workplace impairment:
 - (i) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.
 - (ii) The use of mood-altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.
 - (iii) The use of drugs, medication or mood-altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty, is prohibited.
 - (iv) Employees must know and understand the possible effects of drugs, medication or mood-altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

Alcohol and Drug Testing in the Railway Industry

- Testing allowed in Canada currently:
 - Pre-employment
 - Reasonable cause
 - Post-incident
 - Return-to-duty
- Random, proactive testing not allowed in Canada today
- Canadian National Rail's Drug and Alcohol Policy

Alcohol and Drug Testing: The U.S. Example

- U.S. has legislated alcohol and drug testing in the federally regulated transportation sector for over 20 years
- This was introduced after a subway train derailment in NYC in 1991 caused 5 deaths and injured 175
- Testing has been an effective deterrent:

	Prior to Random Testing	After Random Testing
Positive rates for drugs in reasonable cause testing	4.7%	2.02%
Positive rate for drugs after qualifying accident events	5.6%	1.1%
Number of positives for drugs in post-incident testing	41	17

Source: Control of Alcohol and Drug Use: Expanded Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States, 2004

Alcohol and Drug Testing: The U.S. Example

- Canadian transportation industry (commercial motor vehicle operators, railways) operating cross-border are required to comply with U.S. regulations, including mandatory alcohol and drug testing
- Canada should be aligned with the U.S. on this issue so that safety benefits can be maximized.

Addressing the Testing Gap in Canada

- Railway Association of Canada and other federally regulated Employers have tried to secure an amendment to Bill C-45 or C-46
- Alternately, an amendment to Canada Labour Code could also address workplace safety after legalization.

A Patchwork of Legal Decisions

- Case law today is variable
 - *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*
 - *Suncor Energy Inc v Unifor Local 707A, 2017*
 - *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission, 2017*
- A patchwork of decisions exist
- This is a challenge for railway, other industries

Safety vs. Privacy

- Some opponents of workplace testing argue it is a privacy infringement
- We assert that safety must be prioritized over privacy when it comes to railway safety
- TTC Example:
 - TTC has random drug and alcohol testing in place today
 - Had to fight in court for many years to do so
 - Judge's Decision: "In this case the workplace includes the subway, buses and streetcars that travel throughout the city. The workplace genuinely is Toronto itself."

Technology and Cannabis

Impact on Regulatory and Criminal Risk
for the Trucking Industry

Brian Lipson

May 22, 2018

Introduction

- **Technology** promises more control and more knowledge
- **Cannabis** promises less control and less knowledge
- Both affect exposure to regulatory and criminal risk

Criminal Negligence 101

Criminal Code, s. 219: what is criminal negligence?

- **219 (1)** Every one is criminally negligent who
- **(a)** in doing anything, or
- **(b)** in omitting to do anything that it is his duty to do,
- shows wanton or reckless disregard for the lives or safety of other persons.

Criminal Negligence 101 (day 2)

Criminal Code, s. 217.1: Duty of persons directing work

217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

Technology

- Electronic Logging Devices (ELD)
- Automation and Self-Driving Trucks



Hours of Service Current System: Daily Logs

- Daily log controls hours to avoid fatigue
- Driver's hours/conduct not immediately known to carrier/shipper

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)												ORIGINAL - File each day at home terminal DUPLICATE - Driver retains in his possession for eight days		RECAP													
(MONTH)	(DAY)	(YEAR)	(TOTAL MILEAGE TODAY)									I certify these entries are true and correct:		VEHICLE NUMBERS - (SHOW EACH UNIT)													
(TOTAL MILES DRIVING TODAY)												(DRIVER'S SIGNATURE IN FULL)		DRIVING HRS. TODAY TOTAL LINE 3													
Company Name (NAME OF CARRIER OR CARRIERS)						(NAME OF CO-DRIVER)						DRIVING VOLUNTARY TODAY															
Address, City, State, Zip Code (MAIN OFFICE ADDRESS)						Address, City, State, Zip Code (HOME TERMINAL ADDRESS)						ON DUTY HRS. TODAY TOTAL LINES 3 & 4															
	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS	70 HRS DAY DRIVERS A. TOTAL HRS ON DUTY LAST 7 DAYS INCL. TODAY B. TOTAL HRS AVAILABLE FOR WORK 70 HRS MINUS A C. TOTAL HRS ON DUTY LAST 7 DAYS INCL. TODAY	
1:	OFF DUTY																										
2:	SLEEPER BERTH																										
3:	DRIVING																										
4:	ON DUTY (NOT DRIVING)																										
	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11		80 HR/7 DAY DRIVERS A. TOTAL HRS ON DUTY LAST 7 DAYS INCL. TODAY B. TOTAL HRS AVAILABLE FOR WORK 80 HRS MINUS A C. TOTAL HRS ON DUTY LAST 7 DAYS INCL. TODAY	
REMARKS																											
Shipping document, manifest number, or name of a shipper and commodity. Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours.																											
FROM: (STARTING POINT OR PLACE)														TO: (DESTINATION OR TURN AROUND POINT OR PLACE)													
USE TIME STANDARD AT HOME TERMINAL																											
One Stop Printers 800.456.0982 TOOL 1050																											

Criminal Liability for Motor Carriers Before ELDs:

***R. v. Fummerton*, 2016 ONSC 1107,
2017 ONCA 3866**

- Truck crosses median, kills off-duty OPP officer
- Fatigue possibly involved
- Driver found to be driving long hours, falsifying daily logs
- Carrier found to be aware of double logs, aware of long hours

Fummerton, 2017 ONCA 3866

- Accused had duty to prevent harm to any person resulting from driver's work (217.1)
- Had duty to comply with provincial HOS regulations (219)
- Showed wanton or reckless disregard for safety of other persons
- Charged with Crim. Negl. Causing Death
- Pled to Dangerous Driving (in his office)
- 6 month prison term

Electronic Logging Device

- Data comes directly from vehicle via GPS
- Carrier has instant access to data
- Carrier presumed to be aware of driver's conduct
- Increased risk of prosecution for “allow driver to drive in excess of HOS”
- Increased risk of Crim. Negl.



Criminal Negligence 101 (day 3): Publication Bans & Media Coverage

- Under *Criminal Code*, preliminary inquiries currently available for wide range of offences
- Mandatory Publication Ban available to accused
- Important re: jury pool, also useful re: media coverage and public relations
- Fummerton: accused used publication ban to limit coverage of case during trial

Criminal Negligence 101 (day 3): Publication Bans & Media Coverage (cont.)

- Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*
- Currently before Parliament (1st reading)
- Fewer preliminary inquiries (life imprisonment only)
- Fewer publication bans

Cannabis: Pot-ential Criminal Risk for Carriers and Employers

- 217.1 Cr. C: employers have a duty to prevent harm
- Carriers and employers have legal requirements that constitute a “duty” under s. 219 Cr. C.
- Post-legalization, drivers will be subject to:
 - *Criminal Code* impaired driving offences
 - Provincial regulations (zero tolerance)

Cannabis: Pot-ential Criminal Risk for Carriers and Employers

- Canadian employers barred from random drug testing in most circumstances
 - *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34
- Employers/carriers must take reasonable measures to ensure respect of zero-tolerance rules
- Employers/carriers must take reasonable measures to ensure that drivers are not impaired

R. v. Metron Construction, 2013 ONCA 541

- 6 Construction workers including floor manager consume marijuana
- Swing stage collapses under them, fall from the 14th floor, 4 fatalities including manager
- Project manager, president, company charged with criminal negligence causing death (4 counts) and criminal negligence causing bodily harm (2 counts)

R. v. Metron Construction, 2013 ONCA 541

- Floor manager (deceased) was a “senior officer” and marijuana was one of three ways he showed “wanton and reckless disregard for safety”
- Organization pleaded guilty under new section 22.1 Cr. C., \$750,000 fine + criminal record
- Project Manager: 3.5 year prison term (2016 ONSC 25)

***R. v. Metron Construction*, 2013 ONCA 541**

- Conclusions from *Metron* in view of coming legalization of cannabis:
 1. Carriers/employers will have a duty to take active measures to ensure that drivers adhere to statutes and regulations around cannabis;
 2. Criminal charges will continue to be in play for carriers/employers who do not do so.

Automation, or “Who is responsible when a robot causes an accident?”

- Drivers currently insulate carriers, owners and manufacturers from liability in some cases.
- New Quebec legislation allows for SAE level 3 automation
 - = Driver is present but may text or watch a movie
- Manufacturer, carrier/operator, maintenance...who will be responsible?
- Ontario: 207 HTA and Quebec 592 HSC = vicarious liability for owners
- What it will come down to: degree of control

Conclusions

- Carriers must be sure that they actually know what they are deemed to know
- Sound, legal testing procedures for cannabis
- Proactive discipline for drivers in excess of HOS or cannabis regulations
- Automation: driver/monitor training, vehicle maintenance, etc.

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Questions



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