

## **SWITCHING TRACKS – A REVIEW OF THE BC RAIL INVESTMENT PARTNERSHIP**

A significant amount of British Columbia's producers rely on rail transport to carry their products, which include lumber, coal and grain, to market. Much of these goods are carried by what used to be BC Rail, a railway operation wholly owned by the Province of British Columbia through the British Columbia Railway Company.

In 2004, BC Rail, except for the actual railway line, was acquired by Canadian National Railway Company (CN). Ownership of the railway line was retained by the Province but is leased to CN under an agreement which may be extended to 990 years if all renewal options are exercised.

This represented a major change in regulation as well as ownership of the former BC Rail operations. Previously regulated by the Province, it is now regulated largely by federal government agencies.

### **Why we did this review**

In 2005, there were some initial concerns raised about possible delays in shipping and rail car shortages. Since additional railcars and faster shipping times, along with reduced rates, were some of the expected benefits of the transaction, we decided to investigate and determine whether there were delays, if any such delays constituted a breach of CN's commitments, and what remedies might exist for the affected businesses.

Given the significance of the BC Rail Investment Partnership, we believed it would also be of value to clarify the roles and responsibilities of the various government agencies involved in overseeing the former BC Rail operations. We also sought to answer these questions:

- what are the commitments of CN to the Province and stakeholders under the Partnership,
- who is monitoring CN to ensure its commitments to the Province and stakeholders are fulfilled;
- what remedies are available to the Province and stakeholders should CN fail to meet its commitments; and
- is CN fulfilling its commitments to the Province and stakeholders?

While issues have been raised regarding several derailments on the BC Rail line since CN took over operations, we did not expand the scope of our review to include safety issues as these are now under the jurisdiction of Transport Canada and the Transportation Safety Board of Canada. Neither did we review any environmental concerns as the effective power of the Province to regulate and enforce its regulations is unchanged by the Investment Partnership.

## What we concluded

We concluded that there is, generally, an adequate system in place to monitor CN's delivery on its commitments, however, there is a need to ensure that the Province receives notification of any non-compliance on the part of CN under agreements where the Province is a signatory

We determined it was too early to conclude on whether CN is fulfilling all of its commitments, although we note that many of the commitments have already been met. Also, we understand that no formal complaints have been received by the federal agencies responsible for monitoring CN's compliance. This suggests that, to date, CN is fulfilling its commitments.

## What we found and recommended

1. CN's commitments include both one-time and ongoing performance commitments by CN. The Province is responsible for monitoring CN's performance in relation to the one-time commitments, and in relation to the lease of the railway line. CN has fulfilled, or work is on progress on, most of its one-time commitments; the Province will continue to monitor progress on the uncompleted commitments.
2. Since CN is an inter-provincial railway, its operations are subject to federal regulation. In addition, the significant performance commitments have been incorporated in a Consent Agreement between CN, the Competition Bureau and the Province. The Competition Bureau is responsible for monitoring CN's performance under this agreement. We also found, however, that there is no provision to notify British Columbia Railway Company (as the agent of the Province) if CN should be found to be in non-compliance with the Consent Agreement.

**Recommendation:**

That BCRC, as a signatory to the Consent Agreement, request that the Competition Bureau provide BCRC with a copy of any notice of non-compliance at the time the notice is given to CN.

3. The Province has the power take decisive action should CN default on its most significant commitments. It is expected that the Province would not take such action until all other remedies have been exhausted, but this would be at the Province's discretion.
4. It is our understanding, based on conversations with federal officials, that no formal complaints have been received under the Consent Agreement, suggesting that CN is fulfilling its performance commitments.

*For further information, please contact:*

Office of the Auditor General, 8 Bastion Square, Victoria, B.C. V8V 1X4  
Tel: 250 387-6803 or Toll free *Enquiry BC* at 1 800 663-7867 (in Vancouver 604 660-2421)  
A copy of the full report is available on our website at: <http://bcauditor.com>