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## **CN Submission to the Railway Safety Act Review Panel**

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# **RAILWAY SAFETY IN THE COMMUNITY**

**June 27, 2007**

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## 1. INTRODUCTION

Safety is a core value at CN, and one of five key principles that guide every aspect of the company's operations. This focus extends to a wide variety of activities aimed at improving safety where the public comes into contact with rail operations.

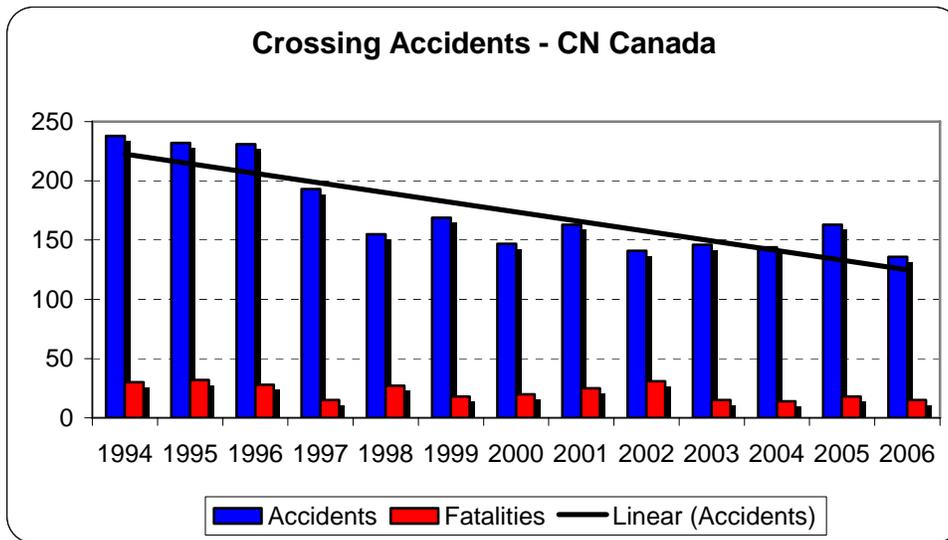
This submission provides the Panel with an overview of CN community safety initiatives related to railway crossings, trespass, rail safety education, and enforcement. It also discusses the importance of improving the interface between railways and communities to improve safety, and to avoid or resolve proximity issues such as noise or vibration.

CN operates through thousands of communities across Canada. While new rail construction projects are relatively rare, rail activities nevertheless expand with increasing traffic demand. CN is committed to help prevent incidents and injuries as part of our responsibility to the communities in which we do business. This, however, is an ever-increasing challenge with the creation of new communities and the rapid expansion of existing communities along railway properties.

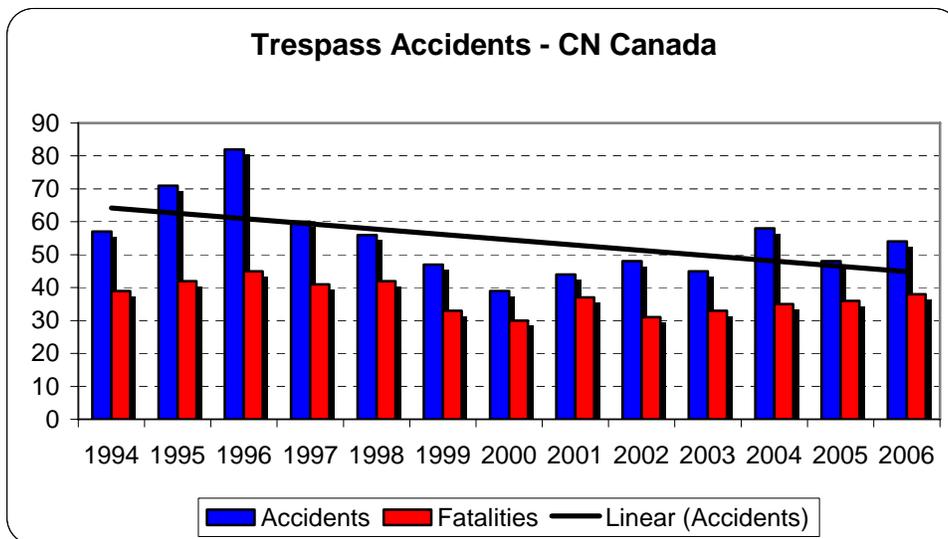
We work closely with federal, provincial and state agencies to ensure the optimum safety of railway operations and of surrounding communities. We partner with municipalities to integrate their safety procedures with ours. CN Police officers actively enforce rail safety laws through focused patrols of CN property, engaging local law enforcement in the safety effort. We make every effort to ensure that, should an emergency or issue arise, we have a coordinated response to handle all aspects of the incident, through public information, on-site control, clean-up and environmental protection.

### 1.1 ACCIDENT RATE IMPROVING

During the last *Railway Safety Act* review in 1994, the panel noted that people suffer injury and death at rail crossings in spite of every possible precaution taken by governments and railways, and expressed frustration at the lack of knowledge of the causes for these problems. They also noted that some unsafe practices beyond the control of railways can have tragic consequences, such as drivers of motor vehicles taking insufficient precautions at grade crossings. Since then, however, and despite relatively large increases in rail and road traffic and urban growth, CN crossing accidents have been reduced by more than one third, and trespass accidents by one quarter.



As shown in **Fig. 1**, when the three-year averages for 1994-1996 are compared with those for 2004-2006, CN crossing accidents are down 37%.



As shown in **Fig. 2**, when the three-year averages for 1994-1996 are compared with those for 2004-2006, CN trespass accidents are down 24%.

While technology and infrastructure investments have contributed to this improvement, CN believes that these results are largely due to its focus on safety education programs and enforcement strategies.

## 2. SAFETY IN THE COMMUNITY INITIATIVES

### 2.1 COMMUNITY EDUCATION AND SAFETY INITIATIVES

CN believes that education about railway operations and the risks associated with such operations is key to reducing crossing accidents and trespassing occurrences. Some of these risks may not be obvious to members of the general public. For example, knowing that a freight train travelling at 50 km/h requires nearly one kilometre to come to a complete stop may cause the driver of a motor vehicle to change his driving behaviour at railway crossings.

CN has created and participates in many community programs to raise awareness, educate and involve communities in rail safety and enforcement. The CN Police Service plays an important role in virtually all of these endeavours.

This section provides an overview of the various programs that CN has established or in which CN participates.

#### *2.1.1 All Aboard for Safety Program*

The objective of this CN community-education program is to help prevent fatalities and injuries on or near railway property. For more than 25 years, 52 weeks a year, CN Police officers have been instrumental in promoting railway safety through key activities of the program:

- *Operation Lifesaver Presentations:* CN participates in Operation Lifesaver, a public education program about level crossing safety and the hazards of trespassing on railway rights-of-way. This program forms the foundation of the industry's rail safety community outreach programs. Every year, CN Police speak to more than 225,000 students and adults at schools and community events in Canada and the United States about the importance of safety and the dangers of walking and playing on or near railway tracks. Since the Railway Association of Canada and Transport Canada launched Operation Lifesaver in 1980, the number of level crossing accidents on all railways in Canada has been reduced by more than 50%. There have been similar reductions in the number of fatalities and injuries resulting from these accidents.

- Community Outreach: CN police officers, risk managers and other CN employees participate in an extensive range of public events, including community events, trade shows, fairs and police department open houses. They make presentations to associations representing school bus drivers, truck drivers and at driver's education classes. They also work with various "safety village" programs, which coordinate public awareness and education programs for elementary school children using a child-sized simulated city.
- Part of the strength of CN's All Aboard for Safety program is our partnership with major community safety organizations. CN has collaborative relationships with *Operation Lifesaver*, a public education program about rail safety; *Safe Communities Foundation*, an organization that helps communities implement safety programs; *Safe Kids Canada* and *Safe Kids Worldwide*, an injury-prevention program for children; *SMARTRISK*, an injury-prevention program for high school students; and *Mothers Against Drunk Driving (MADD)*.

### 2.1.2 Safe Crossing Program

Created in 2005 by CN and Safe Kids Canada, Safe Crossing Program encourages educators, parents and caregivers to teach children about safety at highway-railway crossings. The program began as a one-day event in 2005 and in 2006 was extended to a week-long initiative to expand the reach and impact of the program.

*Safe Crossing Week 2006* was held across Canada from October 23 to 29. The enthusiastic participation exceeded expectations, reaching 50,000 children and securing the active involvement of mayors, schools and teachers across Canada. CN Police alone spoke to 9,000 children during the week, taking the message into elementary schools. Participating schools received a package with lesson plans for teachers, posters, interactive web-based teaching tools, a student activity booklet and a fact sheet to take home to parents.

In addition, CN Police took groups of students to crossings for 'trackside classrooms' to show children how and where to cross safely. Local governments responded enthusiastically to the effort, with a total of 18 mayors proclaiming a Safe Crossing Week in communities across Canada.

Plans are underway to hold Safe Crossing Week 2007 in October of this year. CN hopes to extend the program in the United States the same week with the participation of Safe Kids Worldwide.

### 2.1.3 *www.cn.ca/obie*

In 2006, CN launched a website for children to help them learn about rail safety in a fun and entertaining way. The website features CN's All Aboard for Safety train, *Obie*, and his friend, *Max*, the engineer, who dispense safety tips. With every click, in every story, activity, and game on the site, kids find a safety message.

The online *Obie* is based on an actual scale model of a CN locomotive, called *Little Obie*, that has been promoting rail safety with CN Police at schools and community events and giving rides to thousands of children across Canada and the United States for more than 10 years. By addressing children directly with the playful, animated characters we believe it will generate family involvement in rail safety awareness and help reduce injuries and fatalities.

### 2.1.4 *Mock Collisions Drive Home the Message*

CN works with emergency services organizations to conduct dramatic, high-impact simulations of train-vehicle collisions. The re-enactments demonstrate the potentially dire consequences of being careless and/or drinking and driving, especially at crossings. High school students, some of whom play the injured "victims" during the simulation, hear an *All Aboard for Safety* presentation about rail safety back at school after the event.

### 2.1.5 *Safety Promotion at CN Sponsored Events*

CN uses its corporate sponsorship activities to convey safety messages. Events such as the *CN Canadian Women's Open* (LPGA golf), *CN Future Links* (junior golf), and *CN Adopt an Alouette* (CFL Montreal Alouettes high school program) all have a safety component.

### 2.1.6 *Race Against Drugs/CN Police Pit Stop*

This is an educational program against the use of drugs based on car racing with an entertainment component. When students arrive at the Racing Against Drugs event they see approximately 25 "pit stops". Each "pit stop" is run by a different community agency or group and they each have an interactive, seven-minute presentation with a clear and distinct message related to substance use. Groups of students rotate around the venue,

changing pit stops every seven minutes. Each group of students has time to visit approximately ten to twelve pit stops during their 2-hour session.

Students are then invited to watch their teachers race remote control cars on a giant racetrack. The "Final Race", as it's been coined, matches teachers from one school against teachers from other schools attending the same session. This provides an entertaining conclusion to the event and is a school morale booster for the students.

In the last 5 years, CN Police has teamed up with the RCMP in Ontario and Quebec to integrate the rail safety message in one pit stop managed by one of CN's officers. In 2006, well over 10,500 students attended CN's Pit Stops.

#### *2.1.7 Investing in Community Safety*

CN is committed to helping build safer, stronger communities. Since safety is a key corporate guiding principle, we have made community safety the cornerstone of our community investment program. The goal of our program is to help develop thriving neighbourhoods in CN communities where residents can live and work in as safe and as supportive an environment as possible.

CN's preference is to support registered, not-for-profit, national and local initiatives that address specific community safety needs and issues. We also support projects that reinforce transportation safety and, in particular, rail safety.

#### *2.1.8 Suicide Prevention Programs*

For several years suicides have represented in excess of 60% of the trespasser fatalities on CN's right of way. In order to enhance its prevention and intervention activities, and hopefully reverse this troubling trend, CN has sought the assistance of suicide prevention organizations such as the Alberta Coalition on the Prevention of Suicide in helping us better understand this phenomenon.

When faced with trespassers intent on ending their life by jumping in front of a moving train, there is very little that one can do. Unlike a motor vehicle, a train is incapable of either stopping within a short distance or

avoiding contact. This explains CN's focus on equipping front-line CN Police officers with the appropriate training to identify specific behaviour patterns, and ways to intervene and attempt to prevent a tragedy from happening.

Finally, CN is an active participant on a Transport Canada/US-FRA steering committee recently charged with further examining the issue of trespasser suicides on railways.

## 2.2 ENFORCEMENT INITIATIVES

While education programs are aimed at creating a safety awareness and a safety culture, such programs are not sufficient in and of themselves and need to be reinforced through enforcement initiatives.

### 2.2.1 *Safety Blitzes*

CN conducts regular safety blitzes at busy highway-railway crossings with local police services to alert motorists to the importance of safety at crossings, and issue warnings and citations. In particular, CN Police are out in full force during Rail Safety Week, conducting their annual safety blitz operations in more than 100 locations across Canada and the U.S.

### 2.2.2 *Joint Force Operations*

In 2006, CN conducted 169 joint force operations with local police services across Canada, aimed at tightening security enforcement at problem crossings and high-trespass areas.

While railway police officers are dedicated to rail safety and security, local police officers are mainly tasked with maintaining the overall public safety of their community. Rail safety is often perceived by the local police officers as not being part of their regular patrol responsibilities but rather that of the railway police.

In order to involve the local police officers with rail safety, CN Police arranges Joint Force Operations (JFO) on a regular basis where both jurisdictions meet, i.e. the railway crossings and high trespass areas.

Included in these JFO, is the "Officer on the train" program, where a local police officer will be positioned in the lead locomotive to observe trespassing or crossing infractions. This information is then sent by radio to a colleague officer patrolling nearby so that they can intervene immediately.

These initiatives significantly raise awareness for rail safety within the local police services.

### *2.2.3 CN's Near Miss Program*

CN also considers near collisions in order to better identify from a risk perspective potential problem locations. Any crewmember that witnesses a near collision will report the incident to the rail traffic controller who, in turn, notifies the CN police Communication Centre. A CN police officer is immediately dispatched to conduct the required investigation. If the situation warrants it, action will be taken under either the *Railway Safety Act* or the Highway Traffic Act. Furthermore, the location and particulars surrounding the near miss will be compiled in CN's SAP system, which drives CN's operational and corrective action plans going forward.

In addition, in order to ensure proper feedback, the crewmember that initiated the call will also be notified of the outcome. In 2006, a total of 223 near misses were reported.

### *2.2.4 Enforcement actions under s. 31*

In addition to the enforcement efforts of CN Police and municipal police services, Section 31 of the *Railway Safety Act* provides Transport Canada inspectors with oversight and enforcement powers over various activities impacting railway safety. However, these powers are limited and do not address several components of crossing safety problems.

As an example, Section 31 (2.1) deals with the "Unsafe use of a road crossing". Under the current wording, the enforcement powers available to Transport Canada officers extend only to measures taken against the "*driver or operator of the vehicle*". However, many crossing safety problems result from industries, which use heavy vehicles, commencing operations in the immediate vicinity of a railway crossing, such as quarries or steel manufacturing facilities. Although the presence of heavy vehicles serving these facilities can result in crossing safety concerns, Transport Canada's current ability to restrict them or require the use of alternate routes is limited to action against the individual drivers or operators of these heavy vehicles. This method is impractical

and ineffective, as it does nothing to address the associated risks of the root cause, the operation of industries in the vicinity of a railway crossing.

CN recommends that the *Railway Safety Act* be amended to provide Transport Canada with the necessary enforcement powers to deal with such situations.

## 2.3 OTHER CROSSING AND TRESPASS SAFETY INITIATIVES

Crossing and trespass safety initiatives are an important component of CN's Integrated Safety Plan. Although crossing and trespassing accidents are under the responsibility of the local police, who will complete an investigation as first responders, CN Police officers will assist them in this task considering their expertise in railway matters. They will also complete an internal report in CN's SAP system that will gather all pertinent, internal and external information, including interviews, so as to identify the cause of the accident.

An analysis is done of all accidents and incidents in order to efficiently direct prevention and enforcement initiatives discussed above. Priority locations and improvements are determined through safety performance data collection and trend and root cause analyses. Observations of train operating crews and track supervisors are also taken into account through CN's Near Miss Program referred to above.

Following is a summary of other main crossing and trespass safety initiatives implemented by CN.

### 2.3.1 *Community Incident Response*

#### **911 Railway Response Template**

In 2006, CN developed the 911 Railway Response Template with a view to provide practical information to assist emergency communications centers and first responders - police, fire and medical - in developing service-specific procedures for responding safely to railway incidents.

This Template provides general recommendations on safe practices when responding to railway incidents. It is not intended to act as a stand-alone directive for responding to all types of emergency incidents. It is also in addition to and not a replacement for existing emergency response guidelines.

Emergency Response Agencies are invited to contact railways within their jurisdiction to identify specific hazards, emergency contact information, and response procedures unique to those specific railway operations.

### **Canadian Rail Incident Investigation Guidelines (CRIIG)**

In the late 1990's, CN developed a series of guidelines in a training package to help the local police officers and coroners in dealing with a fatality resulting from a train collision.

It was important to ensure that these collisions were investigated in a safe and efficient manner to ensure the public interest is met and that public safety is not compromised while resuming train operations.

In 2000, the Canadian Association of Chiefs of Police passed a resolution at their annual conference endorsing this initiative and stated that the guidelines are an important resource when investigating railway collisions. That same year, the Chief Coroners and Chief Medical Examiners also endorsed the guidelines during their annual meeting.

The Canadian Rail Incident Guidelines training package has since been distributed to all police services and Chief Coroners throughout Canada and in some States in the US. In addition, some police academies have included the CRIIG into their regular basic training curriculum for police officers.

#### *2.3.2 Crossbuck Reflectorization*

The installation of additional reflectorized material on the reverse side of existing crossing signs increases warning visibility for users of the crossings, especially in those remote areas where there are no additional advanced warning signals. With funding provided by Transport Canada, 5,785 crossings have been completed since 2003. This additional reflectorization acts as a strobe light when illuminated by the headlight of a motor vehicle at a crossing with a moving train.

### *2.3.3 Light-emitting Diode (LED) Technology*

CN undertook a pilot project in British Columbia with the Transport Development Centre to test LED technology as a replacement for incandescent lighting on crossing warning systems. LED has now become the industry standard and CN is actively continuing to upgrade crossings with this technology.

### *2.3.4 Trespass Warning Systems*

Trespassing on specific structures, identified as high risk for the community, is also a concern for CN. A good example is the Cap Rouge trestle, located approximately 10 km from Quebec City, which is the highest structure on which trains are operated in the province of Quebec. Its height of 173 feet has become over the years an attractive and dangerous location for trespassers and people from the nearby park. CN has overcome that situation by fencing the area and by implementing a sophisticated video alarm system through the Internet which sends an alarm signal to an operator who immediately gets in touch with the trespasser through an audio system while calling the local police.

### *2.3.5 1-800 Emergency Signs at Crossings*

As part of a public communication and safety initiative, CN introduced a pilot program in Ontario in 1995 to provide 1-800 emergency numbers at all public crossings. This specific initiative was undertaken following the suggestion from an operating employee. As part of this program, 1-800 emergency phone numbers are identified on the back of crossbucks as well as the subdivision and mileage of the crossing location. The phone number connects directly to CN's 24 hour Police Communications centre. This provides the public a direct number to quickly report emergency situations as well as crossing malfunctions. CN introduced this concept in Canada and was among the first in North America to initiate such a program at all of its public crossings. Given its success, the program was expanded to system-wide operation in 1997 and was adopted by Transport Canada as a new requirement under the proposed crossing regulations.

### *2.3.6 Grade Crossing Improvement Program (GCIP)*

This is a Federal Government program which allows the funding of up to 80% of the cost of safety improvements at public level crossings in Canada. Since 1993, CN and Transport Canada have worked closely

together to identify and prioritize those crossings that most require safety enhancements. CN receives funding from Transport Canada for approximately 20 to 30 crossing projects annually and receives between \$3M and \$5M in annual funding on average.

The *Grade Crossing Improvement Program* has made a significant difference in increasing railway-crossing safety in Canada. CN believes however that the program could be enhanced to create even greater improvements to safety.

Under its current wording, the *Railway Safety Act* restricts funding for safety enhancement to public crossings that have been in existence for a minimum of three years. Consequently, private crossings remain ineligible for funding despite the fact that some private crossings can be of greater concern from a safety perspective. In the past, only the landowner for whose benefit the crossing was established would use such private crossings for the enjoyment of his land. Since then, the use of the land may have changed from farmland to u-pick farms, campgrounds, waterfront cottages or industrial uses. In such cases, the private crossing has evolved into what is effectively a public use crossing without the crossing having been declared public, as the road crossing the rail tracks is not a public road.

Private crossings are also provided when a landowner's property is severed as a result of the construction of a railway or when a person purchases separate parcels of land on each side of the rail right of way. In the first case, the crossing is granted as of right and, in the latter case, while it is discretionary, the crossing is generally granted by order of the Canadian Transportation Agency, but at the landowner's cost. In either case, the railways are unable to limit the number and the intended use of private crossings, as past rulings of the Canadian Transportation Agency have stated that a landowner's use of a private crossing for the enjoyment of his land cannot be restricted. There is no policy direction in the legislation that would purport to limit the granting of private crossings. As a result, there are few instances where applications for private crossings are denied.

A recent report on private crossings funded by Transport Canada estimates that there are approximately 28,500 private crossings along railway lines in Canada, and that between 1995 and 2003 there has been an average of 45.1 collisions per year at these types of crossings. Transport Canada recognized the need to reduce the level of risk at private crossings and in June 1995 undertook the *Identification and Examination of Safety at Private Crossings*. The final report concluded that Transport Canada should have the freedom to provide subsidies to

pay for safety improvements and alternative access, in addition to crossing closures. The Transportation Safety Board of Canada has also recognized the importance of dealing with private crossings in past recommendations. The 1994 review of the *Railway Safety Act* made a similar recommendation.

CN considers that this recommendation is even more relevant in 2007 and recommends that the *Railway Safety Act* allow funding for improvements to or rationalisation of any crossing, including private crossings, where the Minister is of the opinion that the proposed work will provide a safety benefit. CN further recommends that the legislation include a policy direction that establishment of discretionary private crossings be limited.

### *2.3.7 Grade Crossing Closure Program (GCCP)*

Reducing the number of crossings and eliminating dangerous crossings are a key element in reducing crossing accidents. However, because of the particularly complex regulatory environment in Canada, progress in doing so has been slow. During the review of the *Railway Safety Act* in 1994, it was recognized that the elimination of grade crossings in Canada would improve safe railway operations. The review concluded that the closure of a crossing and the re-direction of the traffic to an alternate, better equipped, crossing would enhance safety. As a result of this finding, the *Railway Safety Act* was amended to include a provision which empowers the Minister to enter into agreements with crossing owners to close crossings in the interest of safe railway operations, and the ability to make grants for such closures.

As a result of this amendment, Transport Canada developed a new program, the Grade Crossing Closure Program (GCCP). This grant program is renewable every five years, with the first renewal due at the end of 2007-08. Payments made under this program are made in one instalment of up to \$20,000 in the case of an unrestricted crossing or up to \$5,000 in the case of a restricted crossing, and are awarded to encourage the closure of grade crossings. Eligible recipients are normally road authorities or a private party.

CN recognizes the value of crossing consolidation/closures and has made such measures a priority in the past few years. However, despite Transport Canada's and CN's efforts, these closures are very difficult to achieve under the current regulatory environment. CN has had only limited success – approximately 30 crossings closures annually over that last 2 years.

The ability to close crossings is severely limited by the *Canada Transportation Act*. The *Canada Transportation Act* gives the power to the Canadian Transportation Agency to authorize crossings (both private and public) upon application by an order of the Agency. These orders remain in effect until either the railway operations are discontinued or the road is closed. The crossings cannot be closed except through the consent of the parties – but third parties are usually very reluctant to give up such crossings.

Furthermore, the *Railway Safety Act* provides Transport Canada inspectors with oversight and enforcement powers over various activities and works affecting railway safety, including crossing safety. Unfortunately, with a few exceptions, these powers are generally limited to serving notice on the railway and restricting railway operations even where it may be the activities of third parties that negatively impact crossing safety.

As already discussed, there is no policy direction in the legislation that would suggest that the number of crossings, private or public, should be limited where there is no other alternative. This is in contrast to other jurisdictions such as the U.S. and the U. K. where one of the safety objectives is the elimination of crossings. In the U.S., the Federal Railroad Administration (FRA) sets crossing reduction targets and has dedicated personnel mandated to achieve those targets. In the U.K., the Office of Rail Regulation has established a policy that except in exceptional circumstances, there should be no new level crossings on any railway. They also state that it is neither effective nor efficient for railway companies only to be responsible for managing safety at level crossings.

It is CN's recommendation that amendments be made to the *Railway Safety Act* and *Canada Transportation Act* that would develop foster development of a policy and strategy to achieve specific crossing reduction targets. This type of crossing elimination program has worked well in the U.S.

### 2.3.8 *Direction 2006*

The 1994 *Railway Safety Act* Review recommended that steps be taken to reduce crossing and trespassing incidents by 50% over a ten-year period. As a result *Direction 2006* was launched by Transport Canada in 1996. Its goal was to reduce grade crossing collisions and trespassing incidents by 50% by 2006, through research, communications and community outreach programs. The program was intended to function as a partnership between public and private sector railway stakeholders, to bridge the gaps in jurisdiction over

railway crossing safety, involving all levels of government, railway companies, public safety organizations, police, unions and community groups.

As can be seen from the statistics below, while Direction 2006 fell short of its goal of a 50% reduction, the Transport Canada program nevertheless achieved significant improvements in crossing and trespassing safety.

### RAIL CROSSING ACCIDENTS IN CANADA

<u>Year</u>	<u>Collisions</u>	<u>Fatalities</u>	<u>Serious Injuries</u>
1996	365	46	69
1997	307	32	60
1998	273	39	43
1999	283	37	44
2000	263	33	33
2001	278	41	47
2002	261	46	42
2003	250	28	52
2004	237	25	50
2005	270	38	54
2006	249	28	27

Source: Transportation Safety Board of Canada

## RAIL TRESPASSING ACCIDENTS IN CANADA

Year	Collisions	Fatalities	Serious Injuries
1996	127	67	45
1997	98	69	30
1998	78	61	17
1999	95	62	34
2000	79	53	23
2001	79	56	22
2002	73	50	21
2003	65	45	19
2004	99	68	33
2005	83	64	18
2006	91	58	27
Source: Transportation Safety Board of Canada			

Direction 2006 was an excellent collaborative program with Transport Canada and the industry. A recent audit of the program showed that the rail industry has invested in this program on a 20:1 ratio with Transport Canada. As this initiative enters its second phase (post-2006), CN believes that all stakeholders should build on its success and continue to invest in related research, communication and community outreach programs.

CN therefore recommends that Direction 2006 program be renewed/extended as a joint initiative between Transport Canada and the rail industry in safety research, communications, and community outreach.

### 3. RAILWAY / COMMUNITY PROXIMITY ISSUES

Railways in Canada are traditionally associated with nation building. Communities have developed around rail facilities. Since the nation building days, however, rail operations have grown and evolved, often requiring railways to relocate yards and operations from their traditional city centre location to the outskirts. Community development and urban sprawl have resulted in communities creeping up to and around railway yards and operations. Unless proper land use planning is taken into consideration at the outset, such community development can lead to an exacerbation of the crossing and trespass safety concerns discussed above, but also to proximity issues such as noise, vibration and air emissions resulting from incompatible land uses.

Dealing with these issues is a multi-jurisdictional challenge in that land use planning and development is essentially a matter for provincial and municipal levels of government, while railways, at least the current Class 1 railways, are federally regulated. This means, for example, that a federal regulator can cause a railway to act on a proximity complaint, but has little or no authority over a complainant or municipal authority whose inadequate planning may have created or led to the incompatible land use situation in the first place.

With few exceptions, railways have no power beyond their rail right of way and cannot control adjacent landowners' land use. More troubling is the fact that provincial and municipal land zoning and permit procedures for land development next to railway operations rarely involve any consultation with rail operators.

An exception to this is Ontario whose legislation requires notice of Official Plans (and amendments), Plans of Subdivision, Zoning Bylaws, and Consents (to sever lands) be sent to the railway if the proposal involves any land within 300 metres of a railway line. In such cases, CN reviews the pertinent planning documents and recommends appropriate provisions to address safety, security, drainage, noise, vibration or other potential compatibility issues arising from the proposal. In cases where the proposed land use change is for the development of a new residential project next to the railway operations, this may result, for example, in the requirement for the developer to erect a proper sound barrier between the railway and the residential project, to use better sound proofing construction materials or to include a notice in the property title disclosing the fact that the property is constructed next to a railway plant which involves switching activities and railway noise. If the railway's proposed adjustments to deal with such land use compatibility issues are not incorporated into the land development project, the railway may then raise the matter with the Ontario Municipal Board.

It is understandable that railway requirements for 24 – 7 operations to meet just in time delivery and ever increasing transportation demand may not always be apparent to adjacent property owners. Indeed, some submissions made to the Panel specifically question the need to perform switching activities during the night and ask for limits to be placed on railways in the performance of such activities. Ontario’s approach allows for potential incompatible land use issues to be raised and addressed prior to the matter becoming a problem. It also ensures that potential purchasers of such residential properties are properly advised of any such existing situation.

Incompatible land use issues do not arise only in respect of residential developments. Building parks and bicycle paths, or, worse yet, schools next to a railway right of way by definition is creating a trespassing hazard that proper planning and consultation could avoid. This hazard can be compounded by the construction of a fast food outlet across the tracks from the school or park.

In an attempt to address the matter, the Railway Association of Canada has entered into a Memorandum of Understanding with the Federation of Canadian Municipalities on proximity issues. This initiative recognizes the need for better awareness and multidirectional communication among various stakeholders, especially railways, municipalities and developers. It engaged representatives of all the parties to establish guidelines for mitigating proximity issues, and to create a dispute resolution framework, including Community Advisory Panels.

Another recent example of attempts by the railways to address proximity and trespass issues before they arise is through the working group established by Transport Canada to develop *Railway Right of Way Access Control Regulations* pursuant to the *Railway Safety Act*. The multi-stakeholder working group, which included railways, Transport Canada, Provinces and municipalities, originally achieved consensus that municipalities or other authorities having jurisdiction over zoning and construction permits take into consideration the presence of railway infrastructure as an element of decision making, and that railways be notified of these proposals to allow them to make representations. Transport Canada was originally satisfied that section 24 of the Act provided authority for the establishment of a requirement for municipalities to inform railway companies of proposed changes in zoning or applications for building permits in respect of those lands that the municipality owned and were immediately abutting railway property. In the end, however, the regulator chose not to include such a requirement in the draft regulations.

CN continues to believe that the *Railway Safety Act* provides sufficient authority to the federal regulator to require municipalities or other local governments to give notice to the railways of proposed changes in zoning and land uses of lands abutting railway lines and yards in order to allow railways to comment on such changes with a view to improve land use compatibility and minimize safety hazards as described above. To the extent that the Act does not provide sufficient authority, then CN recommends that the Act should be amended to do so.

#### 4. CONCLUSION

Over the past several decades, CN has taken several proactive measures to develop, communicate and implement safe practices in communities in proximity to railway tracks and crossings. This is a daunting task given the number of communities through which CN operates. CN takes some comfort in noting the reduction in crossing and trespassing accidents, which suggests that its programs have been effective in communicating its safety message to the public. This cycle of education, outreach and enforcement in each community, however, is a never-ending task and must be strengthened every year. For this reason, CN will continue to partner with the communities themselves to assist in the educational and enforcement process.

The solution to proximity issues, however, does not rest with railways alone. Proper community planning can go a long way in ensuring a better compatibility of land uses next to railway rights of way. In the same manner, the *Railway Safety Act* must provide the federal regulator with sufficient authority and means to intervene not only in respect of railway operations but also in respect of third party action or inaction, which may impact the safety of railway operations.