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BACK TO THE FUTURE - THE GROWTH OF SHORT LINE RAILWAYS

By Art Stacey

Historically, Western Canada was developed, in part, in conjunction with the growth of the railways from East to West. Originally, railways served the small towns and the various grain elevators spread across the prairies. With the increasing costs of railway operations and the growth of high through-put grain elevators, the number of old wooden elevators serviced by rail across the prairies diminished markedly through the 1980's and 90's. Without a functioning elevator, there was essentially no reason for rail service to be continued to many communities. Systematically, the main line railway companies "de-marketed" their branch line networks in Western Canada.

However, as "common carriers", the railways remained obliged at law to pick up and move traffic presented to them anywhere upon their rail system. Therefore, to avoid the possibility that traffic might be presented to them in relatively small volumes at locations where service could not be economically provided, the railways have moved to formally abandon branch lines throughout Western Canada pursuant to the provisions of the *Canada Transportation Act* ("Act").

Under the Act, both the Canadian Pacific Railway ("CP") and the Canadian National Railway ("CN") are required to publish lists of those lines which they contemplate abandoning, and once a line has been on the "list" for three years, the railway may commence the formal abandonment process. That process is commenced by publishing a notice of the intention to abandon, and mailing such notice to every municipality and community through which the line is located. Once triggered by the publication of such notice, the abandonment process can move within months to a conclusion which entitles the railway to formally abandon the line. At that point, the railway will cease providing any service on the line and is entitled to physically lift the line from the right of way.

However, under the Act, the railways are required to negotiate in good faith with any party who presents an expression of interest to acquire the particular line, provided that party is prepared to continue to provide service upon the rail line. It is through this statutory mechanism that many short line railways have been created in Western Canada.

This process has been particularly utilized in Saskatchewan where at least 10 farmer or community owned short lines presently operate. In Manitoba, several short lines are operated presently by Central Manitoba Railway, but in recent years farmer groups have followed the lead of their Saskatchewan counterparts in seeking to acquire lines otherwise subject to abandonment for continued railway operations.

The development of a short line is often the marriage of mutual self interests on the part of the main line rail carriers and the short line operator. From the standpoint of the main line carrier, an effective relationship with a short line can mean the delivery to the main line of significant volumes, particularly of grain traffic, to a location at which the main line carrier can economically move the grain to port. For CN or CP, an effective working relationship with a short line can mean the delivery of increased quantities of grain at lower costs than either would

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incur should they attempt to source the grain themselves. For the short line operator and its farmer shareholders, significant savings can be achieved by loading producer cars, that is, cars loaded directly by the producer, rather than by simply delivering their grain to an elevator. Empirically, the indication is that in Manitoba, producers can save as much as \$1400 or more on every car of wheat or barley which they load and ship on a short line. Moreover, evidence suggests that farmers who ship in this fashion achieve better grading and lower dockage when the grain is unloaded.

Increasingly, CN and CP recognize that a well-managed short line can be an effective partner, particularly in their grain-related business. CP reports that a significant portion of all of the grain which it sources in Western Canada is sourced from short lines.

The development of a short line can produce significant economic spinoffs for the communities through which the line operates. Typically, the retention by farmers of a short line will lead to the development and construction of producer-owned loading facilities along the line. As an example, there are over 30 such facilities now constructed on what is known as the Great Western Railway, a line of approximately 300 miles serving south-western Saskatchewan. The construction of such facilities produces not only direct capital expenditures in communities, but also leads to the creation of jobs in communities where new employment is often scarce.

The Saskatchewan Government has developed a very attractive loan assistance program which has benefited numerous short lines in that Province. It is to be hoped that the Governments of Manitoba and Alberta will recognize the advantages that can be achieved by their farmers in being able to acquire and operate their own short lines.

The increasing costs of steel over the last several years have made the purchase of short lines an expensive proposition and one which essentially demands the assistance of both levels of government. At a time when the Federal Government claims to be supportive of infrastructure development, there can be few better opportunities for such expenditures than in the retention of short line railways in Western Canada. Once such rail infrastructure is removed, the costs of replacing it are such that it will never be returned.

If you would like more information on this topic or wish to discuss issues of a legal nature, [Art](#) can be contacted by phone at 204.934.2537 or by e-mail at ajs@tdslaw.com.

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