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THE UNIVERSITY OF ALBERTA

WESTERN CANADA AND THE NATIONAL TRANSPORTATION ACT: A CASE STUDY IN CO-OPERATIVE FEDERALISM

by

© MARTIN WESTMACOTT

A THESIS

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "Western Canada and the National Transportation Act: A Case Study in Co-operative Federalism" submitted by Martin Westmacott in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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ABSTRACT

The transformation of the Canadian federal system from classical to co-operative federalism has placed greater importance on consultations between federal and provincial governments prior to the finalization of policy within their respective jurisdictions. While the volume of literature delineating the general characteristics of co-operative federalism is increasing at a steady rate, the vast majority of the literature describing the policy-making process has focused on the negotiation of shared-cost programmes between the federal and provincial governments in areas of provincial jurisdiction. There is an absence of case studies that examine the interaction among provincial governments, provincially or regionally based pressure groups, Members of Parliament from a particular region or province and the federal cabinet in the formulation of policies in areas of federal jurisdiction.

An examination of the political history of Western Canada reveals that transportation policy and in particular the issue of freight rates have been of concern to Western Canada for a prolonged period of time. Using the enactment of The National Transportation Act of 1967 as a case study, the dissertation examines the

policy-making process within the Canadian federal system as it affects the Western Canadian provinces.

The central thesis of the dissertation is that the representations made from Western Canada through traditional mechanisms within the political system, such as the presentation of briefs to Royal Commissions and to Parliamentary Committees and the discussion of issues by Western Canadian Members of Parliament in the House of Commons, had little impact on the content of the final policy output -- The National Transportation Act. A secondary thesis is that the consultative mechanisms employed by the federal government in areas of provincial jurisdiction vary considerably from the consultative procedures employed by the federal government in areas of federal jurisdiction. It is hypothesized that the federal government has been extremely reluctant to discuss proposed federal initiatives directly with the provinces and has employed consultative mechanisms and procedures that limit the extent to which provincial policy inputs are injected into the decision-making process. Because of the limited success of the provincial governments from Western Canada in having their representations accommodated in federal policy outputs, the three prairie provinces have revised their strategy and are attempting to influence the content of federal policy

prior to its finalization by the federal cabinet.

The conclusions emerging from the case study reveal that co-operative federalism is entering a new phase that will be characterized by the increasing demands of the provinces to be consulted by the federal government in policy areas within federal jurisdiction prior to the finalization of policy by the federal cabinet. Furthermore, specialized structures will be established to permit the input of regional views at the federal level on a regularized basis. Finally, both the provinces and the federal government will recognise the existence of distinctive regional entities within the federal system. In the future, the provincial governments within a particular region will attempt to develop a regional policy in the hope that this will strengthen their bargaining position with the federal government.

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CHAPTER I

POLICY MAKING AND FEDERALISM

THE TRANSFORMATION FROM CLASSICAL TO CO-OPERATIVE FEDERALISM

The past few years have witnessed the transformation of federal systems away from what K. C. Wheare defined as classical federalism towards what A. H. Birch has defined as co-operative federalism. K. C. Wheare characterized classical federalism by the co-ordinate and independent status of the two levels of government within their respective spheres of jurisdiction.[1] A. H. Birch, writing on the subject of federalism in the early 1950's, noted that Wheare's classical definition no longer characterized federal systems.[2] Federalism, in Birch's opinion, was entering a new phase that he described as "co-operative federalism". The distinguishing characteristics of co-operative federalism, as defined by Birch, were the increasing co-operation between the two levels of government in the formulation of policy and the increasing administrative co-operation between the two levels of government in the implementation of government policy.[3] Thus, the guiding principle of co-operative federalism was the interdependence between the two levels

of government rather than the independence of the two levels of government that had characterized classical federalism.

The classical concept of federalism, reinforced by the decisions of the Judicial Committee of the Privy Council between 1880 and 1900, dominated Canadian federalism until World War I.[4] However, between 1920 and 1945, classical federalism "was subjected to increasing trials and tribulations and was finally transformed into something quite different . . . something which is called co-operative federalism, or the new federalism".[5] The evolution from classical to co-operative federalism within the Canadian federal system made the policy-making process increasingly complex.

The volume of literature outlining the policy-making process and delineating the general characteristics of co-operative federalism is increasing at a steady rate. Numerous authors suggest that consultation between the provinces and the federal government, prior to the enactment of legislation in areas of jurisdiction that are of concern to both levels of government, must become a key element in the policy-making process if co-operative federalism is to resolve disputes between the provinces and the federal government.[6] The vast majority of the literature describing the policy-making process has focused

on the negotiation of shared cost programmes between the federal and provincial governments in areas of provincial jurisdiction. In fact, specific instances when there were extensive consultations between the two levels of government in the formation of policy are cited as examples of the accomplishments of co-operative federalism in resolving federal-provincial disputes.[7] There is, however, an absence of case studies that examine the interaction among provincial governments, provincially or regionally based pressure groups, Members of Parliament from a particular province or region, and the federal Cabinet in the formulation of policies in areas of federal jurisdiction that have a direct impact on one or all of the provinces. In addition, I am unaware of any studies that focus on the representations made by provincial governments and provincially based pressure groups to federal regulatory agencies. Studies of this type appear necessary because Parliament has delegated to these agencies the power to interpret federal legislation in policy areas that affect provincial interests.[8]

One explanation of the absence of this kind of study in the literature is that the Canadian political system, like the British system, operates in an atmosphere of secrecy. As a result, many aspects of the decision-making process (the interaction between governments, bureaucracies, and pressure groups at the federal and

provincial levels) are difficult to study. Perhaps this explains, in part, the deficiency of Canadian studies on governmental decision-making and interest group behaviour in Canada when compared to the quantity of American literature written on the subject. Yet, it is increasingly important, despite the difficulty in obtaining information, that these case studies be undertaken. A knowledge of the nature and the extent of consultation between provincial governments, provincial based interest groups, and the federal government and its regulatory agencies could do much to illuminate the nature of the decision-making process within the federal system. Indeed, studies that assess the effectiveness of the political actors of each region of Canada in articulating the demands of their region at the federal level could lead to important insights into the policy-making process within the federal system.

Many of the areas of public policy that are exclusively within federal jurisdiction, such as monetary policy, transportation policy, and commercial policy (tariffs), have been and continue to be of particular concern to Western Canada.[9] In addition, the power of the federal government to influence the level of economic development through monetary and fiscal measures and the ability of the federal government to regulate the export of natural resources such as wheat and oil has made

provincial politicians increasingly aware of the impact of federal policies on the economy of Western Canada. As a consequence, several of these policy areas (particularly the issue of transportation policy) have been raised for discussion by provincial Premiers at federal-provincial conferences.[10] Increasingly, provincial governments are demanding that there be consultation between the provinces and the federal government prior to the enactment of federal policies that have a direct impact on the provinces. All of the provincial Premiers from the three Prairie Provinces have on several occasions referred to the infrequent input of Western Canadian views into the formation of federal policy in areas of vital concern to the West, and the resultant feeling of political alienation that seems to be prevalent in the West at this particular time.[11]

OBJECTIVE OF THE DISSERTATION

The objective of the dissertation is to examine the policy-making process within the Canadian federal system as it affects the Western provinces.[12] In particular, an attempt will be made to examine a neglected aspect of the decision-making process -- the formulation of policy by the federal government in areas of federal jurisdiction that have a direct impact on the provinces. It is possible to argue that every federal policy has an indirect impact on the economy of the provinces and on provincial

programmes, given the increasing interdependence between the two levels of government in the Canadian federal system. However, there are certain policy areas, such as monetary and fiscal policy, transportation policy, and commercial policy, that have come to be recognized by provincial politicians as being of particular importance to Western Canada.[13]

The central thesis of the dissertation is that representations made by provincial political actors from Western Canada through traditional mechanisms within the political system, such as the presentation of briefs to Royal Commissions and to Parliamentary Committees and the discussion of issues by Western Canadian Members of Parliament in the House of Commons, have had little impact on the content of federal policy outputs in policy areas of particular concern to Western Canada.[14] The failure of the political actors to have their views incorporated into the policy outputs of the federal government has resulted, over a period of time, in a growing reluctance on the part of the provincial governments to use the traditional mechanisms within the political system to convey their views to the federal government. In addition, one finds indications of a feeling of alienation among the political actors in Western Canada, reflected in demands that the views of Western Canada must receive more

accommodation at the federal level. Recently, for example, provincial Premiers have raised specific policy issues within federal jurisdiction for discussion at federal-provincial conferences. Increasingly, the political actors in Western Canada are utilizing the federal-provincial conferences and engaging in direct consultations with federal officials in an attempt to convey their views to the federal government in areas of public policy that are of particular concern to Western Canada.

A secondary thesis is that the consultative mechanisms and procedures employed in the decision-making process in areas of federal jurisdiction vary considerably from the consultative procedures employed in the decision-making process in policy areas that are within provincial jurisdiction. For example, in the past when the federal government has negotiated shared-cost programmes with provincial governments in areas of provincial jurisdiction, the federal government has discussed the policy proposal with the provincial governments at a federal-provincial conference or in a series of bi-lateral discussions.[15] Many provincial politicians have argued, however, that the federal government did not engage in meaningful consultations, but merely sought their approval for a particular programme after all the details had been finalized. The discussions between the provinces and the federal government concerning the introduction of Medicare is cited by

many provincial politicians as being characteristic of the consultations between the two levels of government.[16]

However, in recent times, the federal government has become increasingly sensitive to the provincial demand that the federal government engage in meaningful consultations with the provinces prior to the introduction of shared-cost programmes in areas of provincial jurisdiction. The recent proposal of the federal government to use the federal spending power in areas of provincial jurisdiction with the approval of the provinces indicates that the federal government is prepared to engage in genuine consultations prior to the introduction of shared-cost programmes.[17]

An attempt will be made to illustrate that the consultative mechanisms employed by the federal government in its discussions with the provinces in policy areas that are within federal jurisdiction do not in fact accommodate provincial views in the decision-making process. In the past, the federal government has relied on Royal Commissions, hearings before Parliamentary Committees and debates in the House of Commons to solicit the views of the provinces with regard to a particular federal policy. The federal government has not convened federal-provincial conferences to discuss federal policy initiatives, and has only engaged in "off the record" discussions with provincial officials in an attempt to assess provincial reaction.[18]

In short, the federal government has been extremely reluctant to discuss proposed federal initiatives with the provinces in policy areas that are of direct concern to the provinces and has employed consultative mechanisms and procedures that limit the extent to which provincial policy inputs are injected into the decision-making process. In reality then, there are two different modes of consultation between the provinces and the federal government in the formulation of policy within the federal system. In areas of provincial jurisdiction, the consultations have been characterized by direct negotiations between federal and provincial politicians and officials at federal-provincial conferences or in bi-lateral meetings. However, in areas of federal jurisdiction, negotiations between the provinces and the federal government have been characterized by the federal government's use of Royal Commissions, Parliamentary Committees, and debates in the House of Commons to determine provincial views. The federal government has been extremely reluctant to discuss federal initiatives directly with the provincial governments. Before delineating the objectives of the dissertation in greater detail, it is necessary to briefly trace the transformation of the Canadian federal system from classical to co-operative federalism and to relate the concept of co-operative federalism to the Canadian federal system.

THE DIMENSIONS OF CO-OPERATIVE FEDERALISM

The gradual evolution from classical to co-operative federalism was not the result of formal constitutional amendment. Rather, co-operative federalism was the product of a series of political, social and economic variables that produced similar developments in all federal systems.[19] Thus, the evolution towards the concept and practice of co-operative federalism was not a uniquely Canadian phenomenon. D. V. Smiley notes that all federal systems are characterized by an interdependence between the two levels of government and by the importance of the relationships between the executives of the two levels of government in the formation of policy.[20]

Numerous authors have attempted to delineate the social, political, and economic variables that caused the gradual transformation from classical to co-operative federalism.[21] K. C. Wheare attributed the change to four main factors: war, economic depression, the expansion of social services, and the mechanical revolution in transportation and communications.[22] Summarizing recent trends and developments in federal systems, Wheare noted that, in the four federal systems he had studied, the national government had grown stronger at the expense of the regional governments. Regional governments have increased the level and scope of their activities, and he concluded

that in the future there would be greater co-operation between the two levels of government in the formation and implementation of policy. Each level of government would no longer be completely independent of the other level of government.[23]

A. H. Birch observed that the transformation of the federal system could be attributed to three major developments: the financial dominance of the national government and the financial dependence of the regional governments upon federal payments, the attempts on the part of national governments to eliminate regional economic disparities between the various constituent regions of the federal system through the expenditure of federal monies, and the increasing role of the federal government in the provision of social welfare services.[24] In Birch's view, the impact of these developments raised serious doubts as to the applicability of Wheare's classical definition of federalism. He suggested that ". . . the definition of federalism should be recorded so as not to suggest that intergovernmental co-operation and grants are exceptions to the federal principle. . . ."[25] W. B. Graves noted that the growing interdependence that has come to characterize the relationship between the two levels of government in a political system was, in part, a result of the movement from an agricultural to an industrialized economy.[26]

An examination of the literature written on Canadian federalism suggests that the following would appear to be the most important factors that encouraged the growing interdependence between the provinces and the federal government within the Canadian federal system.

1. The absence of "devices of adjustment"[27] within the British North America Act necessitated that adjustments in the distribution of governmental powers and fiscal resources assigned to each level of government be accomplished through the negotiation of co-operative measures between the provincial and federal governments.[28]
2. The increasing intervention by both levels of government in the social and economic life of the nation resulted in a growing interdependence between the federal and provincial governments. With the increasing integration of the Canadian economy, both levels of government engaged in regulatory action that either directly impinged upon areas of jurisdiction that were the responsibility of the other level of government or had a direct impact on the other level of government.[29] For example, as the federal government became increasingly involved in the general area of urban affairs, this automatically involved the federal government in areas of

provincial jurisdiction. As the federal government developed policies regulating the sale of natural resources, these federal policies had a direct impact on provincial policies relating to the development of natural resources. The use of fiscal policy as a means of regulating the level of economic activity necessitated inter-governmental consultation and co-ordination.[30]

3. The establishment of national programmes with nation-wide standards, particularly in the areas of health, education and welfare, saw the federal government enter areas of provincial jurisdiction through the use of the federal spending power and through the negotiation of specific shared-cost programmes with the provincial governments. As some provinces became increasingly dependent on the federal government as a source of revenue, the importance of co-operation and consultation between the two levels of government increased significantly. D. V. Smiley commented on the impact of the federal spending power on the federal system in the following manner:

> In Canada as in other federations it has become increasingly common for the federal government to give financial support to activities within the legislative jurisdiction of the regional administrations. Characteristically, those who receive such payments -- individuals, private associations, local authorities and state or

> provincial governments -- must meet the conditions of eligibility determined by federal authorities. The widespread use of this device has permitted the federal government to involve itself in a large number of matters outside its jurisdiction. . . . The use of the spending power results in a situation where the sharing of the financial burdens and functional responsibilities between the federal and provincial governments is affected in many important matters by policy decisions of the federal authorities, acting either unilaterally or in collaboration with the provinces, without reference to the constitutional delineation of legislative powers under Sections 91 - 95 of the B.N.A. Act. . . .[31]

CO-OPERATIVE FEDERALISM AND THE CANADIAN FEDERAL SYSTEM

Since 1945, the term co-operative federalism has appeared with increasing regularity in writings on Canadian federalism. However, as D. V. Smiley has noted on several occasions, there is no general agreement in the literature on the precise meaning of the term.[32] While recognizing that there are significant and important differences in the various definitions of "co-operative federalism", Smiley argues that the concept, as it has developed in Canada since 1945, has the following general characteristics:

a) The chief devices by which continuous redistribution of powers, responsibilities and resources between the two levels of government is effected are procedures of continuous interaction between the federal and provincial governments rather than constitutional amendment or changing patterns of judicial review.[33]

A review of the literature written on the subject of co-operative federalism indicated general agreement with

this proposition. For example, E. R. Black and A. C. Cairns noted that, since 1945:

> . . . the practical workings of the federal system in the post-war decades came to be decided more and more by politicians and administrators who shared a common interest in making the system work rather than in determining its internal dividing lines. The result was an intertwining of the activities of ten (later eleven) governments through co-operative arrangements which made the British North America Act a less and less accurate guide for the determination of which government provided which service. . . .[34]

Bora Laskin is of the opinion that political federalism has been dominant over legal federalism since 1945, and that politicians prefer to resolve federal-provincial disputes through negotiations and bargaining rather than resolving the issue through the judicial process.[35] J. A. Corry expressed the view that politicians employed political processes rather than judicial review and formal constitutional amendment as the mechanism of adjustment within the federal system gives the system greater flexibility to meet changing demands and conditions.[36]

b) . . . Co-operative federalism embodies consultations between the provinces and the federal government prior to the latter committing itself to policies affecting provincial interests. . . .[37]

This proposition states that the concept of co-operative federalism implies that consultation between the federal government and the provinces will occur prior to the initiation of federal policies that directly affect provincial interests. While most authors writing on the

subject of co-operative federalism agree that one of the fundamental principles of co-operative federalism is that the federal government should consult with the provinces prior to the enactment of legislation that has a direct impact on the provinces, there is no general agreement as to the range of matters (areas of jurisdiction) where consultations between the provinces and the federal government should occur. In addition, there is no consensus as to the nature of the consultations between the two levels of government. For example, does consultation mean that the federal government is obligated to modify its proposals after consulting with the provinces, or does it merely mean that the federal government should inform the provinces of its proposed policy initiative? Furthermore, if provincial agreement is not forthcoming, there is no agreement as to the extent to which the federal government is obligated to consult with the provinces in an attempt to reach an agreement before proceeding with the programme. The federal government put forward a proposal at the Federal-Provincial Constitutional Conference in 1969 that would limit the use of the federal spending power in areas of provincial authority subject to the approval of the Provinces of Ontario and Quebec, two of the Provinces of New Brunswick, Nova Scotia, and Newfoundland, and two of the Provinces of Manitoba, Saskatchewan, Alberta,

and British Columbia.[38] To date, this formula has not been accepted by the provincial governments. However, if such a formula is approved, it would establish some general guidelines for the nature of consultations between the provinces and the federal government with regard to certain areas of public policy within provincial jurisdiction.

An additional question that has not been clarified is whether consultations with the provinces and the federal government should take place before a bill has been introduced into the House of Commons or whether consultations should take place at the Committee stage when representations are requested by the federal government on policy proposals.[39] Such questions have been debated by the provinces and the federal government on numerous occasions since 1960.[40] To date, the provincial and federal governments have not reached any agreement on these important issues.

It should be noted that co-operative federalism also places an obligation on the part of the provincial governments to consult with the federal government prior to enactment of legislation that would have an impact on the federal government. It is important to stress that co-operative federalism places an obligation on both levels of government to consult with each other.

c) Co-operative federalism has come to involve interactions between the two levels of government in respect to the most fundamental aspects of public policy. In Canada, . . . both the norms and procedures of federal-provincial relations include not only collaboration in specialized public functions but also the attempted articulation of policies in fiscal matters and in policies for economic stability and growth. . . .[41]

Co-operative federalism in the period from 1945 to 1960 was characterized as a period of "programme collaboration".[42] Interaction between governments on a non-technical level were rare and the devising and implementation of specific programmes were not related to broader federal-provincial issues and objectives. D. V. Smiley has described this particular period of Canadian federalism as "administrative" or "joint" federalism.[43] Beginning in 1960, however, federal-provincial relations have been increasingly dominated by discussions of broad issues of federal-provincial concern (division of tax sources and revenues, the co-ordination of fiscal policies at the federal and provincial level, and the revision of the constitution).

d) Co-operative federalism envisages increasingly more institutionalized structures and processes of intergovernmental relations. . . .[44]

Beginning in 1955, new governmental structures and agencies, designed to facilitate consultation and communication between the provinces and the federal government, have emerged within the Canadian federal system. Since 1957, the frequency of federal-provincial conferences and meetings at the

Prime Ministerial, Ministerial, and Deputy Ministerial level have increased significantly.[45] Both the federal government and three of the provincial governments (Ontario, Quebec, and Alberta) have created agencies and secretariats to facilitate regularized consultation between the two levels of government.

CO-OPERATIVE FEDERALISM IN THE 1960'S

Since 1960, the provinces have become increasingly aware of the impact that federal initiatives have had on provincial policies and priorities.[46] The provinces have been extremely aggressive in their demands for consultations prior to the enactment of federal legislation in areas of provincial jurisdiction and in areas of federal jurisdiction that have a direct impact on the provinces.[47] One example serves to illustrate this point. In 1963, the Liberal government introduced legislation establishing a municipal loan fund and the Canada Pension Plan without prior consultations with the provinces. The response of the provinces to each federal proposal was so negative that the federal government immediately called a federal-provincial conference and proceeded to negotiate changes in the details of the legislation.[48] However, there is no agreement as to the extent to which the federal government is obligated to consult with the provinces nor in what areas of public policy. While the provinces have demanded

that they be consulted on policy matters within federal jurisdiction, there has been no attempt by the provinces to have the federal government consult with them prior to the introduction of a federal budget.[49] Thus, it is recognized by the provinces that there are certain areas of federal jurisdiction where there cannot be consultation prior to the introduction of legislative proposals by the federal government.

The former Premier of Quebec, Jean Lesage, articulated the demands of the provinces for greater consultation prior to the enactment of federal policy in his opening statement to the Federal-Provincial Conference of July, 1965:

> . . . Sound practice of federalism requires that each government respect the jurisdiction of the other legislative authorities. In an era when interdependence is as pronounced as it is today, however, respect of mutual (legislative) competence is not the only condition for harmony between governments. Thus, even when legislating in fields within its own jurisdiction, each government should be concerned with the repercussions of its decisions on the other's plans and on the orderly conduct of the country's affairs in general. In our opinion, a government may not do exactly as it pleases simply because it has legal authority in a given field. Instead, in the interests of administrative efficiency and the search for genuine solutions, it must see that its actions are compatible with those of the other legislative authorities, and do not infringe on their rights and privileges. In short, the legality of an act should not be the only criterion, it is also important to weigh its timeliness and repercussions. . . .[50]

Mr. Lesage specifically proposed that the federal government should consult the provinces prior to the introduction

of federal monetary, fiscal, tariff, and transportation policies. Permanent federal-provincial committees should be established to ensure that the provinces would be consulted prior to the introduction of particular federal policies.[51]

A similar position is well expressed by the Alberta Government in a position paper on Intergovernmental Liaison. The report notes the absence of meaningful consultations between the provinces and the federal government prior to the enactment of federal policy in areas of provincial jurisdiction:

> . . . With the developing fiscal, economic, and social complexities of our society it is patently obvious that federal initiatives, and particularly initiatives which involve the spending power, are going to continue to affect Alberta in this era of interdependence. Alberta has raised its voice on many occasions against federal encroachment in provincial spheres of jurisdiction but the federal government has shown no inclination to amend its position. Moreover, it has clearly demonstrated in Federal-Provincial Grants and the Spending Power of Parliament, that it considers the use of the spending power a legitimate exercise of its powers. Alberta's major concern in this area is the absence of meaningful consultation with the federal government before initiatives are taken which directly affect provincial policies and programs. Post-announcement consultation is obviously of little value. . . .[52]

In reply to Quebec's demands, Prime Minister Pearson acknowledged the legitimacy of the provinces' demands for greater consultation. However, he reminded the Premiers that co-operative federalism placed a reciprocal

obligation on the part of the provincial governments to consult with the federal government before initiating policies that could have a direct impact on federal policies and priorities:

> . . . We cannot work together if the federal government attempts to encroach on provincial rights. Equally we cannot work together if provincial policies are directed to the erosion of federal jurisdiction and power. We have to proceed by the methods of co-operative federalism, by consultation and co-operation in all matters of mutual concern. Co-operative federalism is not a doctrine that puts all the restraints on the federal government. It does not mean that the federal government should move only after consulting the Provinces while the Provinces accept no similar obligation on their side. Co-operative federalism does not mean that the burden of agreement rests only on the federal government while the Provinces make demands for the withdrawal of the federal government from established lines of action and responsibility. . . .[53]

Emerging out of numerous federal-provincial discussions during the 1960's was a recognition by the provinces and the federal government of the necessity for increased consultation and co-operation between the two levels of government. D. V. Smiley summarized the tenuous nature of the consensus that had emerged and noted the continuing areas of dispute between the provinces and the federal government when he wrote:

> . . . The traditions of co-operative federalism as these are now evolving preclude such unilateral federal initiatives. There is, however, no agreement about either the range of matters in respect to which consultation should take place or the circumstances of these discussions. Without altering

> the traditions of Canadian politics in a very fundamental way, co-operative federalism could not forestall a federal political party from committing itself to initiatives in matters directly affecting the provinces. But there is as yet no clear tradition as to whether it is more appropriate for a federal government to introduce into Parliament bills providing for activities in which the provinces are directly concerned, with the assumption of course that provincial consultation will occur before the final parliamentary enactment, or whether it is more appropriate for the government to ask Parliament to ratify agreements previously reached with the provinces. There is also no agreement as yet about the range of matters on which federal-provincial consultations are appropriate not only in such matters as the marketing of agricultural products and industrial standards, where under the constitution both levels have responsibilities, but also in respect to other policies where no such obvious sharing exists but where the actions of one government clearly affect the others. . . .[54]

CLASSICAL vs CO-OPERATIVE FEDERALISM: A SUMMARY

The concept of co-operative federalism, as it has evolved in Canada since World War II, can be differentiated from the classical concept of federalism in the following manner. The concept of co-operative federalism emphasized the interdependence rather than the independence of the two levels of government. The blending, mixing, and ultimately the sharing of areas of jurisdiction by both levels of government, a characteristic of co-operative federalism, is in sharp contrast with the sharp and clear-cut delineation of federal and provincial powers envisaged in classical federalism. Since 1945, the number of federal-provincial

conferences convened to discuss matters of concern to both levels of government has increased significantly. In addition, numerous federal-provincial committees at the ministerial and the official level, designed to promote greater consultation and co-operation between the two levels of government, have been established. Since 1960, there has been greater consultation between the provinces and the federal government prior to the introduction of federal policies in areas of provincial jurisdiction.

Co-operative federalism as it has evolved in Canada since 1960 has not been without its critics. For example, J. M. Leger reflected the views of many French Canadians when he noted that co-operative federalism as it had evolved in the 1960's was merely another attempt by the federal government to centralize the Canadian federal system.[55] On the other hand, critics such as Mr. John Diefenbaker saw co-operative federalism as practised by the Pearson Government as a potential threat to the federal system.[56] In Mr. Diefenbaker's view, co-operative federalism would severely limit the powers of the federal government. Finally, the view was expressed on several occasions by provincial Premiers that the federal government recognized the need for consultation with the provinces in areas of provincial jurisdiction only to the extent that the provinces were informed of federal policy proposals.[57] With regard to federal policy initiatives in areas of federal

jurisdiction, the critics of co-operative federalism observed that the federal government did not engage in direct discussions with the provinces but attempted to assess provincial reaction through indirect means such as provincial representations to parliamentary committees and briefs to Royal Commissions and task forces.

REGIONALISM -- A DIMENSION OF CO-OPERATIVE FEDERALISM

The existence of distinctive geographic regions within the Canadian political system has been recognized as a reality by almost every author who has written about the Canadian federal system. The Fathers of Confederation were cognizant of the existence of distinctive geographic entities when the provisions of the British North America Act pertaining to the Senate were discussed at the Charlottetown and Quebec Conferences in 1864.[58] The acceptance of the principle of "equal regional representation" as the basis of representation in the Senate gave formal recognition to the existence of four geographic regions within the Canadian federal system. In recent discussions between the provinces and the federal government with regard to constitutional reform, the existence of distinctive geographic entities has been recognized in the federal government's formula for limiting the use of the federal spending power and in the proposed formula for amending the British North America Act.[59]

During the 1960's, the subject of regionalism was a topic of debate in both governmental and academic circles. For example, in 1966, the Institute of Public Administration of Canada selected regionalism as the topic of discussion for their annual conference. The Council of Resource Ministers examined the concept on several occasions during the 1960's.[60] During the same period, the governments of the Atlantic and the Prairie Provinces agreed to the establishment of the Prairie Economic Council and the Atlantic Provinces' Economic Council.

The Prairie Economic Council was established by the Premiers of Alberta, Saskatchewan, and Manitoba in October 1965. Since 1965, the Council has met on a regular basis to facilitate the exchange of information among the three Prairie Provinces. Among the topics discussed at the meetings have been freight rates, agricultural policy, post-secondary education, pollution, and industrial growth. While the initial meetings of the Council were designed to exchange information and views, recent meetings of the Council have seen the three provincial governments attempt to develop a common regional policy in their dealings with the federal government on such issues as tax reform, agricultural and transportation policy.[61]

In the 1960's the feasibility of the political union of the Maritime Provinces was examined by a special

commission established by the Governments of Nova Scotia, New Brunswick and Prince Edward Island.[62] In May 1970, the University of Lethbridge sponsored a conference entitled "One Prairie Province?".[63] During the three day conference, the economic, political and sociological aspects of prairie union were examined. In short, regionalism, and the existence of regional interests that must be accommodated within the federal system, have become important new dimensions of co-operative federalism. It should be noted, however, that provincial and regional interests are not always coterminus. The existence of problems peculiar to one province, and the differing political affiliations of the governments in office in the various provinces, may deter the development of a unified regional policy. Recent events in Western Canada in particular suggest that the three prairie governments are making every effort to overcome these obstacles.[64]

TRANSPORTATION POLICY AND THE NATIONAL TRANSPORTATION ACT - A CASE STUDY

An examination of the political history of Western Canada since 1896 reveals that policy matters in the general area of transportation have consistently occupied the attention of provincial governments and Members of Parliament from Western Canada.[65] In particular, the issue of freight rates has been of concern to Western Canadian politicians.[66] While other issues have emerged for short periods of time,

no issue has been so protracted as the issue of freight rates. Western Canadian political leaders have consistently expressed the view that federal policy, establishing the guidelines for the setting of freight rates by the railways, has deliberately discriminated against Western Canada, and that the administrative agencies established to administer the federal policy have not taken into account the views of the West in the implementation of federal policy.[67] Thus, the issue of freight rates has been a source of continued dissatisfaction to the West for a prolonged period of time and can be considered to be an issue of concern to all of Western Canada.

It is possible to trace the bill from its origin, in the Royal Commission on Transportation of 1959, to its final enactment by Parliament in 1967. More importantly, it is possible to examine the input of provincial views at various stages in the policy-making process. The National Transportation Act was the culmination of a long period of review and analysis by the federal government of all aspects of transportation policy in Canada. Initially, the federal review began as an inquiry into the practices employed by the railways in establishing freight rates. The inquiry quickly expanded to include a general evaluation and assessment of Canada's national transportation policy. The Report of the Royal Commission included specific recommendations for the revision of those federal

statutes governing the operation of railways in Canada, as well as a series of recommendations that were used by the federal government as guidelines for a general revision of Canada's transportation policy.

The Royal Commission on Transportation completed its report in 1961; however, the Conservative government made no attempt to implement the recommendations of the Report prior to its defeat in 1963.[68] With the change in government in 1963, the Pearson government began to prepare a bill incorporating many of the recommendations of the Royal Commission, and on September 14, 1964, the Honourable J. W. Pickersgill, Minister of Transport, introduced into the House of Commons for first reading Bill C-120 -- An Act to Amend the Railway Act, the Transport Act, the C.N.R. Railways Act, and to Repeal the C.N.R.-C.P.R. Act. The bill was given first reading and sent to the Committee on Railways, Canals, and Telegraphs for study. The bill was studied in Committee for several weeks and the Committee prepared a report summarizing its hearings. The Report of the Committee was never debated in the House of Commons and the bill died on the order paper when a federal election was called for November 1965.

The National Transportation Act of 1967 (Bill C-231) was introduced for first reading into the House of Commons by the Honourable J. W. Pickersgill on August 29, 1966. The bill was given second reading on September 8, 1966 and was referred to the Standing Committee on

Transportation and Communications, where it was studied by the Committee for a period of four months. The Committee received representations from all of the provincial governments in Western Canada, as well as from many pressure groups. The Report of the Committee was debated in the Committee of the Whole House in December 1966 and in January 1967. During the debate, Western Members of Parliament expressed considerable concern over those provisions in the legislation that established the regulations for the setting of freight rates by the railways. The bill passed third reading on January 27, 1967 and after a short debate in the Senate, was given Royal Assent on February 9, 1967. From this brief account of the events leading to the enactment of the Act, it is evident that there were numerous opportunities for the input of Western Canadian views into the policy-making process.

In an attempt to discover whether in fact there is a distinction between the modes of consultation between the provinces and the federal government in the formulation of policy in areas of provincial and federal jurisdiction, and to assess the extent to which the political actors from Western Canada expressed a "regional" point of view, answers to the following questions will be sought in ensuing chapters.

1. Has the issue of freight rates been a recurring issue in the history of Western Canada? If so, with what intensity and with what frequency?
2. What channels of communication were utilized by the political actors in the three Prairie Provinces to articulate their views at the federal level when legislation establishing the criteria for the determination of freight rates was enacted?
3. How effective were the political actors from Western Canada in articulating the position of Western Canada on the issue of freight rates? Has the Act been amended or revised, either by formal legislative amendment or by decisions of the Canadian Transport Commission, arising from an interpretation of the Act, that accommodate the views expressed by the Prairie Provinces?

   There are several methods of assessing the effectiveness of Western Canadian political actors in articulating their views to the federal government. Perhaps the most obvious would be to compare the demands of Western Canada with the provisions of the final

policy output. Such a comparison would give some indication as to the effectiveness of the political actors in articulating their views. A second method would be to assess the extent to which the Western Canadian political actors utilized various occasions to outline their views to the federal government. For example, did the provinces use every possible occasion and every channel of communication available to them? Finally, the effectiveness of Western Canadian political actors could be revealed by an assessment of the extent to which provincial governments and pressure groups prepared the necessary documentation to substantiate their position. For example, did the provincial Premiers of Manitoba, Saskatchewan, and Alberta attach considerable importance to the issue of freight rates? Did the officials in each provincial government prepare documentation outlining provincial views on the issues of freight rates? Was there an attempt by Western Canadian politicians at the federal and provincial level to develop a common policy position in their discussions with the federal officials? An assessment of

these variables could produce a reasonably accurate assessment of the effectiveness of Western Canadian political actors in articulating the views of Western Canada to the federal government.

4. Is there a need to create a specialized structure designed to convey more directly and more persuasively the views of the provincial governments from Western Canada on policy issues that are of concern to the West?

5. Is there any connection between the acceptance or rejection of the viewpoints of the political actors from Western Canada by the federal government and the growing feeling of alienation in Western Canada -- the feeling that Western Canada has no meaningful input into the formation of policy at the national level? While it is recognized that it would be extremely difficult to measure the strength of feelings of alienation among the political actors in Western Canada, and to establish a relationship between a feeling of alienation and the extent to which Western Canadian views are accommodated in federal policy

outputs, statements by politicians, government officials and representatives of pressure groups would provide information that could suggest a possible relationship.

6. To what extent did the federal government consult with provincial governments and pressure groups prior to the introduction of the National Transportation Act into the House of Commons? What channels of communication did the federal and provincial governments utilize during the course of their discussions? How did the methods of consultation employed by the federal government vary from the methods employed by the federal government with regard to proposed policy initiatives in areas of provincial jurisdiction? What variables influenced the extent of the consultations between the federal government and the Prairie Provinces? Did the federal government consult with one particular province to a greater extent than with the other provincial governments? If so, why did this occur?

There has been considerable reaction in Western Canada since the enactment of the National Transportation Act in 1967. For example, the provinces and the Canadian

Transport Commission engaged in a series of discussions leading to the development of costing regulations. The Thatcher government in Saskatchewan introduced a series of amendments in 1970 to the Mineral Taxation Act. These amendments were introduced in an attempt to break the deadlock in negotiations between the Canadian Pacific Railway and Saskatchewan potash producers for lower freight rates on shipments of potash to Vancouver for export. The amendments, if proclaimed, would have increased the level of taxation on the mineral rights on property owned by the Canadian Pacific Railway in Saskatchewan. In December 1969, Mr. Hu Harries, Member of Parliament for Edmonton-Strathcona, introduced a private member's bill in the House of Commons that would have amended the National Transportation Act in such a way that long and short haul discrimination would have been outlawed. Beginning in 1970, a series of applications were received by the Canadian Transport Commission from various business groups in Western Canada requesting that specific freight rates levied by the railways be disallowed. Many of these applications were supported by the Governments of Alberta and Saskatchewan.

Beginning in 1969, the issue of freight rates was raised for discussion by Western Canadian Premiers at the Constitutional Conferences. Emerging from these discussions was a series of bi-lateral discussions between the

federal government and each of the three prairie governments. In addition, the Prairie Provinces utilized the meeting of the Prairie Economic Council to develop a common policy for future discussions with the federal government. Finally, as a result of the limited success of Western Canada in having its views accommodated in the final policy output, Western Canadian politicians are re-assessing their strategy for future negotiations with the federal government. In brief, these are some of the developments arising from the enactment of the National Transportation Act.

FOOTNOTES

[1]K. C. Wheare, Federal Government (Oxford : Oxford University Press, 1946), pp. 10-11.

[2]A. H. Birch, Federalism, Finance and Social Legislation (London: Oxford University Press, 1955), pp. 288-306.

[3]Ibid., pp. 304-306.

[4]J. A. Corry, "Constitutional Trends and Federalism", in A. R. M. Lower et al., Evolving Canadian Federalism (Durham: Durham University Press, 1958), p. 95.

[5]Ibid., p. 96.

[6]For example, see K. C. Wheare, op. cit., pp. 242-245. In addition, see A. H. Birch, op. cit., pp. 304-306, and D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945 (Ottawa: Queen's Printer, 1970), pp. 82-83.

[7]D. V. Smiley, "Canadian Federalism and the Resolution of Federal-Provincial Conflict", in F. Vaughan (ed.) et al., Contemporary Issues in Canadian Politics (Scarborough: Prentice Hall of Canada Ltd., 1970), pp. 50-52.

[8]The Western provinces are becoming aware of the impact that decisions of federal regulatory agencies such as the Canadian Wheat Board, the Canadian Transport Commission, the Canadian Radio and Television Commission, and the National Energy Board have on the economy of Western Canada. For a summary of views of the Prairie Provinces on the importance of the impact of the decisions of federal administrative boards on the provinces, see Government of Alberta, A Position Paper on Intergovernmental Liaison (June, 1970), p. 17, and H. E. Strom, Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), p. 135.

[9]The importance of federal policies in these areas was outlined by the three Western Premiers at the Constitutional Conference in 1969. For details, see Constitutional

Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), and Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969).

[10]Premier Thatcher of Saskatchewan made the following comments on the subject of freight rates at the Constitutional Conference of December 1969:

> . . . For seventy-five years my province has asked to be given freight rates which are similar to those which exist in other parts of the nation. I say to this conference the railroads' treatment of our natural resources is nothing short of scandalous: the way it has been treated as second rate citizens by the CNR and the CPR. Westerners want no better freight rates than the rest of Canada, but we do demand fair and equal treatment.
>
> Let me tell the Conference that the uncompromising refusal year after year to give the Prairies competitive freight rates is contributing to national disunity. . . .

(Hon. R. Thatcher, Statement at the Constitutional Conference, December 1969, Proceedings (Ottawa: Queen's Printer, 1969), pp. 92-93. Premier Bennett made the following comment:

> Take the freight rates, for instance, from Eastern Canada into the Prairies compared to the freight rates from Vancouver into the Prairies on similar mileage. The differential is way against British Columbia. . . . We are not receiving equal treatment regarding freight rates.

(Hon. W. A. C. Bennett, Statement to the Constitutional Conference, December 1969, Proceedings (Ottawa: Queen's Printer, 1969). Hon. L. J. Robichaud commented on the subject of freight rates in the following manner:

> . . . Industry is complaining regularly and bitterly against the high cost of transportation from Eastern Canada. . . .

(Hon. L. J. Robichaud, Statement to the Constitutional Conference, December 1969, Proceedings (Ottawa: Queen's Printer, 1969).

[11]For a discussion of the debate between the provinces and the federal government in the 1960's, see Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969). In particular, see the discussions on the federal proposal to limit the federal spending power. In addition, see Constitutional Conference, December 1969,

Unrevised Proceedings (Ottawa: Queen's Printer, 1969). In particular, see the discussion on the use of federal spending power. This subject was also discussed at various federal-provincial conferences; for example, see Federal-Provincial Conference, July 1965, Proceedings (Ottawa: Queen's Printer, 1965); Federal-Provincial Conference, October 1966, Proceedings (Ottawa: Queen's Printer, 1966); and Tax Structure Committee Report, September 1966 (Ottawa: Queen's Printer, 1966). For the most detailed statement of Western Canadian grievances, see the opening statement of Premier H. Strom to the Constitutional Conference, February 1969. Premier Strom did comment on the absence of consultation between Ottawa and Western Canada in the following paragraph:

> . . . I have already alluded to the fact that much Federal legislation in areas where the West has vital concerns is formulated without any real consultation with us. Because of the proximity of provincial governments in Central Canada to the national capital, they sometimes appear much more influential than ourselves in securing Federal legislation favourable to their requirements and often equally unfavourable to our requirements. We would consequently ask that greater consultation take place between the Federal Government and the Governments of Western Canada on those issues in which they are vitally affected. . . .

(Hon. H. E. Strom, Opening Statement to Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), p. 135.)

[12]The Western provinces are defined as being the Provinces of Manitoba, Saskatchewan, and Alberta.

[13]These policy areas have come to be recognized by Western Canada as being of particular importance to the economy of Western Canada. For example, see W. L. Morton, The Progressive Party in Canada (Toronto: University of Toronto Press, 1950). These areas of policy were also referred to by the provincial Premiers from Western Canada at the Constitutional Conferences held in 1969.

[14]For the purposes of this dissertation, the political actors of Western Canada will be defined as Members of the Provincial Cabinet, Federal Members of Parliament, senior Provincial Government officials from Manitoba,

Saskatchewan, and Alberta and the leaders of interest groups that presented briefs to the Royal Commission on Transportation or to the Parliamentary Committees that examined the legislation.

[15]For a discussion of the consultative procedures employed by the federal government during the 1960's, see D. V. Smiley, "Canadian Federalism and the Resolution of Federal-Provincial Conflict", in F. Vaughan (ed)., op. cit.; D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945; D. V. Smiley, "Public Administration and Canadian Federalism", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality? (Toronto: Methuen, 1968).

[16]See footnote 11. The Honourable J. P. Robarts, Premier of Ontario, referred to the imposition of Medicare by the federal government as the greatest Machievellian plot ever perpetrated on the people of Canada.

[17]Rt. Hon. P. E. Trudeau, Federal-Provincial Grants and the Spending Power of Parliament (Ottawa: Queen's Printer, 1969).

[18]This point was made in interviews with Mr. J. W. Telford, Manager of the Alberta Freight Rate Bureau, on May 31, 1971, and with Mr. R. A. Wallace, Secretary, Cabinet Committee on Planning and Priorities, Government of Manitoba, on September 3, 1971.

[19]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, p. 3.

[20]Ibid., p. 3.

[21]See J. A. Corry, "Constitutional Trends and Federalism", in A. R. M. Lower et al., Evolving Canadian Federalism; D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945; J. E. Hodgett, "Regional Interests and Policy in a Federal Structure", Canadian Journal of Economics and Political Science, Vol. XXII, No. 1, February 1966; J. R. Mallory, "The Five Faces of Canadian Federalism", in C. B. Macpherson and P. A. Crepeau (eds.), The Future of Canadian Federalism (Toronto: University of Toronto Press, 1965); J. M. Beck, "Canadian Federalism in Ferment", in R. H. Leach (ed.), Contemporary Canada (Durham: Duke University Press, 1968), pp. 148-177.

[22]K. C. Wheare, Federal Government, pp. 238-243.

[23]Ibid., pp. 238-243.

[24]A. H. Birch, Federalism, Finance and Social Legislation, pp. 288-306.

[25]Ibid., p. 291.

[26]W. B. Graves, American Inter-Governmental Relations (New York: Schribner, 1964).

[27]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, p. 3. Smiley notes the absence within the B.N.A. Act of an amending formula and provisions for the delegation of powers between the federal and the provincial governments. Smiley has defined the term "devices of adjustment" in the following manner: "the procedures with which the respective powers, resources and responsibilities assigned to the federal and provincial governments by the original constitution are dynamically redelineated as new circumstances arise".

[28]Ibid., p. 4; Corry, op. cit., pp. 97-98.

[29]Ibid., p. 4.

[30]Ibid., p. 4.

[31]Smiley, op. cit., pp. 43-45.

[32]Ibid., p. 81.

[33]Ibid., p. 81.

[34]E. R. Black and A. C. Cairns, "A Different Perspective on Canadian Federalism", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality? (Toronto: Methuen, 1968), p. 86.

[35]Bora Laskin, "Reflections on the Canadian Constitution After the First Century", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality?, pp. 135-136.

[36]J. A. Corry, op. cit., p. 21.

[37]D. V. Smiley, op. cit., p. 82.

[38]Rt. Hon. P. E. Trudeau, op. cit., pp. 38-46.

[39]D. V. Smiley, op. cit., p. 83.

[40]See footnote 11.

[41]D. V. Smiley, op. cit., p. 84.

[42]Ibid., pp. 87-89.

[43]D. V. Smiley, "Public Administration and Canadian Federalism", in J. P. Meekison (ed.), op. cit., p. 273.

[44]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, p. 84.

[45]There are numerous articles that outline the rapid increase in the number of federal-provincial conferences since 1957. For example, see E. Gallant, "The Machinery of Federal-Provincial Relations: I", and R. M. Burns, "The Machinery of Federal-Provincial Relations: II", both in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality?, pp. 287-305; K. W. Taylor, "Co-ordination in Administration", in Proceedings of the Ninth Annual Conference, 1957 (Toronto: Institute of Public Administration of Canada, 1957), pp. 253-273; D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, pp. 88-103; and The Report of the Institute of Intergovernmental Relations of Queen's University on Intergovernmental Liaison on Fiscal and Economic Matters (Ottawa: Queen's Printer, 1969), Appendix D.

[46]The provinces have made these demands on several occasions. See footnote 11.

[47]See footnotes 11 and 15.

[48]D. V. Smiley, "Public Administration and Canadian Federalism", in J. P. Meekison (ed.), op. cit., pp. 283-284.

[49]While there has been consultation after the presentation of the budget, and general discussions on economic conditions prior to the introduction of the budget, the federal government has never discussed the details of the budget with the provinces before it was introduced into the House of Commons. At the Federal-Provincial Conference held in November 1971, Premier Blakeney of Saskatchewan questioned whether the provinces should not be consulted during the preparation of a budget by the federal government. The proposal of Premier Davis of Ontario to establish a joint economic committee at the Prime Ministerial level further illustrates the desire of the provinces to have a policy input into the formulation of federal economic policy.

[50]Jean Lesage, Statement to Federal-Provincial Conference 1965 (mimeograph), p. 26.

[51]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, p. 105.

[52]Government of Alberta, A Position Paper on Intergovernmental Liaison, June 1970, pp. 14-15.

[53]L. B. Pearson, Statement to Federal-Provincial Conference 1965 (mimeograph), p. 3.

[54]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945, pp. 94-96.

[55]J. M. Leger, "Co-operative Federalism in the New Face of Centralization", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality?, 2nd edition (Toronto: University of Toronto Press, 1971).

[56]Mr. Diefenbaker made this statement on numerous occasions in the 1960's.

[57]The provinces have raised this point on many occasions in the 1960's. See footnote 11.

[58]There are numerous articles that reveal the views of the Fathers of Confederation with regard to the role of the Senate. For example, see: P. B. Waite, The Life and Times of Confederation 1864-1867 (Toronto: University

of Toronto Press, 1962); P. B. Waite, Confederation Debates in the Province of Canada, 1865 (Toronto: McClelland and Stewart, 1963); W. M. Whitelaw, "Reconstructing the Quebec Conference", in Canadian Historical Review, Vol. XIX, 1938, pp. 123-138; D. G. Creighton, Road to Confederation (Toronto: Macmillan, 1964); A. G. Doughty, "Notes on the Quebec Conference", in Canadian Historical Review, Vol. I, 1920, pp. 26-48; T. W. L. Macdermot, "The Political Ideas of Sir John A. Macdonald", in Canadian Historical Review, Vol. XIV, No. 3, 1933, pp. 247-265; R. A. MacKay, The Unreformed Senate of Canada (Toronto: McClelland and Stewart, 1963); Joseph Pope, Confederation: Being a Series of Heretofore Unpublished Documents on the British North America Act (Toronto: Carswell and Co., 1885); G. Ross, The Senate of Canada, Its Constitution, Powers and Duties Historically Considered (Toronto, 1914); and D. V. Smiley, "The Two Themes of Canadian Federalism", in Canadian Journal of Economics and Political Science, Vol. 31, 1965, pp. 80-98.

[59]Rt. Hon. P. E. Trudeau, The Constitution and the People of Canada (Ottawa: Queen's Printer, 1969) and Rt. Hon. P. E. Trudeau, Federal-Provincial Grants and the Spending Power of Parliament (Ottawa: Queen's Printer, 1969). In addition, see the proceedings of the Constitutional Conferences of February and December 1969.

[60]J. E. Hodgetts, "Regional Interests and Policy in a Federal Structure", in Canadian Journal of Economics and Political Science, Vol. XXXII, No. 1, February 1966, pp. 3-14.

[61]Details of the agendas of the Prairie Economic Council were obtained from Mr. J. W. Telford, Manager of the Alberta Freight Bureau. Interviews with Mr. Telford and with Mr. K. Setter, an economist with the Government of Saskatchewan, revealed the changing role of the Prairie Economic Council.

[62]John Deutsch et al., "Report on Maritime Union", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality?, 2nd ed., pp. 374-388. See also: Guy Hanson, Interprovincial Relations in the Maritime Provinces (Fredericton: Maritime Union Study, 1970); and Maritime Union Study: The Report on Maritime Union Commissioned by the Governments of Nova Scotia, New Brunswick and Prince Edward Island (Fredericton: The Queen's Printer, 1970).

[63]D. K. Elton (ed.), One Prairie Province: Conference Proceedings and Selected Readings (Lethbridge: Lethbridge Herald, 1970).

[64]This point will be explored in greater detail in the concluding chapter of the dissertation.

[65]See W. L. Morton, The Progressive Party in Canada; C. B. Macpherson, Democracy in Alberta (Toronto: University of Toronto Press, 1953); S. M. Lipset, Agrarian Socialism (Berkeley: University of California Press, 1955); and Paul F. Sharp, The Agrarian Revolt in Western Canada (Minnesota: University of Minnesota Press, 1948).

[66]A detailed account of statements made by the Governments of Manitoba, Saskatchewan, and Alberta, as well as by Western Members of Parliament, on the issue of freight rates is found in Chapter II of the dissertation.

[67]Included in Chapter III of the dissertation will be a detailed statement of Western Canadian demands on the subject of freight rates as expressed in the House of Commons, at Federal-Provincial Conferences, and at the hearings of various Royal Commissions.

[68]The Diefenbaker government did prepare a draft bill that implemented many of the recommendations of the Royal Commission. The bill was never discussed in Cabinet. This point was confirmed by Mr. A. V. Mauro in an interview in Toronto on September 30, 1971.

CHAPTER II

WESTERN CANADIAN ALIENATION

A feeling of political and economic isolation has been a recurrent theme in the political history of Western Canada.[1] This feeling has been characterized in recent times by the press and by politicians as an important dimension of the phenomenon that has come to be known as Western Canadian Alienation. Newspaper articles and editorials on the subject have appeared with increased regularity and many federal and provincial politicians from Western Canada have expressed concern at the increasing feeling of discontent prevalent in the West at this particular time.[2] For example, Senator Donald Cameron of Alberta, speaking in the Senate in January 1970, expressed the view that the feelings of dissatisfaction and injustice currently prevalent in Western Canada are more serious than the wave of discontent that swept the prairies in the 1920's and 1930's.[3]

While the secession of Western Canada would not appear to be a real possibility at this time, several pressure groups in Western Canada have commissioned studies to determine the economic implications of secession from the federation. The Alberta Federation of Agriculture,

at their annual meeting in January 1970, unanimously approved a "study of the economies of an independent Western Canada".[4] At its annual convention in the fall of 1969, the Saskatchewan Wheat Pool passed a resolution calling for "the consideration of secession if the federal government does not give due consideration to the problems of Western Canada".[5] In January 1970, a group of businessmen from the three Prairie Provinces formed an organization called the Midcan Businessmen's Association designed "to develop and advocate policies which will bring about faster growth in the West".[6] These recent discussions are only variations on a theme which has been recurrent in Western Canada since the region was developed.

WESTERN CANADIAN ALIENATION

A review of the literature written on Western Canadian politics reveals that the phenomenon of Western Canadian Alienation cannot be documented with precision.[7] There are, however, numerous articles that offer possible clues as to its origin, and it is possible to isolate several political and economic variables that may be said to lie at the root of this feeling of discontent. For example, W. L. Morton has observed that Western Canadians quickly developed a strong feeling of regional identity and an acute awareness

of the problems peculiar to Western Canada.[8] In Morton's view, the demand for provincial status in Western Canada between 1870 and 1905 symbolized the West's desire for political equality with the other regions of Canada. The agrarian revolt in the 1920's and the rise of the Progressive Party symbolized Western Canada's opposition to national economic policies and to the Canadian party system.

C. B. Macpherson, in his explanation of the emergence of a "quasi-party" system in Alberta, identified the "quasi-colonial" economy of Western Canada, the homogeneity of the population, and the "non-party tradition" of the West as factors that differentiated Western Canada as a distinct and separate entity from the other regions of Canada.[9] Perhaps the most recent and most comprehensive statement delineating the various dimensions of the phenomenon known as Western Canadian Alienation was presented by Premier Strom in his opening statement to the Constitutional Conference of February 1969.[10] The essence of Premier Strom's remarks can be summarized in the following paragraphs:

> We must recognize the deep feelings of alienation and inequality of treatment that are felt by regional groups in Canada which are neither of French extraction, French-speaking, or resident in the Province of Quebec. These feelings may not be cultural in nature, but would prove to be just as dangerous to Confederation as friction between the English and French cultures. The causes of these and other discontents are of such nature that they may not be readily

> remedied by constitutional reforms, but may require actions on the part of Parliament and provincial legislatures of a substantially different nature. . . .
> Let me say that it would be a tragic and profound mistake on the part of either the politicians, or the press, or the general public of Central Canada to underestimate or dismiss out of hand the profound dissatisfaction which does exist among many people in Western Canada. There is a real lack of understanding and appreciation of our regional interests and problems and aspirations in other parts of this country. We deeply resent the picture which is often painted of the West in the minds of the people of Central Canada.[11]

Premier Schreyer of Manitoba, in a recent newspaper interview, expressed sentiments similar to those of Premier Strom. In part, he said:

> There is a growing feeling -- well, maybe alienation is too strong a word -- that the West as a region is not receiving the attention of the federal government that it deserves -- to put it another way, that it is receiving less of the attention of the federal government than is Quebec. . . .[12]

Premier Ross Thatcher of Saskatchewan, in his opening remarks to the Constitutional Conference of December 1969, strongly attacked the federal government's failure to deal with the problems faced by Western Canada and suggested that the federal government was assigning too high a priority to constitutional reform and to the accommodation of the demands of Quebec. In part, he said:

> The government of Saskatchewan comes to this Conference somewhat in a spirit of impatience because we continue to believe, as we have believed at other conferences, that there are problems facing our people which have a far higher priority than

> constitutional reform. . . .
> Now I must tell this group of Federal and Provincial leaders that the West is facing an economic crisis which unless alleviated will soon affect every part of Canada.
> In my part of the nation these problems are causing frustration and even despair. Yet on Parliament Hill we sense a kind of attitude, a feeling, if the country waits long enough the problems of the West may go away.
> Mr. Prime Minister, at conference after conference we have talked about the difficulties and problems of Quebec. Today we have done so again.
> Repeatedly year after year we have discussed the financial shortcomings of the Maritimes. I do not in any way deny that those matters are important but when will there be a conference to discuss with equal seriousness the problems of Western Canada?
> I am not an alarmist and I am certainly not a separatist but permit me to say this great area of Canada cannot indefinitely be ignored.[13]

To illustrate the recurring nature of this feeling of political and economic isolation in the political history of Western Canada, a series of quotations have been selected from the speeches made by Members of Parliament from Western Canada in the 1920's. The similarity of the content of these speeches with the content of the speeches in the 1970's is striking. Speaking in the House of Commons on May 16, 1923, Mr. D. Kellner, Progressive Member of Parliament for Edmonton West, commented on the mood of Western Canada in similar terms to those used by Premier Strom almost fifty years later:

> I think there is a spirit abroad in the West today that will not be much longer denied. When we see the transportation companies and the elevator companies exploiting us from coast to coast in weights, in grades, in transportation rates, it is only natural that we should feel

> just a little bit strong on some of these questions. We cannot be intimidated, either by being told that we do not know what we are talking about; the dissatisfaction which prevails in the West will, I am sure, never die out unless times are made much better. . . . In conclusion, I think it would be wise, if this country wishes to avoid internal strife, that more attention be paid to the demands which come from the West. The representations made should not lightly be passed by; we should not be merely told it is our own fault. . . .[14]

On May 31, 1922, Mr. A. W. Neill, Liberal Member of Parliament for Comox-Alberni, spoke of the feelings of inequality prevalent in Western Canada at that time and observed that it was extremely difficult for a Western Member of Parliament on the government side of the House to explain the actions of the federal government. In part, he said:

> . . . We are, however, feeling that we are being discriminated against in favour of the more populous or more represented portions of Canada. I do not chuckle over this as my honorable friends to my right. The reason I do not chuckle is that I have to go home and explain to my constituents why I support a government which does all these things. . . .[15]

The possibility of the secession of Western Canada from Confederation was raised by Mr. J. L. Shaw, Independent Member of Parliament for Calgary West. Speaking in the House of Commons on April 30, 1925, he noted:

> As a Canadian I have always objected to and will continue to protest against the suggestion of secession in this country. In Western Canada, there are, from time to time, suggestions of

> that kind, and I think they should be frowned upon, not only because they are impossible of accomplishment but also because the last state would be worse than the first. . . . We require the closest studentship into the great economic difficulties that surround us if we hope ultimately to secure unity, and after all, political unity can be based only upon economic solidarity. . . .[16]

Thus, it can be seen that feelings of political and economic inequality, characterized in recent times as dimensions of Western Canadian Alienation, are firmly rooted in the political history of Western Canada.

ECONOMIC DIMENSIONS

An analysis of the literature documenting the historical and political development of Western Canada reveals that there are certain recurring economic dimensions of Western Canadian Alienation that can be isolated for study.[17] The incidence of national economic policies on the economy of Western Canada and the issues of freight rates and tariffs are the economic dimensions of Western Canadian Alienation that are cited most often by Western Canadian politicians.[18] Each dimension will be considered separately, and an attempt will be made to illustrate, by reference to statements of Western Canadian politicians on various occasions since 1920, that the views expressed have not varied significantly over time.

THE INCIDENCE OF NATIONAL POLICIES

A recurring dimension of Western Canadian Alienation has been the unequal incidence of national economic policies on Western Canada. The major federal policies isolated for particular criticism by Western Canadian politicians have been in policy areas such as monetary and fiscal policy, trade policy, transportation policy, and resource development policy.[19]

H. A. Innis has noted that one of the truisms of Canadian economic history is that the major economic policies of the federal government, in the immediate post-Confederation period, were designed to benefit Eastern Canadian financial interests at the expense of Western Canada.[20] C. B. Macpherson, documenting the "quasi-colonial" nature of the economy of Western Canada, observed that federal policies designed to populate and develop the Prairie Provinces were of direct benefit to the financial interests of Eastern Canada.[21]

In a brief submitted in 1938 to the Royal Commission on Dominion-Provincial Relations,[22] the Government of Saskatchewan noted the heavy burden of national economic policies on the economy of Saskatchewan. In part, the brief read:

> There has been no hesitation in expressing the opinion that certain national policies bear so hard upon the economic life of the province as

> to make a satisfactory development very difficult, if not impossible. . . .[23]

The Report of the Royal Commission on Dominion-Provincial Relations summarized the impact of national economic policies on Western Canada, and in doing so revealed many of the long-standing grievances of Western Canada. In part, the Report read:

> In our public hearings the incidence of various federal policies on certain provinces and regions were discussed at length. In particular, it was argued that the customs tariff bore with exceptional severity on the four Western Provinces. . .; that the federal monetary policy after 1931 had seriously injured the Prairie region; that the freight rate structure (initially the responsibility of the Dominion Parliament) discriminated against the Western Provinces and especially Alberta. . . .[24]

The Commissioners concluded that it was extremely difficult, if not impossible, to measure the benefits and the disadvantages flowing to each region of Canada from every federal policy when each federal policy was considered in isolation. They did, however, agree, on the basis of the information gathered by the Commission, that ". . . federal policies considered as a whole have tended to benefit certain regions more than others. . . ."[25] The Economic Council of Canada, in its annual report issued in September 1968, examined the regional aspects of federal economic policies.[26] In particular, federal monetary policy, fiscal policy, tariff policy, and transportation policy were reviewed. The Council summarized its findings by noting:

> . . . The unavoidable impression that emerges from our review of federal economic policies is that they have exerted a pervasive but inconsistent impact upon the various regional economies. . . .[27]

It is interesting to note that the conclusions of the two reports are similar, even though the report of the Economic Council was written thirty years after the Report of the Royal Commission on Dominion-Provincial Relations. In short, it would appear that Western Canada has not always enjoyed the benefit of national economic policies and that the unequal regional incidence of national policies continues to be an issue of concern to Western Canadians.

Beginning in the late 1960's, Western Canadian politicians have again referred to the negative impact of national policies on the economy of Western Canada.[28] Premier Strom, in his speech to the Constitutional Conference of February 1969, outlined several policy areas where federal policies were having a harmful effect on Western Canada. Specific policy areas isolated for particular attention were federal trade policies that, in the past, had been oriented to the Atlantic Community rather than to the Pacific Community, the National Oil Policy that restricts the flow of Alberta oil beyond the Ottawa Valley, and federal monetary and fiscal policy that fails to recognize the uniqueness of the Western Canadian economic situation and fails to encourage the diffusion of capital rather than its concentration in Eastern Canada.[29] Premier

Thatcher, at the Constitutional Conference of December 1969, attacked the federal government's White Paper on Taxation and accused the federal government of attempting to restrict the economic development of the West by proposing tax changes that could result in a decline in the industrial development of Western Canada.[30] In addition, all three of the Western Canadian Premiers have raised, on several occasions over the past two years, the traditional and long-standing issues of freight rates and tariffs as examples of federal policies that discriminate against Western Canada.[31]

I. H. Asper, Leader of the Liberal Party in Manitoba and a recognized tax expert, studied the impact of federal policies in areas such as freight rates, monetary policy, tariffs, immigration, oil, and wheat over the past one hundred years and concluded that these policies have had a negative impact on the economy of Western Canada.[32] In Asper's view, these federal policies have significantly contributed to the present regional economic imbalance that exists between Eastern and Western Canada and to the feeling of discontent that is prevalent in Western Canada at this particular time.[33]

TARIFFS

The issue of tariffs has been a long-standing grievance articulated by Western Canadians.[34] Western

Canadian politicians have taken the position that the tariff policy of the federal government has protected the manufacturing interests of Eastern Canada at the expense of the agricultural and resource industries of Western Canada. Most authors writing on the political and economic history of Western Canada agree that the question of tariffs has been a contentious issue in Western Canada for a prolonged period of time.[35] C. B. Macpherson noted that:

> The protective tariff has been the fundamental federal imposition by which they [Western Canadian farmers] have seen themselves victimized. They have never been able to touch it. . . .[36]

A review of the speeches delivered by Western Canadian Members of Parliament in the 1920's reveals that the issue of the tariff was raised on numerous occasions.[37] Perhaps the most outspoken critic of the tariff was the Honourable T. A. Crerar. Speaking during the Debate on the Speech from the Throne opening the first session of Parliament in 1922, he noted:

> The tariff should be revised downward and downward very considerably. During the election there were those who said that I stood for absolute free trade, and that if the Progressive Party came into power the tariff would be swept away over night. That proposal has never been made anywhere at any time by any member of the Progressive Party. I am convinced that the principle of protection is not suited as a fiscal policy for this country, and this country will never develop as it should develop as long as protection is embedded as the guiding principle of our fiscal policy. I recognize

> that it is and will be necessary for a considerable time to raise revenue by customs duties; but a tariff based upon the principle of revenue and the needs of revenue is an altogether different thing from a tariff based upon the principle of protection, and I earnestly hope the Government, when they come to present to Parliament their concrete proposals in respect to the fiscal policy of this country, will be guided by the former principle.[38]

The Government of Saskatchewan, in its brief to the Royal Commission on Dominion-Provincial Relations expressed views that summarized the position of Western Canada on the tariff question. In part, the brief read:

> We do not propose in this submission to re-state the weighty economic arguments against a protective tariff nor are we here concerned to refute the more doubtful allegation that the imposition of a protective tariff may, under certain conditions, and in the long run, be in harmony with some broadly conceived national interest. Rather, in this submission, we are concerned to show that in times of prosperity and in times of depression alike, the dead-weight burden of the tariff bears more heavily upon Saskatchewan than upon any other province of the Dominion. The nature of our economy, characterized as it is by intensive specialization in the production of an export staple and by the absence of secondary industries, makes this inevitable. The position of Saskatchewan in the Canadian Federation suggests that of Tasmania in the Australian, in which case it was declared "that the high protective tariff was an unmixed burden with very little compensating benefit".[39]

Speaking at the Constitutional Conferences of February and December 1969, Premiers Strom and Bennett referred to the negative impact of the tariff on the economic development of Western Canada.[40] In Premier Strom's

view, the tariff symbolized the economic imbalance of Confederation. Premier Bennett restated the traditional position of Western Canadian politicians on the issue by noting that British Columbia received no benefits from the national policy on tariffs when British Columbia sells its products on world markets.[41]

FREIGHT RATES

The issue of freight rates has been a contentious political issue in Western Canada for a prolonged period of time. Western Canadian politicians have consistently taken the position that discriminatory freight rates have restricted the level of economic development in Western Canada. The leading spokesman from Western Canada on the issue of freight rates in recent times was Premier Ross Thatcher of Saskatchewan. At two Federal-Provincial Conferences in 1969, Premier Thatcher severely attacked the federal government for their failure to regulate the activities of the railways with regard to the establishment of freight rates.[42] Premier Thatcher was supported on this issue by Premiers Bennett and Strom.[43] In February 1969, Premier Strom proposed the creation of a commission on tariffs and freight rates to examine Western problems and to recommend possible solutions.[44]

POLITICAL DIMENSIONS

A recurring grievance of Western Canada has been the belief, on the part of Western Canadian politicians, at both the federal and provincial levels, that Western Canada does not possess a strong and effective voice at the federal level to articulate the views of Western Canada on issues that are of vital concern to the West.[45] A review of recent articles revealed this feeling of political impotence in recurring phrases such as: "The West is not being heard in Ottawa"; "There is a need for a strong voice in Ottawa from the West"; and "Western Canada is not understood in Ottawa".[46]

W. L. Morton has written that Western Canadians became acutely aware of their political impotence at the federal level at a very early stage in the political development of Western Canada.[47] In Morton's view, the emergence of the Progressive Party in the 1920's was a manifestation of the feeling of political impotence and a reaction against both the quality and the quantity of representation from Western Canada in the House of Commons and the Cabinet.[48] The dominance of the party caucus resulted in Members of Parliament sacrificing regional interests for the sake of party cohesion. Increasingly, both the Liberal and Conservative Parties came to be viewed by Western Canadians as parties controlled by

majorities from Central Canada.[49] Neither party provided the vehicle for the articulation of Western Canadian views at the federal level. Thus, the emergence of the Progressive Party symbolized, in Morton's words, "a revolt against the concept of Canadian political practice".[50]

Both C. B. Macpherson and V. C. Fowke have expressed the view that one should not interpret the concessions that the agrarian pressure groups and the Progressive Party were able to extract from the federal government as concrete evidence of the ability of Western Canadian politicians or pressure groups to influence the decision-making process at the federal level.[51] V. C. Fowke noted that any of the concessions that were achieved, such as the regulation of the grain trade, the restoration of the Crow's Nest Pass Rates on grain, the completion of the Hudson Bay Railway and the increase in the number of branch lines in Western Canada, were concessions that the federal government was required to make in the interests of Eastern capital.[52] The National Policy of protective tariffs was abandoned in Fowke's view:

> . . . not because of any waxing of agrarian political strength, but because the National Policy had by that time . . . "fulfilled the purposes of the Dominion", in effect, to establish on the prairies a new agricultural frontier attached economically to the central provinces. . . .[53]

Fowke concluded that the Canadian farmers' political power

". . . varied in proportion to the contribution which agriculture could make . . . to the cause of commerce, finance, and industry, rather than in proportion to farmers' numbers and their state of organization. . . . ."[54]

The Report of the Royal Commission on Dominion-Provincial Relations expressed similar views to those of Macpherson when it noted that it was possible in a federal system for certain regions of the country to feel that they were unable to participate in the decision-making process at the federal level and thus unable to influence the content of federal policy.[55] Should such a situation arise, the Commissioners concluded that the electorate within that region of the country would articulate their grievances at the provincial rather than at the federal level. In part, the Report read:

> . . . A sense of their inability to influence federal policy directly may easily divert the electors to use the provincial field to organize their discontent with federal policy, and thus a policy, constitutionally within the discretion of the federal Parliament and presumably designed in the national interest, may become the occasion for serious friction between the Dominion and a province, and may thus tend to weaken the bonds of national unity rather than strengthen them. The necessity of carefully estimating the consequences, both economic and political, of federal policy is an obvious lesson to be drawn from the survey of economic and financial developments since 1867. . . .[56]

C. B. Macpherson, in his attempts to explain the presence of a "non-party tradition" in Western Canadian

politics, observed that political parties at the provincial level perform a unique function -- the articulation of provincial demands at the federal level.[57] This unique function, a direct response to the "quasi-colonial" economic and political relationship that existed between the Western Canadian provinces and the federal government, was performed more effectively by political parties that were independent of the two national parties. The governmental party was, in Macpherson's view, "an offensive weapon"[58] used to oppose federal legislation that would have a harmful effect on Western Canada. These developments are manifestations of the feelings of political and economic isolation prevalent in Western Canada.

Further support for Macpherson's views are found in an article by Stephen Muller. Muller has characterized the Canadian party system as having two distinct levels -- a national and a provincial level.[59] He contends that there is a relationship between the continuance of a relatively stable two-party system at the national level and the emergence of minor or splinter parties at the provincial level, in that political parties, within the provincial party system, act as a safety valve for the expression of regional interests.[60] In many instances, the party in power at the provincial level may come into conflict with the federal government on various policy matters. Thus,

the balancing of centripetal and centrifugal forces within the Canadian federal system is institutionalized in the interplay and the bargaining that occurs between the two levels of the party system.[61]

Denis Smith has criticized the view that political parties at the provincial level provide opposition to the federal government in power.[62] While Smith agrees that politicians at the provincial level have on occasions criticized federal government policy, he does not believe that any real or effective opposition comes from the provinces. In Smith's view, the politicians at the federal level are preoccupied with policy matters of a different nature than those performed by provincial politicians.[63]

With the transformation of the federal system from classical to co-operative federalism, the importance of consultation between the two levels of government in the formation of policy in areas that are exclusively federal or provincial has increased significantly. Thus the role of the governmental party as a spokesman for provincial interests would seem to be enhanced. This would lend support to Macpherson's views that the bargaining and interplay between the two levels of the party system are of particular importance in any assessment of the decision-making process within the Canadian

federal system.

In statements at the Constitutional Conferences in 1968 and 1969, all the Western Premiers noted the absence of consultations between the provinces and the federal government in the formulation of policy in areas of federal jurisdiction that are of concern to the West.[64] In addition, concern was expressed over the unwillingness of the federal government to accommodate the views expressed by politicians and pressure groups from Western Canada. Premier Strom summarized the views of the West on this matter when he said:

> I have already alluded to the fact that much federal legislation in areas where the West has vital concerns is formulated without any real consultation with us. Because of the proximity of provincial governments in Central Canada to the national capital, they sometimes appear much more influential than ourselves in securing Federal legislation favorable to their requirements and often unfavorable to our requirements.
>
> We would consequently ask that greater consultation take place between the Federal Government and Governments of Western Canada on the issues in which they are vitally affected.
>
> We need and desire more equitable representation on Federal Government Boards, Commissions, task forces, and so on. Even this will not bring us positive returns unless there is also an effort on the part of the Federal Government to consult with us much more readily than it has in the past. . . .[65]

Thus, it would appear that the various grievances that collectively constitute the political dimension of Western Canadian Alienation in 1970 do not vary significantly from the grievances articulated by Western Canadian politicians in the 1920's. A feeling of political impotence and the belief that Western Canada does not have effective political power at the federal level continues to influence the thoughts of Western Canadian politicians.[66]

CONCLUSION

A feeling of economic and political isolation from the other regions of Canada, and the demand for economic and political equality, has been a recurring theme in the political history of Western Canada. These feelings, characterized in the 1970's as Western Canadian Alienation, can be seen as having both a political and an economic dimension.[67] It is necessary, however, to look beyond the outward visible manifestations of this phenomenon -- the articulation of the traditional and long-standing grievances by Western Canadians and the formation of splinter groups in Western Canada advocating secession from Confederation -- and examine its underlying and basic causes. This feeling of discontent appears to be a direct result of the absence of effective channels of communication within the

Canadian political system for the expression of Western Canadian views at the federal level. Therefore, what Western Canadians are demanding in reality are basic reforms in the functioning of the political system to give them effective political power at the federal level.

FOOTNOTES

[1]For example see: W. L. Morton, The Progressive Party in Canada (Toronto: University of Toronto Press, 1950); S. M. Lipset, Agrarian Socialism (Berkeley: University of California Press, 1955); Paul F. Sharp, The Agrarian Revolt in Western Canada (Minneapolis: University of Minnesota Press, 1948); and C. B. Macpherson, Democracy in Alberta (Toronto: University of Toronto Press, 1953).

A book edited by David P. Gagan entitled Prairie Perspectives offers some interesting clues as to the possible origins of Western Canadian Alienation. In a series of articles by G. F. G. Stanley, Denis Smith, and John Rea, each author attempts to outline characteristics of the Western Canadian society that differentiates it from other regions. For example, G. F. G. Stanley, in an article entitled "The Western Canadian Mystique", traces the development of a sense or spirit of community within Western Canada that clearly differentiates it from the other regions of Canada. In his search for the common theme that has dominated the political history of Western Canada, Stanley notes the repeated protests against the semi-colonial domination of the West by Eastern financial interests as one recurring phenomenon. Denis Smith, in his article, noted that ethnic, geographic, and economic variables have contributed to a distinct Western Canadian identity. What differentiates Western Canada from the other regions in his view is that Western Canada wanted to be "a region like the others", and view the federal government not as a distant and foreign government but as its own government. John Rea attempts to apply the "Hartzian Model" to Western Canadian society in an attempt to explain its unique characteristics. David P. Gagan (ed.), Prairie Perspectives (Toronto: Holt, Rinehart and Winston, 1970).

W. L. Morton, in an article entitled "The Bias of Prairie Politics", traces the history of Western Canada through three distinct stages -- colonial subordination, agrarian revolt, and political and economic utopianism. Morton notes the existence of a distinctive society in Western Canada that can be differentiated from the rest of Canada. W. L. Morton, "The Bias of Prairie Politics", in D. Swainson (ed.), Historical Essays on the Prairie Provinces (Toronto: McClelland and Stewart, 1970), pp. 289-300.

[2]These articles refer to the feeling of political and economic inequality in Western Canada and are seen as important dimensions of the phenomenon that has come to be known as Western Canadian Alienation.

[3]For a report of Senator Cameron's speech, see The Toronto Star, January 30, 1970.

[4]For a report of the meeting, see The Calgary Herald, January 10, 1970.

[5]Winnipeg Free Press, January 31, 1970.

[6]Globe and Mail, January 23, 1970.

[7]One of the difficulties in attempting to document the historical roots of Western Canadian Alienation, as well as its various dimensions, is that the literature on Western Canadian politics does not refer specifically to Western Canadian Alienation. They refer to it, however, by implication.

[8]W. L. Morton, The Progressive Party in Canada, and W. L. Morton, "The Bias of Prairie Politics", in D. Swainson (ed.), op. cit..

[9]C. B. Macpherson, Democracy in Alberta. For a discussion of the term "quasi-party system", see Chapters I and VIII. For a discussion of the term "quasi-colonial economy", see pp. 6-10. For a discussion of the term "the non-party tradition in Western Canada", see pp. 20-27.

[10]Hon. H. E. Strom, Opening Statement to the Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969).

[11]Ibid., pp. 122-125.

[12]For a report of the speech, see the Globe and Mail, February 18, 1970.

[13]Hon. R. Thatcher, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), pp. 91-94. It should be noted that provincial Premiers have taken very strong positions at open federal-provincial conferences to establish their bargaining positions.

[14]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Volume III,

(1923), p. 2812.

[15]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. III, (1922), p. 2314.

[16]Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 14th Parliament, Vol. III, (1925), p. 2687.

[17]For a detailed discussion of the economic dimensions of Western Canadian Alienation, see W. L. Morton, The Progressive Party in Canada; C. B. Macpherson, Democracy in Alberta and Paul F. Sharp, The Agrarian Revolt in Western Canada. For a more recent discussion see the statements to the Constitutional Conferences held in 1968 and 1969 by the provincial Premiers of Western Canada. Particular attention should be paid to the statement of Premier Strom at the Constitutional Conference of February 1969. A detailed discussion of the demands of the Progressives of the 1920's can be found in W. L. Morton, The Progressive Party in Canada. In addition, a reading of the Parliamentary Debates of the 1920's on occasions such as the Debate on the Speech from the Throne and the Budget Debate outline many of the grievances expressed by the Progressives in the 1920's.

Recent newspaper articles such as Pat Carney, "Is West Another Quebec?", Winnipeg Free Press, July 12, 1969; Jim Neaves, "Alberta Premier States Views on Federal-Provincial Policies", London Free Press, December 2, 1970; Norman Ward, "Prairie Separatism's Flat", Winnipeg Free Press, June 21, 1968; A. Westell, "Western Alienation", Ottawa Citizen, September 27, 1969; I. H. Asper, "The Winter of Discontent in the West", Globe and Mail, January 26, 1971; I. H. Asper, "Uniform tax system misses out on Canada's regional divisions", Globe and Mail, February 26, 1970; Peter Newman, "West's Unease Now a Force", Winnipeg Free Press, January 17, 1970 reveal that there are similarities in the demands articulated by Western Canadian politicians in the 1920's and in the 1970's.

[18]A review of the sources mentioned in the above footnotes reveals that the incidence of national economic policies on the economy of Western Canada has been a source of concern to Western Canadians for a prolonged period of time. In addition to the above mentioned sources, a review of the briefs presented by the Provinces of Saskatchewan

and Manitoba to the Royal Commission on Dominion-Provincial Relations isolated the policy areas of tariffs and freight rates for particular attention. The Government of Alberta did not present a brief to the Royal Commission; however, they did prepare a report in 1939 entitled The Case for Alberta in which the above issues were isolated for particular attention. A review of the Parliamentary Debates of the 1920's reveals that the Progressives raised these issues on several occasions. A detailed documentation of these speeches can be found in footnotes throughout the chapter.

The control of natural resources was an issue of particular concern to Western Canadians prior to 1930. For a detailed position of Western Canadian politicians on this issue, see C. B. Macpherson, op. cit., p. 6. Macpherson notes that the control of natural resources by the federal government symbolized the quasi-colonial status of Western Canada, in relation to Eastern Canada. In making this point, Macpherson quotes the views of W. A. Mackintosh and V. C. Fowke to support his views. In addition, several Members of Parliament speaking in the House of Commons made similar points. For example, see comments of Mr. James Steedsman, M.P. for Souris, Manitoba in House of Commons on May 16, 1923, in Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. III, (1923), p. 2835. See comments of Mr. A. J. Lewis, M.P. for Swift Current, in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. II, (1922), p. 155; Hon. W. R. Motherwell, M.P. for Regina, in Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. III, (1923), p. 2781; Mr. D. M. Kennedy, M.P. for Edmonton West, in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), p. 143; Mr. O. Turgeon, M.P. for Gloucester, in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), p. 275; and Hon. T. A. Crerar, M.P. for Marquette, in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), p. 50. W. L. Morton notes the issues of the control of natural resources in Western Canada as a grievance articulated by Western Canadians.

[19] Footnotes 17 and 18 outline sources that indicate that the incidence of national economic policies on Western Canada has been of concern to Western Canada for a prolonged period of time. See also: V. C. Fowke, National Policy and the Wheat Economy (Toronto: University of Toronto Press, 1957).

[20]H. A. Innis, Problems of Staple Production in Canada (Toronto: University of Toronto Press, 1933), pp. 19-21. In addition, see W. A. Mackintosh, The Economic Background of Dominion-Provincial Relations (Toronto: McClelland and Stewart, 1964), pp. 140-154. See speech by D. M. Kennedy (Edmonton West) in Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 14th Parliament, Vol. I, (1924), pp. 207-213, as an example of the kind of speech made by Western Canadian Members of Parliament in the 1920's on the unequal incidence of national policies on Western Canada. In addition, reference is made to the impact of national economic policies on Western Canada in W. L. Morton, The Progressive Party in Canada, and C. B. Macpherson, Democracy in Alberta. Additional references can also be found in the briefs submitted by the Provinces of Manitoba and Saskatchewan to the Royal Commission on Dominion-Provincial Relations (1939) and to the Royal Commission on Transportation of 1959.

[21]C. B. Macpherson, op. cit., pp. 6-10.

[22]Government of Canada, Report of the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939).

[23]Government of Canada, Report of Royal Commission of Dominion-Provincial Relations (Ottawa: King's Printer, 1939). In particular see a brief submitted by the Government of Saskatchewan to the Royal Commission in a volume entitled Submissions to the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Vol. 2, Exhibit 34, p. 203.

[24]Government of Canada, Report of the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Book II, p. 230.

[25]Ibid., p. 232.

[26]Economic Council of Canada, Fifth Annual Report (Ottawa: Queen's Printer, 1968), pp. 156-180.

[27]Ibid., p. 177.

[28]For a detailed account of the comments of Western Canadian Premiers, see the statements of Premiers Strom and Thatcher at the Constitutional Conferences of February

1969 and December 1969. Particular attention should be paid to their opening remarks.

[29]Hon. H. Strom, Statement to the Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), pp. 121-136.

[30]Hon. R. Thatcher, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), pp. 91-95, 339-343.

[31]For a detailed account of these statements, see the statements of Premier Strom to the Constitutional Conferences of February 1969 and December 1969 and the statement of Premier Thatcher to the Constitutional Conference of December 1969.

[32]I. H. Asper, "The Winter of Discontent in the West", Globe and Mail, January 26, 1971. See also I. H. Asper, "Uniform tax system misses out on Canada's regional divisons", Globe and Mail, February 26, 1970.

[33]Ibid..

[34]There are many books and articles that document the concern of Western Canadian politicians on the issue of the tariff. For example, see footnote 1 for several books written on Western Canadian politics that outline the impact of tariff policy on Western Canada. In addition, see the comments of Hon. H. Strom, Statement to the Constitutional Conference,February 1969, Proceedings (Ottawa: Queen's Printer, 1969), pp. 111-136, and the statement by Hon. R. Thatcher, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), for a discussion of the impact of tariffs on the economy of Western Canada. All of the briefs presented by the Western Canadian provinces to the Royal Commission on Dominion-Provincial Relations noted the impact of the tariff on the economy of Western Canada. W. A. Mackintosh outlines the impact of the tariff on the various regions of Canada in The Economic Background of Dominion-Provincial Relations, Appendix 3 to the Report of the Royal Commission on Dominion-Provincial Relations. Members of Parliament from Western Canada raised the issue of tariffs on several occasions in the 1920's. For a detailed account of these speeches see footnote 37.

[35]For example, see C. B. Macpherson, Democracy in Alberta and W. L. Morton, The Progressive Party in Canada. In both instances the authors note that tariffs have been a contentious issue in Western Canada for a long period of time.

[36]C. B. Macpherson, op. cit., p. 9.

[37]For example, see the comments of Mr. H. H. Stevens (Vancouver Centre), Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 14th Parliament, Vol. II, (1924), p. 1920; Mr. W. J. Lucas (Victoria), Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. I, (1923), pp. 78-79; Mr. M. N. Campbell (Mackenzie), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), p. 356; Mr. A. M. Carmichael (Kindersley), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), pp. 157-158; Mr. Robert Forke (Brandon), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), p. 78; Mr. D. Kellner (Edmonton West), Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. III, (1923), pp. 2813-14; Mr. A. W. Neill (Comox-Alberni), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. III, (1922), p. 2314; Mr. J. T. Thorson (Winnipeg South Centre), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 16th Parliament, Vol. I, (1927), pp. 964-966; Mr. D. M. Kennedy (Edmonton West), Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 14th Parliament, Vol. I, (1924), pp. 207-213; Hon. T. A. Crerar (Marquette), Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), pp. 54-56.

[38]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. I, (1922), pp. 54-56.

[39]Government of Canada, Submissions To the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Vol. 2, Exhibit 34, p. 223.

[40]Hon. H. Strom, Statement to the Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), pp. 127-128. Hon. W. A. C. Bennett, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969).

[41]Hon. W. A. C. Bennett, op. cit., pp. 133-134, 305-306.

[42]Hon. R. Thatcher, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), pp. 92-93, 340-343, 364-365.

[43]Hon. H. Strom, op. cit., p. 373. Hon. W. A. C. Bennett, op. cit., pp. 366-368.

[44]Hon. H. Strom, op. cit., p. 178.

[45]Both W. L. Morton and C. B. Macpherson note this concern of Western Canadian politicians. In addition, newspaper articles written on the subject of "Western Canadian Alienation" refer to this fact. The issue was also raised by provincial Premiers from Western Canada at the Constitutional Conferences of 1969 and 1970. Members of Parliament from Western Canada raised the issue on numerous occasions. For a detailed account of the speeches see footnotes 18 and 37.

[46]See footnotes 2 and 17.

[47]W. L. Morton, op. cit., pp. 8-10, 288.

[48]Ibid..

[49]Ibid., p. 288.

[50]Ibid..

[51]C. B. Macpherson, op. cit., pp. 8-9.

[52]C. B. Macpherson, op. cit., pp. 8-9. W. L. Morton notes the accomplishments of the Progressive Party in similar terms but does not suggest that the concessions were made in the interests of Eastern financial interests. See also: V. C. Fowke, Canadian Agricultural Policy (Toronto: University of Toronto Press, 1947), p. 270.

[53]V. C. Fowke, op. cit., p. 270.

[54]Ibid., p. 9.

[55]Canada, Report of the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Book II, p. 232.

[56]Ibid., p. 232.

[57]C. B. Macpherson, op. cit., p. 21.

[58]Ibid., p. 21.

[59]Steven Muller, "Federalism and the Party System in Canada", in J. P. Meekison (ed.), Canadian Federalism: Myth or Reality? (Toronto: Methuen, 1968), pp. 119-135.

[60]Ibid., pp. 120-121.

[61]Ibid., p. 125. For a similar view, see F. H. Underhill, "Canadian Liberal Democracy in 1955", in G. V. Ferguson and F. H. Underhill, Press and Party in Canada (Toronto: University of Toronto Press, 1955), pp. 27-46.

[62]Denis Smith, "Prairie Revolt, Federalism and the Party System", in H. G. Thorburn (ed.), Party Politics in Canada (Scarborough: Prentice Hall, 1967), pp. 189-201.

[63]Ibid., p. 196.

[64]The Premiers from Western Canada raised this issue during the Constitutional Conferences held in Ottawa in February and December 1969, during their discussions on proposed restrictions on the spending power. For a complete text of their remarks, see Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969) and Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969).

[65]Hon. H. Strom, Statement to the Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), pp. 134-135.

[66] A series of newspaper articles was collected on the subject of Western Canadian politics from four Western Canadian newspapers - the Winnipeg Free Press, the Regina Leader Post, the Calgary Herald, and the Edmonton Journal from June 1969 to June 1970 while the author was employed in the Federal-Provincial Relations Secretariat of the Privy Council Office in Ottawa.

[67] No attempt will be made to enter into a lengthy discussion of the meaning of the term "political alienation". For purposes of this dissertation the term political alienation will be defined in the following manner: "Political alienation...involves not only apathy or indifference, but also diffuse displeasure at being powerless and mistrust of those who do wield power. Given the opportunity for expression, political alienation would be expected to be translated into either an undirected vote of resentment or an organized vote of opposition . . . . Political alienation is defined as a combination of perceived lack of power in community affairs and distrust of those who hold power positions . . . ."
(Source: Thompson, W. E., and Horton, I. E., "Political Alienation as a Force in Political Action" in Social Forces, Volume 38, October 1959 to May 1960, p. 190 and p. 195.)

CHAPTER III

THE ISSUE OF FREIGHT RATES

The issue of freight rates has been one of concern to Western Canadians for a prolonged period of time. As was noted in Chapter II, Western Canadian politicians have frequently argued that the high level of freight rates has restricted the economic development of Western Canada. The objectives of this chapter are twofold. The first objective is to explore in greater depth the nature of Western Canadian grievances with regard to freight rates. The second objective is to isolate several channels of communication utilized by the political actors from Western Canada to articulate their views to the federal government.

The chapter will be divided into two sections. Section 1 will define the term "freight rate" and isolate some of the variables that influence the level of freight rates levied by the railways. In addition, an attempt will be made to outline particular Western Canadian grievances as they pertain to the issue of freight rates. For example, Western Canadian demands for greater governmental regulation of the railways, for the elimination of long and short haul discrimination and horizontal percentage rate increases, and for the equalization of rates in all regions of Canada will be reviewed.

Section 2 of the chapter will indicate various channels of communication used by the political actors from Western Canada to articulate their views to the federal government. No attempt will be made to document every instance when the issue of freight rates has been raised by a Western Canadian politician. This would be a time-consuming task and it is doubtful that a chronology of these utterances would be particularly meaningful. It is, however, important that sufficient evidence be gathered to demonstrate that the issue of freight rates is a matter that has occupied the attention of federal and provincial politicians for over fifty years.

There are numerous sources that document the position of Western Canada on this particular issue. An attempt was made, however, to select sources that would reveal the various channels of communication that have been used by the political actors in Western Canada to articulate their views to the federal government. Thus, the following sources were selected to document Western Canadian views -- the speeches of Western Canadian Members of Parliament in the House of Commons from 1920 to 1960, briefs submitted by the Provinces of Manitoba, Saskatchewan, and Alberta to the Royal Commission on Dominion-Provincial Relations, to the Turgeon Royal Commission on Transportation in 1948 and to the Macpherson Royal Commission on Transportation in 1959, and statements by the provincial

Premiers from Western Canada to Federal-Provincial Conferences from 1945 to 1968. An examination of these sources should reveal if, in fact, the issue of freight rates has been an issue of continuing concern to Western Canada. In addition, such a review will indicate the extent to which the various channels of communication have been utilized to articulate Western Canada's position at the federal level.

Section 1

According to A. W. Currie, freight rates are "the prices charged by the railways for its freight services".[1] In Canada, the freight rate structure is composed of six broad categories of rates.[2] The six categories are as follows:

1. Class Rates: These rates are the highest level of freight rates applicable for the movement of goods between various points in Canada. All articles are classified in the Canadian Freight Classifications, and the category assigned to each commodity determines the level of rates for that commodity.
2. Commodity Rates: These rates are lower than the corresponding class rates and are applied to relatively large volume movements of commodities such as grain, iron, steel, and lumber.

3. Competitive Rates: These rates represent reductions from normal commodity and class rates and are issued by the railways to meet competition from other modes of transport.
4. Non-competitive Rates: These are class and commodity rates that have not been reduced by the railways to meet the forces of competition.
5. Agreed Charges: Agreed charges are rates negotiated by the railways and the shipper as a method of meeting competition. An agreed charge is a contract between the railway and the shipper under which the shipper agrees to ship all, or a specified percentage, of his shipments between certain points via the railway in return for lower rates. The contract is for an initial period of one year; however, it may be cancelled by either party with ninety days' notice.
6. Statutory Rates: These are freight rates established by the Parliament of Canada for the movement of particular commodities by the enactment of specific legislation. Perhaps the best example of statutory rates

is the Crow's Nest Pass rates on the movement of grain and flour.

A freight rate structure can be based on one of two principles -- "the cost of service" or "the value of service".[3] From 1867 to 1967, the "value of service" principle was used by the railways, and accepted by the federal government, as the guiding principle for the determination of rates. Freight rates, using this principle, were based on the value of the commodity being shipped and on the value of the service to the shipper. In effect, the railways were free to charge whatever rate the traffic would bear given existing competition from other modes of transport. Under this system of pricing, the railways moved bulk commodities that had a low value per pound, such as grain and coal, at very low rates and recovered their losses on the movement of these commodities by charging higher rates on finished products. The federal government justified such pricing practices on the part of the railways on the grounds that such a policy would further stimulate primary resource development in Canada. Clearly, freight rates established under this principle did not bear any relationship to the cost of performing the service. The Royal Commission on Transportation of 1959 commented on this principle of rate-making in the following manner:

> . . . The traditional principle of ratemaking, then, represented a form of cross subsidization under which some users of the rail service contributed through higher rates a relatively greater amount to the total transportation bill than did others -- on a sort of capacity-to-pay basis. It was a system that seemed eminently suited to the needs of the developing Canadian economy as well as to the needs of the railways for the maximum volume of traffic consistent with adequate revenue returns -- and if there were certain shippers who questioned the reasonableness of the rate structure there was, in the transportation environment of the day, very little they could do about it. . . .[4]

With the enactment of the National Transportation Act in 1967, a new approach, "the cost of service principle" became the guiding principle of the freight rate structure. Freight rates were to be determined on the basis of the cost of providing the service rather than on the value of the service to the shipper. The adoption of a cost-oriented rate structure was in response to the increasing competition within the transportation industry in Canada. Such a rate structure would enable the railways "to secure the kind of traffic for which they have an inherent cost advantage and relinquish that traffic which might better be transported by other carriers".[5]

W. A. Mackintosh suggests that there are three factors that influence the level of freight rates in Canada -- the extent of competition from other modes of transport, the cost of construction and operation of railway facilities in relation to the traffic density

moving on those lines, and legislative regulations laid down by the state.[6] The legislative regulations enacted by the federal government outlining the criteria for the determination of rates are of particular interest. In Chapters IV and V, an attempt will be made to outline the legislative criteria that have been set down by the federal government from 1867 to 1959 and to examine the administrative agencies that have been established by the federal government to implement these regulations.

There are several long-standing grievances with regard to the issue of freight rates that have been of continuing concern to Western Canada -- the monopoly position of the railways with regard to the movement of bulk commodities, the equalization of rates in all regions of Canada, long and short haul discrimination, and horizontal percentage rate increases.[7] Each of these issues will be considered in turn.

1. Monopoly position of the railways: Western Canadians have consistently held the view that the railways are in a monopoly position with regard to the movement of particular bulk commodities. As a result, Western Canadians have urged the federal government to enact legislation that would provide Western Canada with adequate protection from the monopoly position of the railways.

2. Equalization of rates: Western Canadians have contended that the level of freight rates in Western Canada has been consistently higher than the level in Ontario and Quebec. Notwithstanding the greater distances involved in moving goods to and from Western Canada, statistics have been presented by the three Prairie Provinces on numerous occasions to illustrate that the level of rates is, in fact, higher in Western Canada. Thus, equalization of rates has always been a policy objective of Western Canada.

3. Long and short haul discrimination: Long and short haul discrimination is a pricing practice adopted by the railways that results in one location paying higher freight rates than another location.[8] Shipments of similar products over the same route and in the same direction are charged a higher absolute rate for the shorter distance than for the longer distance. The nature of the discrimination may be illustrated by the following example:

A C B

If a railroad charges a rate of $1.00 per

hundred pounds for transporting a certain commodity from A to B and $1.25 for carrying it from A to C, the carrier is practising long and short haul discrimination. A similar discrimination results if the rate from C to A is in excess of the rate from B to A. Long and short haul discrimination as practised by the railways has been a long-standing grievance of Western Canada.

4. Horizontal percentage rate increases: Horizontal percentage rate increases refers to the practice adopted by the railways, and approved by the Board of Transport Commissioners, of applying uniform percentage rate increases to all categories of rates. Such a procedure in the view of Western Canadians further accentuated existing discrepancies in the freight rate structure and transferred the major impact of freight rate increases to Western Canada. The Royal Commission on Transportation of 1959 commented on the regional impact of horizontal percentage rate increases in the following manner:

> . . . It is apparent, therefore, that as far as its effects are concerned a horizontal increase is horizontal in name only -- it does not apply evenly across the entire rate structure but

> is applied selectively by the railways according to what they think the traffic can bear. Obviously the more competitive a block of traffic is, the less likely it is to receive all, or even part, of the increase. And conversely, the less exposed to competition a type of traffic is, the more likely it is to have the full increase applied to it. With permission from the Board to so apply the "horizontal" increases and with a need to secure additional revenues, it is perhaps understandable that the railways would act in this way -- that is, obtain as much as possible from that traffic where competition is keen and alternative forms of transport readily available. With each successive increase in rates, however, certain traffic ceases to [move] because it cannot bear the higher rate; also, of course, the area of traffic exposed to competition expands and the railways, experiencing both erosion and attrition of their traffic, are faced with a situation where, if they are to continue to attempt to meet their financial needs in this way, they must apply larger and larger increases to a smaller and smaller portion of traffic. . . .[9]

In summary, these are the major issues which have dominated the representations made by the political actors of Western Canada to the federal government on the subject of freight rates over the past fifty years.

SECTION II

There are several channels of communication that have been utilized by federal and provincial politicians from Western Canada to articulate Western Canadian views

at the federal level -- speeches by Members of Parliament in the House of Commons, briefs to Royal Commissions, and statements by provincial Premiers to Federal-Provincial Conferences. Each of these channels of communication will be discussed separately.

A. Speeches of Western Canadian Members of Parliament

An analysis of the speeches of Members of Parliament from Western Canada reveals that they have utilized the debates in the House of Commons to convey Western Canadian grievances on numerous issues to the federal government. Invariably, their list of grievances included the issue of freight rates. For example, the arguments advanced by the Progressive Members of Parliament in the 1920's stressed several themes -- the discriminatory nature of freight rates in Western Canada when compared with the level of freight rates in other regions of Canada, the negative impact of freight rates on the economic development of Western Canada, the absence of representatives on the Board of Railway Commissioners from Western Canada, and the failure on the part of the federal government and its regulatory agency to accommodate the views of Western Canada in the formulation of transportation policy.[10] Excerpts from the speeches of three Members of Parliament from Western Canada reveal these concerns and

characterize the speeches given by most Members of Parliament from Western Canada at that time.

Speaking in the House of Commons on March 10, 1924, Mr. D. M. Kennedy, Progressive Member of Parliament for Edmonton West, noted the negative impact of freight rates on the economy of Western Canada and observed that freight rates in Western Canada were higher than freight rates on similar commodities in Eastern Canada. In part, he said:

> . . . The Province of Alberta has been possibly one of the chief shock absorbers of the Dominion, in so far as freight rates are concerned. . . . We had the long haul on what we bought from Eastern Canada, and we had the long haul to pay on what we sold, because, of course, we paid the freight rates both ways. Then if we want to ship west we have the mountain scale of rates on every mile over which we ship. . . . We believe that the high mountain rates prevent the development of traffic in that direction. . . . If we are going to have all the disadvantages of the tariff, and if our freight rates are going to be possibly fifteen, twenty, or maybe twenty-five percent higher than they are in some other parts of Canada, and if, in addition to that, we have a bank interest rate that runs about two percent higher than in some of the more thickly settled districts of the Dominion, I do not know how to convince any intelligent person that the people in the West are very vigorous in their demands. I am not referring merely to the Members. I am glad we have a people that are not satisfied with those conditions and will never be satisfied with those conditions until they are rectified. I believe that until they get freight rates that are just about the same from coast to coast we never will have anything like real satisfaction or real unity between the various provinces of the Dominion of Canada. . . .[11]

Mr. R. Gardiner, Progressive Member of Parliament for Medicine Hat, commenting on the absence of representatives on the Board of Railway Commissioners from Western Canada, observed that:

> . . . In view of the fact that the three western provinces and British Columbia are very important factors in providing traffic for our railways, we submit that these four provinces should be more fairly represented on the board than they are at the present time. . . .[12]

Speaking in the House of Commons on February 28, 1927, Mr. A.M. Young, Liberal Member of Parliament for Saskatoon, criticized the composition of the Board of Railway Commissioners and the decisions of the Board that in his view discriminated against Western Canada. During his speech, he noted:

> . . . I want to see one half of the board come from Western Canada. Today we have on the board six men, five of whom come from the East and one from the West, and at this very moment from Fort William and Port Arthur west there are more miles of railway than there are in Eastern Canada. Unless we get those things, the unrest which we have in Western Canada in regard to this matter will not subside, but will increase. We cannot afford to allow a thing of this kind to delay any longer, and I am going to plead once more with the government to see to it that at the earliest possible date the defects that now exist in the Board of Railway Commissioners are removed. . . .[13]

The excerpts from the speeches delivered in the House of Commons by members of the Progressive Party illustrate the concern of the opposition Members of Parliament from Western Canada on the subject of freight rates during the 1920's.

During the 1930's, the issue of freight rates was not a subject of major debate in the House of Commons.[13A] However, with the conclusion of World War II in 1945, the issue of freight rates again was debated in the House of Commons by Western Members of Parliament. One of the most important debates took place in April of 1948 when the Minister of Transport, the Honourable Lionel Chevrier, announced that the Cabinet had rejected the request of the provinces that the 21% freight rate increase granted by the Board of Transport Commissioners be suspended.[14] Instead, the federal government instructed the Board to investigate the existing rate structure "with a view to the establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions equalize its application to all persons and localities so as to permit the greatest possible exchange of commodities between the various provinces and territories of Canada".[15]

Western Members of Parliament were extremely critical of the government's announcement and they used the occasion to express their grievances with regard to the inequities in the rate structure in Western Canada.[16] Perhaps the two most vocal Members from Western Canada were Mr. J. H. Blackmore and Mr. W. R. Thatcher. Speaking during the debate, Mr. Blackmore, Social Credit Member for

Lethbridge, indicated that in recent times Western Canadians had become increasingly aware of the fact that the federal government was insensitive to Western Canadian views.[17] In demanding equal treatment for Western Canada, Mr. Blackmore indicated that it was possible that the Western provinces would secede from Confederation if their views on issues of concern to Western Canada were not accommodated by the federal government. He noted that:

> . . . The government seems to have the idea that there is no recourse, that a people like the people of the maritimes and the people of the west simply must take whatever the dominion government chooses to give them and like it. There are means to which these people can have recourse. I should like to warn the members of the government not to drive these people too far. If we once become convinced in the western provinces that it is impossible to live with Ontario and Quebec we shall find some means of doing another thing. The people of this dominion must bear in mind that western Canadians are Canadians and are entitled to equal treatment. They do not consist of slaves or menials or peasants; they consist of free men, descendants of free men with free traditions, and if they cannot accomplish the desires of their hearts in the way of fair government by sending representatives to Ottawa, Mr. Speaker, they will be tempted to send representatives somewhere else. That is just how serious it is. And if the members of cabinet have not had that impressed on them I urge them to take my words seriously because I mean every syllable of what I am saying. Men in my constituency, in my province and in several others are talking in just such terms as that.
>
> Not only has the government disregarded the expressed will of seven sovereign provinces in this dominion, but it has completely disregarded the pleas and requests of organizations of producers from coast to coast in this nation. Farmers' organizations and organizations of

> producers of every kind have sent in requests. Why, one would think these people were babes whispering in a windstorm for all the attention the dominion government gives to what they say. . . .[18]

During the debate, Mr. W. Ross Thatcher, C.C.F. Member of Parliament for Moose Jaw, restated the traditional Western Canadian grievances with regard to freight rates. It is interesting to compare his statements in the House of Commons in 1948 with his statements to the Constitutional Conference in 1969. The consistency of Mr. Thatcher's views on the issue of freight rates is striking. For example, during the debate in 1948 he said:

> . . . As I said a few moments ago, it seems to me that the chief issue in this debate is very clear cut. Is confederation to be an association of provinces equal in every respect, or is confederation to be an association of provinces where seven provinces will receive treatment less favourable economically than the other two? Is the transport board, where freight rates are concerned, to treat some provinces as first-class provinces and others as second-class? That is the question before us today.
>
> As a Canadian who comes from a western province, I ask for precisely the same treatment on freight rates as is given to the Canadian who comes from Ontario or Quebec. My constituents ask for no more than equality, but they will willingly accept no less.
>
> Some honourable members may feel that there are certain reasons why the west should pay freight rates which are higher than those paid in central Canada, but I can assure them that there are many reasons for the opposite being true.
>
> The prairie provinces have almost everything which should make for low rates. We have flat country with very few rivers. We have almost no natural obstacles. I think these features should

> make for low operating costs. Certainly the capital investment of the railroads has been kept much lower than it is in central Canada. The hauls on the prairie are long and the density of traffic is there. The prairies have bulk products which should make for lower operating costs. Despite the advantages which we have, we are at an overwhelming disadvantage through not having competition similar to that which is present in the east. In the east there is competition from the United States railraods, from the great lakes, and from trucks. All these factors have forced the railroads to keep their rates at a reasonable level. . . . Obviously that is the way in which the railroads have fixed their rates during past years. The west has had to pay higher rates simply because it was felt that it could afford to pay them. The railroads have taken advantage of the situation to make the west "pay through the nose" in many cases. . . .
>
> . . . We hear a great deal today about the need for national unity and that is all to the good but I think we must realize in this house that national unity must be brought about on a basis of equality. The action of the government in permitting the freight rate increase cannot but cause discontent in the dominion, because it will impose on the citizens in the remote areas of Canada a charge which is greater than the charge imposed on people in Ontario and Quebec. Once again I do not argue basically with the railways when they say they need increased revenue, but I disagree strongly with the way in which they are proposing to obtain it; that is, by a flat increase instead of by equalization. As equal partners in this confederation we are asking for the same rates as Ontario and Quebec. Let all sections of Canada pay freight rates which are on a fair and equitable basis, and if the government must be defeated to make it see the wisdom of such a policy, then let it be defeated.[19]

The debate in the House of Commons in October 1951 on the recommendations of the Turgeon Royal Commission on Transportation provided Western Canadian Members of

Parliament with another opportunity to debate the issue of freight rates in the House of Commons.[20] For example, the leader of the Social Credit Party, Mr. Solon Low, expressed his support for the amendments to the Railway Act recommended in the Report of the Turgeon Royal Commission.[21] In Mr. Low's view, the recommendations proposed were in direct response to the representations made by Western Canada to the Royal Commission, and strengthened the contention of Western Canada that the existing freight rate structure restricted the level of economic development in Western Canada. In concluding his speech, he urged the federal government to enact the recommendations of the Royal Commission:

> . . . We hope to see the government prepared to bring in legislation and give effect to at least some of the royal commission's recommendations at this session. I say "we"; I am speaking now on behalf of the people of the province of Alberta whom I represent as well as for my group who are entirely from Alberta. We in that province have for many years been labouring under the heaviest freight rate structure in the whole Dominion of Canada. We have been at the peak of the whole structure, and we have suffered under discriminatory rates. I think that claim has been made a good many times on the floor of the house, and has been denied a number of times by people on the government side. The report of the royal commission is evidence that there has been marked discrimination against the west, particularly Alberta and Saskatchewan. We rejoice that at long last some recognition has been given to the claims of the people of my province for redress of these discriminatory rates. . . .[22]

During the debate, Mr. C. E. Johnston, Social Credit Member of Parliament for Bow River, indicated that a

national transportation policy had not been developed by the federal government that placed sufficient emphasis on the "national unity" aspects of transportation policy.[23] In his view, transportation policy in the past had been framed only in the interests of Ontario and Quebec. The following quotation summarizes his views on the subject:

> . . . But certainly the present freight rate structure which is embodied in the Railway Act has been most detrimental to the beneficial expansion of Canada, both financially and industrially. . . .
> . . . We in Alberta -- and the same is true in Saskatchewan -- have all the necessary materials to make a great industrial province. The one thing that has held us back has been the freight rate structure in this country. It is something that is long overdue for an overhaul, and I am glad to see that it is coming at this time. Every time that the railway companies have been permitted to raise their freight rates it has been made that much more difficult for those of us in Western Canada to improve our economic, financial or industrial position. There has been a great advantage to Ontario and Quebec, which have these long-established low rates. It is no wonder, Mr. Speaker, that Ontario and Quebec did not appear before the commission to make submissions. It was to their advantage to stay away from the investigation so they might maintain their already favoured position. . . .[24]

Mr. John Diefenbaker, Member of Parliament for Lake Center, made reference to the impact of horizontal rate increases on the freight rate structure in Western Canada and demanded that the federal government instruct the Board of Transport Commissioners not to grant future rate increases in this manner.[25] In his view, such practices employed by the railways further accentuated existing discrepancies in the freight rate structure. During the debate,

he said:

> . . . I speak particularly for the prairies, where the dice have been loaded against the diversification of industry. Discriminatory freight rates, intensified by reason of the horizontal increases in the last few years, have actually had the effect of denying the prairie provinces the opportunity of becoming diversified in industry. . . .
>
> . . . In Saskatchewan, suffering as we have from discriminatory freight rates, we cannot hope at any time to have established in our province those industries that are particularly fitted for establishment there by reason of the presence of the raw products. . . .[26]

Another long-standing grievance of Western Canada, long and short haul discrimination, was referred to by Mr. Douglas Harkness, Member of Parliament for Calgary East.[27] Such practices, in his view, increased freight rates in Western Canada and placed the railways in the position of deciding what industries would locate in the West. He proposed that such practices on the part of the railways should be outlawed by the inclusion of a specific clause in the Railway Act.

The preceding excerpts taken from speeches of Western Canadian Members of Parliament in the House of Commons from 1920 to 1950 on the subject of freight rates gives sufficient evidence to support the contention that opposition Members from Western Canada have utilized the House of Commons as a forum for the expression of Western Canadian views on the subject of freight rates.

B. Representations to Royal Commissions

The establishment of the Royal Commission on Dominion-Provincial Relations (1937), the Royal Commission on Transportation (1948), and the Royal Commission on Transportation (1959) afforded Western Canadians with the opportunities to present their views on the issue of freight rates to the federal government.[28] The representations from Western Canada to each of these Royal Commissions will be considered separately.

1. Representations to the Royal Commission on Dominion-Provincial Relations

The hearings held by the Royal Commission on Dominion-Provincial Relations afforded both the provincial governments and pressure groups from Western Canada an opportunity to present briefs outlining the grievances of Western Canada. Both the Provinces of British Columbia and Saskatchewan included sections on the issue of freight rates in their general briefs. Manitoba's brief made only a passing reference to the issue and Alberta challenged the establishment of the Commission and refused to submit a brief.[29] However, pressure groups from Alberta, including the United Farmers of Alberta, the Alberta C.C.F. Clubs and the Alberta Association of Municipal Districts presented briefs to the Commission that included sections devoted to the issue of freight rates.[30]

The Government of Saskatchewan presented a detailed survey of the structure and level of freight rates in Eastern and Western Canada in an attempt to illustrate the negative incidence of freight rates on the economy of the West.[31] Numerous statistics were presented indicating that residents of the Province of Saskatchewan were subject to discriminatory freight rates on almost every item consumed in Saskatchewan. To further strengthen their contention that Western Canada was burdened by discriminatory freight rates, reference was made to the writings of H. A. Innis on the history of the Canadian Pacific Railway.[32] Innis contended that the large profits assembled by the Canadian Pacific Railway were in large part a result of the higher freight rates levied by the railway in Western Canada:

> . . . Freight earnings and freight traffic have depended directly and indirectly to a very large extent on the expansion of Western Canada, especially with the development of the West, and with the effect of higher freight rates resulting from a non-competitive situation in that area. The contributions in Western Canada were evident in the receipts from land. It follows, therefore, that to a large extent the net earnings and total receipts of the Canadian Pacific Railway have been directly obtained from Western Canada. . . .[33]

The Government of Saskatchewan recommended that specific amendments to the Railway Act be enacted immediately. In particular, it was recommended that the terms of reference establishing the guidelines for the determination of rates by the Board of Railway Commissioners be

expanded to consider other factors than the reasonableness of the rates charged for a service and the question of unjust discrimination.

The brief concluded by noting that there had been a general feeling in Eastern Canada that "Western Canada can pay a little more -- more interest, more tariffs and higher freight rates".[34] In the opinion of the Government of Saskatchewan, however, the West could no longer suffer under the burden of these policies if the economic future of Western Canada was not to be imperilled.

The Government of Alberta documented at great length the long-standing grievances of Western Canada in a publication entitled The Case for Alberta.[35] This document was sent to the federal government and was not presented to the Royal Commission. Sections of the statement were devoted to the question of tariffs, freight rates and monetary policy. On the issue of freight rates, the Alberta Government charged that Alberta "stands at the apex of the freight rate structure" in Canada and that Albertans paid the highest freight rates on goods imported into and exported from the province.[36] There were four major grievances cited in the brief and in each instance statistical evidence was presented to indicate the discriminatory nature of the freight rate structure.[37]

1. The first grievance expressed by the Alberta Government was the claim that "basic mileage rates" were lower in Eastern Canada than in Western Canada. Statistical evidence was presented that indicated that, not only were the "basic mileage freight rates"[38] higher in Western Canada, the actual percentage reduction in mileage rates in Eastern Canada was double the decrease in rates in Western Canada as distances increased. For example, the first class rate in Eastern Canada for shipping goods a distance of 100 miles was 58 cents per hundredweight as compared with 65 cents per hundredweight in Western Canada. The freight rate for a distance of 500 miles in Eastern Canada was $1.08 per hundredweight while in Western Canada the freight rate was $1.62. Thus, the prairie rate was 50% higher than the Eastern Canadian rate.

2. The second grievance articulated by the Alberta Government was that the freight rates on certain basic commodities consumed and produced in Alberta were higher than Eastern rates on the same commodities. An extensive list of the freight rates on numerous commodities were included in the brief to illustrate this point. For example, carload lumber rates from Vancouver to Calgary, a distance of 642 miles, were 50 cents per hundredweight,

while the carload lumber rate from Mont Laurier, Quebec to Glencoe, Ontario, a distance of 642 miles, was only 27 cents per hundredweight. A comparison of the rates on fresh meat indicated that the rate from Toronto to St. John, New Brunswick, a distance of 810 miles, was 55 cents, while the rate from Calgary to Vancouver, a distance of 642 miles, was $1.10, double the Eastern Canadian rate.

3. The third grievance was the unfavourable position of the distributor and consumer in Alberta in relation to their counterparts in other regions of the country, as a result of lower transcontinental rates from Eastern Canada to Vancouver than from Eastern Canada to points in Alberta. Evidence was presented that indicated that it was cheaper to ship goods from Montreal to Calgary via Vancouver, thus enjoying the advantages of lower rates to Vancouver as a result of water competition, than to ship the goods directly to Calgary or Edmonton. For example, the freight rate on ammonia shipped from Montreal to Calgary or Edmonton was $2.35 per hundredweight, while the freight rate on the same commodity to Vancouver was $1.25. Thus the Alberta rate was 87% higher than the Vancouver rate.

Cities in the Western part of the United States that are land-locked suffered a similar fate with regard to freight rates. However, in 1914, the Interstate Commerce Commission, in a case known as the "Spokane Decision",

ruled that rates to points on the West Coast of the United States could not be lower than rates to intermediary points without the permission of the Board.[39] Both the Government of Alberta and the various pressure groups from Alberta that presented briefs to the Royal Commission urged that the principles of the "Spokane Decision" be adopted, thus eliminating "long and short haul discrimination" in Western Canada. The Edmonton Chamber of Commerce summarized the implications of the "Spokane Decision" for Western Canada, and Alberta in particular, when it noted:

> . . . If the principle of the "Spokane Rate Case" or any approximation thereof were in force in Canada, its effect on Alberta's position in the Canadian freight rate structure and therefore on its financial position within the Dominion would be tremendous. Under the "Spokane Rate Principle", Alberta points on the main lines of either railroad would receive the same rates on through shipments to and from the East as those applying over the much larger distance to and from Vancouver.[40]

The Alberta brief made reference to the fact that railways assign every commodity that is to be shipped a specific classification. This procedure is extremely important in that the category into which a commodity is assigned determines the rate charged for the shipment of that particular good. The Government of Alberta charged that the railway companies were categorizing commodities in such a fashion that they discriminated against both the producer and the consumer in Alberta. For example, canned

goods when shipped to Alberta were assigned a "fifth class rate" at a rate of $1.98 per hundredweight, whereas canned goods shipped to Vancouver were assigned a "special commodity rate" of $1.50 per hundredweight. Calculated on a per ton-mile basis, the Alberta rate was $2.09 per ton-mile, while the Vancouver rate was $1.04 per ton-mile. The Alberta Government charged that as a result of this practice, Edmonton and Calgary were placed at a disadvantage as a distribution point to areas that logically should have been served by Calgary or Edmonton.

4. The fourth grievance was of more direct concern to residents of Alberta and Saskatchewan than to the residents of Manitoba and pertained to the criteria used by the railway companies to calculate freight rates from Port Arthur and Fort William to Winnipeg and points west of Winnipeg. The Government of Alberta strongly opposed the practice followed by the railways whereby the mileage used to calculate the freight rates to Winnipeg from Port Arthur was not based on the actual mileage of 419 miles but on the basis of a "constructive mileage of 290 miles". Evidence was presented that indicated that freight rates established for destinations between Port Arthur and points west of Winnipeg were a higher percentage over the base rate than the distance in mileage warranted. As a result, goods could be shipped at lower rates to Edmonton by having the goods unloaded in

Winnipeg and then reshipped to Edmonton than by having the goods shipped directly from Port Arthur to Edmonton. The Government of Alberta contended that these provisions restricted the growth of Edmonton and Calgary as distribution points.

In summarizing their position on the issue of freight rates, the Government of Alberta concluded that Western Canada was burdened with a very large proportion of Canada's transportation costs and that the arguments advanced by the Government of Canada and the Board of Transport Commissioners were no longer valid. The costs of providing a transportation system in Canada that integrated the economies of the various regions should, in the opinion of the Government of Alberta, be shared by all Canadians in all regions of Canada rather than placing the burden on the residents of one region of Canada.

2. Royal Commission on Transportation (1948)

The establishment of this Royal Commission in 1948 afforded Western Canada with another opportunity to present its views to the federal government. The Commission had been established in response to Western Canadian demands that the legislation outlining the criteria for the determination of rates be reviewed.[41] The briefs presented by the three Prairie Provinces stressed several themes -- the

monopoly position of the railways with regard to the movement of bulk commodities, the impact of long and short haul discrimination and horizontal percentage rate increases on the freight rate structure in Western Canada, and the negative impact of the freight rate structure on the economic development of Western Canada.[42] Among the remedies proposed by the Prairie Provinces were the equalization of freight rates in all regions of Canada, with the exception of the Crow's Nest Pass rates, closer supervision of competitive rates by the Board of Transport Commissioners, the introduction of legislation to prevent long and short haul discrimination, and the elimination of horizontal percentage rate increases as the method used by the Board of Transport Commissioners to grant freight rate increases.

Many of the recommendations proposed by the provincial governments from Western Canada were incorporated into the final recommendations of the Royal Commission. For example, the Commissioners recommended that the equalization of freight rates become a goal of transportation policy and that the Railway Act be amended to limit long and short haul discrimination. Finally, the Commissioners urged the Board of Transport Commissioners to discontinue its practice of granting horizontal percentage rate increases whenever adjustments in the freight rate structure were necessary.[43] Such practices, in their view,

accentuated existing discrepancies in the freight rate structure. Thus, it is evident that Western Canadians utilized this opportunity to present the West's case to the federal government in a very articulate and persuasive manner.

3. Royal Commission on Transportation (1959)

The establishment of the Macpherson Royal Commission afforded the Western Canadian provinces an initial policy input into the decision-making process that ended in 1967 with the enactment of the National Transportation Act. All of the provincial governments as well as numerous pressure groups from Western Canada presented extensive briefs on all aspects of transportation policy as it pertained to the West.[44] No attempt will be made at this juncture to review in detail the content of each of the briefs submitted from Western Canada.[45] There will, however, be references made to the briefs submitted by the Governments of Manitoba, Saskatchewan, and Alberta in an attempt to document the issue of freight rates as a recurring demand of Western Canada on the federal system.

(a) The Province of Manitoba

The Government of Manitoba in its brief to the Royal Commission on Transportation isolated specific inequities in the freight rate structure that discriminated against the economic development of Western Canada.[46]

Among the grievances isolated for particular attention were the negative impact of horizontal percentage rate increases on the freight rate structure in Western Canada, the inability of Western Canada to benefit from lower transcontinental rates as a result of the absence of competing modes of transportation in Western Canada, the failure on the part of the Board of Transport Commissioners to adequately regulate rates charged by water carriers and the existence of rates in the present freight rate structure that did not bear their proper share of the cost involved in transporting goods. The issues of horizontal percentage rate increases and long and short haul discrimination have been selected for particular attention.

(i) Horizontal Percentage Rate Increases

The Manitoba Government, utilizing the arguments advanced by the Prairie Provinces at the hearings of the Turgeon Royal Commission, as well as the recommendations of the Royal Commission, observed that horizontal percentage rate increases accentuated existing disparities in freight rates structures, aggravated the disadvantages suffered by long-haul shippers, and assumed that all traffic could bear the same percentage increase in freight rates.

On the basis of the statistical evidence presented to the Commission, the Manitoba Government concluded that horizontal percentage rate increases resulted in higher

freight rates in Western Canada than in Eastern Canada and that horizontal freight rates increases discriminated against long-haul shippers. No relief from these rate increases could be anticipated from either the railways or the Board of Transport Commissioners, thus the Government of Manitoba recommended that "some safeguards . . . be instituted either by way of statutory limitations or legalistic direction if the present situation is to be altered".[47]

(ii) Long and Short Haul Discrimination

The Government of Manitoba, using similar arguments to those found in the position paper of the Alberta Government in the 1930's, was critical of those provisions of the freight rate structure that resulted in lower freight rates on goods being shipped from Montreal to Vancouver than on goods being shipped from Montreal to points in Western Canada. In Manitoba's view, this practice gave the railways the power to determine whether or not the goods of a particular region of the country could compete with similar goods produced in other regions of the country. In view of the increasing industrialization of Western Canada, the Government of Manitoba urged the Commissioners to adopt the principle that "when a competitive rate is published from a more distant point, the intermediate point should be given a rate reflecting its shorter haul from the point of

destination".[48] This would in part neutralize the impact of freight rates on the level of economic development in Western Canada.

(b) The Province of Saskatchewan

The major theme of the Saskatchewan brief was the contention that the inequities in the freight rate structure as it applied to Western Canada were so firmly rooted in "the economic and political circumstances of the past"[49] that they would not be eliminated by merely adjusting certain classes of freight rates. This had been the practice adopted by the railways and approved by the Board of Transport Commissioners in the 1950's in their attempts to eliminate inequities in the freight rate structure. While it was difficult to demonstrate that the major impact of the freight rate increases of the 1950's had fallen on Western Canada, and Saskatchewan in particular, the Government of Saskatchewan presented statistics to support their contention. On the basis of this evidence, it was concluded that the residents of Western Canada were financing a larger share of the costs of providing a transportation system than were the other regions of Canada.

The central recommendation of the Government of Saskatchewan was the proposal that the federal government enact legislation that would provide a "National Transportation Subsidy" to Western Canada, thus reducing freight rates

in Western Canada. While the calculation of the subsidy would require detailed study by both levels of government, the Government of Saskatchewan expressed the view that the subsidy would be most effective "as a percentage reduction in freight rates on traffic moving out of, into, and within the four western provinces of Manitoba, Saskatchewan, Alberta and British Columbia".[50] The subsidy would ultimately result in a reduction in all classes of freight rates in Western Canada, however the first priority in any proposed reduction of freight rates should be a reduction in the rates on long-haul traffic.

(c) Government of Alberta

The Government of Alberta in its presentation to the Royal Commission on Transportation isolated one particular grievance for attention -- long and short haul discrimination.[51] Reference was made to a study that had been prepared in the United States that illustrated the favourable effects of the decision of the Interstate Commerce Commission of 1914 that eliminated short and long haul discrimination from the freight rate structure of the United States, on the economy of the Inter-Mountain Region of the United States.[52] Statistical evidence was presented by the Alberta Government to illustrate the impact of long and short haul discrimination on the economy of Alberta, and it was on the basis of this evidence that the Alberta

Government concluded that there was a relationship between Alberta's present and potential level of economic activity and transportation arrangements and costs within the province. Among the numerous recommendations advanced were the specific recommendations that low-valued, low-rated commodities should in the future carry a greater share of the fixed costs incurred by the railways and that geographic areas that were dependent on railway transportation should receive additional protection in the form of subsidies. These subsidies would eliminate the necessity of extremely high freight rates in certain regions of the country, when compared to the level of freight rates in other regions of Canada. In addition, it was proposed that the one and one third rule be applied to the movement of all goods and that agreed charges negotiated by the railways be subject to its provisions.

A review of the briefs presented to the Royal Commission on Dominion-Provincial Relations and to the Royal Commissions on Transportation established in 1948 and 1959 reveals that Western Canadians utilized the hearings held by the Royal Commissions to present their views to the federal government on the issue of freight rates. The two Royal Commissions on Transportation were established by the federal government in response to the demands of Western Canadians that revisions be enacted in existing legislation establishing

the criteria for the determination of rates.

The two issues isolated for particular attention at the hearings of the Royal Commissions were horizontal percentage rate increases and long and short haul discrimination. Such practices on the part of the railways, in the view of Western Canadians, further accentuated existing inequities in the freight rate structure. Many of the recommendations proposed by Western Canadians were incorporated in the Report of the Turgeon Royal Commission. For example, the Commissioners recommended that the Railway Act be amended to establish the equalization of rates as a goal of transportation policy and proposed the inclusion of a section in the Railway Act that would limit long and short haul discriminatory practices on the part of the railways.

The recommendations proposed by Western Canadians to the Royal Commission on Transportation of 1959 were for the most part ignored by the Commissioners in their final report.[53] Despite the rejection of Western Canadian views by the Macpherson Commission, the establishment of the Royal Commissions on Transportation in 1948 and 1959 afforded Western Canada the opportunity to present its views to the federal government. Many officials in Western Canada consider the hearings held by the two Royal Commissions to have been the most effective channel of communication in the 1940's and 1950's for the expression of Western Canadian

views to the federal government on the issue of freight rates.[54]

C. Federal-Provincial Conferences

A review of the proceedings of Federal-Provincial Conferences from 1906 to 1968 reveals that the Premiers of Western Canada have used the Federal-Provincial Conference as a mechanism for articulating the position of Western Canada on the issue of freight rates only on rare occasions. In fact, between 1906 and 1945 the issue of freight rates was not discussed at a Federal-Provincial Conference.[55] The sole reference to the issue of transportation policy between 1906 and 1945 was at the Inter-Provincial Conference of 1926 when the Conference unanimously agreed that the Board of Railway Commissioners should be requested "to include the members of the Provincial Governments in the class of persons who may receive Dominion wide passes under the provision of the Railway Act".[56]

Between 1945 and 1968, the issue of freight rates was not raised as a major issue for discussion. On several occasions, there were passing references to the issue in the opening remarks of the Western Canadian Premiers. For example, at the Federal-Provincial Conference held in Ottawa from August 6 to 10, 1945, Premier John Hart of British Columbia noted that all regions of Canada should enjoy "access, on a competitive basis, to markets which lie

within shipping range".[57] Premier E. C. Manning of Alberta observed that one of the objectives of federal policy should be "a fair and equitable adjustment of those factors which have a detrimental effect upon the economy of any part or parts of the Dominion".[58] The Alberta Premier proposed that all discriminatory features in the freight rate structure be removed by the federal government. Premier T. C. Douglas of Saskatchewan, in his opening remarks to the Conference, encouraged the federal government to reduce the impact of tariffs and freight rates on the economy of Western Canada.[59]

The only reference to the issue of freight rates at Federal-Provincial Conferences in the 1950's were statements made by Premier W. A. C. Bennett of British Columbia and Premier Douglas Campbell of Manitoba at the Federal-Provincial Conference of 1957.[60] The issue was raised during the course of their opening remarks and it was not the central theme of their statements to the Conference.

The issue of freight rates was not raised at a Federal-Provincial Conference in the 1960's until the Constitutional Conferences were convened in the late 1960's.[61] The wide-ranging discussion on the issue of constitutional reform and the extensive television coverage of the Conference afforded every province the opportunity to raise long-standing grievances.[62] The Premiers of Western Canada were no exception and they utilized the opportunity to discuss the various dimensions of the phenomenon known as

Western Canadian Alienation.[63]

It is interesting to speculate as to the reasons why the Premiers of Western Canada did not raise the issue of freight rates on more occasions and in greater detail at the numerous Federal-Provincial Conferences convened since 1945.[64] One explanation is that the responsibility for enforcing the guidelines for the establishment of freight rates was delegated by Parliament to an administrative board in 1903. As a result the issue of freight rates has been for the most part removed from the political arena and has been discussed at hearings of the Board of Transport Commissioners and more recently by the Canadian Transport Commission.[65]

A second explanation of the absence of provincial representations at Federal-Provincial Conferences is that, in the late 1940's and the early 1950's, the Board of Transport Commissioners received a series of applications from the railways for freight rate increases.[66] Hearings of the Board were held in connection with these applications and the three Western Canadian provinces presented briefs to the Commissioners protesting the applications for higher rates by the railways. Clearly, at that particular point in time, the provincial governments were correct in directing their views to the Board of Transport Commissioners rather than merely stating their views to the federal government at a Federal-Provincial Conference that had been

convened to consider matters other than freight rates.

In the 1950's there were three Royal Commissions established to study transportation problems in Canada, the Turgeon Royal Commission of 1948, the Royal Commission on Agreed Charges of 1955, and the MacPherson Royal Commission of 1959. Each Commission examined the problems of freight rates in Western Canada. The establishment of these Commissions by the federal government afforded the Western Canadian provinces the opportunity to present detailed briefs on the issue of freight rates. In the 1960's the federal government was preoccupied with the implementation of the recommendations of the MacPherson Royal Commission and the drafting and enactment of the National Transportation Act. The Act was studied in detail by a Parliamentary Committee and, during the course of its hearings, both the provincial governments and pressure groups from Western Canada had the opportunity to submit briefs to the Committee. Thus, one of the reasons why the Federal-Provincial Conference was not utilized by the Prairie Provinces as a mechanism for conveying their views to the federal government was that there were other vehicles in the 1940's, 50's and early 1960's -- Royal Commissions, Parliamentary Committee hearings, and hearings before the Board of Transport Commissioners -- that appeared to be a more effective means of articulating the position of the Prairie Provinces on the issue of freight rates.

The Constitutional Conference of 1969 saw the return of the issue to another part of the political arena. This change in strategy illustrates that the Western Canadian Premiers realized that any changes in the freight rate structure as it applies to Western Canada required a political solution.[67] In a recent letter from the late Mr. Ross Thatcher on the subject of freight rates, he did indicate that the railways, if subjected to political pressure at the federal and provincial levels, would reassess the present freight rate structure in Western Canada.[68]

CONCLUSION

In an attempt to articulate their views on the issue of freight rates, Western Canadian political actors have utilized various channels of communication within the political system. Statements to federal-provincial conferences, speeches in the House of Commons by Members of Parliament from Western Canada and briefs to Royal Commissions established to review transportation policy have been utilized to convey the position of Western Canada on the issue.

Having demonstrated the importance of the issue of freight rates to Western Canada and having isolated the various channels of communication utilized to convey the position of Western Canada on the issue, an attempt will be made in succeeding chapters to outline the content of

the demands articulated by Western Canadian politicians with regard to the provisions of the National Transportation Act relating to freight rates. In addition, an attempt will be made to outline and assess the channels of communication utilized by Western Canadians to express their views on those provisions of the Act relating to freight rates.

FOOTNOTES

[1]A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1959), p. 28.

[2]Ibid., pp. 28-38. Information pertaining to the various categories of rates was obtained in an interview with Mr. J. Henley, Director of Traffic, Railway Transport Committee, Canadian Transport Commission, in Ottawa on September 7, 1971.

[3]For a discussion of the principles governing the determination of freight rates, see: Government of Canada, Report of the Royal Commission on Transportation, Vol. I (Ottawa: Queen's Printer, 1961), pp. 1-14. See also: W. T. Jackman, Economic Principles of Transportation (Toronto: University of Toronto Press, 1935), Chapter 3. Details in succeeding paragraphs were taken from these sources.

[4]Government of Canada, Report of the Royal Commission on Transportation (1959), Vol. I, p. 3.

[5]Ibid., p. 13.

[6]W. A. Mackintosh, The Economic Background of Dominion-Provincial Relations (Toronto: McClelland and Stewart, 1964), pp. 62-63.

[7]These grievances of Western Canada were found in the briefs presented by the three Prairie Provinces to the Royal Commission on Dominion-Provincial Relations, to the Royal Commission on Transportation (1948), and to the Royal Commission on Transportation (1959). On each occasion, these issues were isolated for particular attention and therefore suggest that they have been of major concern to Western Canada for a prolonged period of time. Interviews with government officials in the three Prairie Provinces confirmed that these were the major grievances of Western Canadians. Information in succeeding paragraphs was taken from these sources.

[8]Government of Alberta, Royal Commission on Transportation, Submission by the Province of Alberta on Long and Short Haul Discrimination (Edmonton: Queen's Printer, 1960), p. 8.

[9]Government of Canada, Report of the Royal Commission on Transportation (1959), Vol. I, p. 7.

[10]The issue of freight rates was raised in many of the speeches delivered by Progressive Members of Parliament from Western Canada. For example, see comments of Mr. A. Young (Saskatoon) regarding absence of representation on Board of Transport Commissioners in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 16th Parliament, Vol. I, (1927), p. 699, and Mr. R. Gardiner (Medicine Hat) in Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 16th Parliament, Vol. I, (1926), p. 62. A major debate on freight rates took place in the House of Commons from June 16 to 18, 1925 when amendments to the Railway Act of 1919 were enacted. The amendments to the Railway Act of 1919 reinstated the lower freight rates on grain and flour that had been removed in 1919. Complete details of the Crow's Nest Pass Agreement will be outlined in Chapter V of the dissertation. A complete record of the debate can be found in the Parliamentary Debates of June 16, 17, 18, 1925. For complete details, see Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 14th Parliament, Vol. V, (1925), pp. 4305-4486. Another major debate on the subject of freight rates took place on April 19, 1926 when a motion was introduced by Mr. M. N. Campbell (Mackenzie) to remove freight rate discrimination against the Port of Quebec. In the ensuing debate, Members of Parliament from Western Canada used the opportunity to raise Western Canadian grievances on the subject of freight rates. For complete details, see Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 15th Parliament, Vol. II, (1926), pp. 2577-2608. On May 4, 1922, the Hon. W. C. Kennedy (Minister of Railways and Canals) introduced a motion that ". . . a Select Special Committee be appointed to make inquiry into the question of railway transportation costs. . .", Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament, Vol. II, (1922), p. 1402. The Minister's motion was debated in the House of Commons and the Progressive Party used this opportunity to raise Western Canadian grievances. For details of the debate, see Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 14th Parliament,

Vol. II, (1922), pp. 1402-1458. The Report of the Committee was debated in the House of Commons on June 26, 1922. On this occasion as well, the Progressives used the opportunity to raise Western Canadian grievances on the issue of freight rates.

[11]Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 14th Parliament, Vol. I, (1924), pp. 211-212.

[12]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 15th Parliament, Vol. I, (1926), p. 62.

[13]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 16th Parliament, Vol. I, (1927), pp. 699-700.

[13A]This is explained in part by the dependence by Western Canada on the federal government during this period. In addition, the proposed amalgamation of the C.P.R. and the C.N.R. and the debate with regard to the nationalization of the C.P.R. were major issues of concern to the West.

[14]For details of the government's announcement, see Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 20th Parliament, Vol. III, (1948), pp. 2717-2718.

[15]Ibid..

[16]Among the Western Canadian Members of Parliament speaking during the debate were: Mr. M. J. Coldwell (Rosetown-Biggar, CCF), Mr. J. H. Blackmore (Lethbridge, Social Credit), Mr. A. L. Smith (Calgary West, Conservative), Mr. John Bracken (Leader of the Opposition), Mr. R. Thatcher (Moose Jaw, CCF), Mr. A. Hlynka (Vegreville, Social Credit), Mr. F. E. Jaenicki (Kindersley, CCF), Mr. Howard Green (Vancouver South, Conservative), Mr. D. Fulton (Kamloops, Conservative), Mr. F. S. Zaplitny (Dauphin, CCF), Mr. J. A. Ross (Souris, Conservative), Mr. A. Stewart (Winnipeg North, CCF), and Mr. J. T. Bentley (Swift Current, CCF). For details of these speeches see Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 20th Parliament, Vol. III, (1948), pp. 2717-3025.

[17]Ibid., pp. 2744-2746.

[18]Ibid., pp. 2744-2745.

[19]Ibid., pp. 2917-2919.

[20]For details of the debate, see Canada, Parliament, Parliamentary Debates (House of Commons), 5th Session, 21st Parliament, Vol. I, (1951), pp. 328-338 and 454-520. Among those Members of Parliament from Western Canada speaking on the issue were: Mr. Solon Low (Peace River, Social Credit), Mr. M. J. Coldwell (Rosetown-Biggar, CCF), Mr. C. E. Johnston (Bow River, Social Credit), Mr. Hazen Argue (Assiniboia, CCF), Mr. D. Harkness (Calgary East, Conservative), Mr. John Diefenbaker (Lake Center, Conservative), Mr. R. R. Knight (Saskatoon, CCF), Mr. S. Knowles (Winnipeg North Center, CCF), Mr. P. E. Wright (Melford), and Mr. Walter Dinsdale (Brandon, Conservative).

[21]Ibid., p. 328.

[22]Ibid..

[23]Ibid., pp. 454-461.

[24]Ibid., p. 455.

[25]Ibid., pp. 515-517.

[26]Ibid., p. 515.

[27]Ibid., pp.513-515.

[28]Government of Canada, Report of the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939); Government of Canada, Report of the Royal Commission on Transportation (Ottawa: King's Printer, 1951); Government of Canada, Report of the Royal Commission on Transportation, Vols. I and II (Ottawa: Queen's Printer, 1961 and 1962).

[29]Government of Alberta, The Case for Alberta (Edmonton: King's Printer, 1939). The Government of Alberta outlined the reasons for its failure to support the Royal Commission on Dominion-Provincial Relations in "The Forward" of the document.

[30]For the details of the submissions from Alberta pressure groups, see Government of Canada, Submissions to the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Vol. 6, Exhibits 255, 242, 257.

[31]Government of Canada, Submissions to the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Vol. 2, Exhibit 34, pp. 203-223. In particular statistics were presented on pp. 214-220 illustrating the level of the freight rate structure in Western Canada.

[32]H. A. Innis, The History of the Canadian Pacific Railway (London: P. S. King and Son, 1923).

[33]Ibid., pp. 269.

[34]Government of Canada, op. cit., pp. 221-222.

[35]Government of Alberta, The Case for Alberta.

[36]Ibid., p. 142.

[37]Ibid., pp. 143-149. Details in succeeding paragraphs were taken from these pages.

[38]"Basic mileage freight rates" refers to the basic class rates calculated on a per ton-mile basis. A ton-mile refers to the cost of moving one ton over a distance of one mile.

[39]"The Spokane Decision" refers to the case before the Interstate Commerce Commission in 1913 that resulted in the elimination of long haul discrimination against landlocked mid-Western points in the United States.

[40]Government of Canada, Submissions to the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), Vol. 6, Exhibit 242, p. 30.

[41]Government of Canada, Report of the Royal Commission on Transportation, 1951. In their report, the Commissioners acknowledged that pressures from Western Canada were instrumental in the establishment of the Commission. See pp. 12-15.

[42]Ibid., pp. 30-34.

[43]Ibid., pp. 61-62, 96-101, and 125-127.

[44]Government of Saskatchewan, Submission of the Province of Saskatchewan to the Royal Commission on Transportation (Regina: Queen's Printer, 1961); Government of Manitoba, Submission by the Honourable Duff Roblin, Premier, at the Regional Hearings of the Royal Commission on Transportation on Behalf of the Government of Manitoba (Winnipeg: Queen's Printer, 1960); Government of Alberta, Royal Commission on Transportation: Submission by Province of Alberta on Long and Short Haul Discrimination (Edmonton: Queen's Printer), p. 8; Government of Alberta, Royal Commission on Transportation: Submission by Province of Alberta on Some Effects of Limitation of Long and Short Haul Discrimination on the Inter-Mountain Region of the United States (Edmonton: Queen's Printer, 1960); Government of Alberta, Royal Commission on Transportation: Transportation and the Economy of Alberta with particular reference to Freight Rate Relationships (Edmonton: Queen's Printer, 1960).

[45]A detailed review of the position of each province will be included in Chapter VII of the dissertation.

[46]Government of Manitoba, op. cit., pp. 28-30, 9-20. Details in succeeding paragraphs were taken from this brief.

[47]Ibid., p. 13.

[48]Ibid., p. 26.

[49]Government of Saskatchewan, op. cit., p. 87. Details in succeeding paragraphs were taken from this brief.

[50]Ibid., p. 99.

[51]Government of Alberta, Transportation and the Economy of Alberta, pp. 34-35.

[52]Government of Alberta, Some Effects of Limitation of Long and Short Haul Discrimination.

[53]This will be illustrated in greater detail in Chapter VII.

[54]This view was expressed in interviews with Mr. J. W. Telford, Manager of the Alberta Freight Rate Bureau

on May 31, 1971; with Mr. J. J. Frawley, Special Counsel for the Government of Alberta on September 8, 1971; with Mr. E. M. Jones, Traffic Manager, Freight Services, Purchasing Agency, Province of Saskatchewan on September 1, 1971; and with Mr. A. V. Mauro, former Counsel for the Province of Manitoba, on September 30, 1971.

[55]In an attempt to document the issue of freight rates as an issue at Federal-Provincial Conferences, the proceedings of all the Federal-Provincial Conferences were reviewed beginning with the Federal-Provincial Conference of 1905.

[56]Government of Canada, Dominion-Provincial and Inter-Provincial Conferences from 1887 to 1926 (Ottawa: King's Printer, 1951), p. 114.

[57]Government of Canada, Dominion-Provincial Conference, 1945 -- Dominion and Provincial Submissions and Plenary Conference Discussions (Ottawa: King's Printer, 1946), p. 32.

[58]Ibid., p. 39.

[59]Ibid., p. 180.

[60]Government of Canada, Dominion-Provincial Conference, 1957 -- Dominion and Provincial Submissions and Plenary Conference Discussions (Ottawa: Queen's Printer, 1958), pp. 50-51, 71.

[61]A discussion of the issue of freight rates at the 1968 and 1969 Federal-Provincial Conferences will be found in Chapter XII.

[62]See the opening remarks of the Premiers to the Constitutional Conferences of February 1968, February and December 1969.

[63]See statements of the Western Canadian Premiers at the Constitutional Conferences of February and December 1969.

[64]The information in succeeding paragraphs was drawn from interviews with the Honourable E. C. Manning, Mr. J. J. Frawley, and Mr. A. V. Mauro.

[65]This does not mean that the issue of freight rates was totally divorced from politics. In fact, Parliament has, from time to time, become involved in the setting of freight rates. Perhaps the best example to illustrate how the issue of freight rates has been injected back into the political arena was the decision on the part of the federal government in 1925 to reinstate certain features of the Crow's Nest Pass Agreement of 1897 in response to the demands of the Progressive Party. For a discussion of this point, see W. L. Morton, The Progressive Party in Canada (Toronto: University of Toronto Press, 1950), p. 289. In addition, see an article by A. W. Currie, "Freight Rates on Grain in Western Canada", in Canadian Historical Review, Vol. 21 (1940), pp. 40-55. For a complete outline of the role of the Progressive Party in the reinstatement of the Crow's Nest Pass rates, see footnote 10. The Cabinet and Parliament became involved in the debate on horizontal percentage rate increases in the 1940's and 1950's. The Crow's Nest Pass Agreement will be discussed in Chapter V.

[66]A discussion of the freight rate cases in the 1940's and 1950's will be included in Chapter IV of the dissertation. References to the royal commissions will be included in Chapters IV and V.

[67]For a discussion of the change in strategy on the part of Western Canada since 1967, see Chapter XII.

[68]Premier Ross Thatcher, letter to author dated November 25, 1970. In the letter, Premier Thatcher referred to an article appearing in the Saskatchewan Mineral Spotlight, November 17, 1970, entitled "Major Breakthrough in Freight Rates - Potash First Beneficiary" that outlined the recent amendments to the Mineral Tax Act. If proclaimed, the revised Act would permit the Saskatchewan Government to tax the mineral holdings on the land held by the C.P.R. in Saskatchewan. Referring to the recent amendments to the Act, Premier Thatcher wrote: "Item 9, relating to recent deliberations on Potash rates, is brought to your attention as this case emphatically shows that under pressure, the railways can budge from an inflexible position. . . . The recent amendment to the Mineral Tax Act in Saskatchewan no doubt provided the railways with sufficient incentive to re-assess the potash freight rate structure to the West Coast. . . ."

CHAPTER IV

RAILWAY POLICY AND FREIGHT RATES - 1867 TO 1959 - AN OVERVIEW

Since Confederation, the federal government has enacted legislation that has established criteria for the determination of freight rates. These legislative provisions have been the subject of controversy in Western Canada and have been debated on numerous occasions by Members of Parliament from Western Canada in the House of Commons, and by provincial politicians at hearings held by the Board of Transport Commissioners and by federal Royal Commissions.[1] This issue has never been resolved to the satisfaction of Western Canada. In addition to legislative action, the federal government has established regulatory agencies to implement federal transportation policy.

The objective of this chapter is to review federal legislation that has established the criteria for the determination of freight rates, and to outline the organizational structure of the agencies that have been established to administer the legislation. Such a review reveals the attempts on the part of the political actors of Western Canada to have the federal government enact

legislation that would provide greater protection for Western Canada from the monopoly position of the railways. Furthermore, such a review facilitates a comparison of the provisions of federal legislation enacted prior to 1967 with the provisions of the National Transportation Act. Because the Crow's Nest Pass rates are central to the freight rate structure in Western Canada, Chapter V is devoted in its entirety to an examination of these rates.

A. ATTEMPTS TO REGULATE THE ACTIVITIES OF THE RAILWAYS PRIOR TO 1867

Prior to Confederation, each colony in British North America developed and regulated the various modes of transport within their respective boundaries. Professor S. J. McLean, in a report to the Government of Canada in 1902, observed that each government, prior to Confederation, was preoccupied with the development of transportation facilities rather than with the enactment of legislation designed to regulate their operation.[2] Thus, the prevailing philosophy of government was that the level of freight rates should be governed by the competitive forces within the marketplace and by the laws of supply and demand. Professor McLean summarized the extent of governmental involvement during this period when he wrote:

> In the earlier days of railway construction, the importance of rapid development was such that the question of regulation and control was given scant attention. When attention was devoted to such matters it was tacitly, and in many cases

> explicitly, assumed that whatever difficulties might arise would be settled by competitive forces. The prices of commodities in general were settled by the operation of the law of supply and demand. The price of railway service would be determined in similar manner. The competition existing prevented prices of commodities in general being exorbitant, the same force it was assumed would exercise a corrective power in regard to the charges for railroad service. . . .[3]

Despite the limited role of government in the regulation of freight rates, legislation was enacted establishing minimal restrictions.[4] For example, in Lower Canada, the charter granted to the St. Lawrence and Champlain Railway contained a provision whereby the rates levied could not produce more than a twelve per cent dividend on the company's investment. In Upper Canada, the legislature granted a charter to the Cobourg Railway that empowered the company's board of directors to fix and regulate the rates charged by the railway. It was assumed that there would be sufficient competition to ensure that the railway would not levy excessive freight rates. In New Brunswick, the legislation regulating the operation of railways was even more permissive. The charter of the New Brunswick Railway stipulated that the company was "to charge such rates as it considered reasonable". This provision in the charter was subject to the limitation that, ten years after the completion date of the railway, the legislature could, if the tolls were considered to be excessive, reduce the rates to the point that the rates levied did not produce a rate of profit greater than twenty-five per cent. Many

of the provisions found in the legislation enacted by the colonies of British North America paralleled provisions found in British and American legislation. Thus, the early attempts on the part of the colonies of British North America to regulate the activities of the railways appear to have been influenced, in part, by legislative precedents in Great Britain and the United States.

Beginning in 1845, additional legislation was enacted in the various colonies that resulted in a greater degree of governmental control. Despite these amendments, the legislative provisions were far from restrictive in nature. For example, in 1846 the Canadian legislature enacted legislation stipulating that "tolls were to be charged equally to all persons under the same circumstances".[5] In 1847 additional legislation was enacted that stipulated that all tolls levied by the railway were subject to the approval of the Governor-in-Council. In Nova Scotia, legislation was enacted stating that there was to be no preferential treatment on the part of the railways with regard to the level of rates charged to various customers. A further amendment in 1853 stipulated that all tolls must be approved by the Governor-in-Council. Similar legislation was enacted in New Brunswick in 1864.

The legislative provisions enacted after 1845 differed from the earlier practice of regulating rates by taxing the dividends of the railways if they exceeded the

percentage specified in the legislation. Legislative restrictions ensuring that all persons receive equal treatment under similar circumstances, if stringently enforced by the government, could have restricted the activities of the railways with regard to the establishment of freight rates to a greater extent than restrictions limiting the rate of return that a railway could earn on its investment. However, these regulations were not enforced by the respective governments and the railways remained virtually free from governmental control with regard to the setting of freight rates.

B. REGULATION OF RAILWAYS FROM 1867 TO 1903

After Confederation, the federal government enacted legislation that established uniform regulations for the operation of railways in all regions of Canada.[6] The first legislation enacted by the federal government was the Railway Act of 1868.[7] A review of the provisions establishing the criteria for the determination of freight rates revealed that the basic philosophy underlying the railway legislation of the pre-Confederation era was incorporated into post-Confederation legislation. In short, the role of the government was confined to the establishment of "maximum levels" for freight rates levied by the railways. For example, the provisions of the Railway Act of 1868 stipulated that the Parliament of Canada could reduce the rates

charged by the railways without the consent of the company concerned under the following circumstances:

1. Where the railway company's profits were calculated by the government to be greater than fifteen per cent per year on the capital expended in the original construction of the railway; or
2. Where the Minister of Public Works calculated that the per annum income of the railways exceeded fifteen per cent of the capital costs expended by the railway during that particular year.

Clearly, the legislation permitted the railways to adjust their rates within specific limits, and any rate established by the railways within those limits was accepted by the government as being reasonable and just.

A second clause designed to regulate the level of freight rates stated that all rates levied by the railways "were payable at the same time and under the same circumstances upon all goods and by all persons, so that no undue advantage, privilege or monopoly may be offered to any person or class of persons by any by-laws relating to the tolls". The inclusion of this clause in the legislation was the first attempt on the part of the federal government to include a provision designed to eliminate discriminatory practices on the part of the railways and to promote the equalization of rates in all regions of the country. This

section of the Act has been revised on several occasions by the federal government. In each revision, an attempt was made to phrase the provisions of the Act in such a manner that discriminatory practices on the part of the railways were further restricted.

The final clause of the Act that regulated the level of freight rates was the provision that rates levied by the railways could not come into force until they were approved by the Governor-in-Council. In addition, every regulation issued by the railways establishing particular freight rates was subject to revision by the Governor-in-Council. Finally, no regulation altering the terms of agreement between any party and the railway could come into effect until the new regulation was approved by the Governor-in-Council.

While these regulations were more restrictive than earlier legislative provisions, there were continual demands from Western Canada for the enactment of more stringent legislation. In his report to the federal government in 1902, Dr. S. J. McLean outlined the nature of Western Canadian grievances -- long and short haul discriminatory practices on the part of the railways that resulted in very high freight rates in Western Canada, the classification of goods being moved into Western Canada in categories that resulted in the highest level of rates being charged for

the movement of those goods, and the level of the freight rates in Western Canada when compared to the rates levied in Ontario and Quebec.[8]

In response to demands for more governmental control over the activities of the railways, the Railway Act was amended in 1883 and again in 1888.[9] With the amendments introduced in 1883, the railways were still free to vary the level of rates subject to the provision that any variation in the level of rates be granted to all parties under the same circumstances.[10] In 1888, three additional sections were included in the revised Act in the hope that they would define in a more precise fashion practices on the part of the railways that would be considered illegal.[11] Section 224 of the Act granted to the railways the power to regulate freight rates subject to the condition that ". . . all such tolls shall always, under the same circumstances, be charged equally to all persons, and at the same rate . . . ." The provision further strengthened the amendments enacted in 1883. The inclusion of Section 225 in the revised Act was the first attempt on the part of the federal government to regulate, in an indirect fashion, "long and short haul discrimination". Thus the rates for large quantities on long distances could be proportionately less than the rates charged for smaller quantities on shorter distances, provided that such tolls were charged equally to the same persons under the same circumstances.

While Section 224 restricted discriminatory practices on the part of the railways, Section 232 of the Act outlined the conditions under which discriminatory practices would be permitted. For example, a railway company was not permitted to "make any unjust or partial discrimination between different localities" in the determination of freight rates. However, no "unjust or partial" discrimination was said to exist if a railway company levied varying rates between localities in an attempt to secure additional traffic from other modes of transportation or from another railway. Thus, on the one hand, discriminatory practices on the part of the railways were considered to be illegal as a result of the inclusion of Section 224 in the Railway Act. On the other hand, under certain conditions, discriminatory practices on the part of the railways were acceptable, as a result of the inclusion of Section 232 in the Railway Act. The question left unanswered was how the terms "unjust" or "partial" discrimination would be defined.

The amendments enacted in the 1880's by the federal government did not satisfy the demands of Western Canada and in 1899 the Royal Commission on Railway Rate Grievances and Regulative Legislation was established by the federal government.[12] The chairman of the Commission was Dr. S. J. McLean and during the course of his investigation he travelled across Canada to hear particular grievances with regard to freight rates. The grievances expressed by Western

Canadians in the 1890's were similar to those expressed in the 1870's and 1880's. Dr. McLean noted in his report that the amendments enacted in the 1880's were inadequate and that new amendments should be enacted immediately.

In particular, the report was critical of legislative provisions limiting the ability of Parliament to regulate the level of freight rates levied by the Canadian Pacific Railway until a dividend of fifteen per cent was obtained by the railway on their investment. In addition, the practice of setting rate controls that established maximum levels of rates was severely criticized. Finally the absence of provisions in the Railway Act obligating the railways to notify their customers prior to any alterations in the existing rate structure was isolated for particular criticism by the Royal Commission. Under the provisions of the legislation enacted between 1868 and 1887, the railways notified their customers of changes in the level of rates only as a matter of courtesy. The Royal Commission recommended that legislation be enacted that would obligate the railways to publish any changes in their rate structure prior to their implementation.

In addition to the major recommendation that a federal agency be established to regulate all aspects of railway activities, the Royal Commission proposed several general principles as possible guidelines for future amendments to those provisions of the Railway Act pertaining to

freight rates. Among the general principles enunciated were:

A. that similar rates for similar services under similar circumstances be available to all individuals in all regions of Canada.

B. that the absence of water competition in many regions of Canada (the prairies in particular) re-inforced the need for more stringent regulation of the operations of the railways by the government.

C. that the objective of federal railway policy should be to equalize the level of freight rates in each region of Canada and thus ensure that each region of Canada enjoyed the advantages of competitive rates.[13]

C. AMENDMENTS TO THE RAILWAY ACT (1903 TO 1958)

1. Amendments in 1903

The amendments enacted in 1903 incorporated many of the recommendations of the Royal Commission on Railway Grievances established in 1899. The amendments were an attempt on the part of the federal government to restrict those actions on the part of the railways that resulted in "long and short haul discrimination". The Royal Commission of 1899 had documented several instances of practices on the part of the railways that had resulted in extremely high freight rates for particular regions of the country.

Sections 251 to 254 were the sections of the Railway Act specifically enacted to eliminate discriminatory practices on the part of the railways.[14] Section 252 stipulated that all tolls levied by the railways should be charged equally to all individuals under similar circumstances and

conditions. While the Act permitted lower rates for larger quantities and longer distances, no rate could be levied by a railway that discriminated between localities. The Board of Railway Commissioners, established in 1903, was specifically directed not to approve a lower rate for a commodity transported a longer distance than that for a good transported a shorter distance, unless the Board was satisfied that competition from other modes of transportation warranted such action.

Section 253 obligated railway companies to provide facilities for receiving and delivering commodities without partiality so that a company or a particular person would not be given "undue" or "unreasonable" preference or advantage over another party. The Board of Railway Commissioners was directed to determine as a question of fact whether companies or individuals were receiving "undue or unreasonable preference or advantage", within the meaning of the Act. In addition, the Board was empowered to determine by regulation the meaning of the phrase "substantially similar circumstances and conditions" and "unjust or unreasonable preferences, advantages, prejudices or disadvantages" within the meaning of the Act. Section 254 stipulated that, should a company be charged with employing discriminatory practices in the determination of freight rates, the burden of proof that such a practice was not unjust or unreasonable rested with the company. In considering such cases, the Board was

directed to consider whether a lower rate was necessary for securing additional traffic.

Finally, Section 257 of the Act stated that any tariff that was considered to be "unjust or unreasonable" and contrary to the provisions of the Act could be disallowed by the Board. The Board was empowered to substitute a tariff satisfactory to the Board in its place and specify when the tariff would come into force.

Despite these amendments in 1903, the railways engaged in pricing practices that resulted in inequities within the freight rate structure. For example, the terms of an agreed charge negotiated by a railway were outside the terms of reference of the Railway Act. In addition, the criteria of "unjust discrimination" and "undue preference" for determining rates were so vague that it permitted the railways to engage in pricing practices that resulted in higher freight rates in Western Canada. No attempt will be made at this point to assess the Board of Railway Commissioners' decisions and rulings with regard to various sections of the Act. Such a review will be included at a later point in the chapter.

Despite the enactment of these amendments in 1903, Western Canadians continued to express concern over the inequities in the freight rate structure as it applied to Western Canada. Western Canadian politicians continued to urge the federal government to enact additional regulations

that would limit the ability of the railways to engage in discriminatory pricing practices. No further amendments pertaining to the criteria for the determination of freight rates were enacted until 1951.

2. Amendments of 1951 and 1952

The amendments enacted in 1951 and 1952 implemented several of the recommendations of the Turgeon Royal Commission.[15] The Turgeon Royal Commission was established by the federal government in response to the demands of Western Canada that the legislation establishing the criteria for the determination of freight rates be reviewed. The Commissioners summarized the events leading up to the establishment of the Royal Commission in the following manner:

> It appears therefore from the above recital of events and from the terms of the Order in Council that the Government was moved to institute this inquiry by certain representations made to it on behalf of those areas of Canada which lie outside the central area. These representations are two-fold in character. They declare in the first place that these sections of Canada are in an unfavourable position, in comparison to the central area, because of the "economic, geographic and other disadvantages" which burden them. They then go on to say in the second place that, by reason of these disadvantages, these sections are confronted with difficulties arising out of the situation in which they are placed in respect to transportation and, in particular, by certain inequities which are said to be found in the existing tariffs of tolls and rates. . . .[16]

The recommendations of the Turgeon Royal Commission that are of particular concern to Western Canada can be categorized into three subject areas: horizontal percentage rate increases, long and short haul discrimination, and the

equalization of freight rates.

(a) Horizontal Percentage Rate Increases

One of the longstanding grievances of Western Canadian politicians has been that the application of horizontal rate increases accentuated existing disparities in the freight rate structure and aggravated the disadvantages suffered by long haul shippers.[17] The series of horizontal increases beginning after 1945 revealed the full impact of these increases on the freight rate structure. As a result, the Provinces of Manitoba, Saskatchewan, and Alberta urged the Commission to recommend that an amendment to the Railway Act be enacted that would forbid any increase in freight rates by the "horizontal method".

The Royal Commission was extremely critical of the practices employed by the railways of increasing freight rates in this manner. Despite their concern, the Commissioners concluded that it was not possible to prohibit this practice by statutory amendment. The solution proposed by the Commission was that the railways and the Board of Transport Commissioners be encouraged to undertake studies in an attempt to determine alternative methods for applying rate increases. Therefore, while the Commissioners were extremely critical of past practices on the part of the Board in granting horizontal percentage rate increases, they failed to recommend that the Railway Act be amended in such

a fashion that these practices would either be restricted or eliminated.[18] As a consequence, no amendment to this effect was enacted by the federal government. Despite the criticisms of the Commissioners, the Board continued to approve a series of horizontal percentage rate increases from 1952 to 1959.[19]

(b) Long and Short Haul Discrimination

The Province of Alberta in its representations to the Royal Commission was extremely critical of the provisions in the Railway Act that failed to restrict practices on the part of the railways that resulted in "long and short haul discrimination".[20] In its formal brief, the Government of Alberta proposed that the Board of Transport Commissioners examine the level of transcontinental rates levied by the railways, and that an amendment be included in the Railway Act that would outlaw long and short haul discrimination.

The Royal Commission was impressed with the arguments advanced by Western Canada and they recommended that the Railway Act be amended to provide "That when competitive transcontinental tariffs are published by the railways, such tariffs shall contain a provision that the rates to or from intermediate points shall not exceed the transcontinental rates by more than one-third".[21] This recommendation was enacted by the federal government as an amendment to the Railway Act in 1951 and the amendment was referred to

as the "one and one third rule".[22]

The railways strongly opposed the enactment of the "one and one third rule".[23] They argued that if they met the competition from water carriers on the West Coast and reduced their transcontinental rates accordingly, they would lose revenue on traffic to intermediate points in Western Canada whenever the rate was more than thirty-three per cent greater than the rate to Vancouver. The railways resolved the dilemma however by noting that agreed charges were regulated by the Transport Act and not by the Railway Act.[24] As a result, the railways argued that agreed charges were exempted from the one and one third rule. Thus, the railways maintained their rates to points in Manitoba, Alberta and Saskatchewan at the original level, cancelled all their competitive transcontinental rates to Vancouver and published agreed charges in their place.

The Western Canadian provinces immediately protested the action of the railways to the Board of Transport Commissioners. The Board ruled that the railways could substitute agreed charges for competitive rates under the terms of the Railway Act.[25] Thus, the railways were free to negotiate agreed charges without any regard for the provisions of the one and one third rule. In a series of cases before the Board in 1955 and 1956, the Government of Alberta challenged the Board's earlier decision without success.[26] The rulings of the Board that upheld their original decision

were appealed to the Governor-in-Council. The Cabinet decided that the entire matter should be referred to a Royal Commission for study and, in 1955, the Royal Commission on Agreed Charges was established.[27]

In its report, the Royal Commission noted that, with the growth of competing modes of transport in Western Canada, the portion of rail traffic that was secure from competition was decreasing at a rapid rate. The freedom of the railways to adjust the rate structure so as to achieve certain desired results had disappeared as a result of competition. Thus, the Commission recommended that the railways be free to publish agreed charges without the restrictions of the one and one third rule. In 1955, the Transport Act was amended in such a manner that agreed charges no longer required the Board of Transport Commissioners' approval.[28] However, the Board retained the power to fix a charge for a shipper who believed that he was unjustly discriminated against. Finally, the Board was given the power to alter any agreed charge that had been referred to it by the Minister of Transport or by the Governor-in-Council for its consideration.

(c) Equalization of Rates

At the public hearings held by the Royal Commission of 1948, the three Prairie Provinces renewed their demands for the enactment of a specific provision in the Railway Act stipulating that the equalization of freight rates in all regions of Canada was to be a major objective

of federal transportation policy.[29] In response, the railways noted that while the equalization of freight rates was a highly desirable objective, the realization of such a policy would be an impossibility if the revenue position of the railways was to be protected. The Canadian Pacific Railway noted that legislation guaranteeing reduced rates on the movement of grain in Western Canada and on all traffic in the Maritimes would have to be removed from the statute books if the policy of equalization was to be achieved. The Turgeon Royal Commission in its final report observed that the principle of equalization of freight rates had been accepted in all parts of the country and that such a policy objective should be enacted in a revised Railway Act. However, A. W. Currie, commenting on the recommendation of the Turgeon Commission, noted that the policy of equalization was not universally accepted in all parts of Canada.[30] For example, the Maritime Provinces and the railways had opposed the principle of equalization. In addition, the Provinces of Ontario and Quebec were not represented at the hearings of the Commission.

While urging the government to adopt the principle of equalization, the Commissioners were careful to point out that such a declaration must of necessity be qualified. Thus the Commissioners outlined several instances, such as international, export, import, competitive and statutory grain rates, where the policy of equalization could not be achieved. The Commissioners summarized their views on the

policy of equalization in the following manner:

> The objective of equalization is something which can only be attained after considerable study by the Board and by the railways. Undoubtedly many serious problems are involved, for example, the effect that the proposals may have on railway revenues, on established industries and on trade and market patterns. All of these things are matters of the utmost importance. Having regard to the large number of rate changes which will be involved, the problem is one peculiarly for the Board to resolve finally after the General Freight Rate Investigation and after all parties who may be affected by the proposals have had an opportunity of being heard. . . .[31]

The federal government accepted the recommendation of the Turgeon Royal Commission and in 1952 the Railway Act was amended in such a manner that, subject to the exceptions specified, "every railway company shall, so far as is reasonably possible, in respect of all freight traffic of the same description, and carried on or upon like kind of cars or conveyances, passing over all lines or routes of the company in Canada, charge tolls to all persons at the same rate, whether by weight, mileage or otherwise".[32] Those rates specified in the legislation for exemption from this general policy statement were international rates between Canada and the United States, rates on export and import traffic through Canadian ports, the provisions of the Maritime Freight Rates Act, agreed charges authorized by the Board under the Transport Act, the Crow's Nest Pass rates on grain, and on any occasion when the Board considered that such an exemption should be made. Therefore, while the federal government had accepted the principle of equalization of freight rates in

all parts of Canada, the exceptions to that provision and the directive to the Board of Transport Commissioners encouraging them to work towards the goal of equalizing class and commodity rates created innumerable obstacles that had to be overcome before the policy objective could be realized. In fact, the equalization of freight rates was never fully implemented before the establishment of the MacPherson Royal Commission and the freight rate freeze announced in 1959 by the federal government.

D. SUMMARY

A summary of those provisions of the Railway Act establishing the criteria for the determination of freight rates is in order. Such a review will facilitate comparison of the provisions of the Railway Act establishing the criteria for the determination of freight rates with similar provisions found in the National Transportation Act of 1967.

1. The Board of Transport Commissioners was empowered "to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require".[33] This provision did not extend to special statutory provisions respecting the Crow's Nest Pass rates on grain and flour, agreed charges under the Transport Act, and rates on preferred movements under the Maritime Freight Rates Act.

2. The Board was empowered to ensure that all rates should be charged equally to all persons regardless of weight

or mileage. In addition, the Board through regulation was to ensure that rates did not result in "unjust discrimination", "undue or unreasonable preference or advantage" or "prejudice or disadvantage" to any shipper or locality within the terms of the Railway Act.[34]

3. The Board, under Section 336, was empowered to implement the national freight rate policy designed to equalize freight rates in all regions of Canada subject to the exceptions outlined earlier. Any rate that, in the opinion of the Board, was contrary to the national policy could be disallowed.

4. The Board was empowered to disallow any rate that, in the opinion of the Board, was considered to be unjust or unreasonable or contrary to the provisions of the Railway Act.[35]

5. Before a competitive rate was to come into force, the Board could obligate the railway company to provide evidence to indicate that competition did in fact exist, that the rate was compensatory, and that the rate was not lower than necessary to meet the competition.[36]

6. In the determination of competitive rates for transcontinental traffic, the Board was directed to ensure that the transcontinental rate should not exceed, by more than one-third, the competitive rate published to an intermediate point.[37]

The events surrounding the enactment of amendments to those sections of the Railway Act outlining the criteria for the establishment of freight rates were characterized by the attempts on the part of the federal government to regulate those practices on the part of the railways that were considered to be discriminatory in nature. On each occasion when the Railway Act was amended, the initiative for such amendments came from the report of a Royal Commission or from the demands of a particular region of Canada that the activities of the railways be regulated in a more restrictive fashion. Despite the attempts of the federal government to define those practices on the part of the railways that would be illegal, the Board of Transport Commissioners was forced to interpret such vague phrases as "unjust discrimination" and "undue preference". In the view of Western Canadian politicians, the amendments to the Railway Act did not eliminate those pricing practices that created the inequities in the freight rate structure in Western Canada.[38] In reality, federal policy, while initially framed in a broad national context, had been modified over time in an attempt to accommodate specific regional interests and demands. A. W. Currie summarized the dilemma faced by the politicians at both the federal and provincial level when he wrote:

> . . . To a considerable extent, the Canadian rate-making problem has become a matter of satisfying diverging regional interests without completely ruining both railways in the process. . . .[39]

SECTION II

Section II of the chapter will be concerned with a review of the administrative agencies established by the federal government to administer the provisions of the Railway Act establishing the criteria for the determination of rates. The two administrative agencies established by the federal government were the Railway Committee of the Privy Council and the Board of Railway Commissioners. In 1938, the Board of Railway Commissioners was renamed the Board of Transport Commissioners.

A. The Railway Committee of the Privy Council

The Railway Committee of the Privy Council, established in 1868, was composed of four members of the Privy Council appointed by the Governor-in-Council.[40] The duties of the Committee under the terms of the Act were confined exclusively to the supervision of regulations pertaining to safety standards for the construction and maintenance of railway lines. The Railway Committee had no authority to regulate freight rates prior to 1888, when the Railway Act extended the jurisdiction of the Railway Committee to include the supervision of those provisions of the legislation regulating the level of freight rates.

The amendments enacted in 1888 empowering the Railway Committee to regulate freight rates were extremely vague and very difficult to enforce. For example, Section 11 of the Act empowered the Committee "to inquire into, hear and determine any application, complaint or dispute respecting . . . tolls and rates for the transportation of passengers and freight; the adjustment of such tolls and rates between companies; unjust preferences, discrimination or extortion".[41] In addition, the Railway Committee was obligated to appoint individuals to inquire into any dispute brought before the Committee. At the discretion of the Committee, any decision or order made by the Committee could be enforced as an order of the Exchequer Court of Canada or of a Superior Court of any province of Canada. Cases before the Committee could be submitted to the Supreme Court of Canada for an advisory opinion at the discretion of the Committee. Every decision and order of the Committee was subject to an appeal to the Governor-in-Council.

Any assessment of the role of the Railway Committee with regard to the regulation of freight rates must be extremely general in that of the 408 cases considered by the Committee only seven of the cases dealt with the question of freight rates.[42] Professor S. J. McLean, in his report to the federal government in 1902, was extremely critical of the Committee's performance. Among the factors limiting the effectiveness of the Committee, in Dr. McLean's view,

was the failure on the part of the Committee to travel throughout the nation to hear cases in each region of the country. The Committee was permanently situated in Ottawa and, as a result, individuals and companies wishing to present cases before the Committee were forced to travel to Ottawa at great expense. As a result, many legitimate grievances that should have been considered by the Committee were never brought to their attention. A second factor that limited the effectiveness of the Committee was that the Committee attempted to perform both a political and an administrative function. Thus, the Committee was attempting to settle matters that were essentially of an administrative nature in a highly political atmosphere. It was virtually impossible for Cabinet Ministers to exercise their duties without personal or political bias. Because of the nature of the appointments to the Committee, there were frequent changes in its personnel. Thus, the inability of the Committee to develop a consistent policy in its rulings in the freight rate cases severely restricted its effectiveness. An additional limiting factor was that the members of the Committee did not possess the necessary expertise to evaluate the evidence presented by the witnesses that appeared before them.

The inability of the Railway Committee of the Privy Council to regulate the activities of the railways became increasingly obvious to both the general public and to the

government. As a result, the federal government accepted the major recommendation of the Royal Commission on Railway Grievances and, in 1903, established the Board of Railway Commissioners.

B. The Board of Railway Commissioners

1. Origin

In 1899, a Royal Commission headed by Dr. S. J. McLean was established by the federal government to review grievances in various regions of the country regarding inequities in the freight rate structure and to make recommendations to the federal government regarding future governmental control over the activities of the railways.[44] In making his recommendations, Dr. McLean was influenced by the performance of the Interstate Commerce Commission in the United States and by the Railway Commission in Great Britain. In his report, he recommended the creation of a three-man Board consisting of one lawyer, one man experienced in business and one man who possessed a thorough knowledge of railway affairs. The proposed Board would assume the duties of the Railway Committee of the Privy Council and would have authority to regulate the issuing of stocks and bonds by the railways, to inquire into the necessity for the establishment of new railways, and to arbitrate wage disputes. Finally, Dr. McLean recommended that the individuals appointed to the Board be paid a sufficient salary and that their tenure in office be of such duration that the Board would

have an "efficient and commanding personnel". The government accepted the major recommendation of the Royal Commission and, in 1903, the Board of Railway Commissioners was created.

Speaking in the House of Commons on March 20, 1903, the Honourable A. G. Blair, Minister of Railways and Canals, outlined at great length the reasons for the government's decision to establish the Board of Railway Commissioners. During the course of his speech he summarized the objectives of the Board. He said:

> The proposal is to abolish the existing Railway Committee of the Privy Council, and to substitute for that body a railway commission composed of members independent of the government, independent of Parliament in a practical sense, though not in the broadest sense, and capable, as we think and hope they will be, by experience and ability, of making thoroughly effective the legislation we are now proposing to place on the statute book. . . .[45]

2. Jurisdiction of the Board

The Board of Railway Commissioners, just as any other administrative board or agency established by Parliament, possessed only those powers that were given to the Board by statute. The powers of the Railway Committee of the Privy Council were transferred to the Board in 1903. In addition, the Board was empowered, under the terms of the Railway Act, to regulate the fares and rates charged by railway companies subject to its authority. The Board possessed the power to inquire into any application by any party with regard to the activities of any company or person

who failed to comply with the provisions of the Railway Act. Finally, the Board was empowered to hear and to determine all questions of law and fact within the terms of the Act.

The Board's jurisdiction was expanded on several occasions.[47] In 1908, the jurisdiction of the Board was extended to include the regulation of express, telegraph and telephone companies and, in 1929, the Board was empowered to regulate the tolls on international bridges and tunnels. In 1933, the Board's jurisdiction was expanded to include the issue of rail line abandonment and in 1938 the Board was given responsibility, under the Transport Act, for the regulation of certain aspects of air and water transportation and over agreed charges. With the increase in the jurisdiction of the Board in 1938, it was renamed the Board of Transport Commissioners for Canada. In 1949, the Board was charged with the responsibility for regulating interprovincial and international pipelines.

There have been several occasions when Parliament has restricted the jurisdiction of the Board. The most notable example was in 1944 when the responsibility for the regulation of commercial aviation was transferred to the Air Transport Board. Generally speaking, however, the jurisdiction of the Board has increased since its creation in 1903.

3. Composition of the Board

Initially, the Board was composed of three members appointed by the Governor-in-Council. Each Commissioner held office during good behaviour for a period of ten years, or until age seventy-five. Commissioners were eligible for re-appointment. Under the terms of the Act, the Governor-in-Council was empowered to designate a "chief commissioner" and a "deputy chief commissioner" with each individual holding his appointment as long as he remained a member of the Board.[48] In 1908, the composition of the Board was enlarged to six with the stipulation that the Chief Commissioner and the Assistant Commissioner be either a judge of a Superior Court of Canada or of any of the provinces, or a barrister or advocate of at least ten years standing. In 1948, the Act was again amended to provide that the Chief Commissioner be chosen from among the Chief Justices of the Exchequer Court. Beginning in 1957, the Chief Commissioner, on his appointment to the Board, ceased to be a Chief Justice of the Exchequer Court. The Railway Act did not at any time stipulate any particular qualifications regarding the training and expertise necessary for the other members of the Board.

4. Procedures of the Board

The Board as constituted under the terms of the Railway Act was a Court of Record and was so recognized by other courts.[49] The Board possessed all the powers and

privileges vested in a Superior Court for the exercise of its jurisdiction. The status of the Board as a Court was recognized by Speakers of the House of Commons and in Beauchesne's Parliamentary Rules. Any decision or order of the Board could be made an order of the Exchequer Court; however, the Board could enforce its decisions and orders by its own actions.

The Board was empowered to make its own rules of procedure and a series of standardized rules of procedure were adopted. Finally, the Board possessed the power to review or rescind its orders and decisions and to re-hear an application. The Board accepted the practice that a decision of the Board would not be re-examined unless the Board was persuaded on the basis of new evidence that the original decision was incorrect.

5. Appeals

Any decision rendered by the Board could be appealed to the Supreme Court of Canada on a question of jurisdiction with the consent of a judge of the Supreme Court.[50] On questions which, in the opinion of the Board, dealt with questions of law or of jurisdiction or both, the decision of the Board could be appealed to the Supreme Court having first obtained the consent of the Board. The final avenue of appeal was to the Governor-in-Council. Any decision of the Board could be appealed to the Governor-in-Council for a final decision.

It is interesting to speculate as to the reasons for the inclusion of three avenues of appeal in the legislation establishing the Board of Railway Commissioners.[51] It was the objective of the government when drafting the legislation to include a provision in the law that would establish the Governor-in-Council as the final court of appeal. An appeal to the Governor-in-Council would enable an interested party to raise the issue at the political level in the hope that the Cabinet would consider the political implications of a decision and impose a political solution. Thus, the government was extremely reluctant to delegate all responsibility for the administration of the Railway Act to the Board of Railway Commissioners. It was for this reason that the provision for an appeal to the Governor-in-Council was included in the legislation.

Only a very small number of cases have been appealed to the Supreme Court or to the Cabinet.[52] Currie has calculated that, from 1904 to 1950, only seventy-nine of the Board's 2,300 formal cases were appealed to the Supreme Court of Canada, and fifty-four to the Governor-in-Council. The Board's judgment was reversed on sixteen occasions by the Court and on three occasions by the Cabinet. The Board, on its own initiative, referred seven cases to the Supreme Court. In the 1940's and 1950's, two appeals on general freight rate cases were referred to the Supreme Court.[53] In one case, the Supreme Court rejected the application for

appeal, but in the second case, the Supreme Court criticized the Board for not carrying out its functions as required by law.[54]

The Turgeon Royal Commission of 1948 reviewed those cases that were appealed to the Governor-in-Council.[55] Their analysis revealed some interesting facts. For example, with only the occasional exception, decisions of the Board granting general increases in rates or granting increased rates on grain were appealed to the Governor-in-Council. On no occasion was the Board's decision overruled by the Cabinet. Secondly, twenty-six of the fifty-four appeals to the Governor-in-Council were concerned with specific issues such as rail line abandonment and the location of crossings, sidings, spur tracks and railway stations and did not involve the issue of freight rates. Finally, twenty of the fifty-four appeals dealt with the rates levied on particular commodities. In these decisions, the Cabinet supported the original decision of the Board.

The Cabinet has devised general ground rules to assist Ministers in rendering a decision on these appeals. For example, in an Order-in-Council in 1933, the Cabinet enunciated what has come to be considered as the general guidelines governing its decisions on appeals:

> A practice has grown up not to interfere with an order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that it has been otherwise subject to error. When the matters at issue are questions of fact

> depending for their solution upon a mass of conflicting testimony or are otherwise such as the Board is particularly fitted to determine, it has been customary, except as aforesaid, not to interfere with the findings of the Board.[56]

The hearings of the Turgeon Royal Commission provided an opportunity for both the railways and the provinces to make representations regarding possible changes in the appeal provisions.[57] The Governments of Manitoba, Alberta, and Saskatchewan urged the Commission to recommend the retention of the provisions for making appeals to the Governor-in-Council and that provisions for appeals to the Supreme Court should be removed from the legislation. Among the arguments advanced by the provinces were that they would "never be satisfied" to have the Board of Transport Commissioners as the final court of appeal; that the railways are instruments of national policy, thus the Federal Cabinet should review those decisions that affect the entire economy; and that the small number of appeals upheld by the Governor-in-Council indicated that in fact the Cabinet had not become involved in the activities of the Board. In its brief to the Commission, the Canadian Pacific Railway urged the Commissioners to recommend that the provision for appeals to the Governor-in-Council be removed from the legislation. Among the reasons advanced by the Railway for such action was that this would eliminate appeals to a politically motivated body and would ensure that the Board would render its decisions in an impartial way.

The Government of Manitoba, in a separate brief, encouraged the Commissioners to revise the Railway Act in such a manner that it would enable "the Governor-in-Council to give directions to the Board in respect of policy". The Manitoba Government contended that the power to give "directions" would give the Governor-in-Council the power to dictate matters of "policy".

In its report to the government, the Turgeon Royal Commission recommended that the appeal provisions in the Railway Act be retained without amendment. In recommending such a course of action, the Royal Commission noted that Parliament had in the past taken the position that the federal government should take an active interest in the operation of the railways. In the words of the Commission, "Canadian railways have been projected and built as manifestations of public policy, usually with financial assistance recommended by Government, agreed to by Parliament, and paid for by the people of the country".[56]

6. Decisions and Rulings of the Board

A review of the literature concerned with the development of Canadian transportation policy reveals that there are certain cases and decisions that stand out from the others in terms of their impact on the freight rate structure in Western Canada. A summation of the cases pertaining to the equalization of rates and to horizontal percentage rate increases will serve to illustrate the impact

of the Board's decisions.

(a) The Equalization of Rates

Variations in the level of rates charged by the railways in various regions of the country has been a long-standing grievance articulated by Western Canadian politicians. In response to this demand, the federal government enacted a series of amendments to the Railway Act restricting the ability of the railways to employ practices that created inequities in the freight rate structure in Western Canada. The attempts on the part of the federal government to enact such regulatory provisions have been documented. Generally speaking, rates were to be "just and reasonable" and carriers were to avoid "unjust discrimination" and "undue preference" among shippers when levying rates.

Between 1903 and 1930, the Board of Railway Commissioners considered many cases dealing with alleged discriminatory practices on the part of the railways. Between 1930 and 1958, the number of cases brought to the Board decreased sharply. A. W. Currie has speculated that the reason for the decrease in the number of cases in recent times was that the railways had come to know their rights under the law and that the shippers were reluctant to incur the expense of bringing a case before the Board unless they were certain that they had a strong case.[59] The first major case to come before the Board for a decision was the Western Rates Case of 1914.[60]

Western Rates Case (1914)

Beginning in 1911, the federal government received complaints from various groups in Manitoba, Saskatchewan, and Alberta that the rates being charged by the railways in Western Canada were higher than the rates being charged in Eastern Canada (Ontario and Quebec). In addition, the Board received complaints of "unjust discrimination" on the part of the Canadian Pacific Railway from various groups in Alberta and British Columbia. For example, the Canadian Pacific Railway was charged with levying higher tolls on goods moved from Vancouver to points in Western Canada than on goods being moved to points in Eastern Canada. The Board considered these complaints in the Western Rates Case of 1914.

In its decision, the Board admitted that the rates in Eastern Canada were in fact lower than the rates in Western Canada. In response to the claim that low rates in Eastern Canada were made possible by higher rates in Western Canada, the Board stated:

> The rates in Eastern Canada may be low, perhaps at certain points too low even in view of its geographical advantages. It cannot fairly be said, however, that these low rates are in any manner the result of excessive Western rates. They are practically the rates which applied long before the profits of Western railway operations had anything to do with Canadian resources.[61]

Clearly, the implication of this decision was that railway rates would continue to be higher in Western Canada due to the monopoly position of the railways. Railway rates in Ontario and Quebec would continue to be lower because of the presence of competition from other modes of transport. The Board seemed to indicate that high freight rates were a price that Western Canadians would have to pay for membership in Confederation.

On the question of discriminatory practices on the part of the railways, the Board noted that the Railway Act did not forbid all discrimination but only "unjust discrimination" or "undue preference". Thus the Board ruled that differences in the level of rates levied in Eastern and Western Canada did not constitute "unjust discrimination", within the meaning of the Railway Act. The rate differential was justified on the grounds that competing modes of water transportation and the competition of American railways necessitated lower rates in Eastern Canada if Canadian railways were to compete. The Board stated on several occasions during the proceedings that each case ought to be weighed on its own merits and that it was virtually impossible to apply general principles to all cases. In the Board's view, it was impossible to establish firm principles that could be used to determine when and where discrimination ceased to be "just". Each case in the Board's view was to be considered on its own merits with a view to determining whether the alleged discrimination was "undue, unfair or unjust".

Despite the fact that the Board had indicated that each case should be judged on its own merits, the Board attempted to develop a formula that could be used in the future to determine the reasonableness of particular rates. Such a formula would establish guidelines for the Board in cases dealing with unjust discrimination. The Western Canadian provinces urged the Board to develop a formula that would have had the railways calculate their rates on the basis of the cost involved in moving the good from point A to point B plus a specified percentage for overhead and capital charges. The Board was urged to use the Canadian Pacific Railway's cost and capital structure as the standard for the calculation of rates. Instead, the Board developed a formula whereby railway rates would be calculated on the basis of the traffic density on the line. In addition, the rates levied by the railways were to ensure a "fair return" to the carrier. The definition of a "fair return" was to be left to the discretion of the Board. The formula proposed by the Prairie Provinces was rejected by the Board on the grounds that rates should be determined on the basis of the capital structure of the particular railway involved.

The importance of the decisions rendered in the Western Rates Case by the Board of Railway Commissioners cannot be over-emphasized. The Board was forced to rule on a series of contentious issues that dominated the history of railway policy in Canada for the next thirty years. For example, the Board was forced to deal with the issue of the

equalization of rates between Eastern and Western Canada, and with the establishment of a formula that could be utilized by the railways in the calculation of rates. In Currie's view, the Board adhered to the decisions rendered in this case for the next thirty years.[62]

Despite the ruling of the Board in 1914 that each case involving "unjust discrimination" and "undue preference" should be considered on its own merits, a review of the Board's decisions in later cases revealed that the Board did develop two criteria that were used to determine if railway pricing practices violated the "unjust discrimination" and the "undue preference" clauses of the Railway Act.[63] The first criterion was that the Board would permit discrimination provided that the evidence presented convinced the Board that the discrimination was not unjust or unreasonable. For example, in the Western Rates Case, the Board ruled that the higher rates charged in Western Canada did not constitute "unjust discrimination". In Currie's view, the only occasion where the Board of Railway Commissioners would rule that a particular pricing practice on the part of the railways constituted "unjust discrimination" was where "the person, commodity or district which is favoured has profited at the expense of the individual, article, or locality against which it is claimed the discrimination has taken place".[64]

The second criterion developed by the Board was that a complaint of unjust discrimination was not sustained by the Board by the presentation of evidence to illustrate that

there were variations in the rates on various commodities or between various regions. The complainant was obligated to prove to the Board that his business had suffered as a result of discriminatory practices on the part of the railways. Clearly, the burden of proof was on the individual and not on the railways to prove that railway pricing practices were a violation of various sections of the Railway Act.

The Western Canadian provinces have been extremely critical of the Board's interpretation of the phrase "unjust discrimination". For example, the Western provinces contended that in several cases the Board accepted statistical evidence and explanations from the railways that would not have been accepted in a court of law.[65] The fact that the individual bringing a complaint before the Board was required to prove that the pricing practices of the railways were harmful to his business limited the effectiveness of the provisions in the Railway Act. The small businessman in Western Canada, in the provinces' view, possessed neither the necessary expertise nor the fiscal resources to present a detailed statistical argument to the Board to prove his case. Furthermore, the cost involved in presenting a case to the Board was prohibitive. The rulings of the Board with regard to the "one and one third" rule were criticized by the Government of Alberta on numerous occasions.[66] The Alberta Government contended that the Board failed to interpret the "one and one third" rule in a manner that conformed

with the spirit of the amendment or with the spirit of the recommendations of the Turgeon Commission. Finally, Western Canadians have expressed the view that the Board had permitted the railway companies to engage in practices that clearly violated the provisions of the Railway Act.

The failure of the Board to enforce the provisions of the Railway Act in such a manner that inequities in the freight rate structure in Western Canada were eliminated led many Western Canadians to conclude that the existing provisions in the legislation were inadequte. Thus, Western Canadian politicians continued their demands for amendments to the Railway Act that would afford Western Canada greater protection from the monopoly position of the railways.

(b) Horizontal Percentage Rate Increases

During the Second World War, the railways were faced with increasing labour and operating costs. To offset these increasing costs, the railways applied to the Board of Transport Commissioners for a series of general rate increases. Between 1946 and 1958, the Board approved a series of horizontal percentage rate increases to assist the railways in meeting their expenses.[67] The precedent had been established in a series of decisions by the Board of Railway Commissioners in 1917, 1918 and 1920 for such rate increases.[68] Despite the recommendations of the Turgeon Royal Commission condemning such rate increases, the Board of Transport Commissioners approved a series of these rate increases.

The Western Canadian provinces were extremely critical of the practice adopted by the Board of granting horizontal percentage rate increases on the grounds that increases in rates imposed in this manner reinforced existing discrepancies in the freight rate structure.[69] For example, the Prairie Provinces calculated that post-war rate increases had increased the general level of freight rates in Canada by 157%. Furthermore, the major impact of these rate increases fell on Western Canada. Because freight rates were higher in Western Canada than in Eastern Canada, any percentage rate increase would increase the level of rates in Western Canada to a greater extent. In short, the Prairie Provinces accused the railways of exploiting their monopoly position in Western Canada to extract more revenue from Western Canadians with the consent of the Board of Transport Commissioners. The impact of the horizontal rate increases on the freight rate structure in Western Canada was acknowledged by Mr. L. J. Knowles, a member of the Board, when he appeared before the Standing Committee on Railways, Canals, and Telegraphs of the House of Commons in April 1959. At that time, he indicated that 56.7% of the rail traffic subject to horizontal percentage rate increases moved in Western Canada, while only 26.5% of the traffic subject to these rate increases moved in Ontario and Quebec.[70] It was evidence such as this that convinced Western Canadians that the practice of granting horizontal percentage rate increases

accentuated existing disparities in the freight rate structure.

In response to Western Canadian claims that horizontal percentage rate increases accentuated discrepancies in the freight rate structure, the railways claimed that such an increase in rates was necessary to generate sufficient revenue to offset increasing costs.[71] The only alternative to horizontal percentage rate increases was, in the railways' view, that they be free to alter the level of freight rates without the approval of the Board. While the railways recognized that they should not have the same freedom to alter prices as do private enterprises outside the field of public utilities, they argued that they should have more freedom to adjust their rates to meet changing conditions. Thus the railways proposed that a new formula, "a rate-base-rate-of-return", be adopted as the basis for the calculation of rates. Such a formula would give the railways the power to set their own rates subject to the provisions of a general formula established by the Board that would restrict the rate of return that they could earn on their assets.

Notwithstanding the impact of horizontal rate increases on the freight rate structure in Western Canada, the most important issue faced by the Board during this period was the development of a formula that could be used by the Board to determine if the freight rate increases requested by the railways were reasonable. The formula developed by

the Board established "a permissible level of income" that could be earned by the railways.[72] All requests for rate increases would be considered in the light of this formula. Among the variables included in the calculation of the permissible level of income were the revenues from passenger and freight services. The revenues of the Canadian Pacific Railway were used by the Board in their development and application of the formula. The Board's objective was to establish freight rates at such a level that the Canadian Pacific Railway would meet its operating expenses (including depreciation and taxes), the rail portion of the corporation's fixed charges, a four per cent dividend on its preferred stock, a five per cent dividend on its ordinary stock plus a surplus of approximately two per cent on the company's total investment in rail property. The Western Canadian provinces objected to this formula on the grounds that the railways would be free to increase rates within these general limits. Furthermore, the Board of Transport Commissioners would in effect be relinquishing its control over freight rates. The provinces' views were not accepted by the Board and the formula came into operation.

With the adoption of this formula by the Board, each application by the railways for a freight increase produced a confrontation between the railways and the Western Canadian provinces. The Western Canadian provinces attempted to discredit the statistical evidence presented by the railway while the railways attempted to illustrate that the

requested rate increase was necessary to ensure that rail revenues were within the guidelines of the formula adopted by the Board of Transport Commissioners. The Board attempted to evaluate the evidence presented by the railways and on several occasions the size of the rate increase requested by the railways was slightly reduced. Many of the decisions of the Board were appealed by the provinces to the federal Cabinet without success.[73]

The Board of Transport Commissioners' decision to approve these rate increases did not enhance the Board's reputation and popularity in Western Canada.[74] Many Western Canadians involved in the hearings before the Board expressed the view that the Board did not examine the railways' figures in a detailed fashion and made no attempt to determine if in fact the railway's revenue position warranted such rate increases. Thus, the view was held by many Western Canadians that the Board of Transport Commissioners merely reduced the requested rate increase by a particular amount and approved the increase without any regard for the consequences arising from such a decision. Furthermore, the railways were virtually free to set their own level of rates within the general guidelines established by the Board. Thus, the Board of Transport Commissioners had indirectly accepted the railway's proposal of "a rate-base-rate-of-return" formula as the criteria for the determination of rates. In the view of many Western Canadians, such a formula offered little or no protection for Western Canada.

In 1958, the railways were granted a further increase of 17% in the level of freight rates.[75] During the election campaign, Mr. John Diefenbaker promised Western Canada that he would not permit further freight rate increases until a Royal Commission had investigated federal railway policy. Thus, the Cabinet reduced the rate increase approved by the Board to 8% and introduced legislation that provided for a subsidy to the railways to compensate them for the lower rate increase.[76] The enactment of the Freight Rate Reduction Act in 1959 marked a major change in federal policy. The payment of a subsidy to the railways was specifically designed to offset the impact of the horizontal rate increases on the freight rate structure in Western Canada. In addition to the payment of subsidies, the government announced that no further freight rate increases would be approved pending a complete review of transportation policy. The provisions of the Freight Rate Reduction Act were extended on several occasions and the legislation did not expire until 1966. In addition, the freight rate freeze announced by the federal government in 1958 was not removed until 1966. These changes in policy by the federal government in 1958 were largely in response to the demands of the Prairie Provinces for a review of transportation policy.

In May 1959, the government announced the creation of a Royal Commission to investigate railway policy.[77]

Speaking in the House of Commons, the Right Honourable John G. Diefenbaker reviewed the terms of reference of the Commission by noting that the Commission was instructed to consider inequities in the freight rate structure and the incidence of these inequities on the various regions of Canada, to review the limitations and restrictions placed on the railways by existing legislation, and to recommend amendments to the Railway Act with respect to the possible inclusion in the Act of a formula for the calculation of rates by the railways. During the course of his speech, the Prime Minister assured Western Canadian farmers that the terms of reference of the Commission did not include a review of the Crow's Nest Pass Rates on grain and flour. In Mr. Diefenbaker's view, the Agreement was ". . . part of a bargain that was made between the railways and the government on the one hand, and the settlers who went West on the other. We intend, in so far as this government is concerned, to see to it that that contract shall not be broken. . . ."[78]

With the establishment of the Royal Commission and the announcement that no freight rate increases would be approved until the Commissioners had presented their report to Parliament, the debate on the subject of freight rates and transportation policy in general shifted from the hearings held by the Board of Transport Commissioners to the hearings held by the Royal Commission. Numerous pressure groups as well as the provincial governments from Western Canada utilized the occasion to present briefs to the

Commissioners outlining their views regarding future changes in federal railway policy. The establishment of the MacPherson Royal Commission in 1959 marked the opening of a new era in federal transportation policy that culminated in the enactment of the National Transportation Act of 1967.

7. Assessment of the Board

The performance of the Board has been the subject of constant criticism since its inception in 1903. For example, a review of the speeches made by Members of Parliament from Western Canada in the 1920's revealed the discontent of Western Canadians with the performance of the Board.[79] The absence of adequate representation on the Board from Western Canada and the failure on the part of the Board to interpret those sections of the Railway Act dealing with "unjust discrimination" in such a manner as to eliminate inequities in the freight rate structure were two issues that were isolated for particular attention on several occasions by Western Canadian politicians. Several authors have speculated that the decision of the Cabinet in 1922 to refer the further suspension of the Crow's Nest Pass Agreement to a Parliamentary Committee rather than to the Board was in large part a result of Western Canada's lack of confidence in the work of the Board.[80] In addition, the haphazard way in which the Crow's Nest Pass rates on the movement of grain westward through the Port of Vancouver were applied did nothing to restore the West's confidence

in the Board despite the favourable results of the decision for Western Canada.[81]

The Royal Commission on Transportation of 1948 provided an opportunity for both the railways and the provinces to express their views regarding the performance of the Board.[82] The railways' major complaint was the delay between the time the railways applied for a rate increase and the actual decision of the Board. It is interesting to note that the railways failed to point out in their brief that, in almost all instances, the Board had granted the requested rate increases. The Provinces of Manitoba, Saskatchewan, and Alberta were extremely critical of the Board's performance. Among the major complaints were that the Board had failed to exercise sufficient control over the railways, despite the fact that the Board had the necessary powers to limit certain practices on the part of the railways; that the Board did not act on its own initiative to investigate inequities in the freight rate structure; that the Board had failed to equalize freight rates in all parts of Canada; and that the Board had permitted the railways to continue practices that resulted in "long and short haul discrimination". Finally, the provinces noted that the Board had not considered the impact of the general rate increases on the freight rate structure in Western Canada and was merely ratifying the requests of the railways.

The remedies proposed by the provinces to strengthen the Board were rather vague and general in nature. For example, it was recommended that the "character of appointments" to the Board should be improved and should include individuals not associated with the railways or with the federal Department of Transport, that the size of the Board should be enlarged to permit regional representation, that the Board be more active in making investigations, and that the power of the Board should be expanded to enable it to regulate the activities of the railways with more precision. The Royal Commission, in its report, did not make any major recommendations with regard to the structure and organization of the Board. Furthermore, the Commission did not include any recommendations to guide the Board in its work. While the Royal Commission isolated major problems and noted with precision the complaints of the railways and the provinces with regard to transportation policy, it failed to make any recommendations that would substantially alter the terms of reference of the Board. In a minority report, Commissioner Angus noted that "the Commission set up traffic signals but did not floodlight the road".

A. W. Currie has observed that the Board's performance should be evaluated within the terms of the legislation that determined the scope of the Board's jurisdiction, and within the framework of an external environment that has seen many changes in transportation since 1903.[83] In Currie's view, the terms of reference of the Board were essentially

the terms set out in the Railway Act of 1903. Given these restraints, he concluded that the Board had performed its duties with considerable success.

There would appear to be substantial support for the views of many Western Canadians that the Board of Transport Commissioners became increasingly identified with the interests of the railways. This development is not unique to the Board of Transport Commissioners. Some authors have expressed the view that there has been a tendency for a regulatory agency to become increasingly identified with the interests of the industry that it was established to regulate.[84] A review of the major decisions that influenced the freight rate structure in Western Canada reveals that many of the decisions rendered by the Board accommodated the interests of the railways. For example, the decisions of the Board pertaining to horizontal percentage rate increases in the 1950's and the decisions of the Board with regard to the provisions of the Railway Act relating to "undue preference" and "unjust discrimination" illustrate the insensitivity of the Board to the demands of Western Canada for greater protection from the monopoly position of the railways. The Board's decision that the "one and one third rule" did not apply to agreed charges, in the view of the Prairie Provinces, indicated that the Board was ignoring the federal government's intentions in introducing such an amendment. In summary, the Prairie Provinces viewed the identification of the Board with the interests of the

railways and its failure to assess accurately regional demands for changes in federal policy as the two greatest weaknesses of the Board.

C. CONCLUSION

The history of transportation policy from 1867 to 1959 was marked by the increasing intervention of the federal government in the operation of the railways. Initially, governmental involvement was confined to the establishment and supervision of safety and maintenance standards for the construction and operation of railways. However, discriminatory practices on the part of the railways and the inequities in the freight rate structure in various regions of Canada necessitated greater involvement on the part of the federal government in the regulation of rates. Thus, a series of amendments were enacted to the Railway Act that were designed to restrict discriminatory practices on the part of the railways, and to establish more rigid criteria for the determination of rates. With the growing involvement of the government, a regulatory board was established with the necessary authority to regulate and supervise federal railway policy. Despite the delegation of responsibility for the implementation of federal policy to the Board of Railway Commissioners, both the Cabinet and Parliament retained some involvement in matters relating to the operation of railways and to the setting of freight rates. For example, in the 1920's, Parliament was involved in the abrogation

and subsequent restoration of the Crow's Nest Pass rates. The Cabinet, in the 1950's, heard appeals from the provinces regarding horizontal percentage rate increases.

Many of the amendments enacted since 1903 by the federal government have been in response to particular regional demands. For example, the initial enactment of the Crow's Nest Pass Agreement in 1897, the restoration of the rates at the insistence of the Progressive Members of Parliament, the application of the Crow's Nest Pass rates on grain and flour moving through the Port of Vancouver, and the inclusion of amendments designed to limit long and short haul discrimination illustrate attempts on the part of the federal government to reduce the incidence of national transportation policies on Western Canada. These amendments in federal policy indicate the success of Western Canadians in articulating their demands to the federal government. While all Western Canadian demands were not accommodated, the major changes in transportation policy were enacted in response to the demands of the political actors from Western Canada.[85]

By 1959, it was recognized by the railways, the Board of Transport Commissioners and by the federal and provincial governments that the practice of granting horizontal rate increases to offset rising labour and operating costs in the railway industry was no substitute for a new railway policy. It became increasingly evident to all the parties that the terms of reference of the Railway Act governing the

regulation of freight rates and the operation of the Board of Transport Commissioners were no longer adequate to meet changing conditions. As a result, the Royal Commission on Transportation was established by the federal government to make recommendations for a new federal transportation policy. The enactment of the National Transportation Act of 1967 saw the enactment of a new policy that altered the ground rules governing the operation of the railways.

FOOTNOTES

[1]See W. A. MacKintosh, The Economic Background of Dominion-Provincial Relations (Toronto: McClelland and Stewart, 1964), pp. 61-63.

[2]Canada, Parliament, Sessional Papers (House of Commons), 1902, Volume XXXVI, No. 20A, pp. 3-79. The Report of the Royal Commission on Railway Rate Grievances and Regulative Legislation was printed in the Sessional Papers of 1902. This document will hereafter be referred to as the McLean Report. Details in succeeding paragraphs were taken from pp. 3-4 of this report.

[3]Ibid., p. 3.

[4]Ibid., p. 34. Details in succeeding paragraphs were taken from pp. 34-36 of the report.

[5]Ibid..

[6]Section 92(10) of the British North America Act gives the constitutional authority to the federal government to regulate the activities of railways that cross provincial borders.

[7]Railway Act, 1868, 31 Vic., Ch. 68. The section pertaining to freight rates was S. 12. Details in succeeding paragraphs refer to these sections of the Act.

[8]In his report, Dr. McLean outlined at considerable length the arguments advanced in favour of and in opposition to greater governmental involvement in the regulation of railways. In addition, various grievances arising as a result of discriminatory practices on the part of the railways in the determination of rates were documented in the report. For details, see McLean Report, pp. 3-5 and 41-65.

[9]Railway Act, 1883, 46 Vic, Ch. 24; Railway Act, 1888, 51 Vic, Ch. 29.

[10]Railway Act, 1883, 46 Vic, Ch. 24, S. 12, ss. 6.

[11]Railway Act, 1888, 51 Vic, Ch. 29, S. 224, 225, 232. Details in succeeding paragraphs were taken from these sections of the Act.

[12]McLean Report, pp. 35-37 and 65-66.

[13]Ibid., p. 37.

[14]Railway Act, 1903, 3 Ed. VII, Ch. 58, S. 251-254 and 257. Details in succeeding paragraphs were taken from these sections of the Act.

[15]Government of Canada, Report of the Royal Commission on Transportation (1948) (Ottawa: King's Printer, 1951). This report will hereafter be referred to as the Turgeon Report. Railway Act, 1952, 15-16 Geo VI, S. 332A, 336 and 337.

[16]Turgeon Report, pp. 13-14.

[17]The views of Western Canada with regard to horizontal percentage rate increases have been referred to in Chapter III. In addition, see Turgeon Report, pp. 50-62 for a statement of Western Canadian views.

[18]Ibid., pp. 61-62.

[19]For a discussion of the post-war horizontal percentage rate increases, see A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1959), pp. 102-116.

[20]Turgeon Report, pp. 96-102.

[21]Ibid., p. 101.

[22]Railway Act, 1951, 15-16 Geo VI, Ch. 22, S. 332B, ss. 2.

[23]A. W. Currie, op. cit., pp. 231-232 and 275-276. In an interview with Mr. J. J. Frawley in Ottawa on September 9, 1971, he recalled the events surrounding the enactment of the "one and one third rule" and the reaction of the railways. Details in succeeding paragraphs were taken from these sources.

[24]Transport Act, 1938.

[25]See "The Cast Iron Pipe Case of 1954", Canadian Railway Cases, Vol. 71.

[26]The Alberta Government challenged the ruling of the Board in a series of cases. See "Re Agreed Charges on Iron and Steel of 1954", Canadian Railway Cases, Vol. 71; "Re Agreed Charges on Canned Goods of 1954", Canadian Railway Cases, Vol. 72; "Re Agreed Charges on Wire Rope of 1956", Canadian Railway Cases, Vol. 73.

[27]Government of Canada, Report of the Royal Commission on Agreed Charges (Ottawa: Queen's Printer, 1955).

[28]A. W. Currie, op. cit., pp. 232 and 279. See also Transport Act, 1955, 3-4 Eliz. II, Ch. 59, S. 32, ss. 10-12 and S. 33.

[29]Turgeon Report, pp. 124-127.

[30]A. W. Currie, op. cit., pp. 142-144. See also Turgeon Report, pp. 125-127.

[31]Turgeon Report, pp. 125-126.

[32]Railway Act, 1952, 15-16 Geo. VI, S. 332A, s.s. 2a, 2b, and 2c.

[33]Ibid., S. 328, ss. 15.

[34]Ibid., S. 317-324.

[35]Ibid., S. 328, ss. 1.

[36]Ibid., S. 334.

[37]Ibid., S. 337, ss. 2.

[38]See references in Chapter III to statements by federal and provincial politicians with regard to inequities in the freight rate structure.

[39]A. W. Currie, "Freight Rates on Grain in Western Canada", in Canadian Historical Review, Vol. 21 (1940), p. 55.

[40]Railway Act, 1868, 31 Vic., Ch. 38, S. 24-47. Details in succeeding paragraphs were taken from these sections of the Act.

[41]Railway Act, 1888, 51 Vic., Ch. 29, S. 11.

[42]McLean Report, p. 37.

[43]Ibid., pp. 36-37. In part the Report read: "The Committee has been unable owing to its organization to grapple effectively with the problem presented. It has been impossible, owing to its statutory character, to deal effectively with questions pertaining to rates and preferences. . . . In so far as has been possible, the Committee has dealt with the matters presented to it. Its work has not been an unmitigated record of failure. I consider that in most material matters it has not been effective. . . ." (pp. 36-37.) See also pp. 65-74.

[44]Ibid., pp. 3-5, 34-40, and 77-78.

[45]Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 9th Parliament, Vol. I (1903), p. 246.

[46]Railway Act, 1903, 3 Ed. VII, Ch. 58, S. 23-25.

[47]Rod Kerr, The Board of Transport Commissioners for Canada: A Review of Its Constitution, Jurisdiction and Practice (Ottawa: Queen's Printer, 1957). See also A. W. Currie, Economics of Canadian Transportation, pp. 423-426.

[48]Railway Act, 1903, 3 Ed. VII, Ch. 58, S. 8-10. See also A. W. Currie, op. cit., p. 432.

[49]Rod Kerr, op. cit., pp. 4-9. See also A. W. Currie, op. cit., pp. 437-441.

[50]Rod Kerr, op. cit., pp. 7-8 and A. W. Currie, op. cit., pp. 437-441.

[51]This information was obtained in interviews with Mr. J. J. Frawley and with the Honourable J. W. Pickersgill on September 9, 1971.

[52]A. W. Currie, op. cit., p. 439.

[53]Ibid..

[54]Ibid., pp. 437-440.

[55]Turgeon Report, pp. 78-79. Details in succeeding paragraphs were taken from this source.

[56]Ibid., p. 79.

[57]Ibid., pp. 76-82. See also A. W. Currie, op. cit., pp. 437-439.

[58]Turgeon Report, p. 80.

[59]A. W. Currie, op. cit., pp. 258-303.

[60]Government of Canada, Railway Freight Rates in Canada: A Study Prepared for the Royal Commission on Dominion-Provincial Relations by R. A. C. Henry and Associates (Ottawa: King's Printer, 1939), pp. 242-252. This document will hereafter be referred to as the Henry Report. In addition, see Canadian Railway Cases, Vol. 17, pp. 123-124 and A. W. Currie, op. cit., pp. 55-62. Details in succeeding paragraphs were taken from these sources.

[61]Henry Report, p. 243. Details in succeeding paragraphs were taken from this source.

[62]A. W. Currie, op. cit., p. 60.

[63]Ibid., pp. 260-262.

[64]Ibid., p. 262.

[65]This point was made by Mr. A. V. Mauro and Mr. J. J. Frawley in interviews on September 30 and September 8, 1971 respectively. See also A. W. Currie, op. cit., pp. 271-273 and 276-279.

[66]Interviews with Mr. J. J. Frawley on September 8, 1971 and with Mr. J. W. Telford on May 31, 1971. See also Turgeon Report, pp. 98-99.

[67]Between 1945 and 1959, there were a series of cases before the Board with regard to horizontal percentage rate increases. In 1946, the railways requested a 21% increase in rates. This case is referred to as "Re General Increase in Freight Rates of 1948", in Canadian Railway Cases, Vol. 62, pp. 1-3. See also "The 8% Interim Case of 1949", "The 8% Additional Case of 1950", "The 20% Case of 1950", "The 12% Case of 1951", "The 17% Case of 1952", "The 8, 9, and 7% Cases of 1952 and 1953", "The 7 and 11% Cases of 1956

and 1957" and "The 15% and 17% Cases of 1958". Details of these cases can be found in A. W. Currie, op. cit., pp. 102-116, and in Canadian Railway Cases, Vols. 62-73.

[68]In a series of decisions, the Board granted horizontal percentage rate increases. See "The 15% Case of 1917" in Canadian Railway Cases, Vol. 22, pp. 49-50; "The 25% Case of 1919" and "The 40% Case of 1920" in Canadian Railway Cases, Vol. 25, pp. 130-131. See also Henry Report, pp. 220-223 and A. W. Currie, op. cit., pp. 70-74.

[69]Turgeon Report, pp. 50-63. Details in succeeding paragraphs were taken from this report.

[70]Canada, House of Commons, Standing Committee on Railways, Canals, and Telegraph Lines, Minutes of Proceedings and Evidence, No. 1, Tuesday, April 14, 1959 (Ottawa: Queen's Printer, 1959), p. 16.

[71]Turgeon Report, p. 51.

[72]A. W. Currie, op. cit., pp. 129-132. For a discussion of the principle, "rate-base-rate-of-return", see pp. 132-135. Under this proposal advanced by the railways, the railways would be guaranteed a specific return on their investment and would be free to set rates within these limits. With the Board's adoption of the formula setting out a "permissible level of income" for the railways, they came very close to accepting the railways' proposal. Many individuals involved in transportation argue that at this particular time the railways had a free hand to set rates and that the legislative provisions in the Railway Act did not in fact limit the railways in their setting of rates. This point was made by Mr. A. V. Mauro and Mr. G. Blair during interviews on September 30 and September 8, 1971 respectively. Details in succeeding paragraphs were taken from these interviews.

[73]A. W. Currie, op. cit., pp. 103-120 and 137-141.

[74]This was confirmed in interviews with Mr. J. W. Telford, Mr. J. J. Frawley, Mr. G. Blair, Mr. A. V. Mauro, Mr. David Jones (Chairman of the Railway Committee of the Canadian Transport Commission) on September 10, 1971, and with Mr. E. M. Jones (Traffic Manager, Freight Services, Purchasing Agency, Province of Saskatchewan) on September 1, 1971.

[75]A. W. Currie, op. cit., pp. 113-116. See also John Saywell, ed., Canadian Annual Review (Toronto: University of Toronto Press, 1960), p. 233.

[76]John Saywell, op. cit., p. 233.

[77]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 24th Parliament, Vol. III (1959), pp. 3607-3608.

[78]Ibid., p. 3607.

[79]For details of speeches made by Progressive Members of Parliament in the 1920's, see Chapter III.

[80]A. W. Currie, "Freight Rates on Grain in Western Canada", p. 47. See also T. H. Harris, The Economic Aspects of the Crow's Nest Pass Agreement (Toronto: Macmillan, 1930), pp. 25-29.

[81]A. W. Currie, Economics of Canadian Transportation, pp. 89-90.

[82]Turgeon Report, pp. 76-78. See also A. W. Currie, op. cit., pp. 21-23.

[83]A. W. Currie, op. cit., pp. 426-432.

[84]Peter Silcox, "The Proliferation of Boards and Commissions" in T. Lloyd and J. McLeod, eds., Agenda 1970: Proposals for Creative Politics (Toronto: University of Toronto Press), 1968, pp. 115-135. See also S. J. McLean, "The Work of the Board of Transport Commissioners for Canada", in John Willis, ed., Canadian Boards at Work (Toronto: Macmillan, 1941), pp. 8-21.

[85]This point was made in interviews with the Honourable J. W. Pickersgill, Mr. A. V. Mauro, Mr. J. J. Frawley, Mr. G. Blair, Mr. J. W. Telford, Mr. E. M. Jones, Mr. F. Anderson on September 2, 1971 and with Mr. K. Setter on September 1, 1971.

CHAPTER V

THE CROW'S NEST PASS AGREEMENT (1897-1958)

The enactment of the Crow's Nest Pass Agreement in 1897 by the Parliament of Canada, and the subsequent amendments enacted to the Agreement in the 1920's, are a central feature of the present freight rate structure in Western Canada. In many ways, the Crow's Nest Pass Agreement represents the most important concession granted to Western Canada by the federal government in an attempt to reduce the impact of freight rates on the economy of Western Canada.[1] Western Canadian politicians immediately recognized the importance of the Agreement to the economic well being of Western Canada, and they have strongly resisted any attempts by the federal government to amend or revise the original terms of the Agreement. For example, when the Crow's Nest Pass Agreement was temporarily suspended for a three year period between 1919 and 1922, it was the political pressure exerted by the Progressive Members of Parliament in the House of Commons and by the governments of the three Prairie Provinces that was primarily responsible for having the Agreement reinstated.[2] At the hearings held by the Turgeon Royal Commission and the MacPherson Royal Commission, Western Canadian politicians, as well as representatives from pressure

groups, strongly urged the Commissioners to recommend that the terms of the Crow's Nest Pass Agreement not be altered.[3] Furthermore, during the enactment of the National Transportation Act in 1966, Western Members of Parliament strongly resisted any attempts by the federal government to amend any of the terms of the Agreement.[4] In short, the Crow's Nest Pass Agreement has come to be seen by Western Canadians as the "magna charta" of the West.

The objective of this chapter is to outline the terms of the original Agreement enacted in 1897 and to review the events from 1918 to 1927 surrounding the suspension and reinstatement of the Crow's Nest Pass Agreement. Such a review will facilitate an assessment of the role of the Progressive Members of Parliament from Western Canada and the provincial governments of Manitoba, Saskatchewan, and Alberta in the events leading to the reinstatement of the Agreement, and will further illustrate the success of Western Canadian politicians in having the federal government enact legislation that would reduce the level and the burden of freight rates on Western Canada.

A. TERMS OF THE AGREEMENT[5]

Under the terms of the Agreement negotiated in 1897, the federal government paid to the Canadian Pacific Railway a grant of approximately $3,400,000 to assist the railway in the construction of a rail line from Lethbridge,

Alberta to Nelson, British Columbia via the Crow's Nest Pass. In return for the cash grant, the Canadian Pacific Railway agreed, as of September 1, 1899, to reduce the existing rates on grain and flour moving for export from all points in Western Canada through the ports of Fort William and Port Arthur and points east by three cents per hundred pounds. Furthermore, the railway agreed to reduce its rates by amounts varying from 10% to 33% on a series of commodities (green and fresh fruits, coal oil, agricultural implements, building materials, and furniture) transported from Eastern to Western Canada on rail lines owned, leased or operated by the Canadian Pacific Railway. The reductions in freight rates were guaranteed by the railway without limit of time. Thus, in return for a cash subsidy to build a railway, Canadian Pacific agreed to reduce the freight rates on the chief export of Western Canada, grain, as well as on the major items imported from Eastern Canada.

A review of the debate in the House of Commons on the provisions of the bill establishing the terms of the Crow's Nest Pass Agreement reveals that virtually all Members of Parliament were of the view that the construction of the rail line from Lethbridge to Nelson would be advantageous to the entire nation.[6] However, the size of the subsidy to be paid to the Canadian Pacific Railway was the subject of greater discussion. Before the election of 1896, Sir Charles Tupper introduced legislation into the House of Commons that

would have obligated the federal government to pay the Canadian Pacific Railway a subsidy of $5,000 per mile and to grant a $20,000 loan at 3½% for each mile of the proposed railway line. The bill was never debated and it died on the Order Paper when the general election in 1896 was held. The Liberal Government, elected in 1896, introduced legislation in 1897 that would have paid the railway $11,000 per mile with no additional loan provision. The Conservative Opposition indicated during the debate that the Liberal offer to the Canadian Pacific Railway was too generous. The Minister of Railways and Canals, the Honourable A. G. Blair, defended the terms of the agreement in the following manner:

> I know that there has been the opinion expressed that possibly the Canadian Pacific Railway would have been able, without assistance at all from the Government, to carry out that undertaking successfully. I know that in the report of a meeting of the shareholders of that company, which was held two months ago, the statement appeared that if the Government did not assist the Canadian Pacific Railway they would take hold of the work themselves without assistance. But I believe that that statement was not so much the declaration of a fact within the knowledge of the company itself as a statement put forward perhaps for the purpose of creating an impression for other ends, it may be upon public opinion or the Government of the country, and not that the company was in a position to take up the very large outlay involved by the construction of the line; because I believe that neither the Canadian Pacific Railway nor any other company at this time is so well situated that it would be able, without our aid, to construct the work. Therefore, I think it is not too much to say that unless the Government came to the aid of any company that was in a position to assume the undertaking or unless the Government undertook to build the road itself, many years would have to elapse before the construction of the Crow's Nest Railway would become an accomplished fact. . . . The committee will have noted that we have sought to ensure the country a large measure of relief from the rates which have

> obtained since the Canadian Pacific Railway was started. We have imposed conditions upon the company which are very largely restrictive of their present powers. We have embraced in one of the sub-clauses of these resolutions a considerable list of articles which go into very large consumption among the people of the western provinces, and we have secured an agreement on the part of the Canadian Pacific Railway that very substantial reductions will be made upon the existing rates. We have also received the consent, on their part, that the rates upon all goods - (shipped into or out of British Columbia over the Crow's Nest Pass line) - are to be subject to the control and supervision of the Railway Committee of the Privy Council as is the case with other railway companies in Canada. To the extent of the shipment of goods from any part of Canada to British Columbia, and the shipment of goods from any part of British Columbia traversed by this line, to any part of Canada, there has been secured in the contract between the Canadian Pacific Railway and the Government, a recision of that existing ten per cent clause.[7]

A. W. Currie has noted that a review of newspaper reports in Western Canada at the time of the negotiations indicated that the Agreement was favourably received in Saskatchewan and Alberta. However, in Manitoba, farmers, settlers and merchants continued to demand lower rates than those provided in the Agreement.[8] The continuing demand for another railway from Manitoba to Lake Superior resulted in the formation of the Canadian Northern Railway in 1901. To ensure the construction of the rail line, Canadian Northern Railway negotiated an agreement with the Manitoba Government whereby the Manitoba Government guaranteed the interest on the railway's bonds. In return, the Lieutenant-Governor-in-Council of Manitoba retained the power to approve all rates levied by the railway. As a result of this

agreement, the railway reduced existing rates on grain by four cents per hundred pounds and on all other freight by 15%. This agreement negotiated by the Manitoba Government and the Canadian Northern Railway came to be known as the Manitoba Agreement.[9] Thus, in the period from 1897 to 1901, there were agreements negotiated by the federal government and by the Manitoba Government that resulted in lower freight rates in Western Canada.

Initially, the Canadian Pacific Railway did not meet the competition of the Canadian Northern Railway by lowering rates because the Canadian Northern did not possess the equipment necessary to compete with Canadian Pacific. However, in 1903, the Manitoba Government, in response to the demands of farmers not located on the rail lines of the Canadian Northern, negotiated an agreement with the Canadian Pacific that reduced the rates on grain to the level charged by Canadian Northern.[10] Canadian Pacific extended these rate reductions to the Provinces of Saskatchewan and Alberta. Thus, prior to 1917, freight rates in Western Canada were lower than those permitted under the Crow's Nest Pass Agreement as a result of competition between the two lines.

B. THE FIFTEEN PER CENT CASE OF 1917

In 1917, the railways applied to the Board of Railway Commissioners for a general rate increase of 15%. In presenting their case, the railways contended that increasing operating and maintenance costs necessitated an increase

in rates. The application for the rate increase was opposed by several groups from Western Canada. For example, the legal counsel for the Grain Growers of Manitoba noted that the proposed rate increase would result in a substantial increase in revenue for the Canadian Pacific Railway but only a limited increase in revenue for the other railways. The Grain Growers contended that railways other than the Canadian Pacific were in need of the increased revenue more than Canadian Pacific. The legal counsel for the Manitoba Government argued that such a rate increase in Western Canada was prohibited by the terms of the Crow's Nest Pass Agreement and the Manitoba Agreement.

The Board of Railway Commissioners was sympathetic to the arguments of the railways and they granted the railways the requested increase of 15%. However, the Board had considerable difficulty in deciding if the rate increase should apply to Western Canada, given the terms of the Manitoba Agreement and the Crow's Nest Pass Agreement. Section 325 of the Railway Act specifically stated that "no undue or unreasonable preference or advantage can be granted to any person or company".[12] However, Section 3 of the Railway Act stated that "unless expressly provided in the Act to the contrary, wherever the provisions of the Railway Act, and of any Special Act passed by the Parliament of Canada, relate to the same subject matter, the provisions of the Special Act shall, in so far as it is necessary to give effect to

such a Special Act, be taken to override the provisions of the Railway Act".[13] A "Special Act" of Parliament referred to any act of Parliament establishing freight rates for the movement of particular commodities under particular conditions in certain regions of the country. Thus, the Board of Railway Commissioners was forced to rule on the status of the Crow's Nest Pass Agreement and the Manitoba Agreement. If the Board ruled that the Crow's Nest Pass Agreement and the Manitoba Agreement were "Special Acts" and therefore not subject to the jurisdiction of the Board or to the provisions of the Railway Act, the proposed 15% rate increase could not be applied to Western Canada. If, however, the Board ruled that the Agreements were not "Special Acts", the proposed 15% increase could be applied to Western Canada.

In rendering its decision, the Board ruled that the Crow's Nest Pass Agreement was a "Special Act" of Parliament and that the various provisions of the Railway Act did not limit the terms of the Agreement. In the Board's view, "a specific reduction worked by the Special Act, therefore, limits the general jurisdiction of the Board, having regard to rates. In [our] view, no matter how great the shortage may be in railway revenue, the Board cannot advance these Canadian Pacific rates beyond the reduction secured under the Special Act".[14] With regard to the status of the Manitoba Agreement, the Board ruled that because the Manitoba Agreement was an act of a provincial legislature, it was

not a "Special Act" within the terms of the Railway Act. As a result of this decision, all freight rates in Western Canada, with the exception of those protected by the terms of the Crow's Nest Pass Agreement, were raised by 15%. The decision rendered by the Board established an important precedent for future cases. The Board had recognized that its jurisdiction with regard to the regulation of rates was restricted by the terms of the Crow's Nest Pass Agreement. In addition, the terms of the Railway Act stipulating that rates be "just and reasonable" and "equal between districts and localities" did not limit the provisions of the Crow's Nest Pass Agreement. Thus, the Board recognized that any amendments to the provisions of the Crow's Nest Pass Agreement, or any alterations to the level of rates stipulated in the Agreement, were beyond its jurisdiction.

C. THE SUSPENSION OF THE CROW'S NEST PASS RATES - 1918

In 1918, the railway employees in the United States were granted substantial wage increases.[15] To offset the increased cost to the railways, freight rates in the United States were increased by 25%. Following the wage settlement in the United States, railway employees in Canada demanded similar wage increases. The Cabinet directed that the wage settlement agreed to in the United States be imposed on the Canadian National Railway. The Canadian Pacific Railway was encouraged by the government to accept the terms of the wage

settlement. With the railway's acceptance of the wage increase, the Cabinet directed the Board of Railway Commissioners to prepare a schedule of rate increases to offset the cost to the railways of the wage increase and to submit their report to the Cabinet. A. W. Currie justified the wage settlement in its directive to the Board in the following manner:

> The Order in Council was not passed for the purpose of increasing company profits over those of previous years, but for the purpose of meeting advanced costs of transportation, of preventing strikes, and the collapse of the country's transportation. . . . Railway executives while stating that the increases allowed will enable transportation to continue in efficiency, claim that such increases will not be sufficient to cover the whole increased cost of operation. Whether this will or will not be the case is largely a matter of speculation. . . .[16]

The Board recommended to the Cabinet that in the region east of Port Arthur all rates be increased by 25%. In the region west of Port Arthur an additional 10% increase was to be added to the 15% increase granted by the Board in 1917. The additional 10% increase was applied to <u>all</u> rates in Western Canada including those rates protected by the Crow's Nest Pass Agreement. The rate increases were approved by the Cabinet on July 27, 1918 and came into effect on August 12, 1918.[17] As a result of this Order-in-Council, freight rates higher than those stipulated under the terms of the Crow's Nest Pass Agreement had been established. The authority of the Cabinet to order such an action stemmed from the <u>War Measures Act</u>. Under the provisions of the <u>War Measures Act</u>, the Cabinet suspended the Crow's Nest Pass

Agreement on the grounds that freight rate increases were essential to assist the railways in meeting the financial burdens imposed on them by the war. In its report to the Cabinet, the Board of Railway Commissioners indicated that the railways could not continue to operate unless the rates on grain and other commodities subject to the Crow's Nest Pass Agreement were raised. The Cabinet accepted the advice of the Board and suspended the Crow's Nest Pass rates. However, the Cabinet assured Western Canada that the suspension of the Crow's Nest Pass Agreement was only a temporary measure and that the rates would be restored once the railways had adjusted to post-war economic conditions.[18]

In 1919, Parliament ratified the Order-in-Council of 1918 that suspended the Crow's Nest Pass Agreement.[19] The Railway Consolidation Bill, introduced into the House of Commons in 1918, contained no reference to "Special Acts" of Parliament being exempted from the terms of the Railway Act. The implications arising from the passage of this Bill by the House of Commons were that if the bill was proclaimed Western Canada would no longer enjoy the benefits of the Crow's Nest Pass Agreement. In the Senate, the Government Leader, the Honourable Sir James Lougheed of Alberta, attempted to have the bill amended in such a manner that the Board of Railway Commissioners would not have been restricted in its jurisdiction over freight rates by the provisions of "Special Acts" of Parliament.[20] In a decision rendered in

1917, the Board had ruled that its jurisdiction over freight rates was limited by the terms of "Special Acts" of Parliament. The implications arising from the passage of Sir James Lougheed's amendment would have been to permanently abrogate the provisions of the Crow's Nest Pass Agreement. During the debate in the Senate, the Honourable R. Watson, a Liberal Senator from Manitoba, opposed the proposed amendment on the grounds that the inclusion of the amendment would negate legislation passed by the Manitoba Government that resulted in lower freight rates for the citizens of Manitoba on freight moved on the Canadian Northern Railway.[21] In addition, he noted that the amendment would result in the cancellation of the Crow's Nest Pass Agreement of 1897. Senator Watson was supported by two other Senators from Manitoba, the Honourable W. H. Sharpe and the Honourable L. McMeans, and Senator W. B. Willoughby from Saskatchewan. As a result of the opposition of these Senators from Western Canada, the amendment was withdrawn and Section 325 of the Railway Consolidation Bill was approved by the Senate without this amendment.

The House of Commons did not act on the amendment made in the Senate. In 1919, the government re-introduced the Railway Consolidation Bill into the House of Commons for debate. The government included Sir James Lougheed's amendment of 1918 that the Board of Railway Commissioners should not excuse alleged unjust discrimination on the grounds that

such action was justified or required under a "Special Act" of Parliament in the legislation. The bill was approved by the House; however Senator Watson again opposed the amendment and the Senate refused to pass the bill.[22] In discussions between the Cabinet and the Senators from Western Canada, a compromise agreement was agreed to whereby the Crow's Nest Pass Agreement would be suspended for a period of three years. The legislation suspending the Agreement for three years was enacted on July 7, 1919.[23]

Various authors have attributed the continued presence of the Crow's Nest Pass Agreement as a central feature of the freight rate structure of Western Canada to the efforts of Senator Watson. For example, A. W. Currie noted that:

> . . . It is perhaps not too much to say that the agreement, with all that it means to the West, was ultimately kept in substantial effect by the insistence of but one man, Senator Watson of Portage La Prairie, acting at the insistence of the Manitoba Government. . . .[24]

John W. Dafoe, in his biography of Sir Clifford Sifton, noted the importance of the contribution of Senator Watson to the Senate debate when he wrote:

> The bill as introduced by the government provided for the indefinite suspension of the Act. The three years limitation was added in the Senate at the insistence of Robert Watson, Liberal Senator from Manitoba, who acted in response to suggestions from the Government of Manitoba, of which T. C. Norris was the head. This alone made possible the restoration of the rates. The obligation of the West to Senator Watson and the Norris Government . . . has never been sufficiently understood. . . .[25]

Senator Watson's efforts on behalf of Western Canada provide an excellent illustration of one of the few instances where the Senate effectively acted as a protector of regional interests.

With the election of a large number of Progressives in the general election of 1921, the Liberal Government, because of its precarious position in the House of Commons, viewed any decision regarding the status of the Crow's Nest Pass Agreement with increasing apprehension. As a result, in 1922, the entire matter was referred to a Special Committee of the House of Commons on Railway Transportation Costs.[26] The Committee was directed "to make inquiry into the question of railway transportation costs" and to consider the further suspension of the Crow's Nest Pass Agreement.

During the debate on the motion, the Right Honourable Arthur Meighen indicated that in his view the suspension of the Crow's Nest Pass Agreement should be considered by the Board of Railway Commissioners and not by a Parliamentary Committee.[27] Members of the Progressive Party from Western Canada, however, favoured the appointment of a Parliamentary Committee to examine the future of the Crow's Nest Pass Agreement. The Progressive Members of Parliament believed that they would be in a position to directly influence the course of discussions if a Parliamentary Committee examined the matter. A. W. Currie has noted that the major reason for the government's decision to establish a Parliamentary

Committee to examine the Crow's Nest Pass Agreement was that Western Canada had lost faith in the Board of Railway Commissioners to render decisions that would reflect the views of Western Canada.[28] Therefore, with the support of the Progressives, the government motion to establish the Committee was passed by Parliament.

During the course of the Committee's hearings, representatives of the railways urged the Committee to recommend the further suspension of the Crow's Nest Pass Agreement.[29] Among the reasons cited by the railways were that the restoration of the Crow's Nest Pass rates would remove all possibility of future rate reductions on basic commodities in Western Canada and would seriously reduce revenues at a time when operating costs were increasing. Finally, the railways indicated that the Board of Railway Commissioners should not be limited in its jurisdiction by the terms of "Special Acts" of Parliament.

Representatives from the agricultural industry and representatives from the Chambers of Commerce of various communities in Western Canada urged the Committee to reinstate the Crow's Nest Pass Agreement. They argued that the Crow's Nest Pass Agreement was a legally binding contract and that the contract had only been temporarily suspended during the war. Furthermore, they argued that Western Canada had not received any benefits from the Agreement because the competition from the Canadian Northern Railway prior to 1917 had

kept rates at a lower level than those provided for in the Crow's Nest Pass Agreement. Representatives from the West challenged the railway's contention that the application of the Crow's Nest Pass rates would substantially reduce the revenues of the railways. The West maintained that the lower rates would result in increased traffic moving in and out of Western Canada. Thus, the revenues of the railways would increase rather than decrease over a period of time.

The Committee concluded its hearings and prepared an initial report that recommended that the Crow's Nest Pass Agreement be suspended for an indefinite period.[30] The Cabinet realized that if the Committee's report came to the House of Commons for a vote, the Progressives would vote against the government and the government would be defeated. In addition, several Western Liberal Members of Parliament had made it known to the Cabinet that they would vote against the government. As a result, the Committee re-convened to hear evidence from the Canadian National Railway that indicated that if the rates were only applied to grain and flour the revenue position of the railways would not be damaged. Clearly, at this point, both the Cabinet and the Committee were not interested in the economics of the Crow's Nest Pass Agreement but were attempting to find a political solution that would be acceptable to the Progressive Members of Parliament. As a result, the Committee recommended that the Crow's Nest Pass Agreement be suspended for a further

two year period with the exception that the rates on grain and flour be restored to the level of rates established by the Crow's Nest Pass Agreement in 1897. In A. W. Currie's view, the entire strategy on the part of the government "was a device to secure the support of the Progressives on the budget which was then before the House".[31] Mr. W. T. Jackman expressed similar views when he wrote:

> There is no question that the recommendations of the Committee's report . . . [were] due to political expediency. The Government had to have the assent of the Western Members before it could be sure of carrying through its policy.[32]

It is interesting to speculate as to the reasons that led the Progressive Members of Parliament from Western Canada to accept a solution that restored the Crow's Nest Pass rates only on grain and flour.[33] One explanation is that many of the goods that were included in the Crow's Nest Pass Agreement were now being produced in Western Canada. Thus, the necessity of having lower rates on these commodities was reduced. Secondly, the movement of grain and flour for export was the most beneficial aspect of the Agreement in the view of many Western Members of Parliament. With the reinstatement of the rates on grain and flour, the most important element of the Agreement had been retained. Finally, the Progressives realized that the majority of the Conservatives and many of the Liberal Members of Parliament favoured the total abolition of the rates. Thus, the Progressives calculated that a reinstatement of the rates on grain and flour was the best possible solution that they

could obtain given existing political conditions. The Railway Act was amended in 1922 whereby the Crow's Nest Pass Agreement was suspended for an additional year with the exception of the rates on grain and flour.[34] In addition, the amendment empowered the Governor-in-Council to extend the suspension of the Agreement for an additional year if circumstances justified such action. The Cabinet exercised this power and the Agreement was suspended until July 6, 1924.

D. RESTORATION OF THE CROW'S NEST PASS RATES - JULY 1924

On July 7, 1924, the provisions of the Crow's Nest Pass Agreement were restored in their entirety. Earlier that year, the railways had urged the Cabinet to extend the suspension of the Agreement on the grounds that operating costs were substantially higher than they were in 1897.[35] Furthermore, the railways argued that if the rates were only applied to the commodities stipulated in the Crow's Nest Pass Agreement and only to those rail lines in existence in 1897, disparities in the level of rates levied by the Canadian National and the Canadian Pacific Railways would exist in Western Canada. The legal counsel from Western Canada representing the provincial governments and the agricultural industry noted that the Canadian Pacific Railway had entered into a contract in 1897 and that the terms of the Agreement should be enforced. Furthermore, the decision to suspend the Agreement in 1918 was never intended to be

permanent.

The Cabinet was aware of the views of the Progressive Members of Parliament in the House of Commons and they realized that a further suspension of the Crow's Nest Pass Agreement could result in the Progressives withdrawing their support for the government in the House. As a result, the Cabinet refused to extend the suspension of the Agreement. In anticipation of this event, the Canadian Pacific Railway filed a series of rates with the Board, early in 1924, that complied with the rates specified in the Crow's Nest Pass Agreement on those rail lines in operation in 1897. Although the Canadian National Railway was not bound by the Agreement of 1897, the railway did publish similar rates to those of the Canadian Pacific in an attempt to compete with Canadian Pacific for the movement of traffic from competitive points in Eastern Canada to competitive points in Western Canada. However, both railways levied higher rates to destinations not on the Canadian Pacific's 1897 lines. Numerous complaints were made to the Cabinet from all regions of Canada charging that the level of rates levied in one area varied from the level of rates in another. The complainants argued that these rate differentials arising from the reinstatement of the Crow's Nest Pass Agreement were violations of the provisions of the Railway Act. The complaints were forwarded to the Board of Transport Commissioners for their consideration and, on October 14, 1924, the Board ruled that their powers under the Railway Act were not

limited by the terms of "Special Acts" of Parliament.[36] This decision was in direct conflict with the decision rendered by the Board in 1917. The Commissioners noted, however, that the ruling in 1917, that the jurisdiction of the Board was limited by the terms of "Special Acts" of Parliament, did not pertain to the Crow's Nest Pass Agreement in particular. In its 1924 decision, the Board ruled that the question before the Board was the status of the Crow's Nest Pass Agreement.

In the course of their judgment, the Board examined their terms of reference under the Railway Act of 1903 and they noted that Section 5 of the Railway Act of 1903 made reference to the fact that only "Special Acts" of Parliament "heretofore" passed by Parliament would be exempted from the terms of the Railway Act.[37] Thus, the Board argued that the Crow's Nest Pass Agreement of 1897 had been incorporated into the Railway Act of 1903 and did not limit the jurisdiction of the Board. In order to remove existing disparities in the level of rates as a result of the reinstatement of the Crow's Nest Pass Agreement, the Board ordered that the rates in existence prior to July 7, 1924 be restored. Thus, the Crow's Nest Pass Agreement would apply only to the movement of grain and flour.

The Provinces of Manitoba, Saskatchewan and Alberta appealed the decision of the Board to the Governor-in-Council.[38] The Cabinet, recognizing the political consequences of the Board's decision, suspended the Board's ruling

and referred the entire matter to the Supreme Court. In the interim, the Cabinet ordered the complete restoration of the Crow's Nest Pass Agreement.

In February of 1925, the Supreme Court rendered its decision.[39] In brief, the Court ruled that the Crow's Nest Pass Agreement was a "Special Act" of Parliament and was an exception to any general act dealing with the same or similar subject matter. The Court noted that the words "heretofore" included in Section 5 of the Railway Act of 1903 did not exclude the Crow's Nest Pass Agreement from being classified as a "Special Act" of Parliament. In addition, the Court ruled that the Crow's Nest Pass Agreement applied only between points on the Canadian Pacific Railway's lines that were in existence in 1897.

The inequities in the freight rate structure that had led to the Board's initial decision were not resolved by the Court's decision and the debate on the status of the Crow's Nest Pass Agreement returned to the House of Commons. In June 1925, the status of the Crow's Nest Pass rates was clarified when the Railway Act was amended in such a manner that the Crow's Nest Pass rates on grain and flour were extended to all rail lines (both Canadian National and Canadian Pacific).[40] Furthermore, the rates on products, such as building materials and agricultural implements, included in the original terms of the Crow's Nest Pass Agreement of 1897 were cancelled. Thus, the Crow's Nest Pass rates applied only to grain and flour moving for

export.

Two amendments proposed during the debate by Progressive Members of Parliament were defeated. Mr. Robert Forke moved an amendment to the effect that the provisions of the bill would not affect pending litigation between the Government of Manitoba and the Canadian National Railway with regard to the Manitoba Agreement.[41] The government refused to accept the amendment on the grounds that it would interfere with the general work of the Board of Railway Commissioners. Mr. T. A. Crerar proposed a second amendment that would have instructed the Board of Railway Commissioners to draw up schedules of rates for Western Canada in such a manner that the rates in Western Canada would not exceed by more than ten per cent the rates approved by the Board for Ontario and Quebec.[42] The amendment was not accepted by the government on the grounds that such an amendment would provide additional preferential treatment for Western Canada.

E. EXTENSION OF THE CROW'S NEST PASS RATES TO VANCOUVER

The remaining outstanding issue with regard to the status of the Crow's Nest Pass Agreement was the claim by Alberta and British Columbia that the Crow's Nest Pass rates should apply to the westward movement of grain and flour through the Port of Vancouver. Since the opening of the Panama Canal, Vancouver had become an important exporting center and both the Provinces of Alberta and British

Columbia urged the Board of Railway Commissioners and the federal government to further extend the application of the Crow's Nest Pass rates. The first attempt by British Columbia to have the federal government amend the Railway Act was in 1922 when Premier John Oliver of British Columbia appeared before the Committee of the House of Commons investigating railway rates and requested that the Crow's Nest Pass rates on grain and flour be applied to shipments through the Port of Vancouver.[43] Despite the representations of Mr. Oliver, the Committee did not recommend this amendment in their final report. With the restoration of the Crow's Nest Pass rates on grain and flour moving eastward from Western Canada in 1922, British Columbia was placed in a more difficult position. In a case before the Board in 1922, the Government of British Columbia petitioned the Board to have the Crow's Nest Pass rates applied to shipments of grain through the Port of Vancouver.[44] However, in its decision, the Board failed to rule on the request of British Columbia.

Both British Columbia and Alberta appealed the decision to the Cabinet on the grounds that the Board had failed to deal with the question of the status of the Crow's Nest Pass rates on grain and flour moving through the Port of Vancouver.[45] The Cabinet, in October 1923, referred the matter back to the Board for a further ruling. In its decision, the Board reduced the rates on the movement of grain through the Port of Vancouver by ten per cent; however, the

Board refused to apply in full the rates under the Crow's Nest Pass Agreement.[46] The Board noted that rates established by Parliament for particular reasons and under special circumstances should not be the basis for the determination of other rates.

In November 1924 at a routine hearing of the Board in Vancouver, two of the Commissioners received a petition from the Province of British Columbia that the Crow's Nest Pass rates be applied to the movement of grain through the Port of Vancouver. The Commissioners reserved judgment on the petition and no action was taken by the Board for over a year. In June 1925, the Board was instructed by the Cabinet to conduct a general review of disparities in the freight rate structure. This investigation was launched by the Cabinet as a result of numerous complaints received by the Cabinet in 1924 and 1925 that documented variations in the level of freight rates in different regions of Canada. In August 1925, shipping interests from Vancouver presented a brief to the Board requesting that the Board render a decision on the application filed by the Government of British Columbia in November 1924. On September 2, 1925, at a meeting of the entire Board in Ottawa, the Commissioners agreed by a vote of three to two to include the petition of the British Columbia Government in their general investigation. Despite this resolution, on the afternoon of September 2, the two Commissioners who had heard the original case in Vancouver in 1924, and who opposed the resolution issued

that day by the Board, issued Order 36769 applying the Crow's Nest Pass rates on grain and flour to the movement of grain through the Port of Vancouver.[47]

The Chief Commissioner supported this action by the Board on the grounds that the issue of extending the Crow's Nest Pass rates to the movement of grain through the Port of Vancouver had been fully discussed. Furthermore, he argued that a decision should be made before the opening of a new crop year. Under the Railway Act, the Board could, for any particular purpose, be divided into sections of three members. Two of the three members present constituted a quorum. In addition, the Act stipulated that an order of the Board must be signed by either the Chief Commissioner or the Assistant Chief Commissioner. Because Mr. H. A. McKeown was the Chief Commissioner of the Board, and one of the two Commissioners who issued the order, his signature on the order made it a legally binding order of the Board. Two of the three remaining Commissioners protested the action; however, in the words of A. W. Currie, "the damage had been done. This unusual if not unethical procedure had completely destroyed the country's confidence in the Board. . . ."[48]

The issuance of Order 36769 aroused bitter protests in many regions of Canada. Several Boards of Trade and Harbour Commissions in the Maritimes and in Quebec vigorously opposed the order charging that it discriminated in favour of the Port of Vancouver. In Western Canada, the railways

were accused of failing to comply with the order issued by the Board. The Prairie Provinces petitioned the Board to order the railways in Western Canada to comply with Order 36769.[49] The Board reserved judgment pending the conclusion of their general investigation initiated in 1925. The Provinces of Alberta and Saskatchewan appealed to the Cabinet in an attempt to have the Cabinet instruct the Board to render a decision on the petition brought by the two governments.[50] The Cabinet dismissed the appeal on the grounds that Order 36769 was clear and needed no further explanation. Finally, on August 26, 1927, the Board confirmed Order 36769 and reaffirmed that the Crow's Nest Pass rates should apply on the movement of grain through Vancouver.[51] In addition, rates on branch lines in Western Canada were to conform to rates levied on the main lines. The Canadian Pacific Railway was granted one concession. In the calculation of rates from Calgary to Vancouver, the railway was permitted to calculate the mileage by the longer Canadian National mileage. With the ruling of the Board in 1927, the terms of the Crow's Nest Pass Agreement were not examined by the Parliament of Canada, the provinces or the railways until 1948.

F. ROYAL COMMISSION ON TRANSPORTATION OF 1948

The establishment of the Turgeon Royal Commission in 1948 afforded the railways, the provincial governments and other interested parties the opportunity to make representations to the Commission outlining their respective views

regarding the continuance of the Crow's Nest Pass rates in the freight rate structure. The Governments of Manitoba, Saskatchewan, and Alberta urged the Royal Commission to recommend the continuance of the Crow's Nest Pass rates.[52] They were, however, prepared to accept a modification in the rates if the railways could demonstrate that they were in fact losing revenue as a result of the reduced rates. If the railways were losing money, the Parliament of Canada should subsidize the railways.

The Canadian Pacific Railway urged the Commission to recommend that the Crow's Nest Pass rates be repealed and that the grain farmers be paid a subsidy should they need assistance. The Canadian National Railway, in its brief, noted that there was merit in having all rates placed under the jurisdiction of the Board of Transport Commissioners.[53] In addition, the railway recommended that an examination of the revenues from the Crow's Nest Pass rates and the benefits to Western Canada arising from these rates be reviewed before any amendment was enacted to the Railway Act that would eliminate the Crow's Nest Pass Agreement.

In its final report to the federal government, the Commissioners recommended that the Crow's Nest Pass rates on grain and flour remain a central element in the freight rate structure.[54] In making this recommendation, the Commissioners noted that, in their view, the grain industry in Western Canada required special consideration and that it was in the "national interest" to continue to have reduced

rates on the movement of grain in Western Canada. In part, the report read:

> The conclusion which commends itself to the Commission is that the time has not come for Parliament to divest itself of the immediate control of these rates which it assumed in 1897. Such a time may come later in the evolution of the country's economic position, but it seems certain that it has not yet come in this case. On the contrary, it would be against the national interest at this moment, in view of the uncertainties which exist in world affairs, and consequently in world market prospects, to subject this great export industry to the disturbance which the abandonment of statutory protection would undoubtedly cause. This abandonment would mean that Parliament no longer looks upon Western Canada's production of grain for export as an industry requiring special consideration in the national interest. There is no doubt that the effect of such a measure at this time would be particularly unfortunate. . . .[55]

G. CONCLUSION

The Crow's Nest Pass rates are recognized by most Western Canadians to be of considerable economic benefit to Western Canada. Thus, these rates remain the central element in the freight rate structure of Western Canada. The existence of these rates has been the subject of considerable discussion particularly in the period from 1918 to 1927. Western Canadian politicians have strongly resisted any attempt by the Board of Railway Commissioners, the Cabinet, or the Parliament of Canada to amend or revise any of the provisions of the Agreement. While the reduced rates on the movement of certain goods into Western Canada were removed from the Agreement in 1925, the reduced rates on grain and flour have been retained on the movement of grain through the Ports of Fort William and Port Arthur, and

extended to shipments moving through the Port of Vancouver. The railways utilized the hearings of the Turgeon Royal Commission and the MacPherson Royal Commission to express their opposition to the continued existence of the Crow's Nest Pass rates. To date, the federal government has refused to adopt such a course of action and the Crow's Nest Pass rates on grain and flour are still protected within the provisions of the National Transportation Act of 1967.

FOOTNOTES

[1]The importance of the Crow's Nest Pass Agreement to Western Canada has been noted by many authors. For example, see W. L. Morton, The Progressive Party in Canada (Toronto: The University of Toronto Press, 1950), and A. W. Currie, Economics of Canadian Transportation (Toronto: The University of Toronto Press, 1959).

[2]Members of Parliament from Western Canada stressed the importance of the Crow's Nest Pass Agreement in speeches in the House of Commons during the 1920's. These speeches have been referred to in Chapters II and III.

[3]See Government of Canada, Report of the Royal Commission on Transportation (1948) (Ottawa: King's Printer, 1951); and Government of Canada, Report of the Royal Commission on Transportation (1959) (Ottawa: Queen's Printer, 1961). The views of Western Canada are outlined in Chapters IV and VII.

[4]The debate in the House of Commons on the National Transportation Act in 1966 and 1967 revealed the importance of the Crow's Nest Pass Agreement to Western Canada. A detailed account of these statements can be found in Chapter X.

[5]For details of the terms of the Crow's Nest Pass Agreement, see Statutes of Canada, 60-61 Vic., Ch. 5, 1897. See also A. W. Currie, op. cit., pp. 47-49 and T. H. Harris, The Economic Aspects of the Crow's Nest Pass Agreement (Toronto: Macmillan, 1930), pp. 1-7. Details in succeeding paragraphs were taken from these sources.

[6]For details of the debate on the Crow's Nest Pass Agreement, see Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 8th Parliament, Vol. II, (1897), pp. 4512-4611. Details in succeeding paragraphs were taken from these pages.

[7]Ibid., p. 4514.

[8]A. W. Currie, op. cit., p. 49.

[9]Ibid., pp. 49-51.

[10]Ibid..

[11]Details of this case can be found in Canadian Railway Cases, Vol. 22, p. 49. See also A. W. Currie, op. cit., pp. 63-70 and T. H. Harris, op. cit., pp. 19-23. Details in succeeding paragraphs were taken from these sources.

[12]Railway Act, 1903, 3 Ed. VII, Ch. 58, S. 325.

[13]Railway Act, 1903, 3 Ed. VII, Ch. 58, S. 3.

[14]T. H. Harris, op. cit., p. 23.

[15]This case is known as "The 25% Case". For details, see Judgments, Orders, Rules and Regulations of the Board of Railway Commissioners, Vol. 8, p. 277. In addition, see A. W. Currie, op. cit., pp. 70-72 and T. H. Harris, op. cit., pp. 23-25. Details in succeeding paragraphs were taken from these sources.

[16]A. W. Currie, op. cit., p. 71.

[17]Ibid., pp. 70-72. The Order-in-Council authorizing the 10% increase in rates can be found in Government of Canada, Railway Freight Rates in Canada: A Study Prepared for the Royal Commission on Dominion-Provincial Relations by R. A. C. Henry and Associates (Ottawa: King's Printer, 1939), p. 183. This document will hereafter be referred to as the Henry Report. The Henry Report contains the Order-in-Council passed by the Cabinet under the provisions of the War Measures Act.

[18]T. H. Harris, op. cit., pp. 24-25.

[19]Section 325, subsection 5 of the Railway Act was amended in 1919 and the Crow's Nest Pass Agreement was suspended for three years. This amendment confirmed the Order-in-Council of 1918 suspending the Crow's Nest Pass Agreement. For details of the debate see Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 13th Parliament, Vols. I and III, (1919), pp. 357, 936, 2617-2652 and 3517.

[20]Canada, Parliament, Parliamentary Debates (Senate), 1st Session, 13th Parliament, Vol. I, (1918), pp. 194-196.

[21]Ibid., p. 209.

[22]Ibid., p. 669.

[23]Railway Act, 9-10 Geo. V, Ch. 68, S. 325, s.s. 5.

[24]A. W. Currie, op. cit., p. 77.

[25]John W. Dafoe, Clifford Sifton in Relation to His Times (Toronto: Macmillan, 1931), pp. 499-500.

[26]A. W. Currie, op. cit., pp. 76-77. For details of the debate, see Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. II, (1922), pp. 1402-1458.

[27]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. II, (1922), pp. 1404-1411. The comments of the Progressive Members of Parliament are found in pp. 1414-1420.

[28]A. W. Currie, op. cit., p. 77.

[29]For details of the Committee's report, see Canada, Parliament, Parliamentary Debates (House of Commons), Special Committee on Railway Transportation Costs, 1922, 2nd Session, 14th Parliament, Vol. II, (1922). See also T. H. Harris, op. cit., pp. 25-29. Details in succeeding paragraphs were taken from these sources.

[30]A. W. Currie, op. cit., p. 78. Details in succeeding paragraphs were taken from this source.

[31]Ibid..

[32]T. H. Harris, op. cit., p. 29.

[33]A. W. Currie, op. cit., pp. 78-80.

[34]Railway Act, 1922, 12-13 Geo. V, Ch. 41, S. 325(5). For details of the debate, see Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 14th Parliament, Vol. IV, (1922), pp. 3548-3555.

[35]T. H. Harris, op. cit., pp. 32-38. Details in succeeding paragraphs were taken from these pages.

[36]A. W. Currie, op. cit., pp. 85-87. This case is referred to as "Re Crow's Nest Pass Rates". Complete details of the case can be found in Canadian Railway Cases, Vol. 29, p. 238. See also T. H. Harris, op. cit., pp. 35-37, and Henry Report, pp. 184-191.

[37]T. H. Harris, op. cit., pp. 35-36.

[38]Ibid., p. 37. See also A. W. Currie, op. cit., p. 87.

[39]A. W. Currie, op. cit., pp. 87-88. For details of the case see "Re Crow's Nest Pass Rates, 1925" in Supreme Court of Canada Reports, 1925, p. 155 and Canadian Railway Cases, Vol. 30, p. 32.

[40]An Act to Amend the Railway Act, 1925, 15-16 Geo. V, Ch. 52. For details of the debate see Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 14th Parliament, Vol. V, (1925), pp. 4305-4486. Under the terms of the original Crow's Nest Pass Agreement, the rates stipulated in the Agreement applied only to Canadian Pacific lines that were in existence in 1897.

[41]Ibid., p. 4484.

[42]Ibid., p. 4460. The government's response to these amendments can be found in pp. 4484-4486.

[43]See Report of the Special Committee on Railway Transportation Costs, 1922.

[44]For details of the decision, see the case "Re Freight Rate Tolls of 1922", in Canadian Railway Cases, Vol. 27, p. 169.

[45]A. W. Currie, op. cit., p. 82.

[46]Ibid., pp. 82-85. For details, see the case "British Columbia vs Canadian Freight Association of 1923" in Canadian Railway Cases, Vol. 30, pp. 393-394.

[47]For details of the events surrounding the extension of the Crow's Nest Pass rates to grain and flour moving through the Port of Vancouver, see A. W. Currie, op. cit., pp. 89-94.

[48] Ibid., p. 90.

[49] Ibid., pp. 90-91.

[50] Ibid., p. 91.

[51] Ibid., pp. 91-94. This case is referred to as "The General Investigation Case, 1925-1927".

[52] Government of Canada, Report of the Royal Commission on Transportation (1948) (Ottawa: King's Printer, 1951), pp. 248-249.

[53] Ibid..

[54] Ibid..

[55] Ibid..

CHAPTER VI

THE NATIONAL TRANSPORTATION ACT, 1967

I. INTRODUCTION

The enactment of the National Transportation Act, in February 1967, was the concluding step in a series of events that produced a new national transportation policy for Canada.[1] The origins of the National Transportation Act can be traced to the recommendations of the Royal Commission on Transportation established by the Diefenbaker Government in May 1959. Although the Commissioners concluded their investigations in 1961, no legislative action was taken by the federal government until 1964 when the Honourable J. W. Pickersgill, Minister of Transport, presented a bill to the House of Commons that incorporated many of the Royal Commission's recommendations.[2] The Minister immediately informed Parliament that the bill was only a series of proposals advanced by the government for consideration by Parliament. Members of Parliament were cautioned not to view the bill as a definitive statement of government policy. While this was seen as an unusual step on the part of the government in 1964, the introduction of bills which the government is willing to revise has become more common since 1968.[3]

After first reading, the House of Commons, acting on the assurances of the Minister, forwarded the bill to the Standing Committee on Railways, Canals, and Telegraph Lines for detailed study. During the course of its investigations, the Committee received evidence from officials of the Department of Transport, from officials of the Board of Transport Commissioners, and from various pressure groups that were concerned with the contents of the legislation. While the provincial governments did not present a formal brief to the Committee, a joint submission was prepared by the Provinces of Manitoba, Saskatchewan, and Alberta, and presented to the Minister of Transport and his officials.[4] The Committee concluded its hearings without preparing a final report and the bill was left to die on the Order Paper when a general election was called in October 1965.

A second bill was presented to the House of Commons in September 1966. After a short debate on second reading, the bill was quickly referred to the Standing Committee on Transport and Communications. (In 1965, the Standing Committee on Railways, Canals and Telegraph Lines was renamed the Standing Committee on Transport and Communications.) During the course of their investigations, the Committee received evidence from officials of the Department of Transport, from the Board of Transport Commissioners, and from the Canadian National and the Canadian Pacific Railways. In addition, the three Prairie Provinces

and many pressure groups from Western Canada presented briefs. The Committee prepared its final report and it was debated in the House of Commons in December 1966 and January 1967. After a short debate in the Senate, the bill was given Royal Assent on February 9, 1967. Part IV of the bill pertaining to bridges was proclaimed on February 9, 1967. Part V, dealing with railways, telegraphs, and telephones, was proclaimed by the Cabinet in March 1967; however, Part I of the bill establishing the institution known as the Canadian Transport Commission was not proclaimed until September of that year. Part III of the Act, dealing with extra-provincial motor vehicle transportation, was proclaimed on May 15, 1970, and Part II, pertaining to commodity pipe lines has not yet been proclaimed.[5]

Thus it can be seen that the development and enactment of a new transportation policy was a long and complex process involving a Royal Commission, the preparation of two bills by the Cabinet, and on two occasions, extensive hearings by a Parliamentary Committee. The enactment of the National Transportation Act provides an excellent occasion to review policy inputs from various groups within the political system and to assess the extent to which the views of these groups were accommodated.

The objectives of this chapter are to outline the organization and structure of the Canadian Transport Commission and to review the regulatory function of the

Commission as it pertains to railways. In particular, those provisions establishing the criteria for the determination of rates will be isolated for special attention.[6]

The National Transportation Act is a significant addition to existing transportation legislation in Canada in that it contains many unique features that differentiate it from previous legislation. Perhaps the most unique aspect of the bill is found in the opening sections that outline in detail the goals and objectives of Canadian transportation policy. No other piece of legislation had attempted to enunciate the guiding principles of Canadian transportation policy.

The first clause of the Act sets out the objectives by noting that ". . . an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the users of transportation and to maintain the economic well being and growth of Canada. . . ."[7] The Act further stipulates that these objectives will be achieved to the greatest possible extent when all modes of transport are free to compete under conditions that ensure that:

A. regulation of all modes of transport will not be of such a nature as to restrict the ability of any mode of transport to compete freely with any other modes of transport;

B. each mode of transport, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided that mode of transport at public expense;

C. each mode of transport, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty; and

D. each mode of transport, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute
   (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, or
   (ii) an undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movements of commodities through Canadian ports.[8]

While the two traditional and conflicting goals of transportation policy -- the promotion of an efficient and competitive transportation system and the contribution of transportation policy to national unity -- are recognized as objectives of transportation policy, the preamble to the National Transportation Act places greater emphasis on the promotion of an efficient and economic transportation system as the first and overriding objective.[9] Although the principles of competition and efficiency are modified by references to the "national interest" and by the obligation of the transportation system to promote the movement of goods to all regions of the country, a detailed reading of the provisions of the Act reveals that the "national unity aspects" of transportation policy are a secondary goal.

A second feature of the legislation that distinguishes this legislation from earlier legislation is the provision for the creation of a new regulatory agency designed to regulate all modes of transportation within federal jurisdiction. The Canadian Transport Commission assumed the functions performed by the Board of Transport Commissioners, the Air Transport Board, and the Canadian Maritime Commission. In addition, the Commission was given authority to regulate pipelines and extra-provincial motor vehicle transportation as well as two modes of communication -- telegraphs and telephones. Along with its regulatory functions, the Commission was assigned a research function. Thus the objective in establishing the new regulatory agency was to develop an integrated and comprehensive approach to transportation policy. This aspect had been neglected in the past as a result of the piecemeal formation of administrative structures designed to regulate particular aspects of transportation policy.

The third distinguishing feature of the legislation is that, with the enactment of the National Transportation Act a cost-oriented rate structure replaced the existing rate structure that had been developed on the "value of service principle".[10] In addition, legislative restrictions such as "unjust discrimination" and "undue preference" were replaced with legislative provisions that enabled the railways to establish freight rates within the general guidelines

of a maximum and a minimum rate formula.

II. ORGANIZATIONAL STRUCTURE OF THE CANADIAN TRANSPORT COMMISSION

A. Jurisdiction of the Commission

The Canadian Transport Commission assumed the regulatory functions and powers possessed by the Board of Transport Commissioners, the Air Transport Board and the Canadian Maritime Commission.[11] The Commission, under Section 14 of the National Transportation Act, possesses the powers granted to the three boards under the Railway Act, the Aeronautics Act and the Transport Act. In addition, the Commission has the authority to regulate commodity pipelines, under the provisions of the National Energy Board Act, and to regulate extra-provincial motor vehicle transportation, telephones and telegraphs under the terms of the National Transportation Act. Thus, the Commission's regulatory powers are found in several federal statutes as well as within the terms of the National Transportation Act itself.

Under Section 15 of the National Transportation Act, those functions of the Commission that can be categorized as being advisory in nature are outlined.[12] During the enactment of the legislation, there was considerable opposition to the Commission possessing both regulatory and advisory functions. Members of Parliament from Western Canada expressed the view that the research function of the Canadian Transport Commission would be used to support the regulatory

functions of the Commission and that the research branch would not engage in independent research.[13] Thus, the proposal was made that a separate and independent research organization be developed. Despite these reservations expressed by Western Canadian Members of Parliament, the Government enacted its original proposal that assigned the Commission both functions. Among the advisory functions assigned to the Commission are: the power to inquire into measures designed to promote the "sound economic development of the various modes of transport" within federal jurisdiction; to undertake studies into "the economic aspects of all modes of transportation"; and, to inquire into the relationship between various modes of transportation and to recommend measures to "achieve co-ordination in development, regulation and control" over the various modes of transport.[14] In addition, the Commission can recommend to the Minister of Transport that federal financial assistance be granted to certain modes of transportation and can make recommendations regarding future governmental expenditures in the field of transportation. The Commission may consult with any individual or organization that in its opinion could be of assistance. From these examples, it can be seen that the Commission possesses advisory powers that may be of considerable importance to the development of federal transportation policy in the future.

In the spring of 1968, the research division of the Canadian Transport Commission was established with a staff

of twenty-three.[15] It is this group within the Canadian Transport Commission that is primarily charged with the responsibilities outlined in Section 15 of the Act. In addition, an advisory council was established to assist the research division in establishing priorities for their research. The Council is composed of fifteen people drawn from universities and from various transport consuming industries.[16]

According to Mr. H. Arbique, Secretary of the Commission, the Advisory Council on Research is "moribund".[17] The Council functioned for approximately three years; however, with the reorganization of the Ministry of Transport in 1970, the functions performed by the research division of the Canadian Transport Commission were transferred to the Transportation Development Agency within the Ministry of Transport. As a result, a large measure of the research function that was originally assigned to the Canadian Transport Commission has been assumed by the Transportation Development Agency. While the Canadian Transport Commission continues to possess the research and advisory functions outlined in Section 15 of the National Transportation Act, the majority of the Commission's research is of an academic nature. Thus, the Canadian Transport Commission is not engaged in the wide-ranging areas of study originally contemplated when the legislation was enacted.

B. Composition and Personnel of the Commission

1. Composition

The Commission is composed of eighteen individuals with each individual appointed by the Governor-in-Council for a period of ten years.[18] Any Commissioner can be removed from the Commission by the Cabinet "for cause" at any time. Commissioners are eligible for reappointment, although they must retire when they reach seventy years of age. One of the Commissioners is designated by the Cabinet as the President of the Commission, with two of the Commissioners being designated as Vice-President and Vice-President in Charge of Research. The Commissioner appointed Vice-President must be a barrister or advocate of at least ten years' standing at the bar of any province in Canada. The main responsibilities of this Vice-President are to supervise the work of the committees of the Commission. His ruling on any question of law before the Commission is final unless the President is a barrister, in which case final authority resides with the President. In the absence of the President, the Vice-President functions in his place. The Vice-President in Charge of Research is charged with directing the research programmes undertaken by the Commission. The only other qualification for appointment to the Commission is that no Commissioner may have financial interests in any mode of transport or engage in any activity that would conflict with his duties as a Commissioner.

Each Commissioner, within three months of his appointment, must divest himself of all financial holdings that could conflict with the exercise of his duties.

The Secretary of the Commission is appointed by the Governor-in-Council and holds office at the pleasure of the Cabinet. The Secretary is responsible for keeping a record of the proceedings of the Commission and ensuring that all orders and regulations are properly signed and filed in the Secretariat of the Commission.

In performing the regulatory duties assigned to it, the Commission is obligated under Section 17 to establish the following committees: railway transport committee, air transport committee, water transport committee, motor vehicle transport committee, commodity pipeline transport committee, and any other committee that the Commission should decide to establish.[19] Each committee has a member designated as Chairman. The Commission is empowered to enact the necessary regulations to assist the committees in the performance of their duties. A committee may, in accordance with the rules of procedure adopted by the Commission, exercise all the powers and duties of the Commission and may issue orders and regulations in the name of the entire Commission. In 1969, the Commission decided that all regulations issued from that point in time, regardless of the mode of transportation involved, would be issued in the name of the Commission rather than in the name of one particular committee.[20]

2. Personnel

At the present time, five committees are in operation: the Railway Transport Committee, the Air Transport Committee, the Water Transport Committee, the Motor Vehicle Transport Committee, and the Telecommunications Committee. The Commodity Pipeline Transport Committee will be established to exercise jurisdiction over the construction and operation of commodity pipelines when Part II of the Act is proclaimed. Because the subject matter of the dissertation pertains to freight rates, the composition of the Railway Transport Committee will be isolated for particular attention.

The Railway Transport Committee consists of nine members.[21] A review of the backgrounds of the Committee members revealed some interesting facts with regard to regional representation and representation from the transportation industry. For example, an examination of the birthplace of the members of the Committee revealed that three Commissioners were born in Western Canada (one in Manitoba, one in Saskatchewan, and one in British Columbia), one in Quebec, three in Ontario, and one in the Maritimes. An analysis of the occupational background of the Commissioners revealed that there is one railway union official, three lawyers, two engineers, one chartered accountant, one individual associated with public relations, and one former civil servant. In addition, specific modes of transportation are represented. For example, one of the Commissioners was

the spokesman for the trucking industry on transportation matters at hearings of the MacPherson and Turgeon Royal Commissions and at the Parliamentary Committee hearings held in conjunction with Bill C-231. Two Commissioners were associated with the railways prior to their appointment while two others were employed in the Department of Transport. While there is regional representation on the Railway Committee, it is extremely difficult to assess the extent to which these individuals represent regional views in that their occupational experience prior to their appointment would lead one to the conclusion that each individual would probably be influenced more by his occupation than by his birthplace.

In an interview with Mr. David Jones, Chairman of the Railway Committee of the Canadian Transport Commission, he indicated that regional considerations are significant factors in determining appointments to the Commission.[22] When questioned as to his role as a spokesman for Western Canada, he noted that the assumption of such a role would be presumptuous on his part. However, he did acknowledge that he does attempt to bring his background and understanding of Western Canadian problems to his work as a Commissioner. Regarding the accusation that the Committee is railway-oriented, Mr. Jones acknowledged that there was a danger that the Canadian Transport Commission could become too closely associated with the interests of the railways. He indicated that the policy of the Railway Committee was to

promote good working relationships with the railways and at the same time retain their objectivity with regard to railway problems in Canada.

C. Rules of Procedure

The Canadian Transport Commission is a Court of Record and any decision rendered by it may be made a rule of the Exchequer Court or any Superior Court of any province of Canada and can be enforced in such a manner.

Section 19(1) of the Act empowers the Commission to enact the rules and procedures necessary to implement the objectives of the Act.[23] For example, the membership, size and jurisdiction of the various committees of the Commission are outlined in the Rules of Procedure. In addition, the rules and procedures governing applications to the Commission for protection under provisions of the Act pertaining to freight rates, such as the "captive shipper" clause and the "public interest" clause, are outlined. The rules governing the proceedings of hearings conducted by the Commission, the presentation of evidence, the preparation of documents and the intervention by interested parties in support of or in opposition to a particular case before the Commission are specified. Finally, the determination of costs resulting from the Commission's hearings and the decision as to who should pay the costs are detailed in the Rules of Procedure.[24]

D. Appeal Provisions

The legislative provisions for appealing decisions of the Canadian Transport Commission were influenced to a great extent by the appeal procedures governing the operation of the Board of Transport Commissioners, the Air Transport Board, and the Canadian Maritime Commission.[25] The Board of Transport Commissioners had the power to review, rescind, or alter any of its decisions. In addition, the Board could rehear applications. Appeals to the Supreme Court of Canada were permitted on questions of jurisdiction with the consent of the Court, while any question that, in the opinion of the Board, involved a question of law or jurisdiction or both, could be appealed to the Supreme Court with the consent of the Board. Finally, appeals and petitions by interested parties or individuals arising from the Board's decisions could be made directly to the Governor-in-Council.

Appeals arising from decisions of the Air Transport Board could be made to the Supreme Court of Canada on matters of law and jurisdiction. In addition, appeals to the Minister of Transport were permissible when the Board suspended, amended or refused to issue a license authorizing a carrier to fly a particular commercial route. While the Minister did not have the power under the existing legislation to direct the Board to issue a particular directive, he could veto the Board's decision. In actual practice, the Minister did not act on his own initiative and all appeals

were considered by the Cabinet.

The Canadian Maritime Commission was an advisory body to the Minister and had no regulatory function. As a result, there were no appeal provisions included in the legislation establishing the Commission.

The appeal provisions of the National Transportation Act closely parallel those established by previous legislation. For example, decisions, orders, and rulings of the Canadian Transport Commission dealing with rates and licenses can be appealed to the Supreme Court on questions of law and, with the consent of the Court, on questions of jurisdiction.[26] In addition, appeals can be made directly to the Governor-in-Council. The additional provisions for appeal that are found within the Act deal with appeals arising from decisions rendered by a particular committee of the Canadian Transport Commission that are not concerned with the questions of rates and licenses. These provisions are set out in Section 17(4) of the Act. Under this section, any order or rule issued by a committee of the Canadian Transport Commission pertaining to a particular mode of transport can be appealed by the operator of another mode of transport on the grounds that the order, rule or direction ". . . discriminates against or is otherwise unfair to his operations".[27] On receipt of such an appeal, the Commission may, in accordance with its Rules of Procedure, confirm, rescind, change, or alter the order. During the course of the review procedure, the Commission may permit witnesses

from provincial or municipal governments or other interested parties to present evidence.[28]

During the hearings held by the Parliamentary Committee, and in the debate in the House of Commons, the most controversial aspect of the appeal procedures was the provision that appeals arising from the decisions of the various committees would be heard by the entire Commission. Numerous groups expressed the view that the Commission would automatically confirm the Committee's decision. The second aspect of the appeal procedure that aroused controversy was the provision that enabled the operator of another mode of transport to appeal a decision that "discriminates against" or was "unfair to his operations". Both the Canadian National and Canadian Pacific Railways were extremely critical of this procedure on the grounds that it could be utilized by operators of other modes of transport to interfere with the operations of the railways.[30] They contended that should an appeal be made, the order or rule rendered by the Committee should be enforced until confirmed or rescinded by the entire Commission.

Under the rules of procedure adopted by the Commission, any appeal under Section 17(4) of the Act is immediately referred to a Review Committee of the Commission for study.[31] In each instance, the individual or party involved must document the reasons for his appeal. In addition, the appellant may apply to the Commission for an order staying the Committee's decision pending the outcome

of the appeal. The Commission would not issue a staying order unless "the appellant files with the Secretary an undertaking, under seal, to save harmless all other parties from damages resulting from the operation of such an order. . . ."[32] The appellant is required to present within fifteen days detailed evidence supporting his case. In addition, any party opposing the appeal has the opportunity to present evidence to the Commission.

III. LEGISLATIVE PROVISIONS GOVERNING FREIGHT RATES

The increasing emphasis on the development of a competitive and efficient transportation system is revealed in the legislative provisions establishing the criteria for the determination of freight rates by the railways. The enactment of the National Transportation Act marked the beginning of a new era with regard to legislative restrictions on the railways. For example, existing legislative restrictions such as "unjust discrimination", "undue preference", and the policy of the equalization of rates were removed from the Railway Act, and the railways were free to levy rates subject to a maximum and a minimum level calculated on the basis of cost. Subject to these very general restrictions, the railways were free to set their own rates. The government had been persuaded by the recommendations of the MacPherson Royal Commission that competition within the transportation industry had increased to the point that the railways were no longer in a monopoly position.[33] Thus in the government's

view, the old legislative restrictions placed on the railways were limiting the railways' ability to compete with other modes of transport. In short, the government accepted the central thesis of the Royal Commission on Transportation of 1959 that the inequities in the freight rate structure that had emerged in the past were a result of the legislative restrictions placed on the railways. Once these restrictions were removed and the railways were free to compete with other modes of transport, the inequities in the freight rate structure would disappear. In essence, this is the guiding philosophy of the various sections of the Act dealing with freight rates.

The major sections of the Act dealing with freight rates are clauses 334, 336, 317, 16, and clauses 328 and 329 dealing with the Crow's Nest Pass rates. The provisions of each clause will be outlined separately.[34]

1. Section 334

Section 334 establishes the minimum level for rates that can be levied by the railways and thus constitutes one of the two basic guidelines for the determination of rates. This clause stipulates that all freight rates that are levied must be compensatory, in that the rate levied must cover the variable costs involved in transporting the good from point A to point B.[35] The inclusion of this clause in the legislation was designed to restrict the railways from attempting to obtain traffic from other modes of transport

by levying rates that were lower than the cost involved in moving the freight. In determining if a rate levied by the railway equalled the variable cost of moving the good, the Commission was directed to follow the costing procedures issued by the Commission. Included in the costing procedures were a series of variables that were to be taken into account when calculating the variable costs of the railways.[36] The Commission could disallow any rate that was not compensatory after investigation. The Commission was free to initiate its own investigation with regard to a rate, or any individual or party was free to lodge a complaint. The appellant is forced to present prima facie evidence to illustrate that the rate is not compensatory.[37] On the basis of the evidence presented, or the lack of evidence, the Commission would rule on the compensatory nature of the rate.

2. Section 336

Section 336 of the Act established the formula for the determination of the maximum level of rates. This clause is known as the "captive shipper" clause and was included in the Act to provide protection to those areas of the country where the railways continued to be in a monopoly position with regard to the movement of particular commodities. This section of the Act is of particular concern to Western Canada and was the subject of considerable criticism by Western Members of Parliament and by the Governments of

Manitoba, Saskatchewan, and Alberta when the provisions of the bill were being debated.[38] The Act states that if a shipper of goods is of the view that there is "no alternative, effective and competitive service" by a mode of transport other than rail, the shipper may, if he is dissatisfied with the rate negotiated with the railway, apply for a rate to be determined by the Commission. Having received the application, the Commission will calculate the range within which the fixed rate would fall.[39] The shipper, having been informed of the range of the rate, may then apply to the Commission for "captive shipper status", if the rate calculated by the Commission is acceptable to him. The Commission may, after investigation, declare the shipper to be "captive" and fix a rate equal to the variable cost of moving the good plus an amount equal to 150% of the variable cost. In determining the variable cost, the Commission was directed to calculate the cost of moving the good on the basis of 30,000 pound carloads. These two provisions are known as the 30,000 pound and the 150% provisions of the Act, and they will be referred to in considerable detail in later chapters.

Should the Commission grant the shipper "captive shipper" status, the shipper is informed of the rate and, within 30 days of the Commission's announcement, he must sign an agreement with the railway that commits him to move all his products via that railway for a period of one

year. This section of the Act further stipulates that the maximum formula does not apply to rates in effect on August 1, 1966 and would not come into force until the rate rose above the rate levied as of August 1, 1966. Finally, the Commission was required to prepare a report for the Governor-in-Council four years after the bill was enacted, in which the Commission assessed the operation of this section of the Act. In the preparation of its report, the Commission was free to receive submissions from interested groups.

The Commission presented an interim report to the Governor-in-Council in 1971 on the operation of Section 336 of the Act.[40] In the report, the Commission noted that costing procedures had not been finalized until late in 1970 and, as a result, there had been no applications for "captive shipper" status. A further report will be presented when the Commission has received applications for "captive shipper" status. Premier Thatcher of Saskatchewan, in a letter to the Commission in March 1971, indicated that the provisions of Section 336 offered no protection to Western Canada.[41] He requested that the Canadian Transport Commission convene a meeting to discuss this section of the bill. His request was denied by officials on the grounds that, since there had been no applications from Western Canada for "captive shipper" status, the legislation was being well received in Western Canada and there was no need to convene such a meeting.

3. Section 317

Section 317 deals with the movement of less than carload quantities (under 5,000 pounds) of freight to any point in Canada where there is no "alternative, effective and competitive service by a common carrier" other than railways. The Commission is empowered to investigate such situations and where, in the opinion of the Commission, the rates are such ". . . as to take undue advantage of a monopoly situation" may disallow the rate and substitute a satisfactory rate in its place.

4. Section 16

This section is known as the "public interest" clause in that any interested party that considers that a rate levied by the railway "prejudicially affects the public interest" may apply to the Commission for the repeal of the rate.[42] If the Commission is satisfied that a prima facie case has been presented, it may require the carrier to remove the prejudicial feature of the rate or recommend any action that is considered appropriate.[43] In conducting its investigation, the Commission is directed to consider the following factors:

a) whether the toll creates an unfair disadvantage beyond any disadvantage "that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved".

b) whether the toll constitutes an "undue obstacle to the interchange of commodities between points

in Canada or 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".

c) whether control by or the interests of another mode of transport may be involved.[44]

This section of the Act resembled in many ways the "unjust discrimination" and "undue preference" clauses found in the Railway Act. This provision of the Act was not included in the original draft of the bill and was inserted at the insistence of the Western Members of Parliament and the Governments of Manitoba, Saskatchewan, and Alberta by the Parliamentary Committee that examined the bill. The clause was included in the legislation in an attempt to provide Western Canada with greater protection from the monopoly position of the railways.[45]

5. Sections 328 and 329

These provisions protect the Crow's Nest Pass rates on the movement of grain and flour for export to the Lakehead. In addition, the Crow's Nest Pass rates on grain and flour moving through the Port of Vancouver are protected in the legislation. Prior to 1967, the Crow's Nest Pass rates on grain moving through Vancouver had only been protected by a ruling of the Board of Transport Commissioners in 1925. Finally, the Crow's Nest Pass rates were extended to shipments of grain and flour moving through the Port of Churchill.

IV. CONCLUSION

A review of the main provisions of the Act establishing the criteria for the regulation of freight rates illustrates the extent to which the railways have been released from the legislative obligations that had limited their freedom to levy rates and their ability to meet competition from other modes of transport. Of equal importance was the acceptance by the government of a new principle for the determination of rates. Prior to 1967, the basic principle underlying the determination of rates was the "value of service principle" -- the belief that the rate levied should reflect the ability of the shipper to pay. Under the new legislation, the basis for the calculation of rates was the "cost of service principle" -- the cost of moving a good from point A to point B. Both the MacPherson Royal Commission and the Liberal Government were convinced that railway costing techniques had reached the degree of sophistication where it was possible to calculate the cost of moving goods with a high degree of accuracy. Despite the recognition of the "cost of service principle" and the acceptance of the forces of competition as the guiding principle governing the operation of the transportation system, the continued presence of the Crow's Nest Pass rates in the freight rate structure illustrates the necessity of recognizing particular regional interests within the freight rate structure.

As was indicated on several occasions, the National Transportation Act was revolutionary in several respects. Not only was a regulatory board with jurisdiction over all modes of transport established, but the entire philosophy underlying Canadian transportation policy was altered. The increasing emphasis on competition and the belief that the railways should be released from past legislative restriction were the central elements of the new philosophy.

In succeeding chapters, an attempt will be made to isolate the policy inputs from Western Canada with regard to the provisions of particular sections of the Act. From the brief discussion of the various provisions of the legislation, certain areas of particular concern to Western Canada emerge. For example, did the federal government overestimate the degree of competition in existence within the Canadian transportation industry? Was there a need for the inclusion of safeguards in the legislation for the protection of Western Canada from the monopoly position of the railways? Do the provisions in the legislation, such as the "public interest" clause and the "captive shipper" clause give adequate protection to Western Canada, or was the inclusion of these provisions merely an attempt to make the bill more acceptable to Western Canadians by including provisions that offered only limited protection? Finally, are the tasks facing the Railway Committee of the Canadian Transport Commission different from those facing the Board of Transport Commissioners?

On the one hand, the Board of Transport Commissioners was forced to consider what constituted "unjust discrimination", "undue preference" and a reasonable level of income for the railways. The Railway Committee, on the other hand, is forced to consider such questions as: What is a variable cost? What is a fixed cost? What constitutes a captive shipper? What is a prima facie case? What is the public interest? As Currie noted in his assessment of the Act, the Canadian Transport Commission will be forced to make decisions that involve questions of human judgment, as was the Board of Transport Commissioners. Future actions and decisions on the part of the Canadian Transport Commission will determine in large part the extent to which the National Transportation Act is able to cope with future transportation problems.

FOOTNOTES

[1]An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions, 1967, 14-15-16 Eliz. II. This Act will hereafter be referred to as the National Transportation Act.

[2]There are many reasons for the delay on the part of the federal government in implementing the recommendations of the Royal Commission on Transportation of 1959. The change in government in 1963 and a federal election in 1964 are two factors responsible for the delay. For a further discussion of the events, see Chapters VIII and IX.

[3]Since 1968, the introduction of draft bills into the House of Commons has become more frequent. For example, the bill implementing tax reform and the legislation revising the Combines Investigation Act were introduced into the House of Commons as legislation that was subject to revision.

[4]The brief prepared by the Prairie Provinces was not finalized until the Parliamentary Committee had concluded its hearings. As a result, the views of the provinces were conveyed to the Minister of Transport and his officials. For details of these consultations, see Chapter VIII.

[5]Details regarding the dates of proclamation of the various sections of the Act were obtained in an interview with Mr. H. Arbique, Secretary to the Canadian Transport Commission, in Ottawa on September 7, 1971.

[6]As was indicated in Chapter I, the objective of the dissertation is to examine the decision-making process in areas of federal jurisdiction that are of particular concern to the provinces using the National Transportation Act as a case study. In an attempt to outline the policy inputs from Western Canada and to assess the extent to which they were accommodated in the final policy output, the author was of the opinion that such a comparison would be more meaningful if the details of the Act were reviewed prior to any assessment of the policy inputs from Western Canada. It was for this reason that this chapter was included at this particular point, rather than leaving a discussion of the provisions of the Act to a concluding chapter.

[7]National Transportation Act, 1967, 14-15-16 Eliz. II, Ch. 69, S. 1.

[8]Ibid., S. 1, s.s. (a), (b), (c), and (d).

[9]A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1967), p. 25.

[10]For a discussion of these principles, see Chapter III.

[11]A. W. Currie, op. cit., p. 25.

[12]National Transportation Act, S. 15. Details in succeeding paragraphs were obtained from this source.

[13]For details of the debate on this issue in the Parliamentary Committee and in the House of Commons, see Chapters IX and X.

[14]National Transportation Act, S. 15, s.s. 1(b), 1(c).

[15]Government of Canada, Second Annual Report of the Canadian Transport Commission (Ottawa: Queen's Printer, 1968), p. 8.

[16]A letter, dated April 6, 1971, to the author from Mr. H. Arbique. In this letter, the membership of the Advisory Council was outlined. Among the members appointed to the Advisory Council were: Dr. C. Barber (University of Manitoba), Mr. F. Doucet (then with Cape Breton Development Corporation), Mr. J. Eyre (Saguenay Shipping), Mr. J. Granger (Ecole Polytechnique), Professor Heaver (University of British Columbia), Dr. Kuhn (York), Mr. E. H. LaBorde, Mr. E. A. Moncrieff (Standard Aero Engines, Winnipeg), Mr. W. J. Rae (Leaver Bros.), Professor Stevens (University of New Brunswick), Dr. Armstrong (McGill), Professor F. Anderson (University of Regina), Mr. Jean-Claude Lessard (Quebec Hydro), Mrs. Irene Spry, Dr. MacPhail (National Research Council).

[17]Letter from Mr. H. Arbique.

[18]The provisions governing the constitution of the Commission are found in Sections 6 to 21 of the National Transportation Act. The information in succeeding paragraphs

is taken from these sections. As of February 1972, the membership of the Canadian Transport Commission was the following: Hon. J. W. Pickersgill (President), Mr. G. Roberge (Vice-President), Mr. R. Cope (Vice-President, Research), Mr. H. Arbique (Secretary), Mr. J. R. Belcher (Chairman of the Air Transport Committee), Mr. H. Griffin, Mr. G. Morisset (Chairman of the International Transport Policy Committee), Mr. J. F. Clark, Mr. G. F. Lafferty, Mr. L. Fortier (Chairman of the Motor Vehicle Transport Committee), Mr. J. Magee, Mr. J. Woodard, Mr. A. Campbell (Chairman of the Water Transport Committee), Mr. D. Jones (Chairman of the Railway Transport Committee), Mr. R. March, Mr. J. Thomson, Mr. L. Talbot, and Mrs. S. M. Carver.

[19]National Transportation Act, Ch. 69, S. 17, s.s. 1.

[20]Government of Canada, Third Annual Report of the Canadian Transport Commission (Ottawa: Queen's Printer, 1969), p. 1.

[21]The members of the Railway Committee, as of February 1972, are: Mr. D. Jones (Chairman), Mr. R. March, Mr. J. M. Woodard, Mr. G. F. Lafferty, Mr. J. Magee, Mr. J. Thomson, Mr. L. Talbot, Mr. J. Clark (ad hoc), and Mr. R. Cope (ad hoc). Biographies of the Commissioners were obtained from Mr. H. Arbique.

[22]Interview with Mr. D. Jones on September 10, 1971.

[23]National Transportation Act, S. 19, s.s. 1.

[24]Canadian Transport Commission, General Orders, 1967, No. 1. In September 1967, the Canadian Transport Commission adopted a series of rules of procedure governing their operation. The information found in succeeding paragraphs is drawn from that document. In particular, see rules number 300, 305, 310, 315, 320, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, and 385.

[25]This point is made by A. W. Currie, op. cit., pp. 401-403. In addition, see rules number 770, 780, 785, 820, 830, 860, 870, 880, and 890 of the General Orders. These rules of procedure govern appeals and are referred to in succeeding paragraphs.

[26]A. W. Currie, op. cit., pp. 401-408. Questions of law refer to the legal procedures employed by the Commission when receiving evidence and in its decisions based on that

evidence. Questions of jurisdiction are concerned with the limits of the Commission's jurisdiction and whether a particular matter is within the jurisdiction of the Commission.

[27] National Transportation Act, 1967, Ch. 69, S. 17, s.s. 4. An example of such an appeal would be if the Canadian Transport Commission rendered a decision with regard to the level of railway rates, this decision could be appealed by a trucking company.

[28] Ibid., S. 17, s.s. 5.

[29] The controversy with regard to the appeal provisions centered on the question of whether an appeal arising from a decision rendered by one of the Committees should be referred to the entire Commission. The view was expressed that the Commission would merely confirm the Committee's initial decision. Details of this debate will be outlined in Chapters IX and X.

[30] The opposition of the CNR and CPR to the appeal provisions was outlined in their briefs to the Parliamentary Committee that studied Bill C-231. For details, see Chapter X.

[31] Canadian Transport Commission, General Orders, 1967, No. 1.

[32] Ibid., rule number 830.

[33] The recommendations of the Royal Commission on Transportation of 1959 will be considered in Chapter VII of the dissertation.

[34] National Transportation Act, S. 334, 336, 317, 16, 328, and 329. Details in succeeding paragraphs were drawn from these sections.

[35] Variable costs can be defined as a type of production cost that varies with the volume of output. In calculating variable costs of moving a good from point A to point B, the cost would vary directly with the distance the good is being transported. For a discussion of this term, see M. K. Inman, Economics in a Canadian Setting (Toronto: Copp-Clark, 1959), p. 481.

[36]In determining the components of the railway's variable costs, the Canadian Transport Commission was instructed to include the variables outlined in the costing procedures that would be developed by the Commission in the future.

[37]There is no definition in the legislation for the term prima facie. It is left to the appellant and the Commission to determine what constitutes a "prima facie case". In an interview with Mr. D. Jones, he indicated that one definition of a "prima facie case" was "a case that required a response".

[38]The opposition of Western Canada to the provisions of this section of the Act will be outlined in Chapters VIII, IX, and X of the dissertation.

[39]In the initial inquiry conducted by the Commission, the Commission would calculate in a very rough fashion, using the criteria outlined in Section 336, the range within which the fixed rate would fall.

[40]The contents of the interim report were revealed by Mr. H. Arbique in an interview.

[41]The contents of Premier Thatcher's letter were revealed in an interview with Mr. F. Lemieux, legal counsel for the Province of Saskatchewan, in Ottawa on September 9, 1971.

[42]There is no definition of the term "public interest" in Section 16. In the view of Western Canada, this was one of the major weaknesses of the bill. The definition of the term "public interest" has been left to the Canadian Transport Commission.

[43]There is no definition of the term "prima facie case" in Section 16, and it is left to the Commission to decide whether an applicant has presented such a case.

[44]National Transportation Act, S. 16, s.s. 3(a), 3(b).

[45]This point was revealed in interviews with the Hon. J. W. Pickersgill on September 9, 1971; with Mr. J. W. Telford, Manager of the Alberta Freight Rate Bureau, on May 31, 1971; with Mr. K. Setter, Economist with the Government of Saskatchewan, on September 1, 1971; with Mr.

G. Blair, former legal counsel for the Province of Saskatchewan, on September 8, 1971; and with Mr. F. Lemieux, and will be discussed in greater detail in Chapter X.

CHAPTER VII

THE ROYAL COMMISSION ON TRANSPORTATION OF 1959

As noted in Chapter I, the objective of the dissertation is to examine the formulation of policy by the federal government in areas of federal jurisdiction that are of concern to the provinces. Such an analysis should reveal if in fact the consultative procedures employed by the federal government in areas of federal jurisdiction differ from the consultative procedures employed by the federal government in areas of provincial jurisdiction. The events surrounding the enactment of the National Transportation Act of 1967 serve to illustrate more completely the nature of the decision-making process within the Canadian federal system during a period which has been described by many as the era of co-operative federalism.

There were three major policy inputs that ultimately produced the National Transportation Act of 1967 -- the Royal Commission on Transportation of 1959[1] (the MacPherson Royal Commission), Bill C-120,[2] the first draft of legislation that attempted to implement the recommendations of the Royal Commission, and Bill C-231,[3] the revised legislation introduced by the federal government in

August 1966. Each policy input contributed to the provisions of the legislation that was ultimately enacted. This chapter and the next four are devoted to a detailed examination of each of these policy inputs. This examination facilitates an analysis of the policy inputs from Western Canada at various stages in the decision-making process. This chapter is concerned with the initial policy input -- the MacPherson Royal Commission.

The objective of this chapter is to examine the major recommendations of the Royal Commission and to assess the extent to which the recommendations were incorporated in the legislation enacted by the federal government in 1967. In addition, an attempt is made to examine the nature of the policy recommendations made by the three Prairie Provinces and various pressure groups from Western Canada. Such a review should reveal the extent to which the policy recommendations put forward by the provincial governments and the pressure groups from Western Canada were incorporated into the final recommendations of the Royal Commission.

The chapter is divided into four major sections. Section I is devoted to a review of events leading to the establishment of the Royal Commission, an examination of the terms of reference and the personnel of the Commission, and a discussion of the major policy recommendations of the Royal Commission. Section II contains an analysis of the policy recommendations made by the railways, the Provinces

of Manitoba, Saskatchewan, and Alberta and various pressure groups from Western Canada, and an assessment of the extent to which their views were incorporated into the final recommendations of the Commission. Reaction of the federal and provincial politicians and pressure groups from Western Canada to the report is reviewed in Section III. Section IV contains an assessment of the importance of the MacPherson Royal Commission as the initial policy input leading to the enactment of the National Transportation Act.

SECTION I: THE ROYAL COMMISSION

A. Events Leading to the Establishment of the Royal Commission

An analysis of the literature written at the time of the establishment of the MacPherson Royal Commission in May 1959 reveals that there is general agreement as to the series of events that necessitated the creation of the Royal Commission.[4]

Perhaps the most important event was the series of horizontal percentage rate increases granted to the railways in a number of cases before the Board of Transport Commissioners during the period from 1945 to 1958.[5] The impact of these increases was particularly severe on the freight rate structure in Western Canada. For example, the Board of Transport Commissioners determined that the impact of the horizontal percentage increase of 17% granted by the Board of Transport Commissioners in 1958 fell most heavily

on traffic moved by the railways in Western Canada. It was calculated that 56.7% of the rate increase would have been carried by traffic moving in Western Canada, while only 26.5% of the increase would have been carried by traffic moving in Ontario and Quebec.[6] The opposition from Western Canada to these rate increases was in large part responsible for the creation of the Turgeon Royal Commission in 1948. It was also the opposition from Western Canada in the 1950's to the series of rate increases that contributed in part to the establishment of the MacPherson Royal Commission.

A second event that led the government to consider the establishment of a royal commission to review all aspects of railway policy was the decision of the Board of Transport Commissioners to grant a further 17% increase in freight rates to the railway in 1958 despite evidence that clearly indicated that the major burden of the increase would once again fall on Western Canada. The rate increase was appealed to the Governor-in-Council by the Governments of Manitoba, Saskatchewan, and Alberta. The appeal was dismissed by the Cabinet on the grounds that the railways had demonstrated to the Board of Transport Commissioners the necessity of the rate increase to offset increasing operating costs. Although the appeal was dismissed, the Diefenbaker Government became increasingly aware of the inequities in the freight rate structure that were emerging as a result of the horizontal percentage increases. As a result, Prime

Minister Diefenbaker announced the appointment of a Cabinet Committee to make recommendations as to how the impact of the rate increases could be reduced in Western Canada. The solution proposed by the government was the granting of a subsidy of $20 million to the railways. The subsidy was specifically designed to reduce the impact of the rate increases on Western Canada and the Maritimes. In March 1959, the Freight Rates Reduction Act was enacted. In addition to the $20 million subsidy to the railways, the increase in rates granted by the Board of Transport Commissioners in 1958 was reduced to 8%. The government also announced that a royal commission would be established to investigate all aspects of railway policy. Finally, the government said that no rate increases would be allowed pending the report of the royal commission. The government concluded that this policy decision would provide adequate relief for Western Canada pending the report of the royal commission. In brief, these were the events leading to the establishment of the MacPherson Royal Commission.

B. Terms of Reference and Personnel of the Commission

1. Terms of Reference

On May 13, 1959, Prime Minister John Diefenbaker announced in the House of Commons the appointment of the Royal Commission on Transportation under the chairmanship of the Honourable Charles P. McTague. The Royal Commission was instructed "to inquire into and report upon the problems

relating to the railway transportation industry in Canada and the causes thereof, and to recommend solutions thereto. . . ."[7] In particular, the Commissioners were instructed to consider the following problems in the preparation of their report:

A. inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities;

B. the obligations and limitations imposed upon the railways by law or for reasons of public policy, and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom;

C. the possibilities of achieving more economical and efficient railway transportation;

D. whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in business and investments other than railways should be taken into account in establishing freight rates; and

E. such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry. . . .[8]

A review of the terms of reference reveals that the Commission was instructed to consider such specific problems as the inequities in the freight rate structure emerging from the horizontal percentage rate increases in the 1950's. In addition, the Commission was directed to review the legislative burdens imposed on the railways as a result of the various provisions of the Railway Act. Thus, it would appear that the terms of reference establishing the Royal Commission were sufficiently general to permit a full scale

review of federal railway policy and at the same time permit an examination of specific problems that had been the source of regional discontent for a prolonged period of time.

During the course of his remarks explaining the terms of reference of the Commission, Mr. Diefenbaker made a statement with regard to the status of the Crow's Nest Pass rates. Assurances were given to Western Canadian farmers by Mr. Diefenbaker that the review of railway policy undertaken by the Commission would not include a review of the Crow's Nest Pass rates on grain and flour. In Mr. Diefenbaker's view, the agreement was a bargain between the federal government and Western Canada that could not be broken.[9]

The implications arising from Mr. Diefenbaker's remarks were of considerable importance. How could Mr. Diefenbaker justify the exemption of the Crow's Nest Pass rates from the terms of reference of the Commission when the terms of reference specifically called for a review of all statutory obligations imposed on the railways? Clearly the Crow's Nest Pass rates on grain and flour are statutory obligations imposed on the railways. Was Mr. Diefenbaker limiting the scope of the terms of reference of the Royal Commission or was he merely stating that his government, regardless of the Royal Commission's recommendations, would not alter the status of the Crow's Nest Pass rates? In the initial organizational meetings held by the Royal Commission, the railways argued that the Crow's Nest Pass rates were

clearly within the terms of reference of the Commission and that the Commissioners should examine the impact of the Crow's Nest Pass rates on the revenues of the railways. The Western Canadian provinces argued that the Crow's Nest Pass rates had been excluded from the terms of reference of the Commission as a result of Mr. Diefenbaker's remarks.[10]

On September 18, 1959, the Commissioners ruled that an examination of the Crow's Nest Pass rates was within the terms of reference of the Commission.[11] The Commissioners noted that the rates were statutory obligations imposed on the railways and thus were within their terms of reference.[12] The Crow's Nest Pass rates became a major issue of debate at the hearings of the Royal Commission held in Western Canada. The railways were responsible for making the Crow's Nest Pass rates the major subject of debate. During the course of the hearings, the railways argued that the losses incurred on the movement of grain in Western Canada necessitated that they apply to the Board of Transport Commissioners for rate increases. In effect, the railways attempted to demonstrate that the Crow's Nest Pass rates were responsible in large part for the inequities in the freight rate structure between Eastern and Western Canada. There was an immediate response from Western Canada and the majority of the briefs from Western Canada included long historical accounts of the Crow's Nest Pass Agreement and the benefits of the Agreement to both the railways and to Western Canada.[13] Mr. J. J. Frawley,

legal counsel for the Alberta Government at the hearings of the Royal Commission, informed the Alberta Government at the outset of the Commission's hearings that the railways would make the Crow's Nest Pass rates the central issue in their presentations before the Commission. In a letter from Mr. R. A. Crosbie, Traffic Director of the United Grain Growers, to Mr. James R. McFall, Secretary of the Alberta Federation of Agriculture, dated July 14, 1959, Mr. Crosbie reviewed the events of a meeting with Mr. Frawley. In the course of the letter, he wrote:

> . . . According to Mr. Frawley the Crow's Nest Pass rates will be subject to investigation, as the terms of the Order-in-Council can be interpreted to enable anyone interested in those rates to place their opinions before the Commission. Mr. Frawley is of the opinion that the Canadian Pacific Railway will make the Crow's Nest Pass Rates their main subject, as they are giving these rates considerable study, and the provincial governments of Western Canada will challenge their submissions strenuously in every way possible, including what is taken into consideration when determining the cost of hauling grain; what the CPR received under the original agreement and any other benefits for construction of the railway. If it is proven beyond doubt that the rates are set at a level below costs, the Governments will then ask that a hard and fast subsidy be provided. . . .[14]

Mr. Frawley's analysis of future events was extremely accurate and they will be explored in greater detail in succeeding sections of the chapter.

2. Personnel

The Royal Commission on Transportation was composed of seven individuals. A review of their personal background reveals some interesting facts with regard to regional and

occupational representation.[15] The Chairman of the Commission was the Honourable C. P. McTague, a judge of the Supreme Court of Ontario from 1935 to 1944. Prior to his appointment to the bench, Mr. McTague was a national organizer of the Conservative Party, Chairman of the Ontario Securities Commission from 1945 to 1948, and a Director of the Toronto Telegram. Due to illness, Mr. McTague was forced to resign as Chairman shortly after the Royal Commission was established and Mr. M. A. MacPherson of Regina was made Chairman. Mr. MacPherson was one of the original Commissioners and Mr. McTague's position on the Commission was never filled. Mr. MacPherson was a former Attorney-General of Saskatchewan and, from 1931 to 1934, was Provincial Treasurer. He was nominated for the leadership of the national Conservative Party on several occasions. During the 1940's and 1950's, Mr. MacPherson was the legal counsel to the Saskatchewan Government in a series of cases heard before the Board of Transport Commissioners.

Mr. A. H. Balch of Ottawa was a member of the Canadian Brotherhood of Railroad Trainsmen and a national legislative representative of that union from 1951 to 1957. In July 1957, he was appointed as an employee representative on the Canadian Labour Relations Board. Mr. H. Anscomb of Victoria was a chartered accountant by profession and Minister of Finance in the Conservative Government of the Province of British Columbia from 1941 to 1952. Mr. Rene

Gobeil, a consulting forest engineer from Quebec City, was the son of Mr. Sam Gobeil, Postmaster General in the Government of R. B. Bennett. Mr. Gobeil had close associations with the Union Nationale in Quebec.

The representative from the Maritimes was Mr. H. Mann. Mr. Mann was an economist and executive manager of the Maritime Transportation Commission. In addition to Mr. MacPherson, the other Commissioner chosen from the Prairie Provinces was Mr. Arnold Platt, a former President of the Alberta Farmers' Union. A review of the biographies of the Commissioners reveals that all regions of Canada were represented and Western Canada, in particular, had a very strong voice on the Commission. Of the six Commissioners appointed, the Chairman and two of the Commissioners came from Western Canada.

C. Reaction to the Establishment of the Royal Commission

The reaction of both federal and provincial politicians to the establishment of the Royal Commission was very favourable. There were, however, reservations expressed regarding the terms of reference of the Commission. For example, Mr. Lionel Chevrier, spokesman for the Liberal Party on transportation matters, questioned the terms of reference by noting that they should have included specific reference to such problems as the compensatory nature of the Crow's Nest Pass rates, the impact of horizontal percentage rate increases and the effects of long and short

haul discrimination on various regions of the country.[16] With regard to the Crow's Nest Pass rates, Mr. Chevrier noted that the rates should be studied by the Commission to see if they were compensatory. If it was found that the railways were losing money on the movement of grain, they should be paid a subsidy.

Mr. Douglas Fisher of the C.C.F. noted that the Commission was dominated by Western Canada. As a result, he believed the Commission would not examine in any great detail the compensatory nature of the Crow's Nest Pass rates. Despite the statements of Mr. Diefenbaker with regard to the Crow's Nest Pass rates, Mr. Fisher was of the opinion that it was within the terms of reference of the Royal Commission to examine the compensatory nature of the rates.[17] However, Mr. Hazen Argue, C.C.F. Member of Parliament for Assiniboia, noted that any attempt to alter the status of the Crow's Nest Pass rates would be detrimental to the welfare of the nation. If the rates on grain and flour were altered, it would be, in Mr. Argue's view, ". . . the greatest blow to national unity administered in this generation. . . ."[18] Both Mr. Fisher and Mr. Argue were in agreement that there was enough information available in the reports of previous Royal Commissions for the government to take action on the question of freight rates. They also proposed that the terms of reference of the Commission be expanded to include all modes of transportation.

Press reaction in Western Canada to the establishment of the Royal Commission was favourable. In an editorial on May 15, 1959, The Calgary Herald noted:

> Progress towards a solution of Canada's aggravating railway policy problem is now assured with the appointment of a royal commission to examine every aspect of it. The men appointed to the Royal Commission represent an admirable selection of talent and a worthy representation of cross-country opinion. . . .[19]

The Winnipeg Free Press commented on the appointments of Messrs. MacPherson, Anscomb and Platt to the Royal Commission. It was suggested that these appointments would ensure that ". . . Western Canada's interests will receive the full and sympathetic attention of the Commission. . . ."[20]

A review of newspapers in Western Canada did not reveal any comments by the Premiers of the three Prairie Provinces regarding the establishment of the Commission. Because of the pressure exerted on Ottawa to establish the Royal Commission, it can be assumed that its establishment was well received in the three prairie capitals.[21]

D. Organization of the Commission's Work

The Commission travelled to all the provinces to hear briefs from the provincial governments and interested groups. The public hearings continued for 134 days and, during that time, the Commissioners received 141 formal submissions and 185 exhibits of statistical information. The Commission held hearings in Ottawa prior to their travels across Canada and at the conclusion of their travels. The

Ottawa hearings were the most important held by the Commission because it was at these hearings that the provinces and the railways presented their arguments.[22] The hearings held in Ottawa were dominated to a large extent by the arguments by the railways and the Provinces of Manitoba and Alberta regarding the compensatory nature of the Crow's Nest Pass rates. Although the Government of Saskatchewan presented a brief to the Royal Commission, it did not engage outside consultants to prepare a detailed study of the costs incurred in the movement of grain as did the Provinces of Manitoba and Alberta. As a result, it was the officials from Manitoba and Alberta who were the leading spokesmen for Western Canada during the hearings held in Ottawa.

The Commissioners interpreted their terms of reference in a broad manner and went beyond an analysis of transportation policy as it pertained to railways to develop general principles for the development of a national transportation policy that would be applicable to all modes of transport. The recommendations of the Commission are to be found in their three volume report. Volume I, published in March 1961, contains a survey of the changing environment in which the Canadian transportation system functions and the impact that these changing conditions have had on all modes of transport. In addition, general principles underlying a proposed new transportation policy were enunciated. Volume II of the report was published in December 1961, and contained specific recommendations for implementing the

general principles enunciated in Volume I. Volume III, published in 1962, contained a series of studies that had been undertaken by the Commission.

E. Philosophy of the Report

The central thesis advanced in the report of the Royal Commission was that the goal of transportation policy in the future should be the promotion and development of an efficient and competitive transportation system.[23] While recognizing the importance of the social and political aspects of transportation policy, the Commissioners stated that these aspects should be de-emphasized in the future. The guiding principle governing transportation policy should be the principle of competition.

While the Commissioners recommended that transportation policy be governed by the forces of competition, they indicated that the transportation system should not be totally free of governmental controls. Any controls imposed by the government, however, should not directly interfere with the forces of competition as the guiding principle governing transportation policy. Ideally, each mode of transportation should be free to compete with other modes of transportation, and the users of each mode should pay the cost of the services provided. In pursuing this goal, the objective should be to rely as much as possible on the market decisions of individuals to provide the necessary transportation services. National transportation policy

should not inhibit the interplay of competition nor protect one segment of the industry from the forces of competition by governmental regulation. It should be noted that the Commissioners failed to deal with the problem of public and private ownership in various segments of the Canadian transportation industry. More importantly, the Commissioners failed to consider the possible conflict between the forces of competition and the presence of publically-owned transportation facilities within the transportation industry.

While recognizing that the forces of competition should govern the operation of the transportation system, the Commissioners acknowledged that there were particular segments of the transportation industry and particular regions of the country where the forces of competition were distorted by the presence of conditions of monopoly.[24] In situations such as these, governmental regulation should be such that it would accomplish the same results as if the forces of competition were present. When an inefficient and uneconomic transportation system was continued in the "public interest" as a result of a governmental directive, the government should be obligated to subsidize that service from the public treasury. In short, the Commissioners argued that the problems that faced the transportation industry in Canada were a result of its failure and inability to adjust to the forces of competition in existence within the industry. In their report, the Commissioners placed

little or no emphasis on the unwillingness of the transportation industry to adjust to the forces of competition. The Commissioners emphasized the inability of the industry to adjust to the forces of competition as a result of the legislative restrictions imposed on the industry. The benefits derived from the application of the principle of competition would, in the Commissioners' view, offset any of the disadvantages that would arise from the removal of governmental controls.

The philosophy underlying the Commission's report is summarized in the following quotation:

> . . . A detailed examination of this particular situation has led us to the conclusion that national transportation policy can no longer ignore - as it was able to do in the past - the consequences for the transportation system of using parts of it as an instrument of national policy. If the competitive relationship between the various modes is allowed to be affected by non-economic considerations, the result will be the misallocation of resources and the distortion of the transportation system as a whole. Such effects whenever they occur must in our view be naturalized by appropriate public action. . . .
>
> . . . This conclusion, a central theme of this report does not disregard the use of transportation as an instrument of national policy. Rather it conveys that transportation as an instrument of national policy to be most salutary for Canada in the future, its adaptation to the exigencies of the new competitive environment will warrant more consideration than may have seemed necessary in the past. . . .[25]

It is not surprising that the Commissioners concluded that competition should be the guiding principle governing the operation of the transportation industry in Canada. A review of the personal backgrounds of the Commissioners, as well as interviews with Mr. A. W. Platt and

Mr. F. Anderson, Secretary of the Commission, would lead one to conclude that these individuals believed that the forces of competition should guide the industry. Excessive governmental regulation should be avoided wherever possible. Thus, it would appear that their views with regard to the regulation of the transportation system were consistent with their overall political philosophy.

F. Railways and the Forces of Competition

In applying their general philosophy to the railways, the Commissioners noted that the monopoly position once enjoyed by the railways had disappeared and that the railways were unable to meet existing competition within the transportation industry.[26] Among the factors limiting the railways' ability to meet the forces of competition were the increasing demand for specialized shipping services, such as containerization, and the inability of the railways to provide these services, the growing competition from trucks and airplanes, and the restrictions imposed by law on the railways. The Commissioners linked the inability of the railways to meet increasing competition with the legislative restrictions imposed on them by federal legislation. This was the central thesis advanced in their report.[27]

The Commissioners reasoned that the railways were being pressured by rising costs within the industry and declining revenues as a result of increased competition. The

railways were limited in their ability to compete by existing legislative restrictions and they had been forced to resort to horizontal percentage increases as the only available method to increase revenues. The greatest impact of these rate increases had been in areas such as Western Canada where the railways were in a monopoly position. The solution proposed by the Commission was to release the railways from the legislative restrictions that restricted their ability to compete, yet retain governmental controls in areas where the railways were in a monopoly position. In short, the Commissioners recommended a new policy for the determination of rates to meet the new conditions of competition. The traditional principle governing the determination of rates -- the value of service approach -- was clearly inadequate. In the future, the cost of service would be the principle governing the determination of rates.[28]

In recommending that a cost-oriented rate structure be developed to replace the value of service approach, the Commissioners rejected the policy of equalization advocated by the Turgeon Commission in 1951. The Commissioners noted that Commissioner Turgeon failed to recognize the increasing competition within the industry and, as a result, failed to recognize that if class and commodity rates were equalized, the railways would move to the negotiation of agreed charges and competitive rates, thereby negating the policy of equalization.

By proposing that the traditional restrictions on the railways, such as the provisions prohibiting "unjust discrimination", "undue preference", and the promotion of "just and reasonable" rates, be eliminated, the Commissioners were of the view that these restrictions ceased to have meaning as criteria for the determination of rates under conditions of competition.[28] The Royal Commission recommended that a new basis of rate regulation be introduced that would establish maximum and minimum levels for rates. Within this range, the railways would be free to set rates as they saw fit. The Commission did recognize the need for greater regulation in areas that were characterized as being "areas of significant monopoly". To provide protection for shippers in these areas, the Commissioners introduced the notion of the "captive shipper".[30] A detailed analysis of the new rate regulations proposed by the Commission will be outlined in the following section of the chapter.

Before reviewing the details of the rate regulations proposed by the Commission, it is necessary to review briefly some of the factors that led the Commissioners to the view that the railways should be released from existing regulations and that there was need for new criteria governing the determination of rates. Mr. A. W. Platt, one of the Commissioners, and Mr. F. W. Anderson, Secretary of the Commission, outlined several of the factors that the Commissioners took into account when formulating their

recommendations.[31] In their view, the Commissioners were faced with two alternatives. On the one hand, they could have recommended that the forces of competition regulate the various modes of transport. On the other hand, the Commissioners could have recommended greater and more sophisticated methods of governmental regulation over all modes of transport. Initially the Commission accepted the notion of greater regulation. As the hearings progressed, "they became convinced that competition was the only alternative that could be recommended".[32] Mr. Anderson observed that the Commissioners realized that it would be impossible to regulate only one mode of transportation (railways) when there was increasing competition within the transportation industry.[33] The Commissioners concluded that the only solution was to regulate freight rates by a formula that would establish maximum and minimum levels for rates.

The Commissioners were convinced that it would have been impossible to implement and scrutinize the regulations that would be required to regulate all modes of transportation in the future. While Mr. Platt realized the implications of this decision for Western Canada, he was personally convinced that the forces of competition should govern transportation policy. As an economist, he could not make a case that would convince himself or his fellow Commissioners that the principles of competition, as they applied to the transportation system in Western Canada,

should be modified to take into account the monopoly position of the railways with regard to the movement of certain bulk commodities. In Mr. Platt's view, "political solutions should not be imposed on a transportation system that has to serve all industries. . . ."[34] Mr. Platt's view that political solutions should not be imposed on the transportation system is an interesting commentary on transportation policy as it has evolved in Canada. The development of transportation policy since Confederation has been characterized by the imposition of political solutions arising from regional pressures and demands on a national transportation policy that had been developed in large part on the basis of the principle of competition. Furthermore, it is difficult to conceive how any solution proposed by the Commissioners would not have to take these factors into account.

Among the factors that led Mr. Platt and the other Commissioners to the view that governmental regulation should be minimized were the increasing competition from other modes of transport, the belief that in the past the Board of Transport Commissioners did not fully realize the impact of their decisions, and the belief that decisions affecting transportation could best be made by businessmen and not by bureaucrats. An additional factor cited by Mr. Platt was a distrust of bureaucracy and the corresponding view that the greater the degree of governmental regulation, the greater the degree of bureaucratic control. Finally,

it was recognized by the Commissioners that governmental regulations in the future would become increasingly difficult to implement as conditions within the transportation industry changed. While recognizing that greater governmental regulation would have been beneficial to Western Canada, the Commissioners were unanimous in their view that competition should be the guiding principle governing the operation of the transportation industry.

When questioned on the assumptions underlying the basic recommendations of the Commission, such as the belief on the part of the Commissioners that the railways were a declining industry, Mr. Platt noted that he is still convinced that the railways were a declining industry in the late 1950's and that the only alternative was to release them from many of the legislative restrictions imposed on them.[35] Mr. Anderson recalled that an analysis of events in the mid-1950's had convinced him that the railways were losing their monopoly position within the transportation industry. While this observation is a truism in the 1970's, Mr. Anderson noted that this point of view was not being articulated at the time when the Commissioners were preparing their report.[36] Thus the observation that the railways were no longer enjoying a monopoly position within the transportation industry showed greater insight on the part of the Commissioners than a reading of the report in the 1970's would indicate.

While acknowledging that the Commission overemphasized the degree of competition in existence within the transportation

industry, Mr. Platt maintained that the forces of competition have increased since 1959 and that in the vast majority of cases there is adequate competition to regulate the various modes of transport. Regarding the contention of the Commission that the inequities in the freight rate structure were a result of excessive regulation, Mr. Platt continues to accept the validity of that proposition today. He continues to believe that freight rates should be determined on a cost-oriented basis. While recognizing that it is difficult to convince Western Canadians of this fact, Mr. Platt noted that Western Canadians must realize that this is the price they pay for living in the West. While Mr. Platt's contention that the forces of competition within the transportation industry have increased in Western Canada over the past ten years is undoubtedly valid, the railways continue to enjoy a monopoly position with regard to the movement of low value bulk commodities. While commodity pipelines may in the future offer competition to the railways, at the present time there is no viable alternative to the railway for moving these commodities. Finally, it is difficult as a Western Canadian to accept Mr. Platt's comment that high transportation costs are a price that Western Canadians must be prepared to pay. Such a statement disregards the social and political objectives of Canadian transportation policy.

G. Recommendations of the Royal Commission

The recommendations found in the two volumes of the Royal Commission's Report can be categorized into three general areas: those recommendations dealing with rate regulation; those dealing with the Crow's Nest Pass rates on grain and flour; and those dealing with subsidies to the railways for the performance of services that were considered to be in the "national interest". Each series of recommendations will be considered separately.

1. Rate Regulation

As was indicated in an earlier section of the chapter, the Commissioners recommended that the legislative restrictions governing the determination of freight rates by the railways be removed and a new criterion for the regulation of rates be introduced. Specifically, it was recommended that maximum and minimum levels for rates be determined by the Board of Transport Commissioners, leaving the railways free to set their own rates within these general guidelines.[37] The minimum rates permissible should be at a level that would cover the variable cost of moving the good from point A to point B. All rates, to use the Commission's terms, were to be compensatory in nature and it was left to the Board of Transport Commissioners to determine the components of variable costs. The inclusion of a provision establishing the maximum level for rates was specifically designed to protect shippers in areas of the country where one mode of transport possessed a monopoly on

the movement of particular commodities. The Commissioners, in their Report, referred to these conditions as "areas of significant monopoly" and it was under conditions such as these that the maximum rate formula would apply.[38]

The Commissioners were faced with the problem of outlining the criteria that would be used to determine areas of significant monopoly. After considerable study, the basis for the determination of monopoly conditions was measured by the difference between the cost of moving the good and the actual rate charged. Thus it was the relationship of the rate levied to the cost of moving the good that determined the existence of monopoly conditions.[39]

Any shipper who was of the view that there was no effective and alternative method of transport available to him for the movement of his goods could declare himself to be a captive shipper and apply to the Board of Transport Commissioners to fix a rate for the movement of his goods. In calculating the rate, the Board of Transport Commissioners was to set the rate on the basis of the variable cost involved in moving the product plus an additional 150%. In calculating the variable cost, the base weight of 30,000 pounds was to be used. The Commissioners did not provide any statistical evidence to support the choice of the figure of 150% above the variable cost as the rate that should be levied by the Board. In defending the calculation of variable costs on the basis of 30,000 pounds, the Commissioners

noted that the truck was the alternative mode of transport to the railways, thus the basic weight that could be moved by a truck was chosen as the base weight for the calculation of variable costs. Using a figure of 30,000 pounds, it would be possible to develop an artificially constructed competitive rate structure in areas where monopoly conditions were in existence.

The new basis for the determination of rates was not to be imposed on existing legislative provisions. The Commissioners strongly emphasized that if the new criteria were to function successfully they could not operate within legislative restrictions that limited the freedom of the railways to compete. In developing the maximum and minimum formulae for the determination of rates, the Commissioners were attempting to construct a formula that would be acceptable to the railways, provide adequate protection to regions such as Western Canada where the railways were in a monopoly position, and one that was consistent with their own belief that the forces of competition should guide the transportation industry. In short, to do this to the satisfaction of all parties involved was virtually impossible and this was the dilemma faced by the Commission.

In an interview with Mr. A. Platt, he outlined the problems the Commissioners faced in preparing their recommendations with regard to rate regulation.[40] With regard to the determination of areas of significant monopoly, Mr. Platt acknowledged that this was perhaps the most difficult

problem faced by the Commission. While recognizing that the definition found in the Royal Commission's Report was not adequate, he noted that it was the best formula that they could develop given the evidence at their disposal. Although it was extremely difficult to define, or cite examples of, a "captive shipper", the Commissioners were of the view that a captive shipper would be any shipper that applied for protection under the maximum rate formula. When asked to provide an example of a captive shipper, Mr. Platt noted that the movement of coal, grain and potash in Western Canada was captive of the railways.

In a series of interviews in Alberta with various groups who presented briefs to the Royal Commission, the view was expressed that the inclusion of the figure of 150% in the maximum rate formula was a figure that the Commissioners had taken from the costing studies prepared by the railways.[41] Mr. Platt strongly denied that this was the case and stated that the figure of 150% was designed to cover both fixed and variable costs. When pressed to explain the fact that the figure proposed by the Commission was similar to that proposed by the railways, Mr. Platt noted "they [the railways] did have an influence in determining the formula as their cost studies were taken into account. . . ."[42]

The inclusion of the 30,000 pounds base as the criterion for the calculation of variable costs was the subject of particular criticism in Western Canada.[43] Mr.

Platt acknowledged that the figure of 30,000 pounds was a difficult figure to defend and he justified its inclusion on the grounds that the base unit for the calculation of variable costs would change over time. Mr. Anderson recalled that the maximum rate formula proposed by the Commissioners was designed to illustrate how the formula would operate. In his view, it was not the intention of the Commissioners that these figures be incorporated into any legislation without further studies that would assess the impact of the formula on the existing rate structure.[44] In short, the Commissioners expected the maximum rate formula to be reviewed prior to its inclusion in any legislation.

The Commissioners were not certain that the formula proposed for the protection of the captive shipper would in fact give him adequate protection. They realized that regions of the country like Western Canada could be discriminated against with the adoption of competition as the guiding principle governing the transportation industry. In Mr. Platt's view, the inclusion of provisions regarding the captive shipper ". . . was to establish a provision that would give the opportunity to those regions to appeal to the Board for help. . . ."[45] The concern of the Commission with the status of the "captive shipper" was not warranted, in Mr. Platt's view, in that competition within the industry has increased to the point that the areas of significant monopoly in existence with regard to the movement of low value bulk commodities has decreased substantially.

With the adoption of a cost-oriented rate structure, the Commission placed considerable emphasis on the development of adequate costing procedures. Mr. Platt acknowledged that the Commissioners would not have recommended such sweeping changes in the criteria for the determination of rates unless they had been convinced that costing techniques had reached the degree of sophistication where fixed and variable costs could be calculated with a reasonable degree of certainty. The Commissioners made a series of detailed recommendations for the improvement of costing techniques used by the Board of Transport Commissioners. In particular, they recommended that the staff of the Board be increased to include the appointment of individuals capable of analyzing railway costing figures.[46] In addition, it was recommended that the Board conduct a survey of freight transportation patterns. The present method of determining freight patterns was not adequate in that it failed to give a regional breakdown that reflected the actual movement of traffic by rail in the various regions. The importance placed on the development of adequate costing procedures is revealed in the following quotation taken from the Report:

> The efficient performance of the whole transportation function in Canada will be affected by the degree to which the Board is given authority to meet the changes by developing the statistics, the staff, and the standards they find to be necessary. . . .[47]

2. Crow's Nest Pass Rates

The cost of moving grain under the Crow's Nest Pass rates was the subject of considerable debate during the hearings of the Royal Commission. In their final report, the Commissioners recommended that the railways should be compensated for the losses incurred in the movement of grain for export. The Commission did not believe that it was within its terms of reference to make recommendations regarding the level of the rates levied under the Crow's Nest Pass Agreement, on the grounds that the rates were originally set by Parliament and it was Parliament's choice to alter the level of the rates. Thus the recommendations of the Commission were concerned with the non-compensatory nature of the rates.

The Commissioners recommended that the railways be granted by Parliament a sum, on an annual basis, equal to "the short fall of revenues on variable expenses plus $9 million in the case of the Canadian Pacific Railway and $7.3 million in the case of the Canadian National Railways. . . ."[48] In any year when the revenues from the movement of grain were greater than the variable costs incurred, the railways would be granted the sum of $9 million and $7.3 million respectively less the excess of revenue over variable costs.

The recommendation regarding the payment of a subsidy to the railways was not unanimous. Commissioner Gobeil of Quebec City expressed the view, in a minority

report, that the railways had failed to prove conclusively that the revenues incurred in the movement of grain for export were not sufficient to cover the variable costs.[49] As a result, he stated that no subsidy should be granted to the railways. In another minority report, Commissioners Anscomb and Balch expressed the opinion that Parliament should review economic conditions in the agriculture industry on a regular basis and, when economic conditions were favourable, the Crow's Nest Pass rates should be raised and the subsidy to the railways be reduced.[50] Commissioner Platt was convinced that the costing studies prepared by the Commission revealed that the railways were losing money on the movement of grain for export.[51] While it would have been more consistent with the overall theme of the report to have recommended that the Crow's Nest Pass rates be removed, he noted that the Commissioners realized the political repercussions of such a recommendation. Thus they recommended a subsidy rather than the removal of the rates.

3. Subsidies

The terms of reference of the Royal Commission obligated the Commissioners to review those "obligations and limitations imposed upon the railways by law for reasons of public policy. . . ."[52] The Commissioners were further directed to make recommendations that would "ensure a more equitable distribution of any burden" that resulted from these obligations.[53] During the course of their study, the

Commissioners isolated four areas where obligations were imposed on the railways by legislative provisions -- uneconomic passenger services, unprofitable branch lines, statutory and related rates on grain, and statutory free transportation. The recommendations regarding the subsidization of the movement of grain for export have been outlined. The Commission's recommendations regarding the remaining statutory obligations will be reviewed in turn.

The Commission prepared detailed studies in each of the areas where the railways were required to perform functions as a result of legislative provisions. It should be noted that while the Commissioners recommended that a subsidy be granted to the railways to offset the costs involved in the provision of such services, the subsidy was designed to assist the railways in adjusting to the forces of competition. It was assumed by the Commissioners that certain services that were uneconomic would be discontinued while the service on other marginal lines would be reduced. As a result, the size of the subsidy would decrease from year to year until it was ultimately eliminated.

With regard to uneconomic passenger services, the Commission recommended that these be eliminated over a five year period.[54] During that time, the railways would receive an initial subsidy of $62 million. This subsidy would decrease yearly until eliminated after five years. The only exception to this was to be in those instances where the

government ordered that a service be continued in the public interest. The railways would be subsidized for these services.

The railways were to be subsidized in instances where services were provided over light density lines.[55] The Commission recommended that a sum of $13 million a year be granted to the Board of Transport Commissioners to compensate the railways for providing these services. The Commission estimated that over a fifteen year period many of these light density lines could be eliminated. This would remove the necessity of a subsidy. Finally, with regard to statutory transportation, the Commission concluded that the railways should be compensated by Parliament for the costs involved in providing this transportation.[56]

4. Miscellaneous Recommendations

In the second volume of the Report of the Royal Commission, it was recommended that the subsidy of 20% on local traffic within Nova Scotia, New Brunswick, and Prince Edward Island be abolished. The Commissioners recommended that the subsidy be retained in Newfoundland because highways were not considered to be developed in that province to the point where they provided competition to the railways. However, the Maritime Freight Rates Act, that provided for a reduction of 30% on all freight rates in the Maritimes, was retained. It was recommended that the bridge subsidy, a subsidy paid by the federal government to the railways to

defray the costs of moving goods across Northern Ontario, be removed.[57] The bridge subsidy was proposed by the Turgeon Commission and Section 468 of the Railway Act was amended in 1951 to provide the Canadian Pacific Railway with an annual grant of $7 million to assist the railway in meeting the expense of moving goods from Sudbury to Fort William.

The recommendation that certain subsidies to the railways be removed was consistent with the overall philosophy of the Report. When questioned as to the reasons why the Commissioners recommended that the Maritime Freight Rates Act be continued and that the bridge subsidy be removed, Mr. Platt noted that the Maritime Freight Rates Act provided a subsidy for all modes of transport, while the bridge subsidy was a subsidy that was available only to the railways. In the Commissioners' view, there was sufficient competition from trucks in Northern Ontario to warrant the removal of the bridge subsidy. The retention of the Maritime Freight Rates Act was, in Mr. Platt's view, difficult to defend. He noted that Mr. H. Mann, Commissioner from the Maritimes, had strongly argued in favour of its retention.[58] In many ways the retention of the Crow's Nest Pass rates and the Maritime Freight Rates Act was a recognition by the Commissioners of regional demands that these features of the freight rate structure be retained.

The Commissioners recommended that an advisory council on transportation be established to advise the Board

of Transport Commissioners and the Department of Transport on future policy matters. The council was not to be involved in the "day to day" decisions of the Board but was to be concerned with the development of long-range plans for future transportation policy. Laymen were to be appointed to the council rather than individuals associated with particular areas of the industry.[59] The Commissioners did not emphasize the need for regional representation on the council; however, Mr. Platt noted that the Commission should have placed more emphasis on the appointment of regional representatives.[60] Finally, the Commission did not recommend that all regulatory boards in existence in the field of transportation be joined together into one board. They did, however, recognize the need for more coordination between the various agencies in the development of transportation policy.[61]

SECTION II: WESTERN CANADIAN REPRESENTATIONS TO THE ROYAL COMMISSION

The majority of the representations made by Western Canada to the Commission were parochial in nature. Generally speaking, the briefs were not concerned with transportation policy in its totality. The public hearings held by the Commission were, however, of considerable assistance to the Commissioners in terms of informing them of transportation problems as perceived by Western Canadians. In an interview, Mr. Platt stated that the Commissioners' views were not substantially changed by the public hearings. The Commissioners had come to the view, prior to the public hearings,

that competition should be the guiding principle governing transportation policy. Therefore, in many instances, the briefs from Western Canada contained recommendations that were not compatible with the views of the Commissioners.[62]

The three Prairie Provinces and various pressure groups from Western Canada closely followed the proceedings of the Commission and utilized the opportunity to present their views on transportation policy. In Mr. Platt's view, Western Canada took a greater interest in the work of the Royal Commission than any other region of Canada. This is understandable in that it was agitation from Western Canada that resulted in the establishment of the Royal Commission. Western Canada presented its case in a "reasonably effective manner",[63] with the most effective representations made by the Provinces of Manitoba and Alberta, and by the Wheat Pools of Manitoba, Saskatchewan, and Alberta. In particular, the legal counsel for Alberta and Manitoba, Mr. J. J. Frawley and Mr. A. V. Mauro, were extremely articulate in presenting their provinces' views to the Commission. Both Mr. Frawley and Mr. Mauro followed the Commission in its travels across Canada and rarely missed a hearing.[64]

The recommendations found in the briefs presented by the Provinces of Manitoba, Saskatchewan, and Alberta, as well as those from the pressure groups, can be categorized into four main areas: the Crow's Nest Pass rates; the criteria for rate regulation; the inequities in the freight

rate structure as they related to Western Canada; and rates on particular commodities. Each of these areas will be considered separately.

A. The Crow's Nest Pass Rates

It was evident from the initial remarks of the Canadian National and Canadian Pacific Railways that the Crow's Nest Pass rates had been isolated for particular attention. Both railways presented statistical evidence to illustrate that they were incurring substantial losses on the movement of grain for export. The Provinces of Manitoba, Saskatchewan and Alberta, as well as farm groups from Western Canada, were placed on the defensive by the railways and were forced to prepare costing information showing that the railways were not losing money.

1. The Brief of the Canadian Pacific Railway

The importance given to the Crow's Nest Pass rates by the Canadian Pacific Railway is revealed in part by the fact that 116 of the 276 pages of the brief presented pertained to matters relating to the Crow's Nest Pass rates.[65] The central argument advanced by the Canadian Pacific was that the Crow's Nest Pass rates were the largest burden imposed by law on the railways. The losses incurred by the railways on the movement of grain for export were forcing the railway to obtain the necessary revenue by charging higher rates on other traffic. In essence, the railway

associated the recent series of horizontal percentage rate increases, and the inequities in the freight rate structure that emerged, with the presence of the Crow's Nest Pass rates in the rate structure. The following quotations extracted from the brief outline the basic arguments:

> Canadian Pacific management has recognized the distortion in the freight rate structure which has resulted from the fact that Western grain rates are at a fixed level and the adverse effect this fact has had on the relative proportion of the high and low rated traffic being carried. . . .
> Canadian Pacific management has for some years found it extremely difficult to understand why the unfairness in the fixed statutory level of Western grain rates has not been generally recognized and why appropriate action has not been taken to meet this problem. . . .[66]

In their final arguments before the Commission in Ottawa, the Canadian Pacific Railway brief contained the following reference to the Crow's Nest Pass rates:

> The greatest inequity in the freight rate structure and possibly the only one of significance is that which results from what is known as the statutory rates on grain and grain products in Western Canada. . . .[67]

The Canadian Pacific Railway did not encourage the Royal Commission to recommend that the Crow's Nest Pass rates be increased nor that they be removed from the control of Parliament. Rather, the Railway proposed that they should be subsidized by the government for losses incurred on the movement of grain for export. They contended that the railways should be paid a "just and reasonable" rate for the movement of grain and that this rate could be calculated from costing figures that were available. The Railway

proposed that a "just and reasonable" rate would be a rate that would produce an average revenue of 1 cent per ton-mile. At the present time, the Railway moved grain at 0.5 cents per ton-mile.[68] The "just and reasonable" rate proposed by the Canadian Pacific Railway would have provided the railway with a 100 per cent increase in their rates for moving grain.

In support of their position, the Canadian Pacific Railway presented an extensive costing study that illustrated the losses incurred by the railways in 1958 in moving grain for export. The study revealed that the railway had lost $38 million during that year. The solution proposed by the railway was that the Board of Transport Commissioners be given authority to change and alter the level of rates levied on statutory grain as the costs of transportation varied over time. These rate increases would not be passed on to the farmer in the form of higher freight rates. Rather, Canadian Pacific would be given a tax credit against the federal income tax payable by the corporation. This rebate would be equal to the difference between the gross revenues it received from the movement of statutory grain and the gross revenues that it would receive if the grain had been carried at the level of rates proposed by the Board of Transport Commissioners.

2. The Brief of the Canadian National Railways

The brief presented by Canadian National was similar in tone to that presented by Canadian Pacific.[69] The Canadian National argued that the inequities found in the freight rate structure were in large part a result of the movement of grain for export. If the railways were adequately compensated for the movement of the grain, many of the inequities in the freight rate structure would disappear. The following quotation from the brief of Canadian National reveals this theme:

> . . . These statutory rates create inequities in the freight rate structure. Because they do not bear a proper relationship to the cost of operating the railway they place a burden upon the railway and others which should be eliminated. . . . Canadian National considers one of the most serious obligations and limitations imposed upon the railway by law for reason of public policy is that imposed by Section 328(6) of the Railway Act, which deals with the rates on grain and flour to export positions. . . .[70]

In calculating the losses incurred on the movement of grain, Canadian National noted that in 1958 revenue from grain traffic was approximately $28.2 million or 17% of the total revenue earned by the railway in Western Canada. However, 40% of the work performed by Canadian National in Western Canada was concerned with the movement of grain for export. When calculated on a Canadian-wide basis, the revenue from grain produced only 6% of the railway's total revenue but required 19% of the services performed by the railway. The cost of moving the grain in

Western Canada was estimated to be $60 million, or $1.01 per ton-mile. The average revenue to Canadian National for moving the grain was 0.48 cents per ton-mile.[71]

The Canadian National Railways proposed that the rates on grain moved for export remain under statutory control but that the railways be reimbursed for the cost of the work performed in moving this traffic. The government should subsidize the railways in an amount equal to the difference between the revenues obtained under the statutory rates and the amount calculated by the Board of Transport Commissioners to be a "just and reasonable rate" for the movement of grain.

Canadian National opposed the proposed tax rebate of Canadian Pacific on the grounds that it was not a subsidy to the railways but merely "a means of gaining revenues for services performed as a result of the railways being unable to charge the farmer a just and reasonable level of rates. . . ."[72] It is interesting to note the different positions of the two railways with regard to compensation for losses incurred in the movement of grain. The differing positions with regard to the tax rebate is explained in part by the fact that the Canadian National Railway, a government-owned corporation, would gain little if any benefit from a tax rebate. However, the Canadian Pacific Railway, a privately-owned company, would have gained substantial benefits from such a proposal had it been accepted by the Commission.

3. Briefs Presented by the Governments of Manitoba, Saskatchewan, and Alberta

Officials of the three Prairie governments attacked the costing studies prepared by the railways. Among those factors isolated for particular attention by the Western provinces were the time required to move cars in and out of rail yards, the time required to load empty cars at country elevators, the number of lines in existence because of the movement of grain, and the various components of the fixed costs involved in moving the grain.[73]

The Governments of Manitoba and Alberta attempted to have the Commission obligate the Canadian National and Canadian Pacific Railways to compile a detailed analysis of their freight rates revenues to assist them in opposing the railways' contention that there should be a subsidy on the movement of grain. The Commission noted that such a request was unrealistic because it would take eight months to provide such information.[74] However, the Commission assured them that the railway's costing studies would be examined by the Commission as fully as possible. The Commission refused to assure the Western provinces that the information would ultimately be released.

In addition to the verbal arguments presented regarding the proposed subsidy on the Crow's Nest Pass rates, the three Prairie Provinces presented formal briefs to the Royal Commission that restated their views. For example,

the brief prepared by the Government of Manitoba pointed out that the statutory rates on grain were not a burden in that the railways had failed to demonstrate that the losses incurred in the movement of grain were actual losses. In short, they opposed any subsidy to the railways for the movement of grain and strongly recommended that the Crow's Nest Pass rates remain subject to the control of Parliament.[75]

Premier T. C. Douglas of Saskatchewan, in his opening remarks to the Commission in Regina, stressed the importance of the Crow's Nest Pass rates to Western Canada and expressed concern that the railways had concentrated all their efforts on attacking the Crow's Nest Pass rates. During the course of his speech, Mr. Douglas referred to the rates as the "Magna Carta of Western Canada" and noted that there was no justification for granting the railways a subsidy on the movement of grain:

> The Government of Saskatchewan sees no justification whatever for any change in the historic approach to the railway freight rates for the transportation of Canada's vital grain export. We are unalterably opposed to any tampering with the present export grain structure. We adhere to the principle that these rates shall continue to be under the control of the Parliament of Canada. . . .[76]

There are numerous statements in the formal brief presented by the Saskatchewan Government that reflect a similar theme.

The brief prepared by the Alberta Government did not contain any formal reference to the Crow's Nest Pass rates. However, Premier E. C. Manning, in his opening statement to the Commission in Edmonton, stressed the

importance of the rates to Western Canada.[77] It should be noted that Mr. J. J. Frawley, counsel to the Alberta Government, led the Western Canadian provinces in challenging the figures of the railway. Perhaps Mr. Frawley's devastating attacks on the railways in the verbal presentations made at the hearings in Ottawa explains the absence of any reference in the Alberta brief to the Crow's Nest Pass rates.[78]

The Commission held a final series of meetings in Ottawa after their cross-country tour and the Crow's Nest Pass rates were the major topic of debate. The railways claimed that the Prairie Provinces were slow in presenting their final arguments to the Commission. The Western provinces replied that the railways had taken up months in presenting arguments for a subsidy on the movement of grain. If there was a delay in the Commission's report, the Western provinces contended that it was a result of the tactics of the railways. Premier Manning, in a statement to the press on September 16, 1960, said that the railways' charges had a "very hollow sound" and noted that the railways had refused to release costing information that would have been of assistance to the provinces in preparing their final arguments.[79]

4. Pressure Groups

During the course of the hearings held by the Royal Commission in Western Canada, farm groups, as well as business groups such as the Chambers of Commerce and the Canadian

Manufacturer's Association, used the occasion to outline their views on the Crow's Nest Pass rates.

(a) Farm Groups

All the farm groups that presented briefs to the Commission expressed the view that the Crow's Nest Pass rates should not be increased nor removed from the control of Parliament.[80] If the railways could demonstrate conclusively that they were in fact incurring losses on the movement of grain, the subsidy granted to the railways should be general in nature and should not be attached to the agriculture industry. In addition, if a subsidy was granted, the railways should be obligated to improve grain handling facilities. Specifically, the farm groups urged the railways to facilitate faster loading and unloading at the elevators.

In support of their view that the Crow's Nest Pass rates should not be altered, the various groups presented detailed historical accounts of the Agreement and the benefits flowing to the railways from land grants and mineral rights. The importance of wheat to the economy of Western Canada was continually emphasized. Finally, the costing studies presented by the railways were challenged by costing studies prepared by various farm groups in Western Canada such as the Wheat Pool organizations from the three Prairie Provinces.[81]

The farm groups in Western Canada were in many ways in a strong position to prepare the costing studies necessary to refute the studies prepared by the railways. The three prairie Wheat Pools possessed both the expertise and the necessary costing data to prepare the documentation needed to support their contention that the railways were not losing money on the movement of grain. The Wheat Pools had been involved in collecting data related to the costs of moving grain for a long period of time. Furthermore, they had a vested interest in the continuation of the Crow's Nest Pass rates. As a result, they retained experts in railway costing to assist their own staff. Mr. F. Anderson recalled that the briefs presented by the prairie Wheat Pools with regard to the Crow's Nest Pass rates were largely responsible for the Commissioners' recommending a subsidy of a smaller amount than that recommended by the railways in their brief. In Mr. Anderson's view, the prairie Wheat Pools presented the Commission with a fairly accurate assessment of the costs incurred in moving grain in Western Canada.[82]

A review of several of the briefs presented will highlight in greater detail some of the arguments advanced by particular groups in Western Canada. For example, the Saskatchewan Wheat Pool, in an extensive brief, discussed each point made in the railways' briefs and refuted each argument with statistical evidence. The Manitoba Federation

of Agriculture noted that if the railways and the Royal Commission did not consider other problems than the Crow's Nest Pass rates, the Commission would not be fulfilling its terms of reference. In addition, examples of agreed charges negotiated by the railways with various companies on products such as oil and lumber were cited as examples of rates being negotiated at levels very near those established by the Crow's Nest Pass rates. Finally, the Alberta Wheat Pool noted that the railways and the Royal Commission should not become preoccupied exclusively with regional problems such as the Crow's Nest Pass rates. The Wheat Pool encouraged the railways and the Royal Commission to consider railway problems at a national level.

Perhaps the attitude of Western Canada on the subject of the Crow's Nest Pass rates is revealed in the following quotation taken from the brief of the Manitoba Pool Elevators:

> We suggest that the branch line question, the passenger service problem and the problem of adjusting to meet competition from other modes of transportation are more pertinent and more important factors for study by your commission at this time than the question of statutory grain rates. . . . In fact, Mr. Chairman, we submit that the railways have not proven, and we question whether they will prove, that grain hauled from Manitoba is uneconomic, particularly with the elimination of some of the branch line problem. . . .[83]

(b) Business Groups

Both the Canadian Manufacturer's Association and the Canadian Industrial Traffic League expressed the view

that the Crow's Nest Pass rates should be reviewed in an attempt to determine their compensatory nature.[84] For example, the Canadian Manufacturer's Association questioned whether or not it was in the public interest to perpetuate distortions in the freight rate structure that were in existence because of the statutory rates. The Canadian Industrial Traffic League proposed that the Board of Transport Commissioners determine "just and reasonable rates" for the movement of grain and that the railways be compensated for any differential between the two rates.

The Winnipeg Chamber of Commerce, in its brief, noted that the railways should include income from non-rail sources when determining the revenues obtained from the movement of grain. The brief presented by the Regina Chamber of Commerce expressed similar views to those expressed by the farm groups in Saskatchewan. For example, they noted that, despite the fact that the railways operate certain services at a loss, this did not justify the kind of relief requested by the railways with regard to the Crow's Nest Pass rates. Finally, the Lethbridge Chamber of Commerce recommended that before granting a subsidy to the railways, they should be obligated to file statements with the Board of Transport Commissioners indicating their profit and loss position with regard to other types of traffic as well as grain traffic.

5. Conclusion

A review of the briefs presented from Western Canada reveals the importance that Western Canadians attached to the continuance of the Crow's Nest Pass rates. Despite the representations from Western Canada, the Commissioners accepted the arguments advanced by the railways that the Crow's Nest Pass rates were not compensatory and that the railways should be subsidized. While rejecting the size of the subsidy recommended by the railways, the Commissioners did accept the argument that the railways should receive a subsidy on the movement of grain for export.

Provincial politicians and pressure groups from Western Canada reacted negatively to the recommendation that the railways be paid a subsidy on the movement of grain. For example, Premier Roblin of Manitoba expressed disappointment with the recommendations and observed that the Commission had failed to take into account the benefits accrued to the Canadian Pacific Railway over the years.[85] Premier Douglas of Saskatchewan expressed "deep concern" at the Commission's attitude that the Crow's Nest Pass rates on grain were a burden on the railways.[86] He noted the Commission had rejected Saskatchewan's proposal that the revenues from non-rail sources be included in any assessment of the Crow's Nest Pass rates. Finally, Premier Manning of Alberta praised the recommendations found in the minority report prepared by Commissioner Gobeil.[87] In the report, Mr. Gobeil noted

that the railways had failed to prove that they were in fact losing money on the movement of grain. Mr. Manning observed that the Commissioners had disregarded the recommendations put forward by the Alberta Government in their study of costs involved in moving grain.

The President of the Alberta Farmers' Union, Mr. Edward Nelson, expressed surprise at the size of the subsidy recommended by the Commission when compared to the original request of the railways.[88] The General Manager of the Alberta Wheat Pool noted that the recommendations of the Commission appeared satisfactory. In his words, "a team of experts spent several months preparing a joint submission and it appears that most of the recommendations in the submission have been accepted by the Commission".[89] A reading of the brief presented by the Alberta Wheat Pool would suggest that, in fact, their views were not incorporated in the recommendations of the Commission.

Therefore, while Western Canada succeeded in having the Crow's Nest Pass rates retained in the freight rate structure, they were unable to convince the Commissioners that the railways were not losing money on the movement of grain for export, and that non-rail revenue should be considered when calculating the revenues the railways received from the Crow's Nest Pass rates. It should be noted, however, that it was the representations from Western Canada that convinced the Commissioners that the figures submitted

by the railways were totally unrealistic. As a result of the representations from the West, the Commissioners reported that the railways lost $6 million in the year 1958 on the movement of grain under the Crow's Nest Pass rates. The railways had submitted figures that indicated that they had lost approximately $70 million during 1958 on the movement of grain.[90] The conclusion of the Commission with regard to the size of the losses incurred by the railways in the movement of grain and flour did not lead the Commissioners to question the costing data supplied by the railways with regard to the general freight rate structure. One would have thought that the Commissioners' experience with the data presented in connection with the Crow's Nest Pass rates would have made them more suspicious of the railways' figures. This was not the case, however, and the costing data submitted by the railways with regard to the general freight rate structure was not challenged by the Commissioners.

B. Rate Regulation

The most controversial of the recommendations found in the Report of the Royal Commission were those pertaining to the criteria for the establishment of freight rates. The railways, the provincial governments, and numerous pressure groups from Western Canada made representations to the Royal Commission. Their respective views will be outlined in succeeding sections of the chapter.

1. The Railways

(a) The Brief of the Canadian National Railways

The central theme found in the brief of the Canadian National Railways was that the railways should be released from existing legislative restrictions to meet the increasing competition within the transportation industry, and that the cost of service principle should be the guiding principle for the determination of rates.[91] Specifically, they recommended that the Railway Act be amended to permit the railways to set competitive rates on the basis of "ordinary commercial principles" subject to the general restriction that all rates be revealed to the public, that all rates be compensatory, and that the rates charged would not be lower than was necessary to meet competition. While in agreement with the principle that the minimum level for rates should be the long term variable cost involved in moving a good from point A to point B, Canadian National was opposed to the inclusion of this provision in a revised statute on the grounds that it would inhibit their ability to meet competition.

In those areas where the railways were in a monopoly, or near-monopoly, situation, Canadian National recommended that the present standards of "unjust discrimination" and "undue preference" be utilized as the criteria for the determination of rates. In the course of their brief, Canadian National reviewed various proposals for the

inclusion of a formula that would determine the maximum level of rates in non-competitive areas. Each of the formulae put forward by the Provinces of Manitoba, Alberta, and British Columbia was rejected by the railways on the grounds that it was impossible, on the basis of present evidence, to assess what impact these formulae would have on the revenue position of the railways. In the opinion of the Canadian National Railways, the formulae should be tested before being adopted as the criteria for the determination of rates. Therefore, while recognizing the need for new criteria for the determination of rates and a greater recognition of the forces of competition within the transportation industry, the Railway was opposed to incorporating any regulations into a revised statute that would establish a maximum and a minimum formula as the general guidelines for the determination of rates.

Perhaps the philosophy underlying many of the recommendations in the brief of the Canadian National Railways is revealed in the following quotation from their brief:

> . . . CN seeks for itself only the freedom to compete with other highway services for business which the Canadian shipping public offers for carriage. We deplore any suggestion that any carrier should seek protection in the competitive field where its rates should not be lower than necessary to meet competition and should be compensatory. With these safeguards, it should be left to the shipper to decide which mode of transportation he desires, depending upon price and services available to him. . . .[92]

(b) The Canadian Pacific Railway

The recommendations found in the brief of the Canadian Pacific Railway were similar to the recommendations of Canadian National.[93] The central theme that the railways should be freed from existing legislative restrictions to meet the forces of competition was more prominent in Canadian Pacific's brief. They recommended that the cost of service principle be utilized as the criteria for the determination of rates and that the railways be free to set rates within the general guidelines of a maximum and minimum formula.

The inclusion of a provision for minimum rate control was supported by Canadian Pacific on the grounds that it was in the unique position of competing with a government-owned railway. Any formula that would establish maximum levels for rates was dismissed by Canadian Pacific on the grounds that the cost of service principle and the forces of competition could not be translated into a meaningful formula. The opposition of the Canadian Pacific Railway to such a provision is summarized in the following quotation from their brief:

> The effect of the maximum rate proposals advanced to this Commission would be detrimental to the national economy of Canada. They would have an adverse effect upon shippers and industry and would adversely affect the financial integrity of the railways. This would cause numerous disputes between shippers and the railways. They would result in a high degree of instability in the rate structure. They would be expensive to implement and expensive to maintain. It is the submission of Canadian Pacific that they should not be recommended. . . .[94]

In summary, both railways recommended that existing legislative restrictions be removed and that the cost of service principle be adopted as the guiding principle in the determination of rates. While rejecting the inclusion of a formula for the determination of maximum rates in areas of monopoly, Canadian Pacific supported the inclusion of a provision establishing a minimum level for rates. The Canadian National Railways, on the other hand, was opposed to such a proposal.

2. The Provinces

(a) The Government of Alberta

The Alberta Government in its brief to the Royal Commission noted that forces of competition within the transportation industry had increased significantly.[95] In Alberta's view, the railways should be freed from excessive governmental regulation. In most regions of the country, competition could replace governmental regulation as the basis for the determination of rates. The Alberta Government noted that there were no provisions in existence designed to protect that portion of the country where the railways were in a monopoly position. Thus it was recommended that the disparity between competitive and non-competitive rates should be limited by statute.

The traditional criteria for the determination of rates were characterized by the Alberta Government "as public utility controls". In Alberta's view, this type of

control was no longer adequate or relevant in an era when an increasing segment of the industry was subject to increasing competition. Existing regulations were clearly geared to the era when the railways were in a monopoly position. In the future, governmental regulation should be limited to the establishment of a maximum and a minimum level of rates. The railways would be free to set rates within these limits.

The specific formula proposed by the Alberta Government was that the minimum level for rates should be such that the variable costs incurred in the movement of goods would be offset by the rate. The maximum formula proposed was that the upper limit for a rate equal the lowest competitive rate published for the movement of similar traffic plus an additional 40%. In summary, the Alberta Government recommended substantial revisions in the critiera that would determine the level of freight rates levied by the railways. While the general approach was similar to that of the railways, both the specific details of the maximum and minimum formulae, and the recommendation that governmental regulation continue in those segments of the freight rate structure, and in those areas of the country where the forces of competition were absent, placed Alberta's recommendations in conflict with the proposals of the railways.

(b) The Government of Manitoba

The brief of the Manitoba Government contained a series of recommendations designed to alleviate particular situations within the freight rate structure such as long and short haul discrimination. There was no reference made to the general principles that should govern the setting of rates. The specific recommendations proposed by the Manitoba Government will be considered in the next section of the chapter.

(c) The Government of Saskatchewan

The Government of Saskatchewan presented a brief to the Royal Commission containing recommendations that differentiated it from the briefs presented by the Provinces of Manitoba and Alberta.[96] For example, the Government of Saskatchewan was of the opinion that a basic change in the rate structure from the value of service to the cost of service approach would not enhance the railways' ability to provide lower rates nor distribute the burden of the rates in a more equitable fashion. Clearly this point of view placed Saskatchewan in opposition to the views of the Governments of Manitoba and Alberta. The differing policy positions of the Governments of Manitoba, Saskatchewan, and Alberta are explained in part by the varying ideological positions of the three governments on the issue of free enterprise and governmental regulation of private industry.

Clearly, the free enterprise philosophy as reflected in the brief of the Government of Alberta was unacceptable to the C.C.F. Government in Saskatchewan.

The proposal advanced by the Government of Alberta for the inclusion of a formula establishing a maximum level for rates was criticized by the Saskatchewan Government. Specifically, they argued that whenever the railways proposed to negotiate a competitive rate, the railways would be forced to consider the impact of the rate on comparable traffic in all parts of Canada. In Saskatchewan's view, Alberta's proposal placed more restrictions on the railways than did existing regulations under the Railway Act. Therefore, the Saskatchewan Government concluded that the proposed maximum rate formula was not consistent with Alberta's stated goal that the railways should be freed from excessive regulation.

The central theme of the Saskatchewan brief was that, as long as Western Canada remained captive to the railways, no manipulation of the rate structure would reduce the burden of transportation costs on Western Canada. The acceptance of the cost of service principle as the criterion for the determination of rates, and provisions such as the one and one-third rule, were "mere tinkerings" with the rate structure. These policies would not solve transportation problems in Western Canada. The solution to the problems was a national transportation subsidy for Western Canada

similar to the subsidy given to the Maritimes by the Maritime Freight Rates Act. The details of Saskatchewan's proposal will be discussed in another section of the chapter.

3. Pressure Groups

(a) Farm Groups

Farm groups in Western Canada were preoccupied with the Crow's Nest Pass rates. As a result, the briefs presented to the Royal Commission from various farm groups contained only limited references to the general principles that should govern the setting of rates. There were numerous references to the burden that rates placed on Western Canada, the need for legislative provisions to protect Western Canada from the monopoly position of the railways, and the national unity aspects of transportation policy.

The only particular reference to the general principles governing rates was found in the brief of the Farmers' Union of Alberta and in the brief of the Manitoba Pool Elevators. The Farmers' Union of Alberta questioned the assumption that competition within the transportation industry was in the best interests of the industry or the general public and made the recommendation that some form of minimum rate control should be included in a revised statute.[97] The Manitoba Pool Elevators recommended that the basis for calculating rates in Western Canada should be the costs involved in transporting the good and should not

be determined by competitive forces in Eastern Canada or by the distance that the good was being shipped.[98]

(b) Business Groups

Business groups in Western Canada supported the railways in their contention that they should be released from existing legislative restrictions and that the forces of competition should govern the operation of the transportation system. Their position on the issue of freight rates paralleled their general belief in the principles of free enterprise and a minimum of governmental control imposed on industry. For example, the Lethbridge Chamber of Commerce expressed the view that railways were in the best position to correct injustices in existence within the freight rate structure and that government action was not warranted until "the welfare of the Canadian people is in jeopardy".[99] The Edmonton Chamber of Commerce supported the general principles enunciated in the brief presented by the Alberta Government. For example, they expressed the belief that the railways should be free to meet the forces of competition and that governmental regulation should be confined to areas where one mode of transport was in a monopoly position. Among the general principles enunciated as criteria for the setting of rates were that all transportation rates "be freely extended to all like customers under like conditions",[100] and that rates should be based on the cost of service approach.

In addition, it was proposed that no non-competitive rate should be more than 140% of the comparable rate charged to an intermediate point, and that there be no rate discrimination on the basis of product. This formula was identical to the formula proposed by the Government of Alberta. While there were discussions between the Government of Alberta and various Alberta pressure groups with regard to the maximum rate formula, there is no evidence to suggest that there was a deliberate effort by the Edmonton Chamber of Commerce to support the position of the Government of Alberta.

The Regina Chamber of Commerce presented a brief encouraging the Royal Commission to include in their report a recommendation supporting the general principle of equalization and limiting long and short haul discrimination.[101] The Canadian Manufacturer's Association expressed the view that competition was the most effective means of creating an efficient transportation system and that regulations should be imposed only "to the degree necessary to protect the community against unjust discrimination or unreasonable treatment".[102] Existing inequities in the freight rate structure, in the view of the Canadian Industrial Traffic League, were a result of statutory rates, government subsidies, and horizontal percentage rate increases. The Canadian Co-operative Implements Limited noted that if rates were based on the cost of service principle, rates should ultimately be lower due to the geographic features of

Western Canada that reduced railway operating costs. Perhaps the following quotation from the brief presented by the Winnipeg Chamber of Commerce reflects the prevailing theme of the other briefs:

> Each mode of transportation should be free to compete for any traffic that is available, it should be permitted to base its price units on natural advantages, its rates based on its own costs and requirements not forced to bear any arbitrary relationships to the other modes of transport. . . .[103]

4. Summary

A review of the briefs presented by the railways, the provinces, with the exception of Saskatchewan, and many of the business groups reveals that they expressed the view that the railways should be free to compete with other modes of transport. While there was agreement on this general point, a close reading of the briefs indicated that the Provinces of Manitoba and Alberta were of the opinion that there should be particular legislative provisions enacted to protect Western Canada from the monopoly position of the railways. The Government of Saskatchewan did not support the policy position of Manitoba and Alberta. In their brief, Saskatchewan urged the Commission to recommend that greater governmental controls be imposed on the railways. The differing ideologies of the political parties in power in the capitals of the three Prairie Provinces during the 1960's may have limited the ability of Western Canada to develop a common policy position. In this instance, the grievances of the three provinces with regard to the

inequities in the freight rate structure were almost identical. However, the proposed solutions to these common problems varied considerably. On the one hand, the Government of Saskatchewan urged the Royal Commission to recommend the enactment of more legislative restrictions on the railways. The Governments of Alberta and Manitoba, on the other hand, urged the Commissioners to recommend a maximum and a minimum rate formula that would privide greater protection for Western Canada. Both the railways rejected these proposals and recommended to the Commission that their freedom to set rates should not even be limited by a maximum and a minimum rate formula.

While the Royal Commission accepted the general philosophy enunciated in the briefs presented by the Governments of Manitoba and Alberta and the business groups from Western Canada, they failed to recommend specific legislative provisions as proposed by Western Canadians. Those provisions of the Report regarding "areas of significant monopoly" and the "captive shipper" were designed by the Commissioners to give legislative protection to Western Canada. A close reading of the recommendations pertaining to the captive shipper would indicate that the Commissioners drafted a maximum rate formula that, while acceptable to the railways, afforded no protection to Western Canada. Thus one is led to the conclusion that Western Canada was not successful in having policy recommendations of vital concern to the West incorporated into the recommendations of

the Royal Commission.

C. Policy Recommendations Regarding Inequities in the Freight Rate Structure

The establishment of the Royal Commission on Transportation afforded the Western Canadian provinces the opportunity to present their views regarding inequities in the freight rate structure that had a particular impact on Western Canada. Many of the grievances such as long and short haul discrimination and horizontal percentage rate increases had been raised by Western Canada on many earlier occasions.[104] The inequities referred to in the briefs presented from Western Canada and the response of the railways to these allegations will be reviewed.

1. The Provinces

(a) Government of Alberta

The Government of Alberta, in its presentation to the Royal Commission on Transportation, isolated one particular grievance for attention -- long and short haul discrimination.[105] Reference was made to a study that had been prepared in the United States that illustrated the favourable effects of the decision of the Interstate Commerce Commission of 1914, that eliminated long and short haul discrimination from the freight rate structure of the United States, on the economy of the inter-mountain regions of the United States.[106] Statistical evidence was presented by the Alberta Government to illustrate the impact

of long and short haul discrimination on the economy of Alberta, and it was on the basis of this evidence that the Alberta Government concluded that there was a relationship between Alberta's present and potential level of economic development and transportation arrangements and costs within the province. Among the numerous recommendations advanced were the specific recommendations that low-valued, low-rated commodities should in the future carry a greater share of the fixed costs incurred by the railways and that geographic areas that are dependent on rail transportation should receive additional protection in the form of subsidies. These subsidies would eliminate the necessity of higher freight rates in certain regions of the country. In addition, it was proposed that the one and one-third rule be applied to the movement of all goods and that agreed charges negotiated by the railways be subject to its provisions.

The Honourable E. C. Manning explained the rationale for the inclusion in the Alberta brief of a particular recommendation with regard to long and short haul discrimination.[107] Mr. Manning noted that the Alberta Government had gathered adequate statistical evidence to illustrate the negative impact of long and short haul discrimination on Alberta. While the Alberta Government had been successful in urging the federal government to enact the one and one-third rule in 1952, the railways had violated the spirit of the amendment by negotiating a series of agreed charges with various companies that were not subject to the provisions

of the Railway Act. He expressed the view that Alberta's recommendation for the inclusion of the one and one-third rule was not inconsistent with Alberta's position that competition should guide the transportation industry. In Mr. Manning's view, "to render to a region protection from the monopolistic position of the railways with regard to the movement of particular goods was not inconsistent with the belief that competition should be the guiding principle of the transportation system. . . ."[108]

(b) The Government of Manitoba

The Government of Manitoba in its brief to the Royal Commission isolated specific inequities in the freight rate structure that discriminated against the economic development of Western Canada. Among the grievances isolated for particular attention were the negative impact of horizontal percentage rate increases on the freight rate structure in Western Canada, the inability of Western Canada to benefit from lower trans-continental rates as a result of the absence of competing modes of transportation in Western Canada, the failure on the part of the Board of Transport Commissioners to adequately regulate rates charged by water carriers and the existence of rates in the general freight rate structure that did not bear their proper share of the cost involved in transporting goods.[109]

(i) Horizontal Percentage Rate Increases

As noted in Chapter IV, in a series of hearings before the Board of Transport Commissioners in the late 1940's and early 1950's, the railways were given permission to increase freight rates in Canada by way of horizontal percentage increases. It should be noted that the Board of Transport Commissioners continued to support this practice on the part of the railways despite the recommendations of the Turgeon Royal Commission that the Board should not permit further freight rate increases in this particular manner.

The Manitoba Government, utilizing the arguments advanced by the Prairie Provinces at the hearings of the Turgeon Royal Commission, as well as the recommendations of the Royal Commission, observed that horizontal percentage rate increases accentuated existing disparities in freight rate structures, aggravated the disadvantages suffered by long-haul shippers, and assumed that all traffic could bear the same percentage increase in freight rates. Statistical evidence was presented to illustrate the impact of horizontal percentage rate increases on the freight rate structure in Western Canada. For example, during the period from 1949 to 1958, the freight rates on agricultural implements transported from Eastern Canada to Winnipeg had increased from $30.08 per ton-mile in 1949 to $62.65 per ton-mile in 1958, an increase of $32.57. The freight rate

on agricultural implements transported from Eastern Canada to points in the Maritimes had increased from $9.33 per ton-mile in 1949 to $16.43 per ton-mile in 1958, an increase of only $7.10.

On the basis of the statistical evidence presented, the Manitoba Government concluded that horizontal percentage rate increases resulted in higher freight rates in Western Canada than in Eastern Canada and that horizontal freight rate increases discriminated against long-haul shippers. No relief from these rate increases could be anticipated from either the railways or the Board of Transport Commissioners, thus the Government of Manitoba recommended that ". . . some safeguards . . . be instituted either by way of statutory limitations or legalistic direction if the present situation is to be altered. . . ."[110]

(ii) Long and Short Haul Discrimination

The Government of Manitoba, using similar arguments to those found in the position paper of the Alberta Government in the 1930's, was critical of those provisions of the freight rate structure that resulted in lower freight rates on goods being shipped from Montreal to Vancouver than on goods being shipped from Montreal to points in Western Canada. As a result, Western Canada paid higher freight rates on goods because of their geographic location and the absence of competing forms of transportation. In Manitoba's view, this practice gave the railways the power to determine

whether or not the goods of a particular region of the country could compete with similar goods produced in other regions of the country. In view of the increasing industrialization of Western Canada, the Government of Manitoba urged the Commissioners to adopt the principle that "when a competitive rate is published from a more distant point, the intermediate point should be given a rate reflecting its shorter haul from the point of destination. . . ."[111] This would in part neutralize the impact of freight rates on the level of economic development in Western Canada.

(iii) Water Rates

The Manitoba Government drew to the attention of the Commissioners the fact that, even though the Board of Transport Commissioners had been given the power to regulate water rates, water transportation companies were permitted to raise their rates and thus maintain a differential between water and rail rates, without demonstrating to the Board the necessity for such an increase. The railway companies, on the other hand, were required by law to appear before the Board and present evidence that would justify their contention that rates should be increased. As a result of the failure on the part of the Board of Transport Commissioners to exercise its jurisdiction over the regulation of water rates, the Manitoba Government concluded that Manitoba was being denied the benefits of its proximity to the Great Lakes:

> . . . At the time of the construction of the St. Lawrence Seaway it was stated that the Seaway would be of prime importance to national economic development and that the beneficial effects of this great inland waterway would not be limited to a particular region of Canada but would make available to the great heartland of Canada the benefits of ocean and lake transportation. We suggest that unless a clear legislative directive be given to the Board of Transport Commissioners with respect to lake carrier rates, national policy applicable to the carriage of goods by water will be completely frustrated with particularly harmful effects on the economy of Manitoba. . . .[112]

(iv) Voluntarily Depressed Rates

The Manitoba Government contended that there were a number of rates in the freight rate structure that did not cover their share of the cost involved in transporting a good from one location to another. The implication of this claim was that the railways were voluntarily reducing rates on certain items to the point where they did not cover the cost of transporting the goods. In the opinion of the Manitoba Government, the railway used these rates, and the corresponding lack of revenue resulting from the rates, to justify their representations before the Board of Transport Commissioners for higher freight rates. It was recommended that the Board of Transport Commissioners be required to solicit statistical information from the railway companies that would permit the preparation of studies that would determine the burden of freight rates on each region of Canada. Statistical evidence was presented in the Manitoba

brief that indicated that the average freight rate on traffic moving to or from Manitoba was higher than freight rates on similar commodities in any other part of Canada or the United States. The Manitoba Government concluded its brief by noting that, if there was to be an equitable freight rate structure in all regions of Canada, one region of the country should not be obliged to carry the burden for all the other regions. It was the contention of the Manitoba Government that, at the present time, this burden was falling on Western Canada, and on Manitoba in particular. The view of the Manitoba Government that the burden of freight rates fell most heavily on Manitoba was disputed by the Governments of Saskatchewan and Alberta who contended that it fell most heavily on their provinces. However, there was general agreement that Western Canada was carrying an unwarranted share of the costs of the transportation system.

(c) The Government of Saskatchewan

The major theme of the Saskatchewan brief was the contention that the inequities in the freight rate structure as it applied to Western Canada were so firmly rooted in "the economic and political circumstances of the past" that they would not be eliminated by merely adjusting certain classes of freight rates.[113] This had been the practice adopted by the railways and approved by the Board of Transport Commissioners in the 1950's in their attempts to eliminate inequities in the freight rate structure. While

it was difficult to demonstrate that the major impact of the freight rate increases of the 1950's had fallen on Western Canada, and on Saskatchewan in particular, the Government of Saskatchewan presented statistics to support their contention. On the basis of this evidence, it was concluded that the residents of Western Canada were financing a larger share of the costs of providing a transportation system than were the other regions of Canada.

The central recommendation of the Government of Saskatchewan was the proposal that the federal government enact legislation that would provide a "National Transportation Subsidy" to Western Canada, thereby reducing freight rates. While the calculation of the subsidy would require detailed study by both levels of government, the Government of Saskatchewan expressed the view that the subsidy would be most effective ". . . as a percentage reduction in freight rates on traffic moving out of, into, and within the four western provinces of Manitoba, Saskatchewan, Alberta and British Columbia".[114] While the subsidy would ultimately result in a reduction in all classes of freight rates in Western Canada, the first priority in any proposed reduction of freight rates should be a reduction in the rates on long-haul traffic.

2. Pressure Groups

The briefs presented to the Royal Commission from both business and agricultural groups in Western Canada contained references to the inequities in the freight rate

structure as it applied to Western Canada. Many of the references were general in nature with the majority of the grievances expressed by business-oriented groups.

(a) Farm Groups

Passing reference was made to the burden of freight rates on Western Canada, the monopolistic position of the railways, and the necessity of reducing the burden of freight rates on the economy of Western Canada. The only group that made particular reference to inequities in the freight rate structure was the Manitoba Federation of Agriculture. Aside from these rather general statements, there were no statements made by farm groups to the Royal Commission that documented in greater detail Western grievances regarding inequities in the freight rate structure.

(b) Business Groups

Business groups were more specific with regard to the presentation of evidence designed to illustrate inequities in the freight rate structure. For example, the Winnipeg Chamber of Commerce noted that the federal government had not enacted legislative provisions pertaining to the freight rate structure that would have been of benefit to the West.[115] British Columbia benefited from low transcontinental rates and from the removal of the Mountain Differential in 1948. The Maritimes had received benefits from the Maritime Freight Rates Act. While the one and one-third rule had been enacted in 1952 as a result of Western

Canadian agitation, the railways had negotiated agreed charges that were not regulated by the Railway Act. The Winnipeg Chamber of Commerce supported the Manitoba Government in its charges that the Board of Transport Commissioners was not adequately regulating the level of rates levied by water carriers on the Great Lakes. By permitting a series of rate increases, the differential between rail and water rates was maintained. As a result Western Canada was not enjoying the full benefits of the St. Lawrence Seaway. Finally, the Chamber urged the Commission to recommend to the government that, when competitive rates are established to assist shippers to enter or remain competitive in a particular market, rates from other competing points should be calculated so as to preserve the geographic advantage of other shippers. Specifically, the Chamber was concerned that the granting of low competitive rates to Vancouver could give Montreal manufacturers an advantage over manufacturers in Western Canada.

The City of Brandon and the City of Saskatoon presented briefs that outlined at length the impact of horizontal percentage rate increases on small urban centers. Particular reference was made to the fact that these rate increases, when combined with the monopolistic position of the railways, created a freight rate structure that restricted industrialization in Western Canada in general, but in small centers in particular. The Saskatoon brief

recommended that particular areas in Western Canada be designated by the railways so that equal rates would be levied on all goods moving in and out of the region.[116]

In its brief to the Commission, the Hudson's Bay Route Association outlined its opposition to granting rate increases by the horizontal percentage method by noting that there is no competition from other railways in that part of Manitoba. Thus any rate increase is automatically passed on to the consumer. The Great West Coal Company Ltd., the Old Mac Coal Company Ltd., and Western Dominion Coal Mines Ltd. presented a brief that demonstrated the impact of horizontal percentage rate increases on the lignite coal industry. The industry is unique in that the cost of transporting the product is greater than the value of the product being moved. As a result, when rates are increased, they have a significant impact on the industry. The industry recommended that the Board of Transport Commissioners assess more completely the effects of freight rate increases on individual shippers before granting such increases. Finally, the Lethbridge Chamber of Commerce recommended that freight rates should not give preference to manufactured goods of one area over the manufactured goods of another. No undue preference should be given to any region of Canada, in that such a practice would make freight rates the most important factor in determining the location of a particular industry.

3. The Railways

The Canadian Pacific Railway, in their final summation, dealt with many of the points raised by Western Canada. For example, they noted the alternatives available to the railways in lieu of horizontal percentage rate increases and concluded that no other method of granting rate increases worked as well as this method. In part, their brief read:

> . . . The railways unlike regional interests or particular shippers must consider the matter from the standpoint of all shippers of all regions as well as from the standpoint of their own revenue needs. The alternatives suggested have failed to meet the practical tests which must be made to determine their soundness. . . .[117]

With regard to the particular complaint of Western Canada that horizontal rate increases placed a very heavy burden on Western Canada, Canadian Pacific noted:

> . . . It is the position of the CPR that it is the only method which is practical and which implements in the fairest possible way the obviously unpopular necessity of higher freight rates. Notwithstanding numerous analyses, it is submitted that no inequity arising from horizontal percentage increases has been demonstrated. . . .[118]

The response of Canadian Pacific to the claims made by Western Canada that the freight rate structure severely restricted industrialization was that the freight rate structure should not be used as a vehicle for encouraging economic development. Without the presence of competitive shippers in other areas, a subsidy through the freight rate structure was not selective and would therefore cause economic distortions.[119]

The contention of the Alberta Government that the one and one-third rule should be applied to all rates whether they were agreed charges or competitive rates was quickly dismissed by the railway. They further suggested that all reference to long and short haul discrimination be removed from the Railway Act. Finally, Canadian Pacific recommended that the bridge subsidy, designed to reduce the cost of moving goods across Northern Ontario, be removed. In Canadian Pacific's view, "the bridge subsidy creates anomalies and distortions and should be withdrawn."[120]

The Canadian National Railways dismissed the claims of Western Canada with regard to the granting of rate increases by the horizontal percentage method in the following manner:

> . . . While we recognize the difficulties inherent in the horizontal percentage method of increasing freight rates, nevertheless we consider that it is the best available to us at the present time. . . . In such circumstances we should not be required to use a different method until it can be shown to be more equitable and tested sufficiently to ensure that the carriers revenue position will be protected. . . .[121]

It can be seen that the railways dismissed the contentions of the Western Canadian provinces that there were inequities in the freight rate structure that should be remedied.

4. Conclusion

Western Canadians utilized the hearings held by the Royal Commission to raise grievances with regard to inequities in the freight rate structure. As noted earlier,

the majority of the grievances were long-standing and had been articulated on earlier occasions. The representations made by Western Canada were dismissed by the Royal Commission in a manner similar to the way in which the railways had dismissed Western claims. For example, there were no recommendations concerning the practice of granting horizontal percentage rate increases. There was no recognition by the Commissioners of the necessity of limiting long and short haul discrimination, and there was no recognition of the relationship between the freight rate structure and the level of economic development in Western Canada.

In an interview with Mr. A. Platt, he revealed that the Commissioners had never seriously considered Saskatchewan's proposal for a general subsidy on rates levied in Western Canada.[122] He noted that the Commissioners had considered several formulae designed to eliminate long and short haul discrimination, but a suitable formula could not be developed. One was left with the impression that the Commissioners had not attempted to resolve the problem and merely dismissed the Alberta proposal without adequate deliberation, on the grounds that it did not conform to their overall philosophy. Again, Western Canada was unsuccessful in having its views incorporated into the final recommendations of the Commission.

D. Recommendations of a Parochial Nature

Every brief presented to the Royal Commission contained recommendations that could be considered to be of a parochial nature. As noted earlier, Mr. A. Platt observed that in most instances the briefs presented were so parochial in nature that they failed to consider transportation problems in their entirety. Thus the majority of the briefs were, in Mr. Platt's view, of limited assistance to the Commissioners in the preparation of their report.

A review of the briefs presented from Western Canada revealed that there were policy recommendations in the majority of the briefs designed to alleviate particular local grievances. For example, the Lethbridge Chamber of Commerce urged the Royal Commission to recommend that a second railway be constructed in Southern Alberta. The Great West Coal Company Ltd. presented a brief on behalf of other members of that industry requesting lower freight rates on the movement of lignite coal. Lower rates on the movement of timber were requested by the Saskatchewan Timber Board, while the Hudson's Bay Route Association urged the Commission to make recommendations designed to improve facilities at the Port of Churchill. In short, Western Canadians utilized the hearings of the Royal Commission to present particular local grievances to the Commissioners in the hope that they would recommend action on the part of the federal government that would remedy their particular problems.

E. The Accommodation of Western Canadian Views - A Summation

The Royal Commission's report contained policy recommendations of particular concern to Western Canada. For example, the recommendations pertaining to the Crow's Nest Pass rates, those outlining the criteria for the determination of rates, and those designed to alleviate regional inequities in the freight rate structure were of concern to Western Canada. Having read the briefs presented by the Governments of Manitoba, Saskatchewan, and Alberta and the various pressure groups from Western Canada, one is left with the impression that the majority of the recommendations from Western Canada were not incorporated into the final recommendations of the Royal Commission. With regard to the criteria for the determination of rates, Western Canadian views were incorporated into the report to the extent that the Commissioners recommended that the cost of service principle be adopted as the criterion for the determination of rates, and that the railways be relieved of many of the legislative restrictions that limited their ability to compete. However, the Commission failed to include recommendations that, in the view of Western Canadians, provided adequate protection from the monopolistic position of the railways. A detailed examination of those segments of the report dealing with the "captive shipper" and "areas of significant monopoly" revealed that Western Canadian demands

that there be adequate protection for regions such as Western Canada from the absence of competition were largely ignored by the Commission. The recommendations from Western Canada pertaining to horizontal percentage rate increases and long and short haul discrimination were dismissed by the Commission on the grounds that the inclusion of provisions designed to eliminate these grievances would, allegedly conflict with the overall philosophy of the report.

The political actors from Western Canada were more successful in having their views with regard to the compensatory nature of the Crow's Nest Pass rates accepted by the Commission. While the Commission recommended the continuation of payments to the railways, the decision to reduce the size of the subsidy from the amount recommended by the railways was largely in response to the representations from Western Canada. This then was the one aspect of the Commission's report that was influenced to a great extent by the representations made by the political actors of Western Canada.

Why were Western Canadian views not incorporated in the recommendations of the Royal Commission to a greater extent? The personnel of the Commission was such that Western Canadian opinion was adequately represented. As noted earlier, three of the Commissioners, including the Chairman, Mr. M. A. MacPherson, were from Western Canada. Mr. MacPherson had represented the Government of Saskatchewan on numerous occasions at hearings before the Board of

Transport Commissioners where he strongly articulated the views of Western Canada with regard to inequities in the freight rate structure. In addition, he had represented the Government of Saskatchewan at the hearings of the Turgeon Royal Commission and was instrumental in having the Commission recommend that a subsidy be paid for the movement of goods across Northern Ontario. How then could a man who had been so closely identified with Western Canada and with the problems associated with freight rates prepare a report that contained no recommendations for the protection of Western Canadian interests?

In interviews with Mr. A. Platt, the Honourable E. C. Manning,[123] and Mr. F. Anderson, it was revealed that Mr. MacPherson was in extremely poor health at the time when the Royal Commission was holding public hearings. Specifically, Mr. Platt indicated that Mr. MacPherson was in such poor health at that time that he did not recall the proceedings of any of the public hearings. After the public hearings were concluded, Mr. MacPherson remained in Regina and took no active part in the preparation of the final report. In fact, it appears that Mr. MacPherson was never aware of the contents of the report presented to the federal government in his name.

Both Mr. Anderson and Mr. Platt expressed the view that had Mr. MacPherson been in good health, and aware of the kind of recommendations being considered by his

colleagues, he would have never accepted the general philosophy of the report and would have attempted to have specific policy recommendations included in the report that would have given greater protection to Western Canada. Mr. Platt was not certain whether Mr. MacPherson would have been able to convince his colleagues to alter their recommendations, but he did acknowledge that, if Mr. MacPherson had prepared a minority report outlining his opposition to the general theme of the main report, the Report of the Royal Commission would have been discredited and would never have been implemented. Mr. Manning expressed views similar to those of Mr. Platt and Mr. Anderson. Thus the absence of recommendations in the report designed to give additional protection to Western Canada appears to be closely linked with the poor health of Mr. MacPherson.

There is the belief among government officials and pressure groups associated with the hearings of the Royal Commission that Mr. MacPherson failed to represent the interests of Western Canada.[124] The explanation offered by Mr. Platt and Mr. Anderson would indicate that this was not the case. In reality, if the views of Western Canada were not represented, Mr. Platt and Mr. Anscomb, the two Commissioners from Western Canada, must accept responsibility for not representing the views of Western Canada. Mr. Platt indicated that when he was appointed to the Commission, he considered himself not to be a spokesman for Western

Canada but a Commissioner appointed to consider transportation policy as it affected all regions of Canada. In defence of his position, he noted that, as an economist, he could not construct an argument that could justify, on economic grounds, the inclusion in the report of specific policy recommendations designed to protect Western Canada.[125] Perhaps the above explanation presents a more accurate account of the reasons for the absence of recommendations specifically designed to protect Western Canada.

SECTION III: REACTION OF WESTERN CANADIANS TO THE REPORT OF THE ROYAL COMMISSION

The objective of this section is to examine the reaction of the press, federal and provincial politicians, and various pressure groups from Western Canada to the recommendations proposed by the Royal Commission. The negative reaction to the recommendation that the railways be granted a subsidy to compensate them for losses incurred in the movement of grain was outlined in an earlier section of the chapter. The views outlined in this section are concerned with the recommendations dealing with the criteria for the determination of rates and the protection for Western Canada in those sections of the report dealing with the captive shipper.

A. Press Reaction

Press reaction to the recommendations was generally favourable in Western Canada. There were some fears

expressed that the payment of a subsidy to the railways for the movement of grain would be the preliminary step leading to the abolition of the Crow's Nest Pass rates. The Regina Leader Post in an editorial noted that:

> The commission, in its report, veers off on a tangent. It accepts the railways' claim as to losses and recommends an annual subsidy to the railways on the ground that the Crowsnest Pass rates are an "obligation imposed on the railways by law". The commission could not be more wrong in advancing the latter as a basis for a subsidy. The facts of history cannot be ignored. The Crowsnest Pass rates are an obligation assumed voluntarily by the CPR in return for valuable concessions which still rebound to the railways' financial benefit. . . . The Prairie West should resist the implementation of this phase of the report with all the vigor and power it can command. . . .[126]

In an editorial on April 12, 1961, the Edmonton Journal noted that the recommendations pertaining to the removal of governmental regulations with regard to the setting of rates could be detrimental to Western Canada. In part, the editorial read:

> The third recommendation also contains some dynamite. Certainly, in any general elimination of restrictive regulations affecting rate setting, the prairies would demand that their captive commodities, such as grain and lumber, not be penalized. The prairies have had the short end of the rate setting stick for decades and they would fight against any worsening of their position after the gradual improvement of the postwar period. . . .[127]

In an editorial on October 28, 1964, the final report of the Royal Commission was praised by the Edmonton Journal as being "the most sensible and realistic statement on transport, and particularly railway transport ever

produced in this country. . . ."[128] The Calgary Herald, in an editorial on April 14, 1961, noted that the subsidies proposed by the Commission were no "cureall" for the problems faced by the railways and that ultimately the railways must become more efficient. The editorial was critical of a subsidy on the movement of grain for export and urged the government to consider the minority report that had recommended no government subsidy.[129] Regarding the recommendations concerning the criteria for the determination of rates, the Calgary Herald noted that the report contained "a number of constructive proposals for the federal government to consider in trying to solve Canada's extremely serious railway problem. . . ."[130]

In a series of editorials, the Winnipeg Free Press expressed support for the general principles outlined in the Commission's report.[131] However, the editorials noted that the recommendations of the report must be implemented in total if they were to have any impact on the transportation system. In an editorial on May 19, 1961, the Winnipeg Free Press expressed concern that the recommendations of the Royal Commission would not be implemented by the Diefenbaker Government. This was the first expression of this viewpoint in Western Canadian press. The editorial concluded by noting:

> Ever since the MacPherson royal commission's first report was published a few weeks ago, there have

> been disquieting rumors . . . that the Diefenbaker government does not intend to implement some of the Commission's main recommendations. . . .[132]

B. Reaction of Politicians

Premier E. C. Manning of Alberta supported the general philosophy of the report and characterized it as being "a breakthrough for Alberta in its struggle for better rates".[133] In particular, he supported the recommendations dealing with the maximum rate formula, the provisions governing the captive shipper, and the adoption of the cost of service principle as the basis for the determination of rates. Finally, he noted that the recommendation advanced by the Alberta Government that a cost-oriented rate structure be adopted had been incorporated into the recommendations of the Royal Commission.[134]

The initial positive reaction of the Alberta Government to the recommendations of the Royal Commission was only temporary, and, once the officials of the Freight Rate Bureau had occasion to examine the recommendations of the Commission in greater detail, Alberta's attitude toward the recommendations changed considerably. Mr. J. W. Telford, during an interview, indicated that Alberta became increasingly critical of the formula proposed by the Commissioners for a maximum and a minimum level of rates and the provisions pertaining to the captive shipper clause. The 30,000 pounds - 150% provisions were considered to be

detrimental to the interests of Western Canada.[135] As a result, the Alberta Government urged the federal government to enact legislation that would place greater controls over the operation of the railways. This change in tactics on the part of the Alberta Government during the period from 1962 to 1964 marked a major shift in Alberta's position and was specifically designed to strengthen their bargaining position with the federal government. This change became more evident when the federal government drafted Bill C-120 implementing many of the recommendations of the Royal Commission.

Initial reaction to the report of the Royal Commission by officials of the Government of Manitoba was favourable. Premier Roblin expressed general approval of the major recommendations of the report.[136] However, one of the consultants to the Manitoba Government, Mr. V. Steichison, was quoted in the Winnipeg Free Press as having said that ". . . the report could give the railways the right to decide what Canadian firms should stay in business. . . ."[137] In addition, the newspaper quoted him as saying that "he was convinced the railways had managed to sell the royal commission a bill of goods which would cost Western Canadians a lot of money. . . ."[138]

In Saskatchewan, Premier Lloyd supported the recommendations of the report urging the federal government to continue the payment of subsidies to maintain passenger

for study. Mr. Diefenbaker merely replied that this practice had never been followed in the past and that he saw no reason to create such a precedent. When asked when the government contemplated implementing the recommendations of the Commission, he merely replied that "a statement will be given in due course but not at the present time".[142] In tabling the second volume of the report, he stated:

> . . . I think hon. members will find that the report clarifies and illuminates the issues underlying the very real and difficult problem confronting Canada in the field of railway transportation. I feel the report will help Parliament, the government and others concerned with reaching a solution to problems that were placed before the Commission. . . .[143]

The spokesman for the Liberal Party, the Honourable Lionel Chevrier, thanked the Commissioners for their efforts and expressed the hope that the recommendations would be implemented as soon as possible.[144] Mr. Hazen Argue expressed the hope that the recommendations would be acted upon by the government and that the goal of equalized freight rates could be achieved as soon as possible.[145]

C. Reaction of Pressure Groups

The reaction of farm groups to the recommendations of the Royal Commission were confined in large part to those dealing with the Crow's Nest Pass rates. Their comments have been outlined in an earlier section of the chapter.

D. Conclusion

It may appear that the conclusions reached in the preceding two sections of the chapter are contradictory. On the one hand, it was concluded that Western Canadian views were not incorporated into the final policy recommendations of the Commission; yet, on the other hand, it was concluded that there was a favourable response to the recommendations. Mr. A. W. Platt attempted to explain this discrepancy by noting that the initial reaction to the report in Western Canada was favourable inasmuch as the report encompassed the major themes of the majority of the briefs presented from Western Canada. However, once the recommendations were examined in detail, the provincial governments came to realize that many of the traditional safeguards that had protected Western Canadian interests had been removed. Western Canada would not receive the degree of protection from the proposed recommendations that it had initially anticipated on receipt of the report.[146] Thus Western Canada became increasingly apprehensive and the full extent of Western opposition was not revealed until the government drafted Bill C-120 that incorporated many of the Commission's recommendations.

SECTION IV: THE MACPHERSON ROYAL COMMISSION - A POLICY INPUT

The objective of the final section of the chapter is to assess the importance of the Royal Commission as an

initial policy input into the decision-making process that ultimately produced the National Transportation Act. An examination of the provisions of the National Transportation Act, and a review of the major recommendations contained in the report of the Royal Commission, reveal the extent to which the government incorporated these recommendations. For example, the philosophy enunciated in the Royal Commission's report with regard to the belief that the forces of competition should govern the operation of the transportation system is found in many sections of the National Transportation Act. The emphasis on the promotion of an efficient and competitive transportation system at the expense of the "national unity" aspects of transportation policy is also reflected in the Act.

The acceptance of the "cost of service" principle as the criterion for the determination of rates, the belief that railways should be freed from existing regulations to meet the forces of competition, and the adoption of a maximum and a minimum level for rates were recommendations which were incorporated into pertinent sections of the National Transportation Act. In particular, the provisions of those sections of the Act dealing with "areas of significant monopoly" and the notion of the "captive shipper" were taken directly from the Commission's report. Finally, the recommendation proposed by the Commission that the railways be compensated for the losses incurred in the movement of grain

was accepted by the government to the extent that the original provisions of the National Transportation Act committed the government to review the compensatory nature of the rates every three years. This particular provision of the legislation was removed during the debate in the Committee of the Whole House on Bill C-231. The removal of the provision was brought about at the insistence of the federal Members of Parliament from Western Canada.

Clearly, the recommendations of the Royal Commission on Transportation were important policy inputs that were ultimately incorporated into the National Transportation Act. However, the limited extent to which Western Canadian views were accommodated in the recommendations of the Royal Commission made the MacPherson Royal Commission of limited value as an input of Western Canadian views.

FOOTNOTES

[1]Government of Canada, Report of the Royal Commission on Transportation (Ottawa: Queen's Printer, 1961 and 1962), Vols. I and II. This Report will be hereafter referred to as the MacPherson Royal Commission.

[2]An Act to amend the Railway Act, the Transport Act and the Canadian National Railways Act, and to repeal the Canadian National-Canadian Pacific Act (Ottawa: Queen's Printer, 1964). This bill will hereafter be referred to as Bill C-120.

[3]An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions, 1967, 14-15-16 Eliz. II. This Bill will hereafter be referred to as the National Transportation Act or as Bill C-231.

[4]A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1967), pp. 17-18. The series of events described in succeeding paragraphs was outlined by Currie and in the briefs presented by the Provinces of Manitoba, Saskatchewan, and Alberta. All were in agreement as to the factors leading to the establishment of the Royal Commission.

[5]For a detailed discussion of these cases, see Chapter IV.

[6]These figures were presented by the Board of Transport Commissioners to the Parliamentary Committee on Railways, Canals and Telegraph Lines on April 14, 1959. These statistics were cited in both the Alberta and Saskatchewan briefs to illustrate the impact of horizontal percentage rate increases on Western Canada.

[7]MacPherson Royal Commission, Vol. I, p. 45.

[8]Ibid..

[9]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 24th Parliament, Vol. III, (1959), p. 3607.

[10]Interview with Mr. A. W. Platt on June 25, 1971.

[11]MacPherson Royal Commission, Proceedings and Evidence, p. 34. The Commission made this ruling on September 18, 1959.

[12]Ibid..

[13]In particular, see the briefs presented by the Manitoba Federation of Agriculture, the Saskatchewan Wheat Pool, the Alberta Wheat Pool, Manitoba Pool Elevators, United Grain Growers, the Farmers' Union of Alberta, the Farmers' Union of Manitoba, the Saskatchewan Farmers' Union, and the Regina Chamber of Commerce. All these briefs contained detailed analyses of the Crow's Nest Pass Agreement.

[14]Letter from R. A. Crosbie to J. R. McFall, July 14, 1959.

[15]The biographical material on the various Commissioners was obtained from the Globe and Mail, May 14, 1959. The information in succeeding paragraphs was taken from this source and from the interview with Mr. A. W. Platt.

[16]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 24th Parliament, Vol. III, (1959), pp. 3751-2.

[17]Ibid., p. 3753.

[18]Ibid., p. 3761.

[19]Calgary Herald, May 15, 1959.

[20]The Winnipeg Free Press, May 15, 1959.

[21]In an interview with the Honourable E. C. Manning on July 8, 1971, he indicated that the reaction in Western Canada to the establishment of the Royal Commission was very favourable.

[22]The proceedings of the Royal Commission can be found in Volume I of the Report.

[23]MacPherson Royal Commission, Vol. I, pp. 12-14 and pp. 31-34. See also, Vol. II, Chapters 7 and 8.

[24]Ibid., Vol. I, pp. 8-12.

[25]Ibid., Vol. II, p. 93.

[26]Ibid., Vol. I, Chapter I. See also Vol. II, Chapter III.

[27]Ibid., Vol. I, p. 3.

[28]Ibid., Vol. II, Chapter III. In particular, see pp. 30-32.

[29]Ibid..

[30]Ibid., Vol. II, Chapter IV, p. 49.

[31]Interview with Mr. A. W. Platt on June 25, 1971.

[32]Ibid..

[33]Interview with Mr. F. W. Anderson on September 2, 1971.

[34]Interview with Mr. A. W. Platt.

[35]Ibid..

[36]Interview with Mr. F. W. Anderson

[37]MacPherson Royal Commission, Vol. II, pp. 33-36.

[38]The Commissioners did not define precisely the term "areas of significant monopoly".

[39]MacPherson Royal Commission, Vol. II, p. 47.

[40]Interview with Mr. A. W. Platt. The information in succeeding paragraphs was obtained in that interview.

[41]Interviews with Mr. J. W. Telford, Manager of the Alberta Freight Bureau; Mr. O. Broughton of the Alberta Wheat Pool; the Honourable E. C. Manning; Mr. Ivan Radke of

United Grain Growers; Mr. G. W. Barnes, Coal Operators' Association of Western Canada; and Mr. David Wood of Western Co-op Fertilizers Ltd.. They all indicated that the 150% figure was taken from costing studies prepared by the railways.

[42]Interview with Mr. A. W. Platt.

[43]The same groups made similar complaints regarding the provision of 30,000 lbs. as the base weight.

[44]Interview with Mr. F. W. Anderson.

[45]Interview with Mr. A. W. Platt.

[46]MacPherson Royal Commission, Vol. II, pp. 87-88.

[47]Ibid., p. 89.

[48]Ibid., Vol. I, p.30.

[49]Ibid., pp. 36-44.

[50]Ibid., p. 36.

[51]Interview with Mr. A. W. Platt. The data used to assess the losses of the railways was taken from figures submitted by the railways, the provincial governments, the Prairie Wheat Pools, and studies prepared by the Royal Commission.

[52]MacPherson Royal Commission, Vol. I, p. 45.

[53]Ibid..

[54]Ibid., pp. 27-28.

[55]Ibid., p. 28.

[56]Ibid., p. 23.

[57]Ibid., Vol. II, pp. 113-118.

[58]Interview with Mr. A. W. Platt.

[59]MacPherson Royal Commission, Vol. II, pp. 82-85.

[60]Interview with Mr. A. W. Platt.

[61]MacPherson Royal Commission, Vol. II, p. 85.

[62]Interview with Mr. A. W. Platt.

[63]This assessment of Western Canadian briefs was made by Mr. A. W. Platt and Mr. F. W. Anderson.

[64]This assessment was made by Mr. A. W. Platt.

[65]Canadian Pacific Railway Memorandum regarding the Crow's Nest Pass Rates and proposed amendments to rates to assist the railways in their carrying of export grain. This was the title of a brief submitted to the Royal Commission on November 4, 1959. The information in succeeding paragraphs outlining the CPR position was taken from this brief. This brief will hereafter be referred to as the CPR Memorandum.

[66]Ibid., p. 13.

[67]Submission of Canadian Pacific Railway to the Royal Commission: Summation and Argument, February 10, 1961, p. 8. This brief will hereafter be referred to as the CPR Final Summation.

[68]Ibid., p. 28.

[69]Canadian National Railways Memorandum regarding the Crow's Nest Pass Rates and proposed amendments to rates to assist the railways in their carrying of export grain, November 18, 1959. The information in succeeding paragraphs is drawn from this document. This brief will hereafter be referred to as the CNR Memorandum.

[70]Submission of Canadian National Railways to the Royal Commission: Summation and Argument, February 6, 1961, p. 17. This brief will hereafter be referred to as the CNR Final Summation.

[71]CNR Memorandum, pp. 8-9.

[72]CNR Final Summation, p. 21.

[73]See footnote 40.

[74]Edmonton Journal, January 28, 1960.

[75]Government of Manitoba, Submission of the Government of Manitoba to the Royal Commission on Transportation, February 8, 1960, pp. 68-71.

[76]Statement by T. C. Douglas to the Royal Commission on Transportation, Regina, February 12, 1960, pp. 2-3.

[77]Statement by E. C. Manning to the Royal Commission on Transportation, Edmonton, February 16, 1960, pp. 1-3.

[78]Interview with E. C. Manning, July 8, 1971. At that time, Mr. Manning commented on the role of J. J. Frawley in representing Alberta's views.

[79]Edmonton Journal, September 16, 1960.

[80]See briefs from Western farm groups mentioned in footnote 40.

[81]Interview with Mr. A. W. Platt. Mr. Platt indicated that the briefs presented by the Wheat Pools and by the Governments of Alberta and Manitoba assisted the Commission in evaluating the costing studies presented by the railways.

[82]Interview with Mr. F. W. Anderson.

[83]Brief submitted by the Manitoba Pool Elevators to the Royal Commission on Transportation, February 9, 1960, pp. 6-7.

[84]Brief submitted by the Canadian Manufacturers' Association to the Royal Commission on Transportation, March 29, 1960, and the brief submitted by the Canadian Industrial Traffic League on March 30, 1960. The Winnipeg Chamber of Commerce presented a brief on February 10, 1960; the Lethbridge Chamber of Commerce presented a brief on February 16, 1960; and the Regina Chamber of Commerce, on February 15, 1960. The information found in succeeding paragraphs was obtained from these briefs.

[85]Edmonton Journal, April 12, 1961.

[86]Ibid..

[87]Ibid..

[88]Ibid..

[89]Ibid..

[90]MacPherson Royal Commission, Vol. I, pp. 39-40.

[91]CNR Final Summation, pp. 8-16. Details in succeeding paragraphs were obtained from this brief.

[92]Ibid., p. 57.

[93]CPR Final Summation, pp. 131-146. Details in succeeding paragraphs were obtained from this brief.

[94]Ibid., p. 150.

[95]Government of Alberta, A Submission by the Province of Alberta to the Royal Commission on Transportation, Edmonton, Alberta, September 1, 1960. Details in the following paragraphs were drawn from this brief.

[96]Government of Saskatchewan, Submission of the Province of Saskatchewan to the Royal Commission on Transportation (Regina: Queen's Printer, 1961). Details in following paragraphs were drawn from this brief.

[97]Brief of the Farmers' Union of Alberta to the Royal Commission, February 16, 1960.

[98]Brief of Manitoba Pool Elevators to the Royal Commission, February 9, 1960.

[99]Brief of the Lethbridge Chamber of Commerce to the Royal Commission, February 16, 1960.

[100]Brief of the Edmonton Chamber of Commerce to the Royal Commission, January 20, 1960.

[101]Brief of the Regina Chamber of Commerce to the Royal Commission, February 15, 1960.

[102]Brief of the Canadian Manufacturer's Association to the Royal Commission, March 29, 1960.

[103]Brief of the Winnipeg Chamber of Commerce to the Royal Commission, February 10, 1960. This brief was found in Vol. 31 of the Proceedings and Evidence of the Royal Commission on Transportation.

[104]For a statement of these grievances, see Chapter III.

[105]Government of Alberta, Submission of the Province of Alberta to the Royal Commission on Transportation on Long and Short Haul Discrimination, Edmonton, Alberta, August 15, 1960. Details in following paragraphs were taken from this brief.

[106]Government of Alberta, Submission to the Royal Commission on Transportation, "Some Economic Effects of Limitation of Long and Short Haul Discrimination on the Inter-Mountain Region of the United States".

[107]Interview with the Honourable E. C. Manning.

[108]Ibid..

[109]Submission of the Manitoba Government. Details in the following paragraphs were taken from this brief.

[110]Ibid., p. 55.

[111]Ibid., p. 57.

[112]Ibid., p. 42.

[113]Submission of the Saskatchewan Government. Details in following paragraphs were taken from this brief.

[114]Ibid., p. 99.

[115]Brief of the Winnipeg Chamber of Commerce, February 10, 1960, op. cit., pp. 4565-6. Details in the following paragraphs were taken from this brief.

[116]Brief presented by the Brandon Chamber of Commerce to the Royal Commission on Transportation, February 10, 1960, and brief of the Saskatoon Board of Trade to the Royal Commission on Transportation, February 12, 1960. The proposal in the Saskatoon brief is known as "grouping".

[117]CPR Final Summation, p. 166.

[118]Ibid., p. 168.

[119]Ibid., p. 180.

[120]Ibid., p. 182.

[121]CNR Final Summation, p. 16.

[122]Interview with Mr. A. W. Platt.

[123]Interviews with Mr. A. W. Platt, the Honourable E. C. Manning, and Mr. F. W. Anderson.

[124]This was the common belief held by the groups interviewed in Western Canada.

[125]Interview with Mr. A. W. Platt.

[126]The Regina Leader Post, April 13, 1961.

[127]Edmonton Journal, April 12, 1961.

[128]Ibid., October 28, 1964.

[129]Calgary Herald, April 14, 1961.

[130]Ibid., January 24, 1962.

[131]Winnipeg Free Press, May 19, 1961 and April 12 and 13, 1961.

[132]Ibid., May 19, 1961.

[133]Edmonton Journal, January 25, 1962.

[134]Ibid..

[135]Interview with Mr. J. W. Telford.

[136]The Winnipeg Free Press, January 25, 1962.

[137]Ibid..

[138]Ibid..

[139]Regina Leader Post, April 11, 1961.

[140]Ibid..

[141]Winnipeg Free Press, May 19, 1961.

[142]Canada, Parliament, Parliamentary Debates (House of Commons), 4th Session, 24th Parliament, Vol. IV, (1960-61), p. 3506.

[143]Canada, Parliament, Parliamentary Debates (House of Commons), 5th Session, 24th Parliament, Vol. I, (1961), pp. 17-18.

[144]Ibid., p. 18.

[145]Ibid., p. 19.

[146]This point was made by both Mr. J. W. Telford and the Honourable E. C. Manning.

CHAPTER VIII

FEDERAL POLICY INPUTS -- BILL C-120 AND BILL C-231

INTRODUCTION

The second phase in the events leading to the enactment of the National Transportation Act began in December 1961 with the presentation of the Report of the Royal Commission on Transportation to the Diefenbaker Government. The Cabinet began to consider the Report's recommendations early in 1962 when a draft bill was prepared and submitted for approval. However, before the Cabinet had approved the bill in its final form, the government called the general election of June 1962. With the return of a minority Conservative Government, the Cabinet delayed further discussion of the transportation bill. As a result, the Diefenbaker Government never introduced the legislation into the House of Commons prior to its defeat in the House in February 1963.

With the coming to power of the Pearson Government in April 1963, the recommendations of the MacPherson Royal Commission were again considered by the Cabinet. The government prepared two bills -- Bill C-120 and Bill C-231. These two bills represented the two major federal policy inputs leading to the enactment of the National Transportation

Act.

In the succeeding three chapters, an attempt is made to examine the policy inputs from Western Canada during the development of the federal policy. Specifically, the policy inputs from the provincial governments, from the Members of Parliament, and from the pressure groups from Western Canada are reviewed in separate chapters. Such an analysis facilitates a review of the consultative procedures employed by the federal government during the enactment of the legislation and permits an assessment of the extent to which Western Canadian policy inputs were incorporated into the final policy output.

Before proceeding with the detailed analysis, it is necessary to outline the events surrounding the introduction of Bill C-120 and Bill C-231 into the House of Commons. A review of the provisions of these bills facilitates an assessment of the extent to which the recommendations of the Royal Commission, the provincial governments, the Members of Parliament and the pressure groups from Western Canada were incorporated into the final policy output. The chapter is divided into four sections. Section I outlines the events surrounding the introduction of the two bills into the House of Commons. The provisions of the two bills will be reviewed in Section II of the chapter. Section III reviews the extent to which the recommendations of the Royal Commission were incorporated into the legislation. The chapter concludes with an assessment of the

importance of Bills C-120 and C-231 as policy inputs into the decision-making process.

SECTION I: EVENTS LEADING TO THE INTRODUCTION OF BILL C-120 AND BILL C-231

A. Bill C-120

Bill C-120, An Act to amend the Railway Act, the Transport Act, and the Canadian National Railways Act, to repeal the Canadian National-Canadian Pacific Act,[1] incorporated many of the policy recommendations found in the Report of the Royal Commission on Transportation. While the bill was never enacted, it did provide the railways, the provincial governments, interest groups and Members of Parliament with the opportunity to make representations to the federal government and to a Parliamentary Committee that examined the bill. Several of the recommendations proposed were incorporated by the federal government into a revised bill, Bill C-231, that was introduced into the House of Commons in September 1966. Thus, Bill C-120 was an important policy input into the decision-making process leading to the enactment of the National Transportation Act of 1967.

The events surrounding the drafting of Bill C-120 commenced with the presentation of the Report of the Royal Commission on Transportation to the federal government in 1961. As was indicated in Chapter VII, Volume I of the Report was presented in March 1961, with Volume II and Volume III being presented in December 1961 and July 1962

respectively. The Diefenbaker Government was under pressure from both the railways and the provinces to enact legislation that would revise the provisions of the Railway Act dealing with freight rates, uneconomic passenger services, the Crow's Nest Pass rates, and the abandonment of rail lines. In 1959, the government had frozen all freight rate increases pending the report of the Royal Commission. Consequently, the railways urged the government to implement the recommendations of the Royal Commission as quickly as possible. The railways recognized that the enactment of the major recommendations of the Report would free them from many of the legislative restrictions imposed on them under the Railway Act and would permit them to raise their rates without the necessity of first receiving government approval. The provincial governments urged the federal government to indicate at an early date what legislative revisions it planned to enact with regard to the Crow's Nest Pass rates and the abandonment of rail lines. As a result, there was considerable pressure on the Diefenbaker Government from both the railways and the provincial governments to indicate the nature of the proposed revisions that would be enacted.[2]

A draft bill was prepared by the Diefenbaker Government that, in the opinion of Mr. Alvin Hamilton and Mr. J. W. Pickersgill, was almost identical to the provisions of Bill C-120.[3] The legislation prepared by the Diefenbaker

Government, while never introduced into the House of Commons, had been prepared by the fall of 1962. The legislation was referred to in the Speech from the Throne that opened the First Session of the Twenty-Fifth Parliament on September 27, 1962. The reference made in the Speech from the Throne to this legislation reads as follows:

> . . . In recognition of the important role of transportation in the Canadian economy, you will be asked to approve measures to give effect to recommendations of the Royal Commission on Transportation which has now completed its comprehensive analysis of the Canadian railway problem. These changes are intended to remove the need for general horizontal freight rate increases which have borne so heavily in the past upon certain areas and groups of producers. You will also be asked to provide for an extension of the Freight Rates Reduction Act and the other interim railway subsidies provided by appropriation. . . .[4]

The Diefenbaker Government was apparently committed to introduce the legislation in the fall of 1962 or the spring of 1963. In Mr. Hamilton's view, opposition obstruction prevented the government from introducing the legislation.[5] The government was in a minority position in the House of Commons at that time and the Cabinet was of the opinion that it would not be possible to have such a controversial and complex piece of legislation approved by Parliament. Mr. Hamilton characterized the events in Parliament in the fall of 1962 that thwarted the efforts of the government to introduce the bill in the following manner:

> . . . One of the most painful memories I have of that session, knowing the many hours that had been used in the preparation of this resolution, relates to my feeling at the time I read in the newspapers, as evidenced by the attitude here in this House,

> that the opposition was determined not only that no estimates would go through, but no legislation would be passed. One of the most devastating and determined efforts of the opposition to block legislation occured in the fall of 1962, and continued at greater lengths than ever before. . . .[6]

The statement made by Mr. Hamilton that the Conservative Government had drafted legislation and that it was prepared to present it to the House was confirmed by the Right Honourable John G. Diefenbaker. Speaking in the House of Commons on September 8, 1966, Mr. Diefenbaker confirmed that his government had prepared legislation. In part, he said:

> . . . We had the legislation ready. It took some months to get that legislation ready, and in the fall of 1962 the undertaking was given that early in 1963 we would proceed with the legislation. We were defeated in the House, went to the country, and a new government came into office. There was no delay or failure to take action for which we can be criticized, because we had to wait for reports. . . .[7]

There are many reasons advanced to explain the delay on the part of the Diefenbaker Government in introducing the railway legislation. No one of the reasons advanced fully explains the delay. A. W. Currie observed that the delay in implementing the recommendations of the MacPherson Royal Commission was due to a series of events between 1962 and 1967 that were "chiefly associated with party politics".[8] Mr. A. W. Platt suggested that the minority position of the government in the House of Commons was only one of several reasons for the delay on the part of the Diefenbaker Government.[9] For example, he suggested Mr. Diefenbaker was

disenchanted with the Report because it did not contain recommendations that would adequately protect Western Canada or eliminate many of the long-standing grievances such as horizontal percentage rate increases and long and short haul discrimination.

It is extremely difficult to assess Mr. Diefenbaker's reaction to the report. He made no comments on the report when it was tabled in the House, and there is no record of any public statements made by Mr. Diefenbaker that pertain to the recommendations. Perhaps his reaction to the general theme of the report is revealed in a speech he made in the House of Commons on second reading of Bill C-231 on September 8, 1966.[10] During the course of the speech, he criticized many of the provisions of the bill that incorporated the central recommendations of the Royal Commission. For example, he questioned the provisions in the bill that were designed to protect those areas of the country where the railways were in a monopoly position. In addition, he criticized a policy that would enable the railways to levy freight rates within the general limits of a maximum and a minimum formula. Perhaps his opposition to the recommendations of the report is implied in the following quotation:

> . . . There must be a body to control unjustifiable increases in freight rates. Are we going to hand over to the tender mercies of Canadian National Railways and the Canadian Pacific Railway the right to say: This is what we are going to charge, we can get away with it because there

> is no right of appeal or no effective appeal? They can charge whatever the traffic will bear. This is a proposition I cannot accept. . . .[11]

A second explanation offered by Mr. Platt was that the initial reaction of federal civil servants in the Department of Transport to the recommendations of the Royal Commission was extremely negative. There was no communication with the bureaucracy while the Commissioners were preparing their report and, as a result, they were not aware of the policy recommendations being considered by the Royal Commission. There was the belief among senior civil servants that the implementation of the recommendations that would remove governmental regulations threatened the role of the bureaucracy in the implementation and enforcement of transportation policy. In Mr. Platt's view, the bureaucracy's scepticism of the recommendations of the Royal Commission contributed to the delay in the preparation of the bill.

A third explanation of the delay in introducing the legislation into the House of Commons was that the railways did not place pressure on the government to implement the recommendations of the Royal Commission as a result of increasing revenues from the movement of grain in 1961, 1962, and 1963.[12] As indicated in Chapter VII, the central thesis advanced by the railways in their briefs to the Royal Commission was that they would be unable to increase their revenues as long as they were restricted in their ability

to meet the forces of competition. The upswing in the economy in the early 1960's, and in particular the increase in grain sales, increased railway revenues and no longer necessitated the immediate introduction of the legislation. Mr. Pickersgill did not accept the explanation that the railways had not placed pressure on the government to introduce the legislation. In his view, the railways had placed considerable pressure on him as Minister of Transport to introduce the legislation.[13]

A final explanation was offered by Mr. A. V. Mauro, legal counsel for the Manitoba Government during the enactment of the National Transportation Act.[14] Mr. Mauro noted that at the same time that the transportation bill was before Cabinet for discussion, the divisions within the Diefenbaker Government between Cabinet Ministers from Eastern and Western Canada had widened. The failure on the part of the Conservative Government to introduce the railway legislation, in Mr. Mauro's view, was a result of the inability of the Cabinet to reach agreement on the details of the legislation. The views of Mr. Hamilton, Mr. Diefenbaker and Mr. Churchill that Western Canada should receive greater protection under the terms of the legislation could not be reconciled with the views of Mr. Hees and Mr. Fleming that the recommendations freeing the railways from legislative restrictions should be implemented without delay. Perhaps these factors explain, in part, the delay in the introduction

of the legislation by the Conservatives.

Prior to the defeat of the Diefenbaker Government, the Cabinet made a commitment to the three provincial governments in Western Canada, as well as to agricultural groups such as the Wheat Pools of Manitoba, Saskatchewan, and Alberta, that the legislation would be introduced in the spring of 1963.[15] However, with the defeat of the government and the coming into power of the Liberal Government, the introduction of the bill was further delayed pending a detailed examination by the new Cabinet. In September 1964, legislation that was almost identical to the legislation prepared by the Diefenbaker Government was introduced into the House. In summary, these are the events leading up to the introduction of Bill C-120.

Bill C-120 was introduced into the House of Commons by the Honourable J. W. Pickersgill, Minister of Transport, on September 14, 1964. This was approximately two and one-half years after the Royal Commission had presented its Report. After a one-day debate on the resolution preceding the introduction of the bill, it was given first reading. There was no debate on second reading. All the political parties in the House of Commons had agreed at a meeting of House Leaders to the unusual procedure of giving the bill second reading without debate. The subject matter of the bill then would be referred to the Standing Committee on Railways, Canals and Telegraph Lines for detailed study.

The government had indicated to the House Leaders that the provisions of the bill were subject to revision and that the House should not proceed any further with the bill until all interested groups had the opportunity to present their views to the Parliamentary Committee. The Parliamentary Committee held hearings spanning a six-week period at which time representations from the railways, the Department of Transport and other interested groups were heard. The provincial governments from the three Prairie Provinces drafted a joint statement outlining their views with regard to the provisions of the bill. However, by the time the brief was in final form, the Parliamentary Committee had discontinued its hearings. Their views were communicated informally to both the Minister of Transport and to the members of the Parliamentary Committee that had examined the bill. The Committee never prepared a final report and the bill died on the order paper.

In his opening remarks to the House of Commons on the resolution preceding the introduction of the bill, the Honourable J. W. Pickersgill outlined the government's intentions regarding the enactment of the bill.[16] He noted that the government realized that there was not adequate time in the current session of Parliament to enact such a complex and intricate piece of legislation. The government was cognizant of the fact that the railways, the provincial governments and other interested groups were most anxious to make representations to the federal government. As a

result, the government recommended that the bill be referred at an early date to a Parliamentary Committee at which time interested parties could present evidence to the Committee. Mr. Pickersgill assured the House that the provisions of the bill could be altered and that the government would be willing to make revisions in the legislation if they considered them to be in the public interest. In Mr. Pickersgill's view, the government "could not be all wise about as difficult and complex a subject as this, and certainly the government does not intend to be".[17] While Mr. Pickersgill's actions appeared to be somewhat unconventional in 1964, the use of the White Paper and draft bills by the Trudeau Government since 1968 has made the practice of submitting proposed legislation to a Parliamentary Committee for review and study a more conventional procedure for governments to follow.[18]

B. Bill C-231

Bill C-231, An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other acts in consequence thereof and to enact other consequential provisions,[19] was the second policy input of the federal government into the decision-making process leading to the enactment of the National Transportation Act. There were only minor amendments made to the original provisions of the bill during the debate in the House of Commons and in the Parliamentary Committee that

examined the bill. Those amendments that were accepted by the government did not alter the basic philosophy of the bill nor change its basic provisions. Thus, Bill C-231, with minor amendments, became the National Transportation Act.

After a short debate on the resolution preceding the introduction of the bill, it was given first reading on August 29, 1966.[20] The six-day debate on second reading concluded on September 8, 1966. During the debate, Members of Parliament had the opportunity to debate the general principles of the bill. Several members from Western Canada urged the government to send the bill to a Parliamentary Committee for detailed study before second reading. They noted that once the bill had passed second reading this indicated that the House had accepted the general principles found in the bill. Western Members of Parliament, such as the Honourable Gordon Churchill, Mr. Dean Gundlock, and the Honourable Alvin Hamilton, indicated that they were opposed to having the House of Commons approve the general principles of the bill before the provinces and interested groups had the opportunity to make representations to the government outlining their views.[21] Despite these attempts on the part of the Opposition, the bill was given second reading and sent to the Standing Committee on Transport and Communications. The bill passed second reading without a recorded vote.

The Transport and Communications Committee held hearings on Bill C-231 from October 6 to November 24, 1966. During that time, representatives from the railways, from the provincial governments, and from various pressure groups presented briefs. The Committee prepared their report for the House of Commons on November 24, 1966 and it was debated in the Committee of the Whole House on December 20 and 21, 1966 and from January 9 to January 26, 1967. The Committee's report was approved by the Committee of the Whole House on January 26, 1967 and the bill was given third reading on January 27, 1967. After a short debate in the Senate, the bill was given Royal Assent on February 9, 1967.

The events surrounding the introduction of Bill C-231 commenced with the hearings of the Parliamentary Committee that studied the provisions of Bill C-120. The Committee did not prepare a final report for consideration by the House of Commons and there was no further legislative action. Bill C-120 had died on the order paper when the House of Commons was dissolved and a general election called by Prime Minister Pearson in October 1965.

In July 1965, the Premiers of the three Prairie Provinces met with Prime Minister Pearson and the Honourable J. W. Pickersgill to consider Western Canadian grievances regarding the provisions of Bill C-120 and to discuss the provisions of a revised bill.[22] Between October 1965 and August 1966, there were numerous discussions between federal

and provincial transportation officials regarding proposed amendments to Bill C-120.[23] The nature of these discussions will be outlined in detail in the next chapter. Emerging from these discussions was the decision by the federal government to broaden the terms of reference of the revised bill by developing a national transportation policy for Canada encompassing all modes of transport. The provisions of Bill C-120 were merely a series of amendments to the Railway Act incorporating many of the recommendations of the Royal Commission on Transportation. While the original bill contained references to the goals and objectives of transportation policy as it pertained to railways, there was no attempt to develop a comprehensive transportation policy encompassing all modes of transportation -- air, water, vehicular and commodity pipelines. The provisions of the revised bill not only established the rules and regulations governing the operation of these modes of transport, but also provided for the establishment of the Canadian Transport Commission -- a regulatory board that would assume the regulatory powers exercised by the Board of Transport Commissioners, the Air Transport Board, and the Canadian Maritime Commission. Clearly, the inclusion of these two provisions in the legislation were significant additions to the original provisions of Bill C-120.

The enactment of a national transportation policy encompassing all modes of transportation had been proposed

by several Members of Parliament during the Parliamentary Committee's hearings on Bill C-120 and by the Province of Saskatchewan in its brief to the Royal Commission on Transportation. Mr. Pickersgill supported their contention that, if the central philosophy of the MacPherson Royal Commission was to be implemented, the terms of the legislation could not be confined exclusively to one segment of the transportation industry -- the railways. As a result, Mr. Pickersgill persuaded his colleagues in the Cabinet to accept the provisions of a revised bill that would establish a national transportation policy that encompassed all modes of transport.[24] By August 1966, the federal government had finalized the provisions of the bill and it was introduced into the House of Commons.

In August 1966, the House of Commons was called into emergency session to deal with a national railway strike. From August 29 to August 31, the House of Commons considered the Maintenance of Railway Operation Act. With the enactment of this legislation on August 31, the railway workers returned to work on the basis of a settlement imposed by Parliament. Thus the atmosphere in the House of Commons was very tense when Mr. Pickersgill introduced Bill C-231 on August 29. Many Members of Parliament accused the Minister of using the crisis atmosphere surrounding the railway strike to pressure the House into passing the bill with little or no debate.[25] In particular, Members of Parliament from

Western Canada were suspicious of Mr. Pickersgill's strategy. They accused the Minister of attempting to link the legislation settling the railway strike with the provisions of Bill C-231. Western Members of Parliament reasoned that if the government introduced the National Transportation Act in a crisis atmosphere, and indicated to the general public that the enactment of this legislation would ensure that in the future such actions on the part of the railways would not occur, the Opposition would have no alternative but to enact the legislation after limited debate. Perhaps Mr. Gordon Churchill typified the negative reaction to Mr. Pickersgill's tactics in the following excerpt taken from his speech in the House of Commons during the debate on second reading:

> . . . He [Mr. Pickersgill] considered that this would be a great opportunity, with the house meeting under urgent conditions, to compel or urge the House of Commons to pass in double quick time his pet bill - this one on transportation - and linking it up with the railway strike to give the idea across the country that the two bills went together, and that one could not pass without the other. Then the House of Commons, seized of this urgency, would immediately pass those bills, and the minister would be very happy. . . .
>
> . . . If there is one bill that should not be classed as instant legislation, it is the bill presently before us. It has taken the government years to prepare it. It has taken the present minister over two years to get it ready. Its ramifications, as pointed out by many speakers, are profound and will affect our country for many years to come. This is not a bill which should be subjected to this new fangled idea of instant legislation. . . .[26]

In his opening remarks to the House of Commons during second reading, Mr. Pickersgill traced the origins of the bill from the Royal Commission on Transportation to the Parliamentary Committee hearings in 1965.[27] He noted that the government had made many revisions in the provisions of Bill C-120 with the most important being the development of a national transportation policy that included all modes of transport and the establishment of the Canadian Transport Commission. Mr. Pickersgill emphasized on several occasions that the provisions of the bill outlining the goals and objectives of transportation policy, the creation of the Canadian Transport Commission, and the provisions of the legislation pertaining to railways were the most important features of the bill.

During the course of his speech, Mr. Pickersgill appealed to the House for a non-partisan approach on the part of Members of Parliament when considering the provisions of the bill. He urged the Members to consider the national implications of the bill and warned them not to evaluate the bill on the basis of particular or regional interests. Given the minority position of the government in the House of Commons and the opposition from Western Canada to many of the provisions of the bill, Mr. Pickersgill's appeal to the House to consider the national implications of the legislation was apparently an attempt on his part to defuse regional discontent with particular provisions of the bill

and to focus attention on its national implications. Finally, the Minister reiterated the government's willingness to accept amendments to the bill proposed by Members of Parliament, provincial governments, and pressure groups. Mr. Pickersgill summarized the government's position on this issue in the following manner:

> . . . I do not think the bill is perfect. As a matter of fact I found a typographical error only today. I do not think it is only typographical errors that will be found in it. I think it will be found in the committee that there are a lot of improvements which can be made in the detail, and I think it is just as well for me to enter this caveat now. I will not consider that I am retreating, even if the hon. member for Carleton is able to produce a better idea than I have, and I accept his rather than mine. I will simply consider I am wise enough to use his estimable brain. I may say that I only use the hon. gentleman as an example. . . .[28]

SECTION II: THE PROVISIONS OF BILLS C-120 AND C-231

Section II of the chapter is devoted to a review of the major provisions of Bill C-120 that pertain to freight rates, and to a comparison of the provisions of Bill C-120 with the provisions of Bill C-231. Speaking in the House of Commons during the debate on the resolution preceding the introduction of the bill, the Honourable J. W. Pickersgill characterized the bill as being revolutionary in nature. The railways were no longer in a monopoly position in most areas of Canada, thus the legislative restrictions that had limited the ability of the railways to compete in the past could be removed. The forces of competition, in Mr.

Pickersgill's view, would govern the operation of the transportation system, except in those areas where there was no effective competition between the various modes of transport. The general philosophy of the bill was summarized by the Minister in the following manner:

> . . . The philosophical basis, if one wants to put it that way, of the legislation is that the railways now, in the main in most spheres, being subject to competition from other forms of transport, should be free to compete for business with other forms of transport, but with due regard to the national interest. . . .[29]

1. The Provisions of Bill C-120

The provisions of the bill dealt with issues such as compensation to the railways for maintaining uneconomic passenger services, the criteria for the regulation of freight rates, branch line abandonments, the Crow's Nest Pass rates, and subsidization of light density lines. While the bill outlined the objectives of transportation policy, there was no suggestion that a super regulatory board be created. In summary, the bill was a series of amendments to various federal statutes designed to implement the recommendations of the Royal Commission on Transportation. Those sections pertaining to the objectives of transportation policy and to the criteria for the determination of freight rates will be isolated for particular attention.[30]

A. The Goals of National Transportation Policy

Clause I of the bill outlined the goals of national transportation policy by noting that the first objective was the development of an efficient and competitive transportation system. Each mode of transport should be free to compete with other modes of transport except in those areas where a transportation monopoly was in existence. With regard to the railways, governmental regulation was not to limit the ability of the railways to compete with other modes of transport. Each mode of transport was, as far as practicable, to pay the costs of the services provided. Those services performed in the public interest, as a result of a government directive, were to be subsidized from the public treasury. It is clear that the objective of transportation policy was the development of an efficient and competitive transportation system where the forces of competition would be free to shape the industry. The "national unity" aspects of transportation policy received little or no emphasis except for references to governmental regulation in areas of monopoly and compensation for services imposed by statutory regulation.

B. Legislative Provisions for the Determination of Freight Rates

The legislative provisions outlining the criteria for the determination of freight rates are found in Sections

317, 328, 329, 334 and 335. The guiding philosophy of these sections of the bill was that existing provisions in the Railway Act such as "unjust discrimination", "undue preference", and the policy of "equalization of freight rates" were no longer relevant as criteria for the determination of rates. While these criteria were meaningful when the railways were in a monopoly position, they imposed obligations on the railways that restricted their ability to compete with other modes of transport.

All references to "unjust discrimination" and to "undue preference" were removed from the Railway Act and the railways were free to set rates within the general limitations of a maximum and a minimum formula. In addition, the traditional principle governing the establishment of freight rates, the "value of service" principle, was replaced by the "cost of service" principle. The railways would no longer determine their rates on the basis of "what the traffic could bear". In the future, rates would be calculated according to the fixed and variable costs involved in moving a good from point A to point B. The enactment of these provisions of the legislation pertaining to freight rates would have marked a fundamental change in the philosophy underlying railway legislation.

Section 334 of the bill established the criteria for the determination of minimum levels for rates. This provision constituted one of the two general limitations

placed on the railways in the determination of rates. In essence, this section stated that all rates must be compensatory -- i.e. that the minimum rate levied by a railway must meet the variable cost of moving the good from point A to point B. In determining whether or not a rate was compensatory, the Board of Transport Commissioners was directed to consider factors determined by the Board to be relevant in the calculation of variable costs. The Board, after investigation, could disallow freight rates that were not compensatory. In addition, complaints could be brought to the Board with regard to the compensatory nature of a rate and, if the complainant presented prima facie evidence to prove that the rate was not compensatory, the Board would initiate an investigation. On the basis of the evidence presented, the Board would rule on the compensatory nature of the rate.

Section 335 was designed to establish the maximum permissible level for freight rates, and to provide protection to those areas of the country where monopoly conditions were in existence. Briefly stated, a shipper, after negotiating with the railway in an attempt to obtain a satisfactory rate, could apply to have the rate fixed by the Board if there were "no competing transportation facilities available to him". After investigation to determine whether the shipper was truly captive of the railway, the Board could set a rate for the movement of the goods equal to the

variable cost of moving the good plus 150% of the variable cost. In determining the variable cost of moving the good, the Board was directed to calculate the cost on the basis of carloads of 30,000 pounds.[31] If the shipper accepted the rate set by the Board, he was obligated to transport all his goods via that railway for a one-year period. After the one-year period had elapsed, the agreement could either be re-negotiated or cancelled. This clause came to be known as the "captive shipper" clause.

Sections 334 and 335, establishing the maximum and minimum levels for rates and the provisions designed to protect the "captive shipper", were the two key clauses of the new bill pertaining to freight rates. These two provisions of the bill reveal the extent to which legislative restrictions on the railways had been removed.

Section 317 stipulated that if an act or omission on the part of one or more of the railways "prejudicially affects the public interest in respect of railway transportation", the Governor-in-Council was free to initiate an inquiry under the terms of the Inquiries Act. This was perhaps the most general power given to either the Cabinet or to the Board of Transport Commissioners to regulate freight rates, and most closely approximated the traditional legislative restrictions that had been placed on the railways in the past.

Sections 328 and 329 dealt with the Crow's Nest Pass rates on the movement of grain for export. The lower rates on the movement of grain and flour for export through the Ports of Fort William and Port Arthur, as stipulated by the Crow's Nest Pass Agreement of 1897, were guaranteed in Section 328(1) of the bill. In addition, the rates on the movement of grain through the Ports of Vancouver and Prince Rupert were included in the provisions of this section. Originally, the lower rates to these ports had been prescribed by an order of the Board of Transport Commissioners in 1927 and could have been amended by the Board at any time. With the inclusion of these rates in Section 328(2), they could only be amended by an Act of Parliament.

Section 329 authorized the payment of a subsidy to the railways to compensate them for losses incurred in the movement of grain for export. The railways were to receive a grant equal to the difference between the revenues received and the variable costs incurred in moving the grain. The exact amount of the subsidy was to be determined by the Board. To compensate the railways for the "constant costs" involved in handling and moving the grain, the Canadian National Railways was to receive an annual sum of $7.3 million, while the Canadian Pacific Railway was to receive a sum of $9 million. The payment of this subsidy was conditional on the railways not increasing the level of the rates levied on grain and grain products as of January 1,

1964. However, the subsidy to offset the "constant costs" in moving the grain and grain products was to be reduced when the revenues from the movement of the grain exceeded variable costs. Five years after the enactment of the bill, the Board of Transport Commissioners was directed to examine the "constant costs" of the Canadian National and Canadian Pacific Railways, and make recommendations to the Cabinet with regard to changes in the formula for the payment of subsidies.

The rates for the movement of grain by rail to Atlantic and Eastern parts, from inland points between Fort William and Prescott, Ontario, were to be maintained at the level applicable on April 1, 1964. The government was obligated to subsidize the railways for losses incurred in the movement of the grain in this area. These were the major provisions of the bill pertaining to rates levied on the movement of grain.

Section 45A of the bill established additional provisions for appealing a decision rendered by the Board. In the future, the Board could hear representations from provincial and municipal governments, as well as from pressure groups, on matters in which the party was not considered, in a legal sense, to be one of the "interested parties". This provision would permit provincial governments to make representations to the Board on behalf of a party that was presenting a formal appeal to the Board. It provided an

additional opportunity for the provinces to make their views known to the Board. The decision to permit interested parties to present evidence, however, was left to the discretion of the Board. The inclusion of this provision could have limited the effectiveness of this clause.

C. Costing Regulations and Procedures

The adoption of a cost-oriented rate structure necessitated that adequate costing regulations be developed that would outline the components of fixed and variable costs. The task of developing such regulations was given to the Board of Transport Commissioners. The bill did, however, outline certain factors, in Sections 387A, 387B, and 387C, that the Board was to take into account in the determination of the costing regulations.

Section 387A directed the Board to consider allowances for depreciation and whether or not money expended by the railways was borrowed money, when calculating fixed and variable costs. When the costs of a portion of a particular operation were to be determined, the costs involved for the entire undertaking, that were considered to be reasonable by the Board, could be included. Costs for future operations were to be estimated by the Board.

The determination of costs by the Board was final and they were binding on all parties. All costing regulations were to be published in the Canada Gazette thirty days

prior to their implementation. During that time, any person wishing to appeal the regulations could make application to the Board.

Finally, Section 387C stipulated that the Board of Transport Commissioners could not release confidential costing information to the general public in such a manner that it could be used by any other person. In summary, these are the relevant sections of Bill C-120 that outline the criteria for the determination of costing regulations and the criteria for the determination of freight rates.

2. The Provisions of Bills C-120 and C-231 -- A Comparison[32]

A. Objectives of Transportation Policy

One of the major additions to the provisions of Bill C-231 was that the bill outlined the goals and objectives for a transportation policy encompassing all modes of transport. The provisions of Bill C-120 had merely applied to one mode of transport -- the railways. Despite changes in the phraseology of Bill C-231, designed to ensure that these goals and objectives would apply to all modes of transport and not only to the railways, the major goal of an efficient and competitive transportation system where the user pays the cost of the services provided was not amended. The development of a national transportation policy and the creation of the Canadian Transport Commission accommodated in large measure the demands made by Members of Parliament and

by some of the provincial governments. For example, the Saskatchewan Government had proposed, in their brief to the Royal Commission on Transportation, the development of a national transportation policy and the establishment of a super regulatory authority designed to regulate all modes of transport within federal jurisdiction.[33] This proposal was supported by Members of Parliament from the New Democratic Party, such as Mr. D. Fisher, and by farm groups in Western Canada such as the National Farmers' Union.[34]

As will be noted in greater detail in succeeding chapters, the minor amendments made by the federal government did not accommodate the amendments proposed by the Western Canadian provinces in their brief to the Cabinet.[35] For example, the federal government amended the wording of the clause outlining the objectives of the transportation system from "an efficient, balanced and fully adequate transportation system" to "an economic and efficient transportation system".[36] This amendment did not, however, accommodate the demands of the Prairie Provinces that references to the elimination of discriminatory practices on the part of the railways be declared an objective of transportation policy. The amendment that all modes of transport be treated equally, proposed by the Canadian Industrial Traffic League, was not included in the provisions of the amended bill. In summary, the major amendments proposed by Western Canadians, designed to place greater emphasis on the national unity aspects of

transportation policy, were not accepted by the federal government.

B. The Crow's Nest Pass Rates

The only amendment to those provisions of the bill dealing with the Crow's Nest Pass rates was the deletion of that provision in Bill C-120 that obligated Parliament to pay an annual grant of $7.3 million to the Canadian National Railways, and a grant of $9 million to the Canadian Pacific Railway to compensate the railways for the "constant costs" incurred in moving grain for export. The new provisions of the bill merely obligated the Commission to review, three years after the enactment of the bill, the revenues and losses incurred by the railways on the movement of grain for export.[37] In a report to the Governor-in-Council three years after the enactment of the legislation, the Commission was to indicate the amount that should be paid to the railways to compensate them for their losses. The Governor-in-Council, however, was not obligated to accept the figures prepared by the Canadian Transport Commission.

The provinces had requested that all references obligating the government to pay an annual subsidy to the railways be removed from the legislation. While they were successful in having this provision removed from the bill, the federal government did retain a review procedure to determine the actual losses incurred by the railways. Thus, the provinces had only limited success in revising the

provisions of the bill pertaining to the Crow's Nest Pass rates.

During the debate on second reading of Bill C-231, Mr. Pickersgill explained that the dissatisfaction in Western Canada with the provisions of the bill that would obligate Parliament to pay an annual subsidy to the railways had forced the government to reassess its position on that issue. He indicated that the government should not have included this provision in Bill C-120. However, he defended the retention of the review procedure in the bill on the grounds that the Canadian Transport Commission could prepare a comprehensive costing study to determine actual losses incurred in the movement of grain for export. He assured the House that this review procedure was not the first step leading to the elimination of these rates.

C. Rate Regulation

There were several amendments made regarding the criteria for the determination of rates. The amendments to each section of the bill will be considered separately.

1. Section 317 - the public interest clause

The provisions of this section of Bill C-231 varied considerably from those found in Bill C-120. For example, under the provisions found in Bill C-120, the Governor-in-Council could initiate an inquiry into any act on the part of the railways that was considered to be detrimental to the

public interest. However, the provisions of the new bill were such that any person who believed that an action on the part of the railways would "prejudicially affect the public interest" could apply to the Canadian Transport Commission for leave to appeal the action. If the Commission was satisfied that a prima facie case had been established by the appellant, the Commission could investigate the complaint. The Commission was directed, when conducting its investigation, to consider all "relevant" matters. In particular, the Commission was to consider whether the action of the railway created "an unfair disadvantage beyond that which may be deemed to be inherent in the location, scale of operation or volume and type of traffic" and whether the control or interests of a railway company in another mode of transport was responsible for the action on the part of the railways. If the Commission determined that such an act on the part of the railways "prejudicially affected the public interest", it could order that such action on the part of the railways be terminated.

The Western provinces, as well as numerous pressure groups from Western Canada, had recommended that the provisions for an appeal to the Governor-in-Council be eliminated and that an appeal to the Board of Transport Commissioners be instituted in its place. This recommendation was incorporated into the provisions of the bill. It should be noted that the bill was amended by the Parliamentary Committee in

such a way that Section 317 became Section 16 of the final act passed by Parliament.

2. Section 334 - minimum rate formula

There were no changes made in the provisions of Bill C-231 with regard to the minimum rate formula. The provinces had recommended that a rate should be considered to be compensatory if the rate, including any subsidy paid by the federal government, equalled the variable cost of moving the good from point A to point B.

3. Section 336 - maximum rate formula

The provinces had proposed substantial amendments to the maximum rate formula; however, the amendments incorporated into the provisions of Bill C-231 did not accommodate the provinces' major criticisms of the formula. While the criteria used to determine whether a shipper was captive within the meaning of the Act was amended to read "no alternative, competitive and effective service", the Commission was given no guidance in determining when "no alternative, effective and competitive service" did in fact exist. The provinces had recommended that the difference between the variable cost of moving the good and the rate levied for the movement of the good would be one indication of when such a service did exist.

The 150% - 30,000 pounds provisions of the formula were not altered by the federal government despite the protests registered by the provincial governments. The provinces had proposed that rates on the movement of goods of more than 30,000 pounds be reduced by 50% of the variable cost of moving the good. The federal government amended the bill to provide for a 50% reduction on goods weighing more than 50,000 pounds. Finally, the provision in the legislation providing for a five-year delay before the formula came into effect was reduced to three years in the revised bill.

The only new provision found in Bill C-231 was the inclusion of a clause obligating the Canadian Transport Commission, five years after the bill was enacted, to undertake a study assessing the impact of the maximum rate formula on the freight rate structure. In summary, the proposals advanced by the provincial governments to have the provisions of the maximum rate formula amended in such a manner that they provided more protection to shippers and consumers in Western Canada were unacceptable to the federal government. The amendments that were accepted by the federal government did not alter the provisions of the bill in any significant way.

In addition to amendments to the maximum rate formula, the provinces had proposed a series of recommendations that would have left criteria for the determination of rates, such as "unjust discrimination", "undue preference", and

the policy of "equalization of rates", in the Railway Act. In addition, they proposed amendments that would have strengthened these legislative provisions. The federal government accepted the recommendation of the Royal Commission on Transportation that criteria such as "unjust discrimination" were not compatible with a cost-oriented rate structure and with a maximum and minimum rate formula. Thus, the proposal of the provinces that the traditional criteria be retained was rejected. In short, the provincial governments had little or no success in having their views accepted by the federal government.

D. Costing Procedures

There were only minor amendments to the provisions of Bill C-231 pertaining to costing regulations. For example, when determining variable and fixed costs, the Canadian Transport Commission was directed to consider the costing studies and techniques developed by the Royal Commission on Transportation. If the costing regulations issued by the Commission were challenged, the Commission could hold hearings at which time interested parties could make representations. The provinces had proposed a recommendation that would have obligated the Commission to hold public hearings when the costing regulations were challenged. Finally, the clause restricting the Commission from releasing confidential costing material obtained from various firms and industries was not amended when the revised bill was

drafted as had been proposed by the provinces.

5. Conclusion

A comparison of the provisions of Bill C-120 with those of Bill C-231 indicates that there were only minor revisions incorporated into the provisions of Bill C-231. The central philosophy of the bill and the provisions designed to implement that philosophy remained unchanged. For example, the minor amendments to those sections of the bill outlining the objectives of transportation policy did not incorporate the recommendations proposed by Western Canada that greater emphasis be placed on the national unity aspects of transportation policy. The amendments to those sections of the bill outlining the criteria for the determination of rates did not alter the provisions of the maximum and minimum rate formulae and did not re-establish traditional principles such as "unjust discrimination" as criteria for the determination of rates. The removal of the provision in those sections of the bill pertaining to the Crow's Nest Pass rates that granted an annual subsidy to the railways did not affect the status of those rates. Finally, the amendments to those provisions of the bill that established the criteria for the determination of costing procedures did not obligate the Canadian Transport Commission to release costing information obtained from the railways, and did not substantially revise the procedures to be used in developing

costing regulations that were outlined in Bill C-120.

SECTION III: THE RECOMMENDATIONS OF THE ROYAL COMMISSION AND BILLS C-120 AND C-231

A comparison of the provisions of Bills C-120 and C-231 with the recommendations of the Royal Commission on Transportation reveals the extent to which the recommendations of the Commission were incorporated into the legislation. The Honourable J. W. Pickersgill summarized the importance of the recommendations of the Royal Commission in the drafting of the legislation in his opening statement to the House of Commons on the provisions of Bill C-120:

> . . . When the present government was faced with the problem of deciding what if anything should be done about this problem - and it certainly called for some drastic action - the recommendations [of the Royal Commission] in the main have commended themselves to the government, and in the main we are proposing to ask Parliament to translate those recommendations into legislation, if the House is willing to accept this resolution and to permit the government to bring forward a bill. . . .[38]

A review of the provisions of the bills supports Mr. Pickersgill's statement. For example, the recommendations placing emphasis on the forces of competition as the guiding principle governing the operation of the industry, and the objective of promoting the development of an efficient transportation system, where the user pays the cost of services provided, were taken directly from the Report of the Royal Commission. The compensation of various modes of transport for providing services in the "public interest", and the failure to emphasize the "national unity" aspects of

transportation policy, further illustrates that the basic philosophy of the Report of the Royal Commission was accepted by the government and incorporated into the bill.

The sections of the bill establishing the criteria for the determination of rates further strengthens the contention that the government accepted many of the Commission's recommendations. The adoption of a cost-oriented rate structure, the removal of legislative restrictions on the railways, and the inclusion of a maximum and a minimum formula for the determination of rates were taken directly from the Report of the Royal Commission. The notion of the "captive shipper" and the need to protect certain regions of the country from the monopoly position of one mode of transport was one of the central recommendations of the Commissioners. The 150% - 30,000 pounds provisions, found in Section 335, as well as the provisions outlining the procedure for a shipper to declare himself to be captive of a particular mode of transport, were also taken directly from the Report.

There is, however, one crucial difference between the recommendations of the Royal Commission and the provisions of the bill with regard to the status of the captive shipper. The Commissioners recommended that any shipper could declare himself to be captive and could apply to the Board to have a rate fixed for the movement of his goods. The Board was obligated to provide that rate to the shipper. Under the provisions of the legislation, any shipper could

apply for captive shipper status, but the Board was not obligated to grant the shipper that status. After investigation, the Board could declare a shipper to be captive if there was sufficient evidence to prove that the shipper was in fact "captive" within the meaning of the bill. The government explained on several occasions its reasons for rejecting the recommendation of the Royal Commission that any shipper should be permitted to declare himself to be "captive" and apply to the Board of Transport Commissioners for a fixed rate. The government rejected this argument on the grounds that only those shippers who were truly "captive" of one mode of transport should be in a position to appeal to the Board for protection. The government expressed the view that, if the onus was left on the shipper to declare himself to be captive, many shippers who were not truly "captive" would apply for protection.[39]

The captive shipper clause was the subject of much criticism by pressure groups and by the Governments of Manitoba, Alberta, and Saskatchewan at the hearings of the Parliamentary Committee that studied the bill. Despite revisions in the recommendations of the Commission regarding the "captive shipper", it is evident that the majority of the recommendations were incorporated into the provisions of the bill outlining the criteria for the determination of rates.

The emphasis on the development of adequate costing procedures found in the various sections of the bill is also found in the recommendations of the Royal Commission. As indicated in Chapter VII, both the Commissioners and the federal government were convinced that costing procedures had improved to the point that fixed and variable costs could be determined with reasonable accuracy. Finally, the recommendations made by the Royal Commission regarding the Crow's Nest Pass rates were incorporated into the bill. The government accepted the Commissioners' view that the railways were in fact losing money on the movement of grain for export, and that they should be compensated for such losses. The formula for determining the subsidy to the railways, and the annual subsidy to defray "constant costs" involved in the movement of grain, are found in the recommendations of the Royal Commission. The obligation on the part of the federal government to review the compensatory nature of the Crow's Nest Pass rates every five years was recommended by the Commissioners. Thus, it is evident that the government not only accepted the general premises and philosophy of the Report, but also incorporated many of the specific recommendations.

SECTION IV: CONCLUSION

A comparison of the provisions of the National Transportation Act with the provisions of Bill C-120 and Bill C-231 reveals the importance of the bills as policy

inputs into the decision-making process. For example, the provisions of the National Transportation Act outlining the objectives of transportation policy are very similar to those outlined in Clause I of Bills C-120 and C-231. The provisions for a cost-oriented rate structure with a maximum and a minimum rate formula found in the National Transportation Act are almost identical to those found in Bills C-120 and C-231. The notion of the captive shipper and the procedure for declaring a shipper to be "captive" outlined in the National Transportation Act are taken from the two bills. Finally, the criteria for determining costing regulations and the provisions pertaining to the Crow's Nest Pass rates are taken directly from the bills drafted in 1964 and 1966.

Thus it is evident that the provisions of Bills C-120 and C-231 formed the basis for the National Transportation Act that was enacted by Parliament in 1967. Furthermore, the federal government incorporated the vast majority of the recommendations of the Royal Commission into the provisions of the two bills. The only significant addition was the federal government's decision to establish the Canadian Transport Commission. Despite the assurances of Mr. Pickersgill that the provisions of the two bills were subject to revision, it is apparent that the Cabinet had finalized its position prior to the introduction of Bill C-120 into the House of Commons. Any amendments that did

not concur with the general philosophy of the bill were dismissed by the Cabinet.

FOOTNOTES

[1] An Act to amend the Railway Act, the Transport Act and the Canadian National Railways Act, and to repeal the Canadian National-Canadian Pacific Act (Ottawa: Queen's Printer, 1964). This Act will hereafter be referred to as Bill C-120.

[2] Interviews with Mr. A. V. Mauro, Mr. G. Blair, Mr. J. W. Telford, and the Honourable J. W. Pickersgill.

[3] Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7982-7986.

[4] Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 25th Parliament, (1962-1963), Vol. I, p. 9.

[5] Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, p. 7984.

[6] Ibid..

[7] Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, p. 8196.

[8] A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1967), p. 22.

[9] Interview with Mr. A. W. Platt, June 25, 1971.

[10] Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, pp. 8196-8197.

[11] Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, pp. 8196-8197.

[12]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, p. 7986.

[13]Ibid., pp. 7986-7987.

[14]Interview with Mr. A. V. Mauro.

[15]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7984-7987.

[16]Ibid., pp. 7979-7982.

[17]Ibid., p. 7982.

[18]Among the bills that have been introduced into the House of Commons in draft form were revisions to the tax laws and The Competition Act.

[19]An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions, 1967, 14-15-16 Eliz. II. This bill will hereafter be referred to as Bill C-231.

[20]For details of the debate on the resolution preceding the introduction of the bill, see Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, pp. 7742-7744. For details of the debate on second reading, see Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, pp. 7988-8005, 8027-8051, 8061-8116, 8141-8182, and 8195-8211.

[21]Ibid., pp. 8000,8169-8174 and 8175-8176.

[22]Details of the July 1965 meeting were obtained in interviews with the Honourable E. C. Manning and with Mr. J. W. Telford, and from newspaper clippings from the Edmonton Journal of July 21 and 31, 1965.

[23]Details of the meetings between federal and provincial officials are found in telegrams from Prime Minister Pearson to Premiers Manning, Thatcher and Roblin of October 5, 1966; from the Honourable J. W. Pickersgill to the three Prairie

Premiers of October 20, 1966; from Premier Roblin to Prime Minister Pearson, October 7, 1966; and from Premier Manning to Prime Minister Pearson, October 12, 1966. See also a telegram from the three Prairie Premiers to Prime Minister Pearson of September 16, 1966, and a letter from Mr. A. V. Mauro, Mr. J. J. Frawley and Mr. D. G. Blair to Mr. J. R. Baldwin, Deputy Minister of Transport, of September 14, 1966. These documents appear as Exhibits A-11 and A-12 in Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Transport and Communications (House of Commons), 1st Session, 27th Parliament, (1966), No. 44. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1966).

[24]Interview with the Honourable J. W. Pickersgill.

[25]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966), Vol. III, pp. 8169-8179.

[26]Ibid., p. 8170.

[27]Ibid., pp. 7988-7999.

[28]Ibid., p. 7994.

[29]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, p. 7980.

[30]The information in succeeding paragraphs outlining the provisions of certain sections of Bill C-120 was taken directly from the bill and will not be footnoted.

[31]The figures of 30,000 pounds and 150% were taken directly from the Report of the Royal Commission.

[32]Details of the provisions of Bill C-231 and Bill C-120 were taken directly from the bills and therefore will not be footnoted.

[33]Brief of the Saskatchewan Government to the Royal Commission on Transportation, Final Summation and Argument, February 7, 1961, pp. 31-34.

[34]Brief of the National Farmers' Union to the Standing Committee on Transport and Communications, Parliamentary Committee Hearings (1966), No. 30, pp. 2123-2132.

[35]The policy proposals of Western Canada will be outlined in Chapters IX, X, and XI.

[36]Bill C-231, Clause I.

[37]Bill C-231, Section 329(1).

[38]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7978-7980.

[39]Parliamentary Committee Hearings (1966), No. 24, p. 1781.

CHAPTER IX

WESTERN CANADIAN POLICY INPUTS -- THE PROVINCIAL GOVERNMENTS

There were three major policy inputs from Western Canada into the decision-making process leading to the enactment of the National Transportation Act. The first policy input was the discussions and consultations between federal and provincial officials and politicians prior to the introduction of Bill C-120 and Bill C-231 into the House of Commons. A second input of Western Canadian views occurred during the hearings held by the Parliamentary Committees that examined the provisions of the two federal bills. On both occasions, provincial governments and interest groups from Western Canada presented extensive briefs outlining their views to the Committees. The third input came from the Members of Parliament from Western Canada during the debate in the House of Commons on the provisions of the two bills and during the hearings held by the Parliamentary Committees. The succeeding three chapters will examine in detail each of the three Western Canadian policy inputs.

The objective of this chapter of the dissertation is to examine the input of the views of the provincial governments from Western Canada into the decision-making

process. In particular, the nature of the policy recommendations proposed by the Prairie Governments in their briefs to the Parliamentary Committees that examined the two federal bills is reviewed. In addition, the extent and degree of consultation between the federal and provincial governments is examined in an attempt to determine if in fact the consultative procedures employed by the federal government in areas of provincial jurisdiction vary from the consultative procedures employed by the federal government in areas of federal jurisdiction. The chapter concludes with an assessment of the extent to which provincial views were incorporated into the final policy output.

The chapter is divided into three sections. Section I outlines the content of the briefs presented by the provincial governments to the Parliamentary Committees that examined the bills. Section II is devoted to a review of the nature and extent of the consultations and discussions between federal and provincial officials and politicians during the enactment of the legislation. The concluding section of the chapter examines the extent to which the policy proposals of the Prairie Provinces were accommodated in the final policy output.

SECTION I: PROVINCIAL POLICY INPUTS

A. Initial Reactions of the Provinces

This portion of the chapter is devoted to a review of the reaction of provincial politicians to the provisions

of Bill C-120 and Bill C-231 when the two bills were introduced into the House of Commons. The comments found in this section are drawn largely from newspaper reports, and from personal interviews conducted in Western Canada in June 1971.

1. Bill C-120

The strongest reaction to the provisions of the bill came from the Province of Alberta.[1] A review of newspapers at the time when the bill was introduced into the House of Commons indicated that it was the Alberta Government that led the opposition from Western Canada to those provisions of the bill dealing with freight rates. Premier E. C. Manning noted that the bill removed existing safeguards in the Railway Act that protected Western Canada from unrestricted freight rate increases by the railways. In particular, the Premier criticized the removal of all references to "undue preference" and "unjust discrimination" as criteria for the determination of rates, the absence of any reference to long and short haul discrimination, and the removal of the one and one-third rule from the Railway Act. In addition, he noted that the policy of "equalization of freight rates" had been abandoned. The maximum rate formula proposed in the legislation failed to give adequate protection to Alberta shippers. With regard to the details of the maximum rate formula, Mr. Manning observed:

> . . . If it remains unamended, it will prove virtually useless and a poor compensation for the existing safeguards which are being repealed. . . .[2]

An analysis of the details of the Alberta brief to the Royal Commission on Transportation, and of Mr. Manning's statement regarding the provisions of Bill C-120, would seem to indicate that the Alberta Government had altered its position with regard to the criteria that should be used to determine freight rates. The brief submitted by the Alberta Government to the Royal Commission called for the removal of criteria such as "undue preference" and "unjust discrimination" in the determination of rates, and recommended that a maximum and a minimum formula be substituted in their place.

Interviews with the Honourable E. C. Manning and with Mr. J. W. Telford revealed that the government had in fact changed its position with regard to the provisions of the bill in an attempt to strengthen its bargaining position with Ottawa.[3] The Alberta Government was extremely critical of the manner in which the federal government had drafted the provisions of the maximum rate formula for the determination of rates. The 150% - 30,000 pounds provisions of the clause, in Alberta's view, were not realistic and did not give adequate protection to those segments of the country where the railways were in a monopoly position. Thus, the objective of the Alberta Government, in future bargaining with the federal government, was to have the provisions of the maximum rate formula modified and to have a

more liberal definition of a "captive shipper" included in the bill. These were the central recommendations proposed in the Alberta brief to the Parliamentary Committee. In summary, the strategy of the Alberta Government was to oppose the basic philosophy of the bill, and through negotiations with the federal government have the maximum rate formula modified to give greater protection to Alberta shippers and consumers.

The reaction of the Government of Manitoba to the provisions of Bill C-120 was reported by the Winnipeg Free Press as being negative in nature.[4] The newspaper reported Premier Roblin as saying, ". . . the Ottawa transportation bill falls 'far short' of policy goals sought by the Manitoba government".[5] Mr. A. V. Mauro, legal adviser to the Manitoba Government, reacted even more negatively to the provisions of the bill and suggested that the bill protected the interests of the railways. He was quoted in the Winnipeg Free Press as having said:

> . . . It strikes me that this bill must have been prepared by the railways. If I was a CPR lawyer, I don't think I'd want anything changed. . . .[6]

2. Bill C-231

The only reaction of provincial politicians reported in the press when Bill C-231 was introduced into the House of Commons was that of the Government of Saskatchewan. The Regina Leader Post reported that the reaction of government officials to the provisions of the bill was "cool".[7] The

amendments to the provisions of the bill dealing with the captive shipper clause were seen as being "as good a compromise as could be achieved".[8] Mr. Woodrow Lloyd, Leader of the Opposition, was more critical of the provisions of the bill. He charged that the continued emphasis on the development of a transportation policy based on the principles of competition would have a negative impact on Western Canada.[9]

B. Briefs of Provincial Governments to the Parliamentary Committees

The Parliamentary Standing Committee on Railways, Canals and Telegraph Lines began its hearings on Bill C-120 on February 25, 1965.[10] The Committee hearings ended on March 25, 1965. Prior to the formal hearings, the members of the Committee had received briefings from officials of the Department of Transport at which time the provisions of the bill were explained in detail.

At the opening meeting of the Committee, there was some confusion on the part of the Members of Parliament as to the exact terms of reference of the Committee. The Committee had been instructed to consider the subject matter of the bill, but not the details of the bill. Several Members questioned the Minister as to how they could examine the general principles of the bill without considering specific provisions. In reply, Mr. Pickersgill noted that it was the hope of the government that the Committee would consider the general principles of the bill and that they would not become

preoccupied with attempting to draft amendments to specific provisions of the bill. This task, in his view, could be left to the experts in the Department of Transport.[11]

The Standing Committee on Railways, Canals and Telegraph Lines, under the chairmanship of Mr. J. T. Richard, Liberal Member for Ottawa-East, was composed of sixty Members of Parliament. The quorum for the Committee hearings was twelve and, during the hearings of the Committee on Bill C-120, there were never more than twenty Members present at any one time. There were twelve Members from Western Canada on the Committee. All of the Members of Parliament on the Committee from the West were Conservatives with the exception of Mr. H. A. Olson from Medicine Hat who was a member of the Social Credit Party.[12] The legal counsel for the Provinces of Manitoba, Saskatchewan, and Alberta, Mr. A. V. Mauro, Mr. G. L. Blair, and Mr. J. J. Frawley, were in attendance at all the Committee hearings. In addition, officials from the Department of Transport and from the Board of Transport Commissioners were present to outline and explain various provisions of the bill. The first two sessions of the Committee were devoted to presentations by these officials. The Honourable J. W. Pickersgill was in attendance at all the meetings, and he took an active part in the deliberations of the Committee on several occasions. The Canadian Pacific and Canadian National Railways did not present formal briefs to the Committee. Legal counsel for the two railways were

in attendance; however, they did not take part in any of the proceedings. In explaining their absence from the hearings, both railways noted that they would present a brief at a later date. Perhaps the failure on the part of the railways to present briefs at the hearings on Bill C-120 would indicate that they were satisfied with the general provisions of the bill.

The Standing Committee on Transport and Communications that examined Bill C-231 was under the chairmanship of Mr. J. Macaluso, Liberal Member of Parliament for Hamilton West.[13] The Committee held 33 meetings between October 6, 1966 and November 24, 1966 and received 36 briefs. The Committee was composed of 25 Members. There were seven Members of Parliament from Western Canada on the Committee: three from Saskatchewan, two from Alberta, and two from Manitoba.[14] The legal counsel representing the Provinces of Manitoba, Saskatchewan, and Alberta, Mr. A. V. Mauro, Mr. G. Blair, and Mr. J. J. Frawley, were in attendance at all the hearings of the Committee. In addition, officials from the Department of Transport were present to explain various provisions of the bill. Both the railways were represented by legal counsel at all these Committee hearings, and the President of the Canadian National Railways, Mr. Donald Gordon, and the President of the Canadian Pacific Railway, Mr. Ian Sinclair, presented briefs on behalf of their railways.

Because of the minor revisions in the provisions of Bill C-231, the nature of Western Canadian representations to the two Parliamentary Committees that examined the legislation did not vary significantly. It should be noted that the three Prairie Provinces prepared a joint brief outlining their views on the provisions of Bill C-120. This brief was never presented to the Parliamentary Committee but was submitted to the Cabinet. The briefs of each of the Prairie Provinces with regard to the provisions of Bill C-231 were presented directly to the Parliamentary Committee. The representations made by the Governments of Manitoba, Saskatchewan, and Alberta on the provisions of the two bills are considered in unison with references drawn from both Committees' hearings to illustrate the nature of the Western Canadian policy proposals.

During the Committees' proceedings, there were six major subjects that occupied the attention of the provincial governments: rate regulation; the Crow's Nest Pass rates; the goals of transportation policy; costing regulations; inequities in the freight rate structure; and the structure of the Canadian Transport Commission. Each of these areas will be considered separately. In each instance, the response of the federal government will be noted.

1. Rate Regulation

Those provisions of the bills establishing the criteria for the determination of rates were the subject of considerable debate in the Parliamentary Committee hearings. It became increasingly apparent that the maximum rate formula and the definition of a captive shipper were the two most important provisions in the bills in the view of the Western Canadian provinces. The comments of the provinces will indicate their preoccupation with the issue.

(a) The Province of Alberta[15]

The brief of the Government of Alberta was critical of the provisions of the legislation outlining the maximum and minimum rate formulae. In Alberta's view, the proposed formulae offered no protection to Western Canada and were poor substitutes for the provisions outlined in the Railway Act. The minimum rate formula did not restrict the railways' freedom to levy rates in that no railway would levy a rate that was lower than the variable costs incurred in moving the good.

The maximum rate formula was isolated for particular attention in the Alberta brief. The provisions of the maximum rate formula were criticized on the grounds that they departed from the recommendations of the Royal Commission, and that they provided no relief to the shippers and consumers in regions of the country where the forces of competition were inoperative. The objective of the maximum

rate formula as outlined in the Royal Commission's Report was to ensure that no shipper or consumer would pay a "disproportionately large" share of railway fixed costs borne by traffic moving on class and non-competitive commodity rates. In Alberta's view, the provisions of the formula failed to meet this objective and were deficient in two particular aspects -- the procedures followed by shippers to be declared captive were long and complex, and the 150% - 30,000 pounds provisions of the clause would result in the shippers paying higher rates.

The criteria used to determine when a shipper was captive of the railways were, in Alberta's view, totally inadequate. The phrase "no alternative, effective and competitive service" was meaningless if the railways' interpretation of the clause was accepted by the Canadian Transport Commission. In the railways' view, as long as there was market competition, a shipper was not captive within the meaning of the bill. The Alberta Government contended that if this definition was accepted it would be impossible to discover one captive shipper anywhere in Canada. The criteria proposed by the Alberta Government was that any shipper forced to pay a rate that exceeded the variable cost of moving the good by an excessive amount would be declared a captive shipper. What would constitute an excessive amount would be determined by the Canadian Transport Commission. In short, the Alberta Government maintained

that the captive shipper clause would provide protection to Western Canada only if the provisions of the clause establishing the criteria for a captive shipper were amended.

The 150% - 30,000 pounds provisions of the bill, in Alberta's view, were unrelated to existing conditions within the railway industry. The base figure of 30,000 pounds for calculating variable costs bore no relationship to the weight of goods being moved by rail. The actual weight of the good should be substituted for the base figure of 30,000 pounds when calculating the variable cost. The addition of 150% to the variable cost should be replaced by a percentage that would reflect the desired level of railway net earnings as calculated by the Canadian Transport Commission. Any figure calculated by the Commission should include the net earnings of all aspects of the railways' operations.

The provisions of Section 317 were so vague that they offered no protection to Western Canada. The Alberta Government questioned the inclusion of the phrase "the public interest" in the clause and suggested that it would be extremely difficult to prove that an action on the part of the railways was "prejudicial to the public interest". They recommended that a reference to "unjust discrimination" and "the relationship between the variable cost of moving a good and the rate levied for the movement of the good" be included in the section to give additional direction to the

Canadian Transport Commission in determining when an action on the part of the railways was "prejudicial to the public interest". In summary, the Alberta Government proposed that references to "unjust discrimination" and "undue preference" be retained in the Railway Act, and that the maximum rate formula and the "public interest" clause of the bill be substantially amended.

(b) The Province of Saskatchewan[16]

The brief of the Government of Saskatchewan contained similar views to those expressed in the brief presented by the Alberta Government. Both the maximum rate formula and the "public interest" clause of the bill were isolated for particular attention. In Saskatchewan's view, the provisions of the maximum rate formula in Bill C-231 had been improved by the inclusion of the words "effective and competitive" as the criteria for determining when a shipper was captive of the railways. Although the 30,000 pounds - 150% provisions of the formula were criticized in the Saskatchewan brief, no alternative provisions were proposed. The Saskatchewan Government indicated that any assessment of the maximum rate formula must await the developing of costing regulations by the Canadian Transport Commission. They proposed that the formula be assessed by the Commission three years after the enactment of the bill rather than after a five-year period as proposed in the bill.

(c) The Province of Manitoba[17]

The brief of the Manitoba Government expressed concern over the removal of legislative restrictions on the railways and supported the retention of references to "unjust discrimination" in the Railway Act. The provisions of the maximum rate formula found in Bill C-231 offered no protection to Western Canada. For example, the criteria used to determine a captive shipper were inadequate and would not protect those shippers or consumers in areas where the railways were in a monopoly position. The Manitoba Government proposed that all shippers who had received reductions in their class and commodity rates as a result of the enactment of the Freight Rates Reduction Act of 1959 be automatically included as captive shippers under the terms of the bill. This amendment would be of particular importance to Western Canada in that many of the rates reduced by the Act were levied by the railways in Western Canada.

The 150% - 30,000 pounds provisions of the formula were criticized by the Manitoba Government. They noted that these figures were chosen arbitrarily by the Royal Commission and were not supported by any statistical evidence. Furthermore, there had been no attempt on the part of the federal government to assess the impact that this formula would have on the freight rate structure. The Manitoba Government recommended that the 150% - 30,000 pounds provisions be replaced by a formula that would reflect the

difference between the total earnings of the railway and the variable costs involved in moving the good.

(d) Joint Submission of the Provinces of Manitoba, Alberta, New Brunswick, Prince Edward Island and Nova Scotia[18]

Two transportation economists, Mr. G. H. Borts and Mr. E. W. Williams were retained by the provinces to prepare briefs outlining the impact that the maximum rate formula would have on the freight rate structure. Both briefs expressed the view that the maximum rate formula offered no protection to areas where the railways were in a monopoly position. They urged the federal government to retain the traditional legislative restrictions such as "undue preference" and "unjust discrimination" as the criteria for the determination of rates. The 30,000 pounds base for determining variable costs offered no protection to shippers of low value bulk commodities. The addition of 150% to the variable cost of moving the good was not supported by statistical evidence and both Mr. Borts and Mr. Williams expressed the view that the figure would offset both fixed and variable costs.

The criteria used to define a captive shipper were criticized on the grounds that the legislation did not outline the conditions under which no "effective, competitive and alternative mode of transport" was said to exist. They urged the federal government to accept the recommendation of the Royal Commission that any shipper could declare himself to be captive and automatically receive a rate from the

Canadian Transport Commission. Finally they noted that the legislation emphasized the protection of railway revenue at the expense of lower rates to the consumer and shipper. In their view, the proposed maximum and minimum rate formulae for the determination of rates were without precedent. The central thesis of their argument is contained in the following quotation from the Committee hearings:

> . . . The Bill as it now reads conveys the distinct impression of overwhelming concern with the revenue position of the railways. There should be an equal concern for the well being of users of transportation, and for an efficient use of transportation resources.[19]

In response to these criticisms, Mr. Pickersgill noted that the objective of the maximum rate formula was not to protect shippers of low value bulk commodities. In his view, they received protection from statutory and low commodity rates as a result of competition in the marketplace.

(e) The Response of the Federal Government

The response of the federal government to the complaints of the provinces with regard to the provisions of the maximum rate formula was that they were merely implementing the recommendations of the Royal Commission on Transportation.[20] They rationalized the rejection of the Commission's recommendation with regard to the ability of the shipper to declare himself captive on the grounds that only those shippers in areas where there was no "alternative practicable route" should be permitted to apply for captive

shipper status. It was the government's view that shippers in areas where there was adequate competition between the various modes of transport should not be in a position to avail themselves of protection under the "captive shipper" clause. The government indicated that the 150% - 30,000 pounds provisions of the bill were taken directly from the Report of the Royal Commission. In essence then, the government accepted the major thesis of the Royal Commission that competition should be the guiding force within the transportation industry, and that the railways should not be limited in their ability to compete with other modes of transport by legislative restrictions. As a result, a cost-oriented rate structure was implemented and all references to "unjust discrimination" and "undue preference" as criteria for the determination of rates were removed from the Act.

2. The Crow's Nest Pass Rates

The provisions of Bill C-120 obligating Parliament to pay an annual subsidy to the railways for losses incurred in the movement of grain under the Crow's Nest Pass rates and the provisions of Bill C-231 obligating the Canadian Transport Commission to review the compensatory nature of the Crow's Nest Pass rates were the subject of debate during the proceedings of the Parliamentary Committees.

(a) The Provinces

In a joint brief submitted to the federal government in April 1965 on the provisions of Bill C-120, the Provinces of Manitoba, Saskatchewan, and Alberta were unanimous in their belief that the Crow's Nest Pass rates should remain under the jurisdiction of Parliament.[21] The subsidy to the railways for the movement of grain was challenged by the Prairie Provinces on the grounds that the railways had failed to prove that they were in fact losing money on the movement of grain. Costing procedures used by the railways and the Board of Transport Commissioners should be reviewed and the provincial governments should be given the opportunity to make representations on the matter. The Prairie Provinces recommended that Section 329(1) of the bill that provided for the payment of a subsidy to the railways be deleted from the bill in its entirety.

The Alberta brief on the provisions of Bill C-231 contained only a passing reference to the Crow's Nest Pass rates, but it did maintain that their costing studies revealed that the railways were not losing money on the movement of grain for export. Despite figures produced by both railways, the Government of Alberta remained convinced that the Crow's Nest Pass rates were compensatory.[22]

In contrast to the Alberta position, the Governments of Manitoba and Saskatchewan supported the inclusion in the bill of the clause that would have obligated the Canadian

Transport Commission to investigate the compensatory nature of the rates after three years.[23] The Manitoba Government urged the federal government to extend the low statutory rates on grain to grain and flour products moved to the Port of Churchill.[24] At the present time, the railways could raise the rates on grain being moved to Churchill, since they were not protected by statute.

(b) The Response of the Federal Government

The federal government explained that the inclusion of a subsidy on the movement of grain for export in the provisions of Bill C-120 was based on the recommendations of the Royal Commission.[25] The government noted that the Commissioners had determined, on the basis of costing studies, that the railways were in fact losing money on the movement of grain. The proposed subsidy to the railways was in keeping with the overall philosophy of the bill that when the railways were required to perform services as a result of statutory obligation, they should be compensated for these services.

During the Committee's hearings on Bill C-231, the Honourable J. W. Pickersgill assured both the Members of Parliament from Western Canada and the provincial governments that the inclusion of a provision in the legislation that would have obligated the Canadian Transport Commission to review the compensatory nature of the Crow's Nest Pass

rates was not the first step leading to their elimination. He noted that if the railways were in fact losing money on the movement of grain they should be compensated for those losses. A study undertaken by the Canadian Transport Commission would determine the extent of the losses incurred by the railways.[26]

3. Goals of Transportation Policy

(a) The Provinces

The provinces were of the opinion that Section I of the two bills, outlining the objectives of transportation policy, overemphasized the promotion and development of a national transportation system based on the principles of efficiency and competition.[27] In both bills, the "national unity" aspects of transportation policy were of secondary importance to the promotion of a competitive and efficient transportation system. In the provinces' view, the forces of competition in existence within the transportation industry, and the need to release the railways from legislative restrictions to meet the forces of competition, had been overemphasized by the Royal Commission and by the federal government. There were many areas of the country where one mode of transportation was in a monopoly position. Transportation policy, in the provinces' view, must ensure that goods are moved from one region of the country to another, and that one region of Canada is not subject to discriminatory

practices on the part of one mode of transport. Excessively high rates could retard the economic development of one region of the country at the expense of developing another region. In summary, the provinces urged the federal government to consider the "national unity" objectives of transportation policy to a greater extent.

(b) The Response of the Federal Government

When outlining the objectives of transportation policy, both Mr. Pickersgill and the officials of the Department of Transport noted that they were implementing the recommendations of the Royal Commission on Transportation.[28] The provisions of Clause I of the bills incorporated the general philosophy enunciated in the Report -- that the promotion of an efficient and competitive transportation system should be the primary goal of transportation policy. Mr. Pickersgill noted that the national unity aspects of transportation policy were not totally eliminated from the provisions of the bill. For example, he noted that there was protection for areas of the country where one mode of transport was in a monopoly position. In addition, the Board of Transport Commissioners could direct the railways to continue to provide services that were uneconomic. The railways would, however, be compensated for providing services that were imposed by governmental directive. As a result, the federal government noted that the national unity

aspects of transportation policy had not been ignored when the provisions of the bill were drafted.

4. Costing Regulations

The preparation of costing regulations by the Canadian Transport Commission aroused considerable debate during the hearings of the Parliamentary Committees. In particular, the release of confidential costing information by the Commission, the inclusion of non-rail revenue when assessing the railways' financial position, and the obligation on the part of the Commission to hold public hearings when costing regulations were challenged were issues raised by the provinces.

(a) The Provinces

The three Prairie Provinces were unanimous in their contention that the Canadian Transport Commission should be obligated to release confidential costing material obtained from the railways.[29] The provinces reasoned that it would be impossible to assess the impact of the maximum rate formula on the freight rate structure unless adequate costing information was obtained. The inability of the two transportation economists to assess the impact of the maximum rate formula is a case in point. Without this information they were unable to come up with solid arguments to oppose the proposed rate structure.

In their briefs to the Parliamentary Committee, the provinces urged the federal government to release costing information. In addition, telegrams were sent from Premiers Manning, Thatcher and Roblin to Prime Minister Pearson requesting that the material be released.[30] The Premiers noted that the maximum rate formula was the most contentious feature of the new bill and that it would be impossible to prepare briefs or to assess the impact of the formula without adequate costing data.

In the joint submission of the Provinces of Alberta, Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island, the provinces urged the federal government to amend the bill in such a manner that non-rail revenue be included in any financial assessment of the railways' positions.[31] When assessing the variable costs involved in moving goods, the Canadian Transport Commission should, in the provinces' view, include long-term variable costs. Finally, it was recommended that the Commission be obligated to hold public hearings when developing costing procedures.

(b) The Federal Response

The federal response to the request of the three Prairie Provinces was that, while the federal government was willing to assist the provinces in preparing their submissions, the basic philosophy of the bill was that competition should guide the operation of the transportation system.[32]

If the railways were obligated to release costing information, this could ultimately weaken their competitive position. The second reason advanced by the federal government was that the bill had been referred to a Parliamentary Committee for study and it would be improper to release the costing information to the provinces before it was released to the Committee. Finally, the federal government indicated that they would provide costing data to those shippers that the provinces believed would qualify for captive shipper status. In reply to Prime Minister Pearson's telegram, Premier Roblin noted that the federal government's refusal to release costing information indicated ". . . that the government is determined that the bill pass without delay and that the proprietary interests of the railways are of greater concern than a fair and equitable rate structure".[33] The telegram sent by Premier Manning to the federal government expressed similar views to those found in the telegram from the Manitoba Government. They were, however, expressed in a much more forceful way. In part, the telegram read:

> . . . The insistence upon adopting maximum rate control on the basis of fictitious costing is a negation of the arrangement requested by Minister of Transport on July 19th last in your presence when he requested that discussions on this specific subject be continued between our advisors and his departmental officers. Those discussions were in progress when Bill C-231 was introduced retaining the wholly fictitious costing techniques. Our advisors have been told that use of actual costs in the maximum rate determination formula would seriously erode rail revenue. Without data showing actual costs in lieu of fictitious costs

> no one can know with certainty the effect on rail revenues of the application of a true maximum rate determination formula based on actual costs. The Committee and Parliament should not be asked to blindly accept these vital provisions of Bill C-231. If cost data furnished as requested then consultants retained by Prairie and Atlantic Provinces will appear before Committee to present their assessment of the effect of the use of true rather than fictitious costs. The cost data which the provinces request is not proprietary information. MacPherson Commission rejected that plea. It is indefensible that railways should be allowed to present cost data when it suits their own purposes and refuse when the public interest demands such information. Again I strongly urge reconsideration of our reasonable request that you direct the railways to supply the cost data to officers of the Department of Transport for communication to consultants retained by Prairie and Atlantic provinces.[34]

5. Inequities in the Freight Rate Structure

(a) The Provinces

The only specific reference to inequities in the freight rate structure in the brief presented by the provinces is found in those sections dealing with the removal of all references to "unjust discrimination" and "undue preference" from the Railway Act.[35] The provinces noted that the inclusion of these provisions as criteria for the determination of rates limited the ability of the railways to levy higher rates in one region of the country than in another. As a result, the provinces urged the federal government to retain those provisions of the Railway Act establishing "unjust discrimination" and "undue preference"

as criteria for the determination of rates. Specific reference was made to the provisions of the bill that would eliminate the Bridge Subsidy. The provinces recommended that if the Bridge Subsidy was to be eliminated, it should be phased out over a number of years. In summary, there were very few references to inequities in the freight rate structure other than the recommendation that the provisions in the Railway Act forbidding "unjust discrimination" and "undue preference" be retained to assist in alleviating inequities in the freight rate structure. There was no specific response from the federal government nor the railways to this particular issue.

6. The Structure and Organization of the Canadian Transport Commission

The fusion of research and regulatory functions within one organization was the focal point of particular debate at the hearings of the Parliamentary Committee.

(a) The Province of Alberta

The Alberta Government did not comment extensively on the creation of the Canadian Transport Commission. In Alberta's view, the administrative and regulatory machinery established was too complex. No amendments were proposed by the Alberta Government to correct this situation. The one aspect of the Commission's work that did receive special attention was the power of the Commission to develop costing regulations. With the adoption of a cost-oriented rate

structure, the Alberta Government stated that it was essential that the Canadian Transport Commission possess the expertise necessary to evaluate and, if necessary, to challenge the costing figures developed by the railways. The following exeerpt from the Alberta brief reveals this concern:

> . . . These important provisions empower the Commission to determine costs. It need hardly be said that the Commission must set up a cost section which however much may be the expense involved, must be at least the equal in size and competence of the cost sections of the railways. If the new railway rate structure is to be cost-oriented for the protection of the shippers, the analysis of rail costs and the prescription of cost factors and methods for the use of the railways' cost officers will be the most important function of the Commission. We would recommend the addition of an appropriate paragraph to cover the Commission's Cost Section to the clauses setting down the powers and duties of the Commission - clauses 15 to 18.[36]

(b) The Province of Saskatchewan

The brief of the Saskatchewan Government supported the creation of the Canadian Transport Commission, although they did express some reservations regarding the proposed union of regulatory and research functions.[37] The development of adequate costing procedures by the Commission was seen as its most important function.

(c) The Province of Manitoba

The brief of the Manitoba Government made no direct reference to the establishment of the Canadian Transport Commission.

C. Summation

A review of the specific amendments proposed by the Western Canadian provinces in their briefs to the Parliamentary Committees indicates the nature of the proposed revisions.

1. The Goals of Transportation Policy

The proposed amendments to Clause I placed greater emphasis on the "national unity" aspects of transportation policy.[38] For example, it was proposed that two additional subsections be added. These subsections established "the provision of necessary and economic transportation services to all parts of Canada" and "the provision of railway and other modes of transport to compete freely so far as practicable" as goals for the transportation system.[39] The inclusion of phrases such as "as far as practicable", when referring to the forces of competition, and "the provision of necessary and economic transportation services" was designed to ensure that transportation policy would enhance the economic and political unity of the nation. Clearly, the objective of developing a competitive and efficient transportation system would be modified by these amendments.

The clause setting out the elimination of legislative restrictions on the railways as a goal of national transportation policy was to be modified by an amendment which placed more emphasis on providing adequate protection

to those shippers and receivers in areas where the railways were in a monopoly position. The ability of the railways to meet the forces of competition was to be qualified by a reference to "unjust discrimination". In attempting to compete with other modes of transport, the railways could not employ discriminatory practices on shippers, receivers, or on a region of the country. Clearly, the objective of these amendments was to place greater legislative restrictions on the railways, and to provide greater protection for those regions of the country where the railways were in a monopoly position.

2. Rate Regulation

The provinces proposed that references in the Railway Act to the equalization of rates be retained. In particular, they recommended that any shipper who believed that he was being unjustly discriminated against, by reason of the fact that the percentage difference between the variable cost of moving his good and the rate levied by the railway was unjust, could apply to the Canadian Transport Commission to have the rate reduced. After investigation, the Commission could reduce the rate by an amount necessary to alleviate the injustice. This provision of the bill was to apply to rates levied under both the Railway Act and the Transport Act. Thus the railways would not be able to bypass these provisions by negotiating agreed charges. In addition, it was proposed that the Commission could not

dismiss a charge of "unjust discrimination" on the grounds that such discrimination was justified by an agreement negotiated with a client.

The power of the Commission to disallow rates that were considered to be "unjust" or "unreasonable" was to be retained in the amendments proposed by the provinces. The section of the bill dealing with the minimum rate formula was to be amended in such a manner that a rate would be considered to be compensatory if the rate, plus any subsidy paid on the commodity, equalled the variable cost of moving the good from point A to point B. This amendment was specifically designed to protect industries, such as the coal industry, from higher freight rates. The provinces believed that the railways could use the minimum rate formula to levy a higher rate on goods that were subsidized by the government. This was the rationale for including this amendment.

The provinces proposed substantial amendments to the maximum rate formula. For example, they proposed that the criteria for the determination of the existence of a "captive shipper" should be if there was an "economically effective alternative route" for the movement of the good. In determining if such a route existed, the Commission should consider "all matters that it deemed relevant". The Commission would be instructed, however, to examine specifically the difference between the variable cost of moving the good and the rate being charged by the railways. Finally, all

shippers moving goods under commodity and class rates that had been subject to the Freight Rates Reduction Act would automatically be considered to be "captive shippers". The addition of this section to the clause would be of tremendous importance to Western Canada because the majority of the rates affected by the Freight Rates Reduction Act were being levied by the railways in Western Canada.

The provinces proposed that the 150% - 30,000 pounds provisions of the captive shipper clause be amended in such a manner that shipments of more than 30,000 pounds would receive a greater reduction than proposed under the formula outlined in the bill. In particular, the provinces recommended that the 30,000 pounds base for calculating variable costs be increased to 80,000 pounds. Finally, the provinces proposed that the $500 deterrent fee on applications for captive shipper status be removed, and that the maximum rate formula become operational one year after the bill was enacted.

3. Costing Procedures

The amendments proposed by the provinces regarding costing procedures were designed to ensure that the provinces and other interested groups would have the opportunity to make representations to the Canadian Transport Commission before any such procedures were implemented. In addition, the provinces urged the federal government to amend the provisions of the legislation in such a manner that the Commission

would be obligated to release all the relevant costing data when rendering a decision.

4. Crow's Nest Pass Rates

The provinces recommended that those sections of the bill providing a subsidy to the railways for the movement of grain for export be deleted from the provisions of Bill C-120. Furthermore, they recommended the removal of the provision found in Bill C-231 that obligated the Commission to review the compensatory nature of the Crow's Nest Pass rates three years after the enactment of the legislation.

5. Conclusion

A review of the amendments proposed by the provinces reveals that the issue of rate regulation was the topic of most concern. In particular, the provinces proposed amendments that would have left provisions such as "unjust discrimination" and "undue preference", as criteria for the determination of rates, in the Railway Act. In fact, specific amendments were proposed to strengthen these provisions. The maximum rate formula was to be amended to provide for a more liberal definition of the term "captive shipper", and to reduce the maximum rate that could be levied under that formula. Clearly, the intent of the amendments was to protect those regions of the country (i.e. Western Canada) where the railways were in a monopoly position. The Prairie Provinces were concerned that the provisions of the maximum

and minimum rate formulae offered no protection for Western Canada. As a result, they attempted to have these provisions of the bill changed.

The amendments proposed to Clause I of the bill further illustrate the concern of Western Canada that a transportation system governed by the forces of competition would not operate in the best interests of the West. The amendments designed to eliminate the subsidy to the railways on the movement of grain merely restated the long-standing contention of Western Canada that the railways were not losing money on the movement of grain for export. In summary, these were the major amendments proposed by the Prairie Provinces.

SECTION II: CONSULTATIONS BETWEEN FEDERAL AND PROVINCIAL POLITICIANS AND OFFICIALS

This section of the chapter is devoted to a review of the nature and extent of the consultations and discussions between federal and provincial politicians and officials prior to the introduction of Bills C-120 and C-231 into the House of Commons. Such a review facilitates an assessment of the consultative procedures employed by the federal government and isolates several variables that influence the degree of consultation between the two levels of government. The concept of consultation as it has been defined in the literature written on co-operative federalism has many meanings. Perhaps D. V. Smiley has defined the concept in the most precise manner. Writing in his book, Constitutional

Adaptation and Canadian Federalism since 1945, Smiley defines consultation as ". . . the process by which officials and public agencies, with some significant degree of both independent discretion and mutual interdependence, communicate to each other their respective perceptions of situations and their judgements of the appropriate way of dealing with these situations. . . ."[40]

A. 1961 - 1963

There were numerous consultations between the provinces and the federal government prior to the introduction of Bill C-120 in September 1964, with the majority of them taking place prior to February 1963. It should be noted that it was at this time that the Diefenbaker Government began to consider legislation to implement the recommendations of the Royal Commission. While the majority of consultations occurred during this period, this does not imply that the Conservative Government was more willing to discuss the provisions of the bill with the provinces than was the Liberal Government elected in 1963. In fact, Mr. A. V. Mauro recalled that despite the change in government there was no change in the attitude of the federal government with regard to consultations with the provinces.[41]

The consultations were dominated by the issue of rail line abandonment.[42] The issue of freight rates, and the proposed legislative provisions governing freight rates, received little or no attention. It is difficult to explain

the emphasis placed on the issue of rail line abandonment by federal and provincial politicians from Western Canada. There would appear to be two possible explanations, however.

The Minister in the Diefenbaker Government who was given the responsibility of consulting with the provincial governments from Western Canada and with other interested groups was the Honourable Alvin Hamilton. A review of Mr. Hamilton's speech preceding the introduction of Bill C-120 reveals that his major concern was the impact that rail line abandonment would have on Western Canada. He placed very little emphasis on the issue of freight rates or on the impact that the Commission's recommendations would have on Western Canada. It would appear that he believed that the implementation of the recommendations of the Royal Commission would remove the inequities within the freight rate structure that were of concern to Western Canada.[43] Why Mr. Hamilton took this position is difficult to explain, but two possible explanations of his views exist. One is that Mr. Hamilton did not fully understand the recommendations of the Royal Commission, and that he assumed that because Mr. MacPherson, the Chairman, came from Western Canada, the interests of Western Canada had been protected. A close reading of the conclusions of the Royal Commission reveals that Mr. Hamilton's assessment of the impact of the recommendations on Western Canada was much too optimistic. Another explanation is that Mr. Hamilton saw the issue of

rail line abandonment as a more serious problem to Western Canada than the issue of freight rates. As a result, he was preoccupied with the drafting of legislative provisions that would protect existing rail lines in Western Canada.[44]

The second reason why federal-provincial discussions were preoccupied with the issue of rail line abandonment is that the Prairie Governments had not fully realized the impact that the recommendations dealing with freight rates would have on Western Canada.[45] As was indicated in Chapter VII, the initial response of the West to the recommendations was favourable until the implications of the recommendations were fully realized. Actions of the Canadian Pacific and Canadian National Railways in the spring of 1962 diverted the provincial governments' attention away from the issue of freight rates to the issue of rail line abandonment when the railways began to announce that certain branch lines in Western Canada would be discontinued.[46] For example, in Saskatchewan, the railways revealed that 53 lines, accounting for 2,581 miles of track or 30% of the total mileage in the Province of Saskatchewan, were being considered for possible abandonment in the immediate future. In the fall of 1962, the Canadian Pacific Railway asked the Board of Transport Commissioners to hear applications for the abandonment of three lines in the Prairie Provinces -- one in each province. The railways continued their studies of branch line abandonment and, by August 1, 1965, the railways had

applied to the Board of Transport Commissioners to have 3,725 miles of track or approximately 20% of the total Prairie trackage abandoned.

The provincial governments, as well as organizations like the Wheat Pools, became increasingly concerned and they began to exert pressure on the federal government in an attempt to determine how the government was planning to implement the recommendations of the Royal Commission on rail line abandonment. Clearly, at this point, Western Canada was more concerned about this issue than about the issue of freight rates.

In the fall of 1962, the federal government met with representatives from the railways and the grain companies in Western Canada. The issue of rail line abandonment was discussed at the meeting and it was agreed that the federal government would introduce their legislation in the spring of 1963. No details of the legislation were released nor was any commitment made by the federal government to guarantee particular rail lines in Western Canada.[47]

In December 1962, Premier W. S. Lloyd of Saskatchewan called the Regina Conference on the Rationalization of Railway Lines to "formulate a common policy with regard to the proposed plans for the railways for massive abandonment of branch lines in Western Canada".[48] He expressed the hope that the representatives would "agree upon recommendations which can be forwarded to the federal government as soon as possible".[49] The meeting was attended by representatives

from the three Prairie Governments, as well as from the three Prairie Wheat Pools, the United Grain Growers, the provincial federations of agriculture, and representatives from Chambers of Commerce. The provincial government representatives reached an agreement "to request immediate consultation with the federal government respecting the problems of rail line abandonment and that pending such consultation further rail line abandonments or consideration of such be suspended".[50]

The non-governmental representatives reached an agreement on four main points:

(i) to call for an immediate stop in the present piece-meal consideration of rail abandonment.

(ii) to urge from the federal government a clear statement of its acceptance of responsibility and of its intended policy.

(iii) to call for initiation by the federal government of a planned rail rationalization program, the implementation of which includes immediate study to take into account the general interests of the Canadian economy and the special interests of the transportation media, the Prairie sector and the agricultural industry.

(iv) to recognize publicly the need for a rationalization program and admission by each participating organization of responsibility to work towards solution of the problems.[51]

At the conclusion of the meeting, the non-governmental representatives agreed to invite the Western Members of Parliament to meet with them over the Christmas Parliamentary Recess to discuss the issue. This meeting was never convened because the federal government called a meeting of

representatives of the provincial governments from Western Canada, of the railways and of the grain industry for January 4, 1963 to discuss the question of rail line abandonment. The outcome of the Ottawa meeting was extremely important because the governments, the railways and the grain industry reached an agreement regarding rail line abandonment that remained in force until the legislation implementing the Royal Commission's recommendations was enacted.[52] The Agreement, known as the "Ottawa Moratorium", contained three major points:

(i) that the railways would request the Board of Transport Commissioners not to proceed with either new or current applications for abandonment until new legislation was enacted or Parliament was dissolved. This came to be known as the moratorium or voluntary freeze on abandonments and it has been in continuous force since.

(ii) that the government proposed to introduce legislation at the current [1963] session of Parliament providing for "a planned approach to rail line abandonment".

(iii) that there is reason to expect that the proposed legislation will provide authority for the Board of Transport Commissioners in its regulatory function to take a longer-term view of the picture of individual branch lines, with power to defer abandonments on a planned basis.[53]

In addition, the federal government agreed to provide an opportunity during the enactment of the legislation for the three Prairie Provinces to submit briefs to the federal government outlining their position on the various aspects of the bill.

In August 1963, the three Prairie Wheat Pools met with the Transportation Committee of the federal Cabinet to discuss the branch line question. The Wheat Pools recommended that new criteria should be used to determine when a rail line should be abandoned, and that other alternatives to rationalizing railways be considered such as joint operating rights on lines and changes in the ownership between railway companies.[54]

Thus it can be seen that the majority of the discussions between the provinces, pressure groups and the federal government during the period from 1962 to 1963 regarding the details of the legislation was confined to the issue of rail line abandonment. This was the issue of immediate concern to the West and it was on this issue that they attempted to influence the details of federal legislation.

B. 1963-1964

With the coming to power of the Liberal Party in 1963, the government began to consider the details of the legislation drafted by the Conservative Government. With regard to the nature of consultations between the provinces and the federal government on the issue of freight rates, interviews with officials in the Governments of Manitoba, Saskatchewan and Alberta revealed that there were only limited consultations on this issue.[55] The Honourable Alvin Hamilton, speaking during the debate on the provisions of Bill C-120 in the House of Commons in September 1964,

noted that since the Liberal Government had been in power there had been no consultations with the provincial governments. In his opinion, the provinces had not been consulted since January 1963, and he noted that there was growing concern in Western Canada over the absence of consultation. He urged the federal government to consult with the provincial governments with regard to any future amendments to the legislation.[56]

In response to the charges by Mr. Hamilton that there had been no consultations with the provincial governments, the Honourable George McIlraith, speaking on behalf of the Minister of Transport, noted that there had been extensive consultations with the provinces during the drafting of the legislation, and that there was no need to brief them on the details of the legislation. In the Minister's words, the provinces ". . . are already experts on the background information with regard to this complex bill. . . ."[57]

During the proceedings of the Parliamentary Committee that examined the provisions of Bill C-120, Mr. J. R. Baldwin, Deputy Minister of Transport, revealed the nature of the consultations between the federal government, the provinces and the various groups prior to the drafting of the bill. He noted that the federal government had consultations with all the provinces, with the exception of one, at both the ministerial and the official levels. Mr. Baldwin indicated that in some instances federal officials merely

informed the provincial governments as to the intentions of the federal government. On other occasions, however, he indicated that there were discussions between the provinces and the federal government on various policy questions. He observed that the views of the provinces had been considered when the government was drafting the various provisions of the bill. The following excerpt from the Committee's proceedings summarizes Mr. Baldwin's comments on the extent of consultations with the provinces:

> . . . As you can imagine, the very important nature of this document and the subject matter is such that there has been a great deal of public interest, and accordingly a great deal of consultative procedure, both in the period before this bill came into print, and even subsequently with regard to the contents of the bill. . . .
>
> . . . Virtually all of the provinces - with possibly one exception - through various channels, both at ministerial and official level, have made representation to us or have discussed these matters with us. In some cases the discussions have been largely on matters of clarification intended to inform them of what the legislation intended. In most cases they have been actual discussions involving comments and suggestions back and forth. We have not had any discussion at the municipal level, although I believe some representations were made to this committee at the municipal level. The wheat pools in the west have had direct contact with us on several occasions, and the Northwest Line Elevator Company as well. The maritime transportation board, which is in effect the agency which represents the four Atlantic provinces has been our main channel of contact with the Atlantic provinces. Also, there has been communication from the Canadian Chamber of Commerce, the Canadian Manufacturer's Association, the Canadian Industrial Traffic League, and groups of business persons that are concerned. The Canadian Trucking Association has made representation to us, as well as the Railway Brotherhoods, the Dominion Marine Association, the Coal Operators Association, and quite a substantial number of individual companies which feel

> their interests could be affected one way or the other. These range from, let us say, the Steel Company of Canada to other similar large corporate entities. In addition, of course, there are the railways, not only the C.N.R. and the C.P.R., but also the Algoma Central and the Canadian and Gulf Terminal. All of them have been in at one point or another.
>
> . . . Their representations were taken into consideration both when the first legislation was drafted under the previous administration and they were taken into consideration again by the present administration and some changes were made in the legislation which has resulted in the present bill. The further representations they have made to us since are on other points and this is a matter for the minister to comment on and not myself.[58]

This statement suggests that there was consultation with the provinces prior to the drafting of the bill. Interviews with provincial officials in Western Canada lead one to question the exact nature of those consultations.

The Honourable E. C. Manning and Mr. J. W. Telford, of the Alberta Freight Rate Bureau, indicated that there had been no meaningful consultations with the federal government prior to the drafting of Bill C-120.[59] Mr. Manning revealed that the Alberta Government had attempted to obtain a draft copy of the bill. In his view, such a request was not unreasonable in that this had been the practice followed on many other occasions. The federal response was that the bill could not be released to the provinces until it was introduced in Parliament. Prior to the introduction of the bill, Mr. J. J. Frawley, representative of the Alberta Government in Ottawa, met on numerous occasions with officials of the Department of Transport in an attempt to gain information as

to the details of the bill. He did manage, on several occasions, to obtain pieces of information that indicated that the federal government was considering the inclusion of certain provisions in the legislation of concern to Alberta. This information was sent to Alberta and formal letters outlining Alberta's views were drafted and presented to the federal government. In effect, there were no real consultations. The Alberta Government merely responded to rumours and made representations outlining Alberta's views.

In an interview, Mr. R. Cope, one of the advisers to Mr. Pickersgill during the period from 1964 to 1966, supported the contention of the Alberta Government that the consultations between federal and provincial officials were very limited. He noted that he had met with Mr. Frawley on several occasions but that the meetings were off the record. None of the provisions of the bill were revealed during the discussions but, in Mr. Cope's words, "I tested ideas on him and I may have shown him a draft copy of several clauses of the bill".[60]

Interviews with officials of the Governments of Manitoba and Saskatchewan revealed a similar situation to that outlined by Mr. Manning and Mr. Frawley.[61] It is important to note, however, that Mr. A. V. Mauro, legal adviser to the Manitoba Government, left the impression during an interview that the relationships between federal officials and provincial officials in the Manitoba Government

during this period were much more conducive to the exchange of ideas.[62] For example, he recalled that the discussions with federal officials had left him with the impression that, while the provinces would not be placed in the position of actually drafting the legislation, they would be made aware of the federal position and would be given the opportunity to present their views to the federal government. This was perhaps the first indication that all the provinces had not been treated equally by the federal government during the consultations prior to the introduction of the legislation into the House of Commons.

Despite the assurances of the federal government that the legislation was only a draft bill, and was subject to amendment, provincial officials, in Alberta and Saskatchewan in particular, were convinced that the policy enunciated in the bill had been approved by the Cabinet in its final form and that they would be forced to criticize a policy that was not subject to change. Thus, the provincial governments concluded that the major provisions of the bill would not be altered by the representations made to the Parliamentary Committee or to the Cabinet. An assessment of the nature of the revisions incorporated in the provisions of Bill C-231 substantiates this view.[63]

On the basis of available information documenting the extent of consultations between the provinces and the federal government prior to the introduction of Bill C-120,

it is evident that the federal government did not consult extensively with the provinces in the drafting of the provisions of the bill. The provinces were forced to obtain information from federal officials in an "off the record" fashion and to make representations to the federal government on the basis of rumors, myths and half-truths. The only area where there was even limited consultation was on the issue of rail line abandonment. This consultation was precipitated by the attempts of the Canadian National and Canadian Pacific Railways to abandon considerable miles of trackage in the Prairies. Such action on the part of the railways was a source of concern in Western Canada and resulted in strong representations being made to the federal government from provincial governments and pressure groups. Clearly, in this situation, the federal government had no alternative but to consult with them. Had the railways not threatened to abandon such a large number of lines, it is questionable whether the federal government would have consulted with the provinces on even this issue.

C. 1965-1966

There were two major opportunities for consultation and discussion between federal and provincial politicians and officials during this period -- the Federal-Provincial Conference of July 1965 and the discussions between officials during 1966. Each of these events will be considered separately.

1. The Federal-Provincial Conference of July 1965

The only meeting of an official nature between federal and provincial politicians prior to the introduction of Bill C-231 was the meeting between the three Premiers of the Prairie Provinces, Prime Minister Pearson, and Mr. J. W. Pickersgill.[64] The meeting was held after the July 1965 Federal-Provincial Conference. Newspaper reports of the meeting indicate that certain provisions of the bill were discussed. The Prairie Premiers reiterated their opposition to the provisions of the "captive shipper" clause and urged the federal government to alter the details of the bill dealing with rail line abandonment. The final issue raised by the Premiers was the tax exemptions granted to the Canadian Pacific Railway on mainline property in Western Canadian cities. The federal government was urged to remove these tax concessions to the Canadian Pacific Railway found in Bill C-120. The Premiers had raised this issue along with the future status of the Crow's Nest Pass rates in letters to the Minister of Transport in 1964. In reply to these letters, Mr. Pickersgill promised that the government would take action on the tax exemptions and assured Western Canada that the Crow's Nest Pass rates on grain would not be removed. The Premiers used the meeting on July 19, 1965 to bring these issues to the attention of the federal government and to seek the assurances of the Minister that these

matters would be included in the revised bill.

The only formal agreement reached at the meeting was that officials would continue their discussions on the provisions of the "captive shipper" clause. In particular, the "150% - 30,000 pounds" provisions and the definition of a captive shipper were to be isolated for attention. Beginning in January 1965, there were numerous discussions between the provinces and the federal government at the official level to discuss these matters. To assist them in the discussions, the Prairie Provinces retained two experts in the field of transportation economics: Mr. George Borts and Mr. Ernest Williams. Both of these individuals had made representations to the Royal Commission on Transportation on behalf of the Prairie Provinces. The consultants advised the provinces that they could not assess the impact of the proposed maximum rate formula on the freight rate structure in Western Canada unless certain costing data was made available to them. This was not an unreasonable request because it was virtually impossible to determine the impact of the maximum rate formula unless detailed costing data was released.

In April 1966, costing data was released by Department of Transport officials, but the consultants indicated that the information obtained from the federal government was not adequate. In June 1966, representatives of the provinces met with officials of the Department of Transport in an attempt to obtain additional costing information. The

provinces outlined in explicit terms the precise nature of the costing data that was needed by the consultants. However, the federal government did not respond to this request. In September and October of 1966, letters were sent from the legal counsel of the three Prairie Provinces to the Deputy Minister of Transport, Mr. J. R. Baldwin, urging the federal government to release the costing information. By this time, Bill C-231 had been introduced into the House of Commons. Clearly, discussions with federal officials at this juncture would have been meaningless.[65]

The provincial governments were forced to take their case to the Parliamentary Committee. Premiers Manning, Thatcher and Roblin sent telegrams to Prime Minister Pearson requesting that the costing material be released to both the Parliamentary Committee and to the provincial governments. The Prime Minister replied that such costing material could not be released on the grounds that the competitive advantage of each railway would be destroyed by such an action. If the provinces could provide a list of shippers who they anticipated would be severely affected by the legislation, the federal government would release costing data on those specific rates. Premiers Roblin and Manning, in response to Mr. Pearson's telegram, again urged the federal government to release the costing data.[66] In their view, neither the provinces nor the Parliamentary Committee could assess the impact of the legislation without this costing information.

The federal government did not respond to provincial requests for the release of costing information and the refusal by the federal government to release the costing data severely limited the ability of the provinces to discuss the provisions of the maximum rate formula with federal officials.

In summary, there was limited consultation between the federal government and the provincial governments at the ministerial level. The provinces did not receive a copy of the bill until it was introduced into the House of Commons. Furthermore, the consultations never reached the point where the federal government revealed the precise nature of the amendments that they were planning to introduce to the provisions of Bill C-120. While there were more contacts at the official level, the majority of these meetings were "off the record" and there were no detailed discussions of the specific provisions of the bill. On issues such as the maximum rate formula, where the federal government had agreed to discuss the provisions of the legislation with the provinces, the provinces' ability to discuss the matter was severely limited by a lack of information. While the provincial governments did make representations to the federal government, in most instances these representations were made without knowing precisely what amendments the federal government was proposing to introduce.

D. Summation

The enactment of the National Transportation Act offers some insights as to the nature of the consultative

procedures employed by the federal government in areas of federal jurisdiction. These conclusions can be categorized under the following headings -- the position of the federal government, the channels of communication utilized by the federal government to consult with the provinces, and the factors that influence the degree of consultation between the two levels of government.

1. Federal Position

The federal government's attitude with regard to consultations with the provinces was revealed in an interview with the Honourable J. W. Pickersgill.[67] During the course of the interview, Mr. Pickersgill indicated that he is a federalist who believes that the spokesmen for Western Canada at the federal level are the Members of Parliament from Western Canada, and not the provincial governments of Manitoba, Saskatchewan, and Alberta. He noted that if he had engaged in direct consultations with the provinces, he would have undermined the position of the Western Member of Parliament. While he had never formally requested the provinces to consult with him or his officials with regard to the details of the legislation, Mr. Pickersgill did indicate that his officials received the representations of the provinces on several occasions. For example, he recalled that he had discussed the general principles of the bill with Premiers Thatcher and Roblin. In addition, he noted that he had discussions with the Honourable D. Steuart,

Provincial Treasurer for the Province of Saskatchewan, with Mr. A. V. Mauro, legal counsel for the Manitoba Government, and with the President of the Manitoba Pool Elevators, Mr. W. Parker. Mr. Pickersgill recalled that he solicited the views of the three Prairie Wheat Pools with regard to the provisions of the bill dealing with the Crow's Nest Pass rates. While the consultations with the provincial Premiers of Manitoba and Saskatchewan, and with the Presidents of the three Prairie Wheat Pools were characterized by Mr. Pickersgill as being "off the record discussions", he did indicate that they had provided him with an opportunity to discuss various provisions of the legislation with spokesmen from Western Canada who were in a position to convey the views of Western Canada to the federal government.

Thus it can be seen that the attitude of the federal government as exemplified by Mr. Pickersgill was hardly conducive to extensive and in-depth consultations between the provinces and the federal government on the various provisions of the legislation. In summary, Mr. Pickersgill was very selective in his consultations with provincial officials and representatives of pressure groups from Western Canada, and obtained only the views of those groups and individuals that he chose to listen to. During the debate in the House of Commons on the provisions of Bill C-231, Mr. Pickersgill was questioned by Mr. J. A. Mongrain, Independent Liberal Member of Parliament for Trois Rivieres, as to the extent of

consultations between the two levels of government prior to the introduction of the legislation into the House of Commons. Mr. Pickersgill's response to this question summarizes the attitude of the federal government with regard to the nature and extent of consultations with the provinces. In part, he said:

> . . . If I were the premier of Manitoba or Quebec - and I am not likely to be either - but if I were, and if someone in the legislature said to me, "Did you first consult Ottawa before introducing this legislation that is exclusively within provincial jurisdiction?" I would say "Of course not. It is our business; it is not theirs." I feel the same way about legislation exclusively within the jurisdiction of parliament, as this is. . . .[68]

2. Discussions at the Official and Political Level

The Royal Commission on Transportation of 1959 afforded Western Canada with an initial policy input into the decision-making process. After the Report of the Royal Commission had been presented to the federal government, the opportunities afforded to the provinces to convey their views to the federal government on the subject of freight rates were such that the provinces were forced to discuss the provisions of the legislation in a very general fashion.

In summary, the channels of communication utilized by the federal government to solicit the views of the provinces minimized the opportunity for the provinces to convey their views directly to federal officials. In most instances, Western Canadian views were conveyed indirectly to the

federal government through the Report and Proceedings of the Royal Commission on Transportation, through the briefs presented by the provincial governments to the Parliamentary Committees that examined the legislation, and by Western Canadian Members of Parliament during the debate in the House of Commons on the provisions of Bill C-231. While there were limited discussions between federal and provincial politicians at the Federal-Provincial Conference in July 1965, the provisions of the bill were discussed in such general terms that the provinces were not certain as to the federal position on the issue of freight rates. Furthermore, the discussions at the political level occurred after the Cabinet had approved the general philosophy and the major principles of the legislation. Thus, the argument that federal policy had not been finalized could not be used to justify the federal government's refusal to discuss the details of the legislation with the provinces.

While there were more extensive consultations at the official level, the discussions again were limited by the lack of information on the part of the provincial officials with regard to the details to federal policy and by the unwillingness on the part of the federal government to discuss any of the provisions of the bill in a detailed fashion. The majority of the discussions between federal and provincial officials were "off the record" and were of an unofficial nature. As a result, provincial officials

were continually attempting to determine the exact nature of the federal proposals. Finally, the majority of the consultations with the provinces at the official level occurred after the major provisions of the bill had been approved by the Cabinet. During the course of the consultations, provincial officials became increasingly aware of the fact that the federal position had been finalized by the Cabinet, and that the major provisions and the underlying philosophy of the bill were not subject to change or amendment.

3. Factors That Influence the Degree of Consultation with the Provinces

D. V. Smiley has noted four variables that influence the degree of consultation between federal and provincial officials -- the extent to which the federal and provincial participants can speak authoritatively for their respective governments, the extent to which federal and provincial officials share a common frame of reference, the extent to which the federal and provincial officials are committed to the achievement of an agreement on a particular issue and not to the enhancement of the influence of their respective governments, and the extent to which each government is willing to include the policy objectives of the other government within their own policy objectives. The consultation between the two levels of government during the enactment of the National Transportation Act provides an occasion to assess the importance of these variables.[69]

The most significant insight emerging from a review of the consultations between federal and provincial officials during the enactment of the National Transportation Act was the variations in the nature and the extent of consultations between the federal government and each of the Western provinces. In short, each of the three provinces was not treated equally by the federal government during the consultations surrounding the enactment of the National Transportation Act. For example, a series of interviews with federal and provincial officials involved in the enactment of the legislation revealed that there had been more extensive and in-depth consultations between federal and provincial officials in the Provinces of Manitoba and Saskatchewan than there had been with officials in the Province of Alberta.[70] There would appear to be three variables that influenced the degree of consultations between the three Prairie Provinces and the federal government: the personalities of the federal and provincial politicians and officials involved in the discussions and the manner in which each group of officials perceived the other group of officials; the political affiliation of the political leaders at the provincial and federal levels; and the policy objectives and bargaining techniques employed by federal and provincial officials. An examination of these variables may provide an explanation for the preferential treatment on the part of federal officials for particular provinces during the consultations

surrounding the enactment of the National Transportation Act.

(a) Perceptions of Federal and Provincial Officials

The working relationships that developed during the period from 1964 to 1967 between federal and provincial politicians and officials was a key factor in determining the extent and nature of the consultations between the two levels of government. For example, during the initial consultations between federal and provincial officials prior to the introduction of Bill C-120 in September 1964 and during the Federal-Provincial Conference of July 1965, federal and provincial officials were afforded the opportunity to exchange views and to assess the qualities and the capabilities of their federal or provincial counterparts. As the number of contacts between officials increased, both federal and provincial officials presumably began to develop mental images of their counterparts and to perceive their counterparts in a particular fashion. As a result, a number of the political actors at the provincial level came to enjoy the confidence and respect of their respective colleagues at the federal level and a working relationship emerged that was conducive to the exchange of information between the two levels of government.

The limited consultations at the political and official levels between the federal government and the Province of Alberta can be explained in part by an assessment of the

working relationship that developed between officials in Alberta and in Ottawa. In interviews with the Honourable J. W. Pickersgill and the Honourable E. C. Manning, it was apparent that the two men had not enjoyed a working relationship that would have been conducive to the exchange of information and views between the two levels of government.[71] For example, Mr. Pickersgill had little or no respect for the political views of Mr. Manning nor for the philosophy of Social Credit. Furthermore, he had no respect for the abilities of Mr. J. J. Frawley, the official designated by the Alberta Government to lead the negotiations with the federal government. On the other hand, Mr. Manning indicated that he did not believe that Mr. Pickersgill was genuinely interested in soliciting the views of the provinces with regard to various provisions of the legislation and that he was merely soliciting their views as a gesture of courtesy. Thus it would appear that the working relationship that developed at the political level between Mr. Pickersgill and Mr. Manning was not conducive to the exchange of information and to extensive consultations between the two levels of government.

The working relationship at the political level influenced the relationships that developed between federal and provincial officials. The feelings of distrust and insincerity that had characterized Mr. Manning's view of federal officials was extended to officials of the Alberta

Government who were responsible for negotiating with their federal counterparts. Interviews with provincial and federal officials revealed that they shared the views of Mr. Manning and Mr. Pickersgill.[72] Thus it is apparent that discussions at the official level were influenced by the nature of the relationship that had developed at the political level. In summary, the failure on the part of federal and provincial officials to develop a working relationship in which the sincerity and the confidence of their counterparts was not questioned severely limited the exchange of views and information between the two levels of government.

The working relationships that developed between officials of the Governments of Manitoba and Saskatchewan and officials of the federal government are in sharp contrast to the working relationship that developed between the federal government and the Government of Alberta. In a series of interviews with Mr. K. Setter, Mr. G. Blair, and Mr. A. V. Mauro, it became apparent that the attitude of federal officials to their counterparts in the Provinces of Manitoba and Saskatchewan was more conducive to the development of a working relationship that would lead to a more meaningful exchange of information between the two levels of government.[73] During the course of the interviews, they recalled that Premiers Thatcher and Roblin had enjoyed the confidence and respect of both Mr. Pickersgill and the federal officials.

In an interview with Mr. Pickersgill, he revealed that he had enjoyed a close working relationship with the two Premiers and that they had discussed the provisions of the legislation at private meetings on several occasions.[74] It was evident from Mr. Pickersgill's remarks that he had greater respect for the views of the Premiers of Manitoba and Saskatchewan than he did for those of the Premier of Alberta.

The relationships that developed between Mr. Pickersgill and the Premiers of Manitoba and Saskatchewan influenced the nature of the relationships that emerged at the official level. For example, the interviews revealed that there were more frequent and more extensive consultations between federal officials and officials of the Governments of Manitoba and Saskatchewan than there had been with the Alberta officials. In addition, the federal government was willing to discuss its proposals in greater depth and detail with the officials from Manitoba and Saskatchewan than they were with the Alberta officials.[75] For example, Mr. Mauro's recollection of the consultations between the federal government and the Manitoba Government differ sharply from the recollections of Mr. J. J. Frawley. Mr. Mauro indicated that, in his view, the federal government gave Western Canada every opportunity to present their views and that the federal government had been genuinely interested in soliciting the views of Western Canada. On the other hand, Mr.

Frawley recalled that the federal government displayed little interest in hearing the views of the West and that the federal government did not attempt to incorporate their demands into the provisions of the legislation. Thus, it can be seen that the three Prairie Provinces were not consulted to the same extent by the federal government during the enactment of the legislation and that one factor that determined the extent of consultations was the working relationships that developed between the officials and the politicians at the federal and provincial levels. It would appear that D. V. Smiley's contention that the extent to which federal and provincial officials have a common frame of reference and enjoy the confidence and respect of their counterparts are important variables influencing the nature and extent of consultations between the two levels of government.

(b) Political Affiliation of Federal and Provincial Politicians

A second factor that influenced the extent of consultations between the federal and provincial governments was the political affiliation of the federal and provincial politicians involved in the discussions. The strength of a province's bargaining position with the federal government and the political affiliation of the governmental party at the federal and provincial level has been the subject of considerable debate. For example, C. B. Macpherson has noted that political parties at the provincial level perform

a unique function -- the articulation of provincial demands at the federal level.[76] In Macpherson's view, this function could best be performed by political parties that were independent of the two national parties. Further support for Macpherson's views are found in Stephen Muller's characterization of the Canadian party system as having two distinct levels -- a national and a provincial level.[77] Thus, the balancing of centripetal and centrifugal forces within the federal system is institutionalized in the bargaining that occurs between the two levels of the party system. With the transformation of the federal system from classical to co-operative federalism, the importance of consultations between the two levels of government has increased significantly. Thus, the role of the governmental party as the spokesman for provincial interests would seem to be enhanced.

In a series of interviews with federal and provincial officials, it became apparent that the political affiliation of the political leaders in each of the three Prairie Provinces influenced the extent of consultations between the two levels of government, and the strategy employed by the provincial governments during their consultations with federal officials.[78] For example, in interviews with Mr. G. Blair and Mr. J. W. Pickersgill, it was revealed that the political affiliation of Mr. Pickersgill and Mr. Thatcher

was instrumental in the development of a working relationship that permitted an exchange of views between the Saskatchewan Government and the federal government.[79] In Mr. Blair's view, Mr. Thatcher concluded that, because the Liberal Party was in power both in Ottawa and in Regina, the best strategy for the Saskatchewan Government to employ during the consultations was to reject the adversary approach of openly confronting the federal government with its views at hearings of the Parliamentary Committee, and to work with federal officials at private meetings in an attempt to obtain the maximum number of concessions for Saskatchewan. Thus, in the case of Saskatchewan, the working relationships that developed between the two levels of government and the bargaining strategy employed by the provincial government were conditioned in large part by the political affiliation of the governmental parties in Ottawa and in Regina.

With regard to the nature and extent of consultations between the federal government and the Government of Manitoba, it would appear that the difference in political affiliation did not limit the extent of consultations between the two levels of government. Mr. A. V. Mauro recalled that there had been close consultations between the Diefenbaker Government and the Roblin Government in the early 1960's when the federal government was considering the recommendations of the Royal Commission on Transportation.[80] When the Liberals came to power in Ottawa in 1963, Mr. Mauro noted that the relationship between the federal government

and the government of Manitoba did not change at either the political or the official level. The absence of any change in the working relationship can be explained to a large extent by Mr. Pickersgill's personal friendship with Mr. Roblin. In an interview with Mr. Pickersgill, he confirmed the explanation offered by Mr. Mauro and observed that, despite the difference in political affiliation of the governments in power in Manitoba and in Ottawa, there were closer consultations with the Manitoba Government than there were with the Government of Alberta.[81]

The Honourable E. C. Manning referred to the importance of the political affiliation of the governmental parties at the federal and provincial levels.[82] He noted that the political affiliation of the governmental party in Ottawa and in the provincial capital could influence both the extent and the nature of consultations between the two levels of government. Mr. Manning observed that, while a provincial governmental party of the opposite political affiliation to the governmental party at the federal level may be in a stronger position to present its views to the federal government in a more forceful manner, the provincial party may be unable to follow up its initial policy proposals through the political lines of communication that would be present if the party in Ottawa and the party in the province were of the same political affiliation. During an interview with Mr. Pickersgill, it became evident that the political affiliation of the governmental party in Alberta influenced the

nature and the extent of consultations between the two levels of government.

In summary, an analysis of the events surrounding the enactment of the National Transportation Act reveals that the political affiliation of the governmental parties at the federal and provincial levels influenced both the nature and the extent of consultations between the two levels of government. It should be noted, however, that the similarity of the political affiliations of the federal and provincial parties did not influence to any great extent the degree to which the federal government accepted the amendments of the provincial governments. While there were more consultations between the federal government and the Government of Saskatchewan during the enactment of the legislation, the similarity in the political affiliation of the parties did not persuade the federal government to accept many of the proposals advanced by the Government of Saskatchewan.

A review of the events surrounding the enactment of the National Transportation Act indicates that there would appear to be a positive relationship between the frequency, the scope and the extent of consultations between the two levels of government when the governmental party is of the same political affiliation at the federal and provincial level. However, the nature of consultations between the Manitoba Government and the federal government during the enactment of the legislation suggests that, in instances

where the governmental party at the federal and provincial levels are of different political affiliation, the personal relationships that develop between the respective political leaders and their officials play a major role in determining the extent and the nature of the consultations between the two levels of government.

(c) Policy Objectives and Bargaining Techniques

The policy objectives and the bargaining techniques employed by the Prairie Provinces and the federal government during the enactment of the National Transportation Act influenced the nature and extent of the consultations between the two levels of government. As noted earlier, Mr. Pickersgill calculated that those provisions of the bill establishing the criteria for the determination of freight rates were so complex that the average voter in Western Canada would not understand the issues involved nor take a great interest in the debate.[83] However, there were two issues where Mr. Pickersgill calculated that Western Canadian public opinion could be mobilized -- the issue of rail line abandonment and the Crow's Nest Pass rates. Thus, in the consultations with the provinces, Mr. Pickersgill indicated that he would be willing to accommodate the views of Western Canada on the two issues where public opinion could be aroused to the point that the minority position of the federal government could be exploited. The provisions of the legislation establishing the criteria for the determination

of freight rates were, in Mr. Pickersgill's view, not such an issue. Thus, in the consultations with the provinces, those policy recommendations proposed by Western Canada pertaining to freight rates were for the most part ignored by the federal government.

The strategy employed by the Manitoba and Saskatchewan Governments during the enactment of the legislation differed drastically from the bargaining strategy of the Alberta Government.[84] For example, it would appear that the Manitoba and Saskatchewan Governments were aware of the fact that the provisions of the legislation establishing the criteria for the determination of freight rates was the one area where the federal government would strongly resist any major amendments to the legislation. In consultations between the federal government and the Government of Saskatchewan, the officials of the Saskatchewan Government realized that it would be virtually impossible to have the major provisions of the legislation pertaining to freight rates amended. As a result, during the consultations with the federal government, the Saskatchewan Government attempted to have the federal government revise its position on the issues of rail line abandonment and the Crow's Nest Pass rates. Having obtained concessions on these issues and having had the federal government accept minor amendments to the provisions of the legislation establishing the criteria for the determination of freight rates, the Saskatchewan Government realized that it had obtained all possible concessions.

The Government of Manitoba followed a similar strategy in that they realized that all their policy objectives could not be achieved. As a result, the Manitoba Government concluded that in its consultations with the federal government, concessions on the part of the federal government on one issue would have to be traded for the acceptance of the federal policy position on other issues. Therefore, while the Governments of Manitoba and Saskatchewan had certain policy objectives that they hoped to achieve during the consultations, they realized that all of their policy objectives could not be achieved. As a result, the federal government and the provincial Governments of Manitoba and Saskatchewan entered into the consultations with the attitude that there were certain policy issues where the provinces would demand changes in the legislation that the federal government would be prepared to accept. There were other policy issues, however, where the federal position was not subject to change. In summary, the Governments of Manitoba and Saskatchewan entered into the discussions with the federal government in the hope that provincial policy objectives would be realized to the extent that a selected number of their policy proposals would be incorporated into the legislation.

In contrast to the position of the Governments of Manitoba and Saskatchewan, the Alberta Government entered into the discussions with the federal government with a number of specific policy objectives that federal officials

were not prepared either to negotiate on or to change. The major issue of concern to Alberta was the criteria for the determination of freight rates. The issues of rail line abandonment and the Crow's Nest Pass rates were of secondary importance. The majority of Alberta's representations to the federal government centered on the question of freight rates. Many of the proposals advanced by Alberta were in direct conflict with the general principles of the legislation that had been approved by the Cabinet. When the federal government rejected Alberta's proposals, on the grounds that they conflicted with the general goals and philosophy of the legislation, the Alberta Government did not modify its position nor attempt to bargain with the federal government for less significant changes in the provisions of the legislation governing freight rates. Thus, it would appear that the bargaining strategy employed by the Alberta Government of establishing specific policy objectives that were not subject to amendment limited the extent and effectiveness of consultations between the two levels of government.

(d) Summation

The strategies employed by the three provincial governments lends support to Smiley's contention that the nature and extent of consultations between federal and provincial governments will be influenced by the degree to which each level of government incorporates the objectives of the other as part of its own policy priorities. In the

case of the Governments of Manitoba and Saskatchewan, it was recognized that all their policy objectives could not be achieved. As a result, they attempted to gain particular concessions from the federal government by accepting the fact that certain federal policy positions were not negotiable. The Alberta Government, on the other hand, totally rejected the federal position on the issue of freight rates and demanded amendments to specific provisions of the legislation that, in the view of the federal government, were not negotiable. In short, the Alberta Government failed to comprehend the federal strategy during the consultations.

In conclusion, it appears that all three variables -- the working relationships that developed between federal and provincial politicians and officials, the political affiliation of the parties in power at the federal and the provincial levels, and the bargaining strategy employed by the federal and provincial governments -- influenced the nature and the extent of consultations between the two levels of government.

The Governments of the three Prairie Provinces injected their views into the decision-making process by presenting briefs to the Parliamentary Committee that examined the provisions of Bill C-231 and through discussions with federal officials. In retrospect, it would appear that there is a relationship between the content of the briefs submitted by the three provincial governments to the Parliamentary Committee and the nature and the extent of the

consultations with federal officials. For example, the Government of Alberta, having had the majority of its recommendations dismissed by federal officials during the consultations, placed great emphasis on the discussions that took place in the Parliamentary Committee. Furthermore, the rejection of, or the failure to comprehend, the bargaining strategy employed by the federal government with regard to those features of the legislation that were negotiable led the Alberta Government to emphasize in their briefs those recommendations that had been dismissed by federal officials during the consultations. On the other hand, the Governments of Manitoba and Saskatchewan were more successful in conveying their views to the federal government during the consultations. Furthermore, they recognized and accepted the federal position that certain provisions of the legislation were not subject to revision. As a result, the Governments of Manitoba and Saskatchewan attached less importance to the discussions that took place before the Parliamentary Committee and their briefs to the Committee were moderate in tone. Thus, it would appear that there is a direct relationship between the content and the tone of the briefs submitted by each of the Prairie Governments to the Parliamentary Committee and the nature and the extent of the consultations between each province and the federal government.

SECTION III: THE ACCOMMODATION OF PROVINCIAL INPUTS -- AN ASSESSMENT

A review of the briefs submitted by the Provinces of Manitoba, Saskatchewan, and Alberta reveals that the provisions of the maximum rate formula and the obligation on the part of the Canadian Transport Commission to release costing information were the two most important issues in the view of Western Canadians. Increasingly, the provinces became convinced that the criteria used to define a captive shipper offered no protection to Western Canada. Throughout the Committee hearings, as well as in discussions between federal and provincial officials, the Prairie Provinces attempted to extract concessions from the federal government that would lead to revisions in the maximum rate formula. During the hearings of the Committee, it became evident to the three Prairie Provinces, and to Manitoba and Saskatchewan in particular, that the federal government would not revise those sections of the legislation. The Government of Alberta, however, continued to exert considerable pressure on the federal government to revise the provisions of the maximum rate formula.

The representations made by the railways and the federal government to the Parliamentary Committees did nothing to assure the provincial governments that the maximum rate formula would provide adequate protection for Western Canada from the monopoly position of the railways. Both the railways and the federal government expressed the view

that the maximum rate formula, and the captive shipper provisions of the bill, would seldom if ever be used. The forces of competition would ensure that each shipper would receive a fair and equitable rate from the railways.

The second issue that was of particular concern to Western Canada was the inclusion in the bill of a provision that did not obligate the Canadian Transport Commission to release costing information obtained from the railways. The provincial governments, as well as the Members of Parliament from Western Canada, attempted to force the federal government to release this costing information to the Committee. The central thesis of their argument was that it would be impossible to assess the impact of the proposed maximum rate formula without adequate costing data. In addition, without adequate costing data, it would be impossible for shippers, who were considering applying for captive shipper status, to determine if they should proceed with their application.

The Crow's Nest Pass rates were not the subject of a major debate at the hearings of the Parliamentary Committees. While the rates would be reviewed after three years to determine their compensatory nature, the provincial governments had received assurances from the federal government that the statutory rates on grain and grain products would remain within the jurisdiction of Parliament and would not be altered.

The provincial governments supported the creation of the Canadian Transport Commission. As a result, there was little debate on this issue. While the fusion of the regulatory and research functions, and the personnel of the Commission, were referred to by the provinces, these issues did not detract their attention from the major issues: the maximum rate formula, the release of costing information, and the abandonment of rail lines. These were the provisions of the bill that, in the opinion of the provinces, should be amended before the bill was enacted.

A review of the provisions of Bill C-231 and the National Transportation Act reveal that the major policy proposals of the provincial governments of Western Canada were not incorporated into the final policy output. Thus one is forced to conclude that the provincial governments were unsuccessful in having their inputs incorporated into the legislation.

FOOTNOTES

[1]Edmonton Journal, September 25, 1964.

[2]Ibid..

[3]Interviews with Mr. J. W. Telford and the Honourable E. C. Manning.

[4]Winnipeg Free Press, November 17, 1964.

[5]Ibid..

[6]Ibid..

[7]Regina Leader Post, August 30, 1966.

[8]Ibid..

[9]Ibid..

[10]This Committee is hereafter referred to as the Parliamentary Committee of 1965.

[11]Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Railways, Canals and Telegraph Lines (House of Commons), 2nd Session, 26th Parliament, (1964-1965), No. 12, p. 746. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1965).

[12]Parliamentary Committee Hearings (1965), No. 12, p. 746. A review of the proceedings of the Committee revealed that it was dominated by Members from Saskatchewan and Alberta. For example, there were seven Members from Saskatchewan: Mr. A. C. Cadieu (Meadowlake); Mr. R. Cantelon (Kindersley); Mr. N. Korchinski (Mackenzie); Mr. J. E. Pascoe (Moose Jaw-Lake Center); Mr. R. Rapp (Humboldt-Melfort-Tisdale); Mr. R. Southam (Moose Mountain); and Mr. C. O. Cooper (Rosetown-Biggar). There were four Members from Alberta: Mr. D. Gundlock (Lethbridge); Mr. L. Kindt (McLeod); Mr. T. Nugent (Edmonton-Strathcona); and Mr. H. A. Olson (Medicine Hat). There was one Member from Manitoba: Mr. G. Muir (Lisgar).

[13]This Committee will hereafter be referred to as the Parliamentary Committee of 1966.

[14]Membership of the Committee is found in Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Transport and Communications (House of Commons), 1st Session, 27th Parliament, (1966), No. 23. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1966). The Members of Parliament from Western Canada on the Committee were: Mr. R. Cantelon (Progressive Conservative, Kindersley); Mr. J. Horner (Progressive Conservative, Acadia); Mr. H. A. Olson (Social Credit, Medicine Hat); Mr. E. Schreyer (New Democratic, Springfield); Mr. L. R. Sherman (Progressive Conservative, Winnipeg South); Mr. R. Southam (Progressive Conservative, Moose Mountain); Mr. J. E. Pascoe (Progressive Conservative, Moose Jaw-Lake Center).

[15]Brief of the Province of Alberta to the Standing Committee on Transport and Communications, Parliamentary Committee Hearings (1966), No. 39, pp. 2807-2821. Details in succeeding paragraphs were taken from this brief.

[16]Brief of the Province of Saskatchewan to the Standing Committee on Transport and Communications, ibid., No. 32, pp. 2236-2261. Details in succeeding paragraphs were taken from this brief.

[17]Brief of the Province of Manitoba to the Standing Committee on Transport and Communications, ibid., No. 38, pp. 2628-2701. Details in succeeding paragraphs were taken from this brief.

[18]Brief of the Provinces of Manitoba, Alberta and the Maritimes to the Standing Committee on Transport and Communications, ibid., No. 40, pp. 2887-2902. Details in succeeding paragraphs were taken from this brief.

[19]Ibid., p. 2899.

[20]Parliamentary Committee Hearings (1965), No. 12, pp. 750-752.

[21]Proposals of the Maritimes Transportation Commission representing the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and the Provinces of Manitoba, Saskatchewan and Alberta for Amendments to Bill C-120 and Memorandum of Amendments to Bill C-120, Ottawa,

April 2, 1965, pp. 8-9. This brief will hereafter be referred to as the Brief of the Provinces.

[22]Brief of the Alberta Government, op. cit., pp. 2750-2751.

[23]Brief of the Saskatchewan Government, op. cit., p. 2240.

[24]Brief of the Manitoba Government, op. cit., pp. 2651-2652.

[25]Parliamentary Committee Hearings (1965), No. 12, pp. 752-754.

[26]Parliamentary Committee Hearings (1966), No. 23, p. 1668.

[27]Brief of the Provinces, pp. 1-2.

[28]Parliamentary Committee Hearings (1965), No. 12, p. 749.

[29]Briefs of the Provinces of Manitoba, Saskatchewan, and Alberta, op. cit..

[30]Telegram from Premiers Manning, Thatcher, and Roblin to Prime Minister Pearson, September 15, 1966, Exhibit A-11.

[31]Brief of the Provinces, op. cit..

[32]Telegram from Prime Minister Pearson to the three Prairie Premiers, October 5, 1966, Exhibit A-11.

[33]Telegram from Premier Roblin to Prime Minister Pearson, October 7, 1966, Exhibit A-12.

[34]Telegram from Premier Manning to Prime Minister Pearson, October 12, 1966, Exhibit A-12.

[35]Brief of the Provinces, pp. 7-8.

[36]Brief of the Alberta Government, op. cit., pp. 2809-2810.

[37]Brief of the Saskatchewan Government, op. cit., pp. 2241-2242.

[38]A summation of the proposed amendments is found at the conclusion of the Brief of the Provinces. Details in succeeding paragraphs were taken from this summation.

[39]Ibid., p. 1.

[40]D. V. Smiley, Constitutional Adaptation and Canadian Federalism since 1945 (Ottawa: Queen's Printer, 1970), p. 112.

[41]Interview with Mr. A. V. Mauro on September 30, 1971.

[42]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7984-7987. Mr. Hamilton documented the consultations between the Conservative Government and the Prairie Provinces. Additional information was obtained from a speech by Mr. R. Phillips, Research Director of the Saskatchewan Wheat Pool, to the Annual Meeting of the Wheat Pool in 1970, entitled "A Decade of Railway Rationalization".

[43]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7982-7987.

[44]Interview with Mr. A. V. Mauro.

[45]This explanation was advanced in interviews with Mr. A. W. Platt, Mr. J. W. Telford, and the Honourable E. C. Manning.

[46]Speech of Mr. R. Phillips. Details in succeeding paragraphs were obtained from this speech.

[47]Ibid..

[48]Ibid., p. 5.

[49]Ibid..

[50]Ibid., p. 6.

[51]Ibid..

[52]Ibid., pp. 6-7.

[53]Ibid..

[54]Ibid., p. 7.

[55]Interviews with the Honourable E. C. Manning and Mr. J. W. Telford.

[56]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7984-7987.

[57]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, p. 8530.

[58]Parliamentary Committee Hearings (1965), No. 12, p. 758.

[59]Interviews with Mr. J. W. Telford and the Honourable E. C. Manning. Details in succeeding paragraphs were taken from these interviews.

[60]Interview with Mr. R. Cope, September 9, 1971.

[61]Interviews with Mr. A. V. Mauro, Mr. G. Blair, and Mr. K. Setter.

[62]Interview with Mr. A. V. Mauro.

[63]This point is explained in greater detail at the conclusion of the chapter.

[64]Details of the July 1965 meeting were obtained in interviews with the Honourable E. C. Manning and with Mr. J. W. Telford, and from newspaper clippings from the Edmonton Journal of July 21 and 31, 1965.

[65]Details of the meetings between federal and provincial officials are found in telegrams from Prime Minister Pearson to Premiers Manning, Thatcher, and Roblin of October 5, 1966;

from the Honourable J. W. Pickersgill to the three Prairie Premiers of October 20, 1966; from Premier Roblin to Prime Minister Pearson, October 7, 1966; and from Premier Manning to Prime Minister Pearson, October 12, 1966. See also a telegram from the three Prairie Premiers to Prime Minister Pearson of September 16, 1966, and a letter from Mr. A. V. Mauro, Mr. J. J. Frawley, and Mr. G. Blair to Mr. J. R. Baldwin, Deputy Minister of Transport, of September 14, 1966. These documents appear as Exhibits A-11 and A-12 in Parliamentary Committee Hearings (1966), No. 44.

[66]In response to Prime Minister Pearson's telegram, the Premiers of Manitoba and Alberta urged the federal government to release the costing data. Premier Thatcher of Saskatchewan did not reply to Mr. Pearson's telegram. An explanation of this may be that Premier Thatcher communicated his views informally to the federal government. This would have coincided with Saskatchewan's general position to rely on political lines of communication to convey its views to the federal government.

[67]Interview with the Honourable J. W. Pickersgill, September 9, 1971.

[68]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966-1967), Vol. III, p. 11637.

[69]D. V. Smiley, op. cit., pp. 112-113.

[70]Interviews with Mr. A. V. Mauro, Mr. G. Blair, Mr. K. Setter, Mr. J. J. Frawley, Mr. J. W. Telford, and the Honourable E. C. Manning.

[71]Interviews with the Honourable E. C. Manning on July 8, 1971 and with the Honourable J. W. Pickersgill.

[72]Interviews with Mr. J. W. Telford; Mr. J. J. Frawley on September 8, 1971; with Mr. R. Cope on September 9, 1971; and with Mr. H. Arbique on September 7, 1971.

[73]Interviews with Mr. K. Setter, Mr. G. Blair and Mr. A. V. Mauro.

[74]Interview with the Honourable J. W. Pickersgill.

[75]Interviews with Mr. J. W. Telford, Mr. J. J. Frawley, Mr. K. Setter, Mr. A. V. Mauro, and Mr. G. Blair.

[76]C. B. Macpherson, Democracy in Alberta (Toronto: University of Toronto Press, 1953).

[77]Stephen Muller, "Federalism and the Party System in Canada", in J. P. Meekison, ed., Canadian Federalism: Myth or Reality? (Toronto: Methuen, 1968), pp. 119-135.

[78]Interviews with the Honourable E. C. Manning, Mr. J. W. Telford, Mr. J. J. Frawley, Mr. K. Setter, Mr. A. V. Mauro, Mr. G. Blair, the Honourable J. W. Pickersgill, and Mr. R. Cope.

[79]Interview with Mr. G. Blair.

[80]Interview with Mr. A. V. Mauro.

[81]Interview with the Honourable J. W. Pickersgill.

[82]Interview with the Honourable E. C. Manning.

[83]Interview with the Honourable J. W. Pickersgill.

[84]The strategy of the Manitoba, Saskatchewan, and Alberta Governments during the enactment of the National Transportation Act was revealed in interviews with Mr. J. W. Telford, the Honourable E. C. Manning, Mr. J. J. Frawley, Mr. K. Setter, Mr. G. Blair, Mr. A. V. Mauro, the Honourable J. W. Pickersgill, and Mr. R. Cope.

CHAPTER X

WESTERN CANADIAN POLICY INPUTS -- PRESSURE GROUPS

The second input of Western Canadian views into the decision-making process was the representations made to the Parliamentary Committees that examined Bills C-120 and C-231 by various pressure groups from Western Canada. The objective of this chapter is to review the nature of the representations made by the pressure groups and to assess the extent to which their views were accommodated in the final policy output.

SECTION I: THE NATURE OF THE REPRESENTATIONS TO THE PARLIAMENTARY COMMITTEES

A reading of many of the briefs submitted by the pressure groups from Western Canada revealed that many of their concerns were largely parochial in nature and they failed to deal with many of the major issues raised by the provincial governments in their briefs.[1] For example, the business groups were largely concerned with the improvement of transportation facilities in particular communities. Despite these parochial concerns, the briefs submitted to the Parliamentary Committees indicated that there were

several recurring issues of concern to both business and farm groups -- rate regulation, the Crow's Nest Pass rates, costing procedures, the structure of the Canadian Transport Commission, the goals of transportation policy, and inequities in the freight rate structure. Each of these issues will be considered separately. Because the content of the representations did not vary significantly, the briefs of the pressure groups to the two Parliamentary Committees will be considered simultaneously.

1. Rate Regulation

(a) Farm Groups

The only farm group to present a brief to the Parliamentary Committee that examined the provisions of Bill C-120 was the National Farmers' Union.[2] While the brief contained detailed arguments on the status of the Crow's Nest Pass rates, and on the objectives of transportation policy, there were only passing references made to the criteria for the determination of rates. The National Farmers' Union opposed any attempt by the government to remove the legislative restrictions that had been placed on the railways. Any legislative provision designed to restrict the power of the Board of Transport Commissioners was opposed by the National Farmers' Union on the grounds that the determination of rates was too important a question to be left to the discretion of the railways. The following quotation from their brief

summarizes their position:

> . . . We reject those proposals in Bill C-120 which weaken the powers currently held by the Board of Transport Commissioners - that is Section 15 of the Bill. We submit that the fixing of freight rates is too important a matter to be left to the discretion of railway companies. . . .[3]

The Alberta, Saskatchewan and Manitoba Wheat Pools submitted briefs to both Parliamentary Committees.[4] The Wheat Pools supported the position of the three Prairie Provinces with regard to the revisions in the maximum rate formula and noted that the references in the Railway Act to "unjust discrimination" and "undue preference" should be retained as criteria for the determination of rates. Any maximum rate formula enacted should, in the Wheat Pools' view, ensure that rates would not be higher than those levied at the present time.

A brief presented by the Branch Line Association of Western Canada to the Parliamentary Committee studying the provisions of Bill C-231 made reference to the maximum rate formula.[5] The Association expressed the view that the formula failed to provide adequate protection to Western Canada from future rate increases. For example, the 150% - 30,000 pounds provisions of the bill could result in higher freight rates and the definition of a captive shipper found in the bill was too restrictive and could exclude many shippers of bulk commodities in Western Canada that were in fact captive of the railways. Finally, in the Association's view, there were too many obstacles for a shipper to overcome

before he could obtain captive shipper status.

The three Prairie Wheat Pools and the Branch Line Association questioned how the term "public interest" found in Section 317 of the bill would be defined by the Canadian Transport Commission. The obligation on the part of the individual to present a prima facie case before the Commission would undertake an investigation limited the effectiveness of this section as a criterion for the determination of rates.

(b) Business Groups

The Coal Operators' Association of Western Canada, the Canadian Manufacturer's Association, and the Canadian Industrial Traffic League presented briefs to the Parliamentary Committees that contained recommendations pertaining to the maximum rate formula.[6] For example, the Coal Operators' Association noted that the 150% - 30,000 pounds provisions of the clause offered no protection to the captive shipper. In fact, statistics were presented by the Association to illustrate that the rate on coal, of $5.13 per ton, would increase to $7.45 per ton when the maximum rate formula was applied.[7] The calculation of costs on the basis of the 30,000 pounds figure, in the Association's view, would greatly inflate variable costs and would bear no reasonable relationship to the actual variable costs involved in moving the good.

The Canadian Industrial League supported the general philosophy of removing legislative restrictions imposed on the railways.[8] However, the provisions of the maximum rate formula were criticized on the grounds that the rates calculated under the formula could ultimately be higher than existing rates. In addition, the League noted that the formula was too rigid and did not take into account factors such as the type of commodity being moved when calculating the rate. It was recommended that the setting of rates for "captive shippers" be determined by the Canadian Transport Commission. In the League's view, the Commission was in the best position to consider all relevant factors and to prescribe a satisfactory rate. In short, the League was not concerned with the legal definition of a "captive shipper". Their main concern was that an appeal board such as the Canadian Transport Commission be empowered to consider appeals by shippers who were unable to negotiate a reasonable rate with the railways.

The Canadian Manufacturer's Association endorsed the general philosophy of the bill. In particular, they supported the view that the railways should be free to meet competition from other modes of transportation, and that "unjust discrimination" and "undue preference" as criteria for the determination of rates be eliminated from the Railway Act. The effectiveness of the maximum rate formula was dependent upon the development of adequate costing

regulations by the Commission. The 150% - 30,000 pounds provisions of the clause were considered "unrealistic" figures for calculating maximum rates. Statistics were presented to illustrate that the application of the maximum rate formula would result in higher freight rates. For example, a rate of $2.68 per ton when calculated under the maximum rate formula would increase to $18.22 per ton, while a rate of $3.20 per ton would increase to $28.65.[9] In the Association's view, these provisions offered no protection to the shipper of low-value bulk commodities such as grain, coal, potash, and iron ore.

The Association proposed that the 150% - 30,000 pounds provisions be removed and that the Commission be empowered to determine "a just and reasonable rate for captive shippers". No specific directions should be given to the Commission regarding the calculation of "just and reasonable" rates. This was to be left to the discretion of the Commissioners. The Manufacturer's Association indicated that the definition of a "captive shipper" as outlined in the legislation was inadequate. In their view, a captive shipper was "any shipper in any section of the country whose traffic is of such character that it is uneconomic to move by any other form of transportation than by rail".[10] They proposed that a more liberal definition of a captive shipper be included in the legislation.

The provisions of Section 317 of Bill C-231 were referred to in the briefs of the two Associations. In each instance, they noted that the term "public interest" did not provide any protection to the shipper. It was proposed that the term "public interest" be amended to read "public and private interest". Such an amendment would provide greater protection to specific shippers and localities.

(c) The Response of the Railways

Neither the Canadian National nor the Canadian Pacific Railways had presented briefs to the Parliamentary Committee that examined the provisions of Bill C-120. The official reason given by the railways was that they would present their arguments to the Committee at a later date. Perhaps a more accurate explanation is that both the railways were satisfied with the provisions of the bill as it had been drafted by the federal government. Furthermore, it would appear that the railways were reluctant to express their views on the provisions of Bill C-120 until the provinces had made their position known. It should be noted that the provinces were not in a position to convey their views to the Committee when it was receiving briefs from other interested groups. With the introduction of Bill C-231 into the House of Commons and its subsequent referral to the Parliamentary Committee for detailed study, both the railways and the provinces submitted lengthy briefs to the

Committee suggesting certain revisions in the legislation.

The Canadian National Railways[11]

The Canadian National Railways in their brief to the Parliamentary Committee supported the general philosophy of the bill that all legislative restrictions on the railways be removed. On several occasions during the hearings, officials of Canadian National indicated that greater freedom on the part of the railways to set rates did not automatically mean higher rates. The following quotation from the Canadian National's brief summarizes the railway's support for the maximum and minimum rate formula:

> . . . What competitive freedom means to us is the ability of the railway to compete on a fair basis for the transport of goods in Canada. We ask for nothing more and expect nothing more. The company for its part will use the freedom judiciously in an endeavour to give to the country the lowest cost and the most economic transportation possible.[12]

The Canadian National Railways proposed only minor amendments to the maximum rate formula. In addition, the railway made no comments regarding the criteria that should be used to determine when a shipper was captive within the meaning of the bill. However, Members of Parliament from Western Canada questioned Mr. Donald Gordon, President of Canadian National, on the railway's definition of a captive shipper. Mr. H. A. Olson attempted to have the railway admit that there was no competitive or alternative mode of transportation available for moving products such as steel and farm machinery into Western Canada, and that producers in

Western Canada of bulk commodities such as grain, potash, and sulphur were captive of the railways.[13] The railway refused to admit that these shippers would qualify as "captive shippers" under the terms of the bill. In short, the Canadian National Railways took the position that the decision to declare a shipper "captive" should be left to the Canadian Transport Commission. The following quotation taken from the hearings of the Parliamentary Committee summarizes the position of the Canadian National Railways with regard to the captive shipper. The speaker is Mr. Donald Gordon and his answer was in response to a question by Mr. H. A. Olson on the captive shipper clause of the bill:

> . . . From what I have been able to establish from my investigation the concern about the captive shipper has been tremendously exaggerated - so exaggerated - that it is difficult for me to find a true captive shipper. He does not exist. He is a figment of the imagination, with some exceptions. This concern was not expressed in any way at all, but in the course of forming the bill the government advisers decided that they would meet this anxiety, or apprehension, which had been voiced, by constructing a formula. It is not the railway's formula. We do not like it; and, having seen it, we prefer no formula. We think that as good businessmen we can handle this far better ourselves if left to our own devices. However, in the interests of meeting certain shades of public opinion factors and genuine apprehension - because this is a new development in the railway business - this formula has been devised. Our position in this matter, as a railway, is that, since the formula is there, we have examined it, we have tested it by specific examples where we could find it and we find that it is workable. We think it is fair; we believe that we can live with it; and we also recognize that, after a period of experience with it, there will be an opportunity for review. . . . I do say in all sincerity that the concern about the captive shipper is very much exaggerated.[14]

Mr. Gordon's reference to the captive shipper as being "a figment of the imagination with some exceptions" did nothing to enhance the government's contention that the captive shipper clause would protect Western Canada from the monopoly position of the railways. Increasingly, Western Canadian Members of Parliament became convinced that the maximum rate formula offered no protection to Western Canada, and they urged the government on numerous occasions to change the provisions of the bill. In response to a question from Mr. H. Stafford as to how many captive shippers were in existence in Western Canada, Mr. Gordon replied that he did not have "the faintest idea".[15] Mr. Jack Horner questioned Mr. Gordon as to whether the railways would consider a shipper who was presently shipping his goods on non-competitive rates to be a captive shipper.[16] He noted that a significant percentage of goods shipped in Western Canada moved on non-competitive rates. Mr. Gordon refused to accept Mr. Horner's contention that all shippers who shipped goods on non-competitive rates would be considered to be captive shippers within the provisions of the bill. In essence, Mr. Gordon refused to give any assurances to Western Canada that the maximum rate formula would offer protection to both consumers and shippers.

The Canadian National Railway was opposed to the provisions of Section 317 of the bill that empowered any person to appeal an action on the part of the railways that

in their view would affect the "public interest" in a "prejudicial" way. The railway proposed that if this section of the bill was to remain in the legislation that was ultimately enacted, it should be amended in such a way that it applied to all modes of transport.[17] In the railway's view, "care should be taken also to ensure that it is not used as an instrument for harassment of one mode by another under the guise of the 'public interest'".[18] In summary, these were the comments of the Canadian National Railways on those provisions of the bill establishing the criteria for the determination of rates.

The Canadian Pacific Railway[19]

The brief of the Canadian Pacific Railway expressed similar views to those found in the brief of the Canadian National Railways. For example, the Canadian Pacific supported the maximum and minimum rate formulae for the determination of rates and placed little emphasis on the provisions of the bill designed to give protection to the captive shipper. The only amendment proposed by the railway was the removal of that provision of the bill providing for a reduction in the maximum rate for shipments of more than 50,000 pounds. Such reductions, in the railway's view, should be left to negotiations between the railways and the shippers.

The railways attached little or no importance to the captive shipper clause. In most instances, the railways argued that the shipper would receive a lower rate if he negotiated a rate with the railway. This contention of the railways was challenged by the provincial governments and the Members of Parliament from Western Canada on the grounds that the railways were in a monopoly position in Western Canada. When questioned by Members of Parliament from Western Canada, the President of Canadian Pacific, Mr. Ian Sinclair, indicated on several occasions that the provisions of the captive shipper clause would give only limited protection to shippers in Western Canada.[20] When asked by Mr. Olson if the railway had prepared studies to determine the impact that the maximum rate formula would have on the freight rate structure, Mr. Sinclair indicated that some rates would be higher while others would be lower.[21] He reiterated his contention that the formula provided protection that was merely psychological in nature and that it would rarely if ever be used by shippers.

In response to questioning by Mr. Horner and Mr. Olson, Mr. Sinclair said he did not agree that shippers of wheat, potash, sulphur and iron-ore were examples of captive shippers as defined in the bill. Mr. Sinclair contended that there were alternative modes of transport for the movement of these goods, and that the railways were restrained

by the competition of the marketplace when levying rates.[22] He noted that the railway would be restrained from levying rates that were so high that it would threaten the continued existence of the industry. In Mr. Sinclair's view, the protection that the shipper would receive from the forces of competition would be more effective than the protection provided by imposing legislative restrictions on the railways.[23]

A review of the briefs presented by the Canadian Pacific and Canadian National Railways indicates that both railways accepted the general philosophy of the bill and proposed only minor amendments to the maximum rate formula. They placed little or no emphasis on the provisions of the captive shipper clause and questioned whether this clause would provide any protection to Western Canada. Their briefs did nothing to alleviate the fears of Western Canadians that the new criteria for rate regulation offered no protection to Western Canada.

2. The Crow's Nest Pass Rates

(a) Farm Groups

The Manitoba, Saskatchewan, and Alberta Wheat Pools, in their submission, supported the position of the Prairie Provinces that the Crow's Nest Pass rates should remain under the control of Parliament and that the railways should not receive a subsidy to compensate them for losses incurred in the movement of grain.[24] The Prairie Wheat Pools were convinced that if proper costing techniques were developed

by the Canadian Transport Commission, it would be proven conclusively that the railways were not losing money on the movement of grain. If the Commission did determine that the railways were in fact losing money, they were prepared to support the payment of a subsidy to the railways.

The National Farmers' Union, in their brief, merely restated their view that the Crow's Nest Pass rates on grain should remain under the control of Parliament.[25] In a brief prepared by the Saskatchewan Farmers' Union, the proposed subsidy to the railways on the movement of grain was criticized.

(b) Business Groups

In their briefs to both the Parliamentary Committees, the business groups made no reference to the Crow's Nest Pass rates. This was a subject of almost exclusive concern to the farm groups in Western Canada.

(c) The Response of the Railways

Both the Canadian National and the Canadian Pacific Railways would have preferred that the provisions in Bill C-120 that obligated Parliament to subsidize the railways on an annual basis for losses incurred in the movement of grain be retained in Bill C-231. However, both the railways expressed general satisfaction with the provisions of Bill C-231 that obligated the Canadian Transport Commission to review the compensatory nature of the rates. However, Mr.

N. J. Macmillan, Executive Vice-President for Canadian National, expressed disappointment that there was no reference to an "immediate solution" to the Crow's Nest Pass rates.[26] He was encouraged, however, by the fact that the compensatory nature of the rates would be reviewed three years after the enactment of the bill.

3. Costing Procedures

(a) Pressure Groups

Many of the pressure groups from Western Canada, in their briefs to the Royal Commission on Transportation, had recommended that non-rail revenue (the revenue earned from other activities of the railways than the movement of freight) be included as rail revenue when determining the financial position of the railways. Pressure groups from Western Canada such as the three Prairie Wheat Pools argued that the movement of freight by the railways was only one aspect of the railways' overall operations in Western Canada.[27] As a result, they noted that, when the financial position of the railways was being determined, the non-rail revenue, of the Canadian Pacific Railway in particular, should be included in any financial assessment of the railways' revenues in Western Canada. The railways argued that the various aspects of their activities should be considered as separate entities when calculating their financial position.

The Royal Commission recommended that non-rail revenue not be included when calculating the railways' financial position. The federal government incorporated this recommendation into the provisions of the bill. Mr. Pickersgill noted that it would be impossible to include non-rail revenue in any assessment of the railways' financial position. Accounting procedures and the determination of the percentage of non-rail revenue that would be included in any assessment of the railways' position would make this task extremely difficult.[28] It is surprising that the provinces and the pressure groups did not raise this issue for greater discussion at the hearings of the Parliamentary Committee.

There were several references to costing procedures in the briefs presented by groups such as the three Prairie Wheat Pools, the Branch Line Association of Western Canada, the Coal Operators' Association of Western Canada, and the Mining Association of Canada.[29] All the groups were unanimous in their belief that the railways should be obligated to release full costing information to the Canadian Transport Commission, and that the Commission be obligated to release the costing information that they utilized when rendering a decision. It was essential that all relevant costing data be released if shippers were to obtain protection from the maximum rate formula. In addition, they urged the federal government to enact amendments that would ensure that public

hearings would be held when the costing of a particular branch line was being considered by the Commission.

(b) The Response of the Railways

The position of both the Canadian National and the Canadian Pacific Railways was identical on these issues. Both railways expressed the view that the Canadian Transport Commission should not be obligated to release confidential costing information obtained from the railways.[30] They noted that if the forces of competition were to guide the operation of the transportation industry, the release of this information could be of assistance to other modes of transport and could ultimately result in a loss of revenue for the railways. During the Committee's hearings, a railway official summarized the railways' position on the issue in the following statement:

> Perhaps I could give you an illustration of why I think it is important that these costs not be revealed. If I could just digress for a moment I will relate it to a simile. During the war I was an intelligence officer. The purpose of my work was to find out something of what the Germans were doing in certain circumstances. The way I found this out was to piece together little pieces of information - a little bit here and a little bit there - and, over a considerable period of time, to work out a pattern. That was how conclusions were drawn from various facts - from various little bits and pieces of information. It is exactly the same way that it is done in industry. Industries have intelligence services, just as soldiers have. They take all the individual little bits and pieces that they get, of this type you are speaking of, which do not appear to affect anyone at all, because there is no trucker in the area, but they are put together and other

> pieces are put together - all the various little pieces can be put into the picture - and it does not take too much of that to enable an intelligent analyst to make pretty accurate calculations on what the costs of the railways are in the various areas. Once he knows the costs, whether he is a trucker, a barge line operator, or another railroad, he can judge what his competitive action will be, because he knows what our cost is of handling certain commodities in certain circumstances for a mile, or per ton.
>
> That is the thing we fear, the more we give out in the whole area of our costing. It is not the individual point - it might not affect us at all at one point - but it is these various little bits and pieces that are put together. We know, from our own experience, because we have experienced men in this field, that they can put these together very quickly and very easily, and that they can disclose the whole basic pattern.[31]

The railways were adamant in their view that non-rail revenue not be included when assessing the financial position of the railways.

4. Structure of the Canadian Transport Commission

(a) Pressure Groups

The briefs presented to the Parliamentary Committee that examined the provisions of Bill C-231 contained no references to the powers or the structure of the proposed Canadian Transport Commission. The only reference to the Commission was found in the brief of the three Prairie Wheat Pools. They urged the federal government to appoint individuals to the Canadian Transport Commission that were not members of existing regulatory agencies.[32] Future appointments should reflect a greater emphasis on the representation of regional interests. Providing representation

to different segments of the transportation industry should be a secondary consideration when appointments to the Commission were being considered.

(b) The Railways

Both the Canadian National and the Canadian Pacific Railways expressed reservations regarding the provisions of the legislation that gave both research and regulatory powers to the Canadian Transport Commission.[33] The railways were concerned that many of the research powers granted to the Commission were so vague and general in nature that they could ultimately be used by the Commission to regulate many aspects of the transportation industry. In particular, the power of the Commission to investigate the relationship between various modes of transport and to ensure their co-ordination and development, and the power to establish general economic standards and criteria for federal investment in transport equipment and facilities, were examples of research powers that, in the opinion of the railways, could be used to regulate various modes of transportation in a very restrictive manner. Thus the railways urged the government to scrutinize closely the manner in which the Canadian Transport Commission performed both its regulatory and its research functions.

5. Goals of Transportation Policy

(a) Farm Groups

The National Farmers' Union was the only farm group to present a brief that commented on the national objectives of transportation policy. In their brief on the provisions of Bill C-120, they strongly attacked the development of an efficient and competitive transportation system as the most important objective of transportation policy.[34] They noted that transportation policy was the means of achieving both economic and political goals and therefore the transportation industry must be seen as a service industry. Thus, the first objective of transportation policy should be to ensure the economic development of all regions of the country. To achieve this, the National Farmers' Union recommended that the Canadian Pacific Railway be nationalized, and that a national transportation authority be created. The recommendation to establish such a body suggests that the National Farmers' Union may have had some influence in moving the federal government in this direction.

(b) Business Groups

The provisions of the two bills outlining the goals of transportation policy were supported by business groups such as the Canadian Industrial Traffic League and the Canadian Manufacturer's Association. For example, the Canadian Industrial Traffic League supported the general

philosophy of the bill.[35] They did recommend, however, that the objectives of transportation policy should be amended to include a phrase designed to ensure that all shippers were treated equally under the law. The League was concerned that the removal of all references to "unjust discrimination" and "undue preference" could lead to the unequal treatment of shippers by the various modes of transport. The brief of the Canadian Manufacturer's Association expressed similar views to those found in the brief of the Canadian Industrial Traffic League. They supported the general philosophy of the bill that the first objective of transportation policy should be the development of an efficient and competitive transportation system.[36]

6. Inequities in the Freight Rate Structure

The only reference to inequities in the freight rate structure was found in the brief of the National Farmers' Union and in the brief of the three Prairie Wheat Pools. The emphasis in the brief of the National Farmers' Union on the "national unity" aspects of transportation policy, and the recommendation that the Canadian Transport Commission continue to regulate the level of freight rates, reflected their belief that the provisions of the bill would not eliminate inequities in the freight rate structure.[37] The three Prairie Wheat Pools supported the provinces' contention that the Bridge Subsidy should be phased out of existence rather

than being totally eliminated at one time.

SECTION II: SUMMATION

A review of the policy proposals found in the briefs presented to the Parliamentary Committees that examined Bills C-120 and C-231 reveals that the major issues of concern to the various groups were the provisions of the maximum rate formula and the release of costing data by the Canadian Transport Commission. These concerns closely paralleled the major issues of concern to the provincial governments from Western Canada.

Both the farm groups and the business groups objected to the 150% - 30,000 pounds provisions of the maximum rate formula and pressed the government for a more liberal definition of the term "captive shipper". In addition, the groups were in agreement that the formula would offer no protection to Western Canada from the monopoly position of the railways.

The Crow's Nest Pass rates was an issue of concern only to the farm groups. In general, they supported the position of the provincial governments that, before the railways be compensated for losses incurred on the movement of grain, the Canadian Transport Commission should prepare a study detailing the costs incurred by the railways. Finally, they supported the position of the three Prairie Provinces that the provision in the legislation for an

automatic review of the Crow's Nest Pass rates be removed.

The business groups supported the general philosophy of the legislation that the forces of competition should govern the operation of the transportation industry. The farm groups on the other hand urged the federal government to enact specific revisions in the legislation that would emphasize the "national unity" aspects of transportation policy. This proposal was similar to the proposal advanced by the CCF Government in Saskatchewan. The issue of costing regulations was raised by the three Prairie Wheat Pools. They urged the federal government to amend the legislation in such a way that the Canadian Transport Commission would be obligated to release all costing data used in their decisions.

A review of the provisions of the National Transportation Act reveals that the policy proposals advanced by the pressure groups from Western Canada were largely rejected by the federal government. For example, the federal government failed to amend the provisions of the maximum rate formula or the definition of the captive shipper and failed to enact amendments that obligated the Canadian Transport Commission to release all the costing data used in rendering its decisions. The attempts of the farm groups to have greater emphasis placed on the "national unity" aspects of transportation policy were ignored by the federal government as well. Perhaps the only issue where the views

of the pressure groups from Western Canada influenced the federal government was the decision to remove the provision in Bill C-120 that would have obligated Parliament to pay an annual subsidy to the railways for losses incurred in the movement of grain. The provisions of Bill C-120 were amended in such a manner that no subsidy would be paid to the railways pending a full-scale review of the costs incurred in moving grain under the Crow's Nest Pass rates. This would appear to be the only major amendment enacted by the federal government that accommodated any of the policy proposals advocated in the briefs of the pressure groups from Western Canada. Thus, one is forced to conclude that the policy inputs of the pressure groups were largely ignored by the federal government. There are several factors that explain the rejection on the part of the federal government. The briefs presented to the Parliamentary Committees were devoted to parochial issues and failed to deal with many of the major issues in sufficient depth to warrant serious attention by the federal government. Secondly, many of the recommendations of the pressure groups conflicted with the general philosophy of the bill and were therefore unacceptable to the federal government. These factors explain in part the limited extent to which the policy recommendations of the pressure groups were incorporated into the legislation.

FOOTNOTES

[1]This conclusion emerges after a reading of the briefs submitted to the Parliamentary Committees. The briefs of the various Chambers of Commerce from Western Canada were parochial in nature. In most instances, they sought solutions to local transportation problems. The three Prairie Wheat Pools devoted their briefs almost entirely to the Crow's Nest Pass rates. It was only organizations such as the National Farmers' Union that were concerned with the general provisions of the bill. National organizations such as the Canadian Manufacturer's Association, the Canadian Mining Association and the Canadian Industrial Traffic League were concerned with the provisions of the bills establishing the criteria for the determination of freight rates.

[2]Brief of the National Farmers' Union to the Parliamentary Committee (1965). The brief is printed in Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Railways, Canals and Telegraph Lines (House of Commons), 2nd Session, 26th Parliament, (1964-1965), No. 17, pp. 989-998. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1965).

[3]Ibid., p. 997.

[4]A copy of the joint submission of the three Prairie Wheat Pools was obtained from Mr. R. Phillips. Their position on rate regulation is found in Part II on p. 3.

[5]Brief of the Manitoba Branch Lines Association to the Standing Committee on Transport and Communications, in Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Transport and Communications (House of Commons), 1st Session, 27th Parliament, (1966), No. 35, p. 2417. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1966).

[6]Brief of the Canadian Manufacturer's Association, Parliamentary Committee Hearings (1966), No. 27; Brief of the Coal Operators' Association of Western Canada, Parliamentary Committee Hearings (1966), No. 31; Brief of the Canadian Industrial Traffic League, Parliamentary Committee Hearings (1966), No. 32, pp. 2231-2235.

[7]Brief of the Coal Operators' Association of Western Canada, op. cit., p. 2157.

[8]Brief of the Canadian Industrial Traffic League, Parliamentary Committee Hearings (1965), No. 19, pp. 1087-1091.

[9]Brief of the Canadian Manufacturer's Association, Parliamentary Committee Hearings (1965), No. 18, pp. 1011-1037. In particular, see p. 1017.

[10]Ibid., p. 1024.

[11]Brief of the Canadian National Railways, Parliamentary Committee Hearings (1966), No. 24, pp. 1819-1841. Details in the succeeding paragraphs were taken from this brief.

[12]Ibid., p. 1706.

[13]Ibid., pp. 1759-1764.

[14]Ibid., p. 1761.

[15]Ibid., p. 1767.

[16]Ibid., p. 1772.

[17]Ibid., pp. 1830-1831.

[18]Ibid..

[19]Brief of the Canadian Pacific Railway, Parliamentary Committee Hearings (1966), No. 28, pp. 2055-2083. Details in succeeding paragraphs were taken from this brief.

[20]Ibid., p. 1972.

[21]Ibid., p. 1979.

[22]Ibid., pp. 1972-1976.

[23]Ibid., p. 1981.

[24]Brief of the Prairie Wheat Pools, February 1965, Part II, p. 2.

[25]Brief of the National Farmers' Union, op. cit., p. 997.

[26]Parliamentary Committee Hearings (1966), No. 24, p. 1705.

[27]Brief of the Prairie Wheat Pools, February 1965.

[28]Government of Canada, Report of the Royal Commission on Transportation (1959) (Ottawa: Queen's Printer, 1961), Vol. II, pp. 37-40.

[29]Briefs of the Canadian Co-operative Wheat Producers Ltd., the Manitoba Branch Line Association, and the Mining Association of Canada, Parliamentary Committee Hearings (1966), No. 26, 35 and 37 respectively.

[30]Briefs of the Canadian National and Canadian Pacific Railways, op. cit.

[31]Parliamentary Committee Hearings (1966), No. 24, pp. 1762-1763.

[32]Brief of the Canadian Co-operative Wheat Producers Ltd., op. cit., pp. 1884-1885.

[33]Brief of the Canadian National Railways, op. cit., p. 1825.

[34]Brief of the National Farmers' Union, op. cit., pp. 990-997.

[35]Brief of the Canadian Industrial Traffic League, op. cit., p. 1087.

[36]Brief of the Canadian Manufacturer's Association, op. cit., p. 1013.

[37]Brief of National Farmers' Union, op. cit., pp. 989-998.

CHAPTER XI

WESTERN CANADIAN POLICY INPUTS -- MEMBERS OF PARLIAMENT AND SENATORS

INTRODUCTION

The views expressed by Western Canadian Members of Parliament and Senators during the debate in the House of Commons, during the Committee hearings, and in the Senate on the provisions of the National Transportation Act were the third input of Western Canadian views into the decision-making process. In particular, Western Canadian Members of Parliament utilized the hearings of the Parliamentary Committees convened to discuss the provisions of Bills C-120 and C-231, and the debate in the Committee of the Whole House on the provisions of Bill C-231, to present their views to the federal government. The Senators from Western Canada played a limited role in the debate on the provisions of Bill C-231. As a result, their input into the decision-making process was insignificant.

The objective of the chapter is to examine the role of Western Canadian Members of Parliament and Senators during the enactment of the National Transportation Act. Specifically, an attempt is made to isolate the nature of

the policy recommendations advanced by Western Members of Parliament during the debate and to assess the extent to which their views were accommodated in the final policy output. Such an analysis facilitates an assessment of the role of the Western Member of Parliament as a spokesman for regional interests at the national level. The chapter is divided into four major sections. Section I examines the debate in the House of Commons on the provisions of Bill C-120 and reviews the proceedings of the two Parliamentary Committees that examined the two pieces of legislation. In addition, the nature of the recommendations contained in the report of the Parliamentary Committee that examined Bill C-231 will be outlined. Section II is devoted to an examination of the debate in the House of Commons on the provisions of Bill C-231. An assessment of the debate in the Senate will be outlined in Section III. The chapter concludes with an assessment of the extent to which the views of the Western Canadian Members of Parliament were accommodated in the final policy output and a discussion of the role of the Western Member of Parliament as a spokesman for Western Canada.

SECTION I

A. The Debate on Bill C-120

Because of the limited debate in the House of Commons on the resolution preceding the introduction of the bill, and the absence of any debate on second reading,

reaction to the provisions of the bill from Western Members of Parliament was not revealed until the Parliamentary Committee heard briefs from various interested parties. The only Members of Parliament from Western Canada who spoke on the resolution prior to the introduction of the bill were the Honourable Alvin Hamilton and Mr. H. A. Olson. As was noted in Chapter IX, Mr. Hamilton was preoccupied with the issue of rail line abandonment and paid little attention to the provisions of the bill establishing the criteria for the determination of rates. It would appear that he assumed that the maximum rate formula would give adequate protection to Western Canada.

Mr. Olson reviewed the major provisions of the bill and only referred in passing to the issue of freight rates.[1] He noted that Alberta had made representations to the federal government on many occasions on this issue, and he reiterated the long-standing grievances of the Alberta Government with regard to horizontal percentage rate increases and long and short haul discrimination. In fairness to Mr. Olson, it should be noted that at that stage in the debate he had not seen a copy of the bill and could not speak with the same authority as Mr. Hamilton. However, during the hearings of the Parliamentary Committee in 1966, Mr. Olson was the most active Member of Parliament on the Committee from Western Canada. His questioning of the witnesses before the Committee enabled him to articulate in a

very effective manner Western Canadian concerns with regard to the provisions of the bill.

The most critical, and most perceptive, speech delivered during the debate was made by Mr. Douglas Fisher.[2] While he was not a Member of Parliament from Western Canada, he isolated particular features of the bill that he considered would have a negative impact on the West. For example, he was critical of the comments made by Mr. Hamilton, and noted that Western Canada should not assume, as did Mr. Hamilton, that because the Chairman of the Royal Commission on Transportation, Mr. M. A. MacPherson, was from Western Canada that this automatically meant that the recommendations proposed by the Commission would be favourable to the West. Mr. Fisher noted that the recommendations of the provincial governments from Western Canada, and of the various groups that presented briefs to the Royal Commission, had not been accepted by the Commissioners. He also implied that Mr. MacPherson did not have a great deal of influence in the drafting of the recommendations.[3]

Mr. Fisher questioned whether competition should be the guiding force governing the transportation industry, and noted that regions such as Western Canada did not realize the impact that the removal of legislative restrictions would have on the freight rate structure. In his view, the provisions found in the recommendations of the MacPherson Royal Commission did not provide adequate protection to regions where the railways were in a monopoly position. The

following quotation from his speech summarizes his views on the bill:

> . . . We cannot get competitive transportation in the sense in which they have it in southern and northern Ontario. I do not believe we get it really on the prairies, as yet. Yet this is going to be the carte blanche that is given to this new set-up as far as we can make it out - the abolition of the freight rate structure as we know it. I suggest that, inadequate as the structure may have been, despite all the difficulties in connection with it, we are really throwing out a great deal for something that is most indefinite. I am somewhat hesitant of making a fetish out of or bowing to the shrine of free enterprise and competition in contemplation of what may be possible. . . .
>
> . . . I suggest that the people of western Canada are getting in this legislation - and I am disappointed to discover that the official opposition, as revealed by their spokesman, seems to be I will not say enthusiastic, but certainly prepared to go along with this legislation - something that they will regret for a long time. I am not speaking just of the abandonment features, but of the whole question of a new deal in freight rates for an area which has not the protection of the kind of competition existing in other parts of the country. Why have the prairies been squawking for years? Why have we one of the most brilliant lawyers in Canada here from the province of Alberta? It is because of their realization of how vulnerable they are in the freight rates situation when competition really does not work in their favour. There seems to be a general tendency to assume that because M. A. MacPherson was from the prairies and was a good Tory, therefore his recommendations should be suitable to the Canadian west. I think that is a bit of a misstatement. I am not going to credit or discredit the contribution of Mr. MacPherson to the royal commission, but I have the feeling that there was a couple of younger men on the commission who got the bit between their teeth. I wonder why we bothered to go before that commission. I wonder why there were such vigorous presentations when I note the fact that the recommendations seem to ignore completely what was one of the most common features of representation. Region after region in this country worried about their future in the face of wide open freight rates, or freight rates

> which were uneconomic and would not allow them to get their products to the market. It seems to me that western Canada has the most to lose, unless this legislation is a lot more attractive than appears at the present time. . . .[4]

An analysis of the representations made from Western Canada to the Parliamentary Committee in the next section will reveal the extent to which Mr. Fisher correctly predicted Western Canada's response to the bill.

B. The Debate in the Parliamentary Committees

The issues raised for discussion by the Members of Parliament at the hearings of the two Parliamentary Committees were so similar that the proceedings of both Committees will be considered simultaneously. A review of the debate revealed that there were several themes raised by Western Members of Parliament -- rate regulation, the Crow's Nest Pass rates, costing procedures, the structure of the Canadian Transport Commission, the goals of transportation policy, and inequities in the freight rate structure. Each of these issues will be considered separately.

1. Rate Regulation

Members of Parliament raised questions during the hearings of the Parliamentary Committees regarding the criteria for the determination of rates. As the hearings progressed, Western Canadian Members of Parliament became increasingly apprehensive with regard to the impact that the maximum rate formula would have on Western Canada. Both the

Canadian National and the Canadian Pacific Railways had taken the position that the maximum rate formula and the provisions in the bill for a shipper to declare himself captive would rarely, if ever, be used. The forces of competition within the marketplace would give adequate protection to shippers in Western Canada.

The central argument advanced by Western Members of Parliament during the hearings was that it would be impossible to apply the railways' definition of the term "captive shipper" in such a manner that it would offer protection to Western Canada from the monopoly position of the railways. If the railways' definition was accepted, Western Members of Parliament reasoned that shippers of bulk commodities such as potash, coal and sulphur would receive no protection from continual freight rate increases.[5] The movement of goods such as farm machinery and steel into Western Canada would not qualify for protection under the maximum rate formula because the case could be made that it was possible, at least in theory, to move these goods into Western Canada by truck. Mr. H. A. Olson noted that while it was theoretically possible to move these goods by truck, the costs would be prohibitive. In short, Western Members of Parliament attempted to have additional legislative provisions included in the bill that would establish a more realistic definition of the term "captive shipper". A more specific terminology would give greater direction to the Canadian Transport

Commission as to the factors it should take into account when deciding if a shipper was captive. In particular, they attempted to have included in the bill reference to the difference between the variable costs of moving a good and the rate levied by the railways as one criterion that the Canadian Transport Commission should consider.

The 150% - 30,000 pounds provisions of the maximum rate formula were also the subject of much debate. Western Members of Parliament on the Committee questioned each provincial government and pressure group on these features of the formula in an attempt to solicit support for their contention that these figures bore no relationship to the variable cost of moving a good or to the weight of goods being moved by the railways.[6] For example, Mr. Jack Horner and Mr. H. A. Olson questioned the Canadian Manufacturer's Association and the Coal Operators' Association of Western Canada on the impact that these provisions would have on the West and whether they would provide protection to shippers and consumers in Western Canada. In both instances, the organizations indicated that the proposed formula would result in higher freight rates.[7] The following quotations summarize the opposition of Western Members of Parliament to the maximum rate formula and to the provisions of the bill governing the captive shipper. During the presentation of the Canadian National Railways to the Parliamentary Committee hearings, Mr. Horner commented:

> . . . We in the west must be greatly worried about this bill and the definition that the new commission will give to the captive shipper. What is it? Mr. Gordon said he could not find it. I hope the Commission does not take a narrow point of view because we must receive greater assurances in the west than that. . . .[8]

Mr. H. A. Olson summarized the feelings among Western Members of Parliament as to the usefulness of the maximum rate formula in protecting Western Canadian shippers and consumers in the following manner:

> . . . If clause 336 is as useless as the spokesmen for the railways say, and I think the minister intimated this too, that it is not going to apply to scarcely anybody - he cannot find or think of anyone who is going to attempt to invoke the provisions of 336 - then, Mr. Chairman, this committee should strike it out of the bill and say honestly to the Canadian people that from the date this bill passes there is no practical protection under the law in so far as a shipper is concerned if he fails to reach a negotiation with the railways. . . .[9]

Mr. L. R. Sherman offered the Committee a definition of a captive shipper that would be acceptable to the West. In doing so, he intimated that the captive shipper clause was the most controversial aspect of the legislation in the view of Western Canadian Members of Parliament:

> . . . There is, as you will appreciate a feeling in some parts of the country, not only in the West, that it is reasonable to expect from this legislation a certain amount of relief will be granted shippers who consider that they are carrying a disproportionate share of the freight burden in Canada. In their estimation they are captive shippers. . . .[10]

Similar views were expressed by Mr. H. A. Olson when he said:

> . . . My interpretation of that [the captive shipper clause] Mr. Chairman, is that if there is no alternative, effective and competitive service by reason of the fact that the railways can haul this particular commodity so much cheaper than any other mode of transport, then simply by the price he is captive of the railway. . . .[11]

The federal response to the demands of Western Canadian Members of Parliament that the provisions of the maximum rate formula and the definition of a captive shipper be amended was similar to the arguments advanced by the railways.[12] The 150% - 30,000 pounds provisions of the bill were justified on the grounds that these figures had been selected by the Royal Commission on Transportation. They dismissed the argument that these figures were not supported by statistical evidence by noting that studies had been prepared in the Department of Transport that indicated that these figures would not result in a significant rate increase.[13] Mr. Pickersgill defended the maximum rate formula on the grounds that the Parliamentary Committee was in no position to change recommendations that had the support of a Royal Commission and two federal governments. Furthermore, the objections raised by Conservative Members of Parliament from the West pertained to provisions of the bill that were identical with those found in the bill that was drafted by the Conservative Government. During the debate in Committee, he commented:

> . . . As I say, we can proceed, it seems to me, in one of two ways. One way is to accept the view which two governments have successively appeared to be willing to accept, that having appointed this royal commission, having received this advice, having provided the best kind of insurance that we will not be stamping on the country, for an indefinite period, something that works injury to someone, we go ahead and accept it. The other way is to try to substitute our individual or collective wisdom to that of the royal commission. Those are the choices. I think the choice is before us and, as I say, the government, after a lot of consideration, decided to do what the previous government had also apparently decided to do, according to what we were told in parliament, to accept the advice of the MacPherson commission. . . .[14]

The definition of the captive shipper found in the bill was defended by Mr. Pickersgill. He noted, as did the railways, that a "captive shipper" was "a subjective" rather than an "objective" person.[15] He noted that this provision of the clause would rarely be used because in most instances the shipper would be in a position to bargain with the railways and receive a lower rate. Mr. Pickersgill offered the following definition of a captive shipper. The implications of his remarks indicate that the federal government did not anticipate that this section of the bill would be used extensively.

> Now, I think one other matter I ought to mention . . . what I suspect is likely to be the most contentious issue in this bill, and that is the proposed maximum rate formula. . . . The maximum rate formula will apply only in situations where there continues to be a genuine monopoly and where that monopoly situation has not already been met by negotiation between the railways and shippers. Now there are a great many commodities . . . in all parts of Canada that can only be transported

> economically by rail, and probably, the most important of all is still wheat; there is a monopoly situation there and of course it is dealt with by the Crowsnest rates. . . . Most of the other bulk commodities, so far as I have been able to discover, that are shipped in large quantities in this country are already covered by rates which have been negotiated in one fashion or another between the railways and the shippers or are subject to commodity rates which are lower than the existing maximum rates and, therefore, though they do represent a monopoly situation, although it could be argued that they are captive shippers, they are not the kind of captive shippers that are envisaged in respect of the maximum rate formula; because the maximum rate formula will be applied only to those shippers who do not make a deal themselves with the railway. . . .[16]

To date, the Canadian Transport Commission has not declared one shipper to be captive within the meaning of the Act. In interviews in Western Canada with farm and business groups, the view was expressed that the cost of preparing a case, and the delay on the part of the Commission in rendering a decision, were deterrents to many groups contemplating an application to the Commission for captive shipper status.[17] In addition, several businessmen admitted that they would prefer to negotiate a lower rate with the railways, and would apply for captive shipper status only as a last resort. Thus, it would appear that the concerns expressed by Western Canadian Members regarding the degree of protection that the captive shipper clause would provide for Western Canada have been substantiated by the fact that the Canadian Transport Commission has not declared any shippers to be captive within the meaning of the Act. On

the other hand, it can be argued that the arguments advanced by the federal government during the Committee hearings that the railways would be forced to offer competitive rates, has also been substantiated by these events. A final judgment on the clause and the protection it affords Western Canada must await further developments.

Section 317 of the bill was also the subject of criticism by Western Canadian Members of Parliament. They challenged the effectiveness of the term "public interest" as a criterion for determining rates.[18] In their view, it would be impossible to present a prima facie case to the Canadian Transport Commission that would support the contention that an action on the part of the railways was "prejudicial to the public interest".

2. Crow's Nest Pass Rates

The Crow's Nest Pass rates were not the subject of extensive debate during the hearings held by the Parliamentary Committee. Members of Parliament from Western Canada did seek assurances on several occasions from the federal government that the review of the compensatory nature of the rates by the Canadian Transport Commission after three years would not be the first step leading to the eventual elimination of the rates. In his opening remarks to the Committee, Mr. Pickersgill assured Western Members of Parliament that there would be no changes in the status of the Crow's Nest

Pass rates when he observed:

> . . . There is no intention whatsoever of making any change at all or permitting any change to be made in the Crowsnest rates. All that this legislation will provide is that for the next three years we will cost this matter . . . and if there is a net cost that is not met by the revenues then the railways will be reimbursed for it. . . .[19]

Once Mr. Pickersgill had assured the Western Members of Parliament that the Crow's Nest Pass rates would be protected, the majority of the debate centered on the issue of the costing procedures used by the railways in determining their losses. For example, Mr. Jack Horner questioned the costing procedures used by the railways in calculating the costs incurred in the movement of grain.[20] He questioned whether the railways were in fact losing money and he attacked the government for accepting the railways' contention that they were losing money. The federal response to Mr. Horner's charges was that because the Crow's Nest Pass rates were statutory rates imposed on the railways, they had been forced to increase rates on other goods to offset the low revenues obtained from the movement of grain. Mr. Horner challenged the government's explanation by noting that the revenues on the movement of grain had increased in the 1960's, yet at the same time, the railways were increasing rates on other goods.

3. Costing Procedures

Western Members, Mr. H. A. Olson, Mr. E. Schreyer, Mr. L. Sherman, and Mr. J. Horner, pursued the issue raised by the Prairie Premiers in their telegrams to the federal government in September and October 1966 to have the costing data released to the three prairie governments and to the Parliamentary Committee.[21] In an attempt to force the federal government to release this costing information, Mr. H. A. Olson introduced a motion during the Committee's hearings on October 20, 1966 that would have obligated the Canadian Pacific Railway to release the requested costing information to the Parliamentary Committee. The motion was defeated by a twelve to eight margin.[22]

During the debate, the Westerners raised many of the issues that the provinces had put forward in their briefs. For example, Mr. Schreyer noted that the Parliamentary Committee would not be in a position to approve the maximum and minimum rate formulae unless the costing data was released.[23] Mr. H. A. Olson noted that Parliament should not be asked to approve a formula that they knew nothing about. He observed that:

> . . . When we write the law, when we lay down the formula under which the transportation commission is going to operate, . . . if we as elected members of parliament are going to do our job, we surely must know in advance what the application of this formula is going to be if we are going to recommend to parliament that this be the formula and the basis for maximum rate control whenever it is necessary.[24]

Finally, Mr. J. Horner noted that Western Canadian Members of Parliament could not approve a formula that offered virtually no protection to Western Canada. He expressed the growing fear in Western Canada with regard to the maximum rate formula in the following manner:

> . . . I think we in the West are justified in being concerned, in having some fear whether or not we will be subject to it. We are giving up many things. We are giving up the discriminatory clauses in the old bill, non-competitive rates. . . for a limited and, I say very very cautiously, limited amount of protection, because evidence before the Committee so far has suggested that this is so. One in a thousand may use it. . . . We are giving up the lot. Our fears are not really set aside by the witnesses so far today. . . .[25]

The federal response to the demand of Western Members of Parliament that costing data be released was similar to the arguments advanced by the railways. Mr. Pickersgill reiterated the federal position that the release of confidential costing information would destroy the bargaining position of the various modes of transport. The federal position is summarized in the following excerpt from Mr. Pickersgill's presentation to the Committee:

> . . . I remain quite unconvinced that any genuine public interest would be served by obliging the railways to give this information. I think it would weaken the railways' capacity to relieve the taxpayers of the burden that is now falling upon them, and this has become a steadily growing burden. . . .[26]

4. Structure of the Canadian Transport Commission

The limited discussion of the structure and composition of the Canadian Transport Commission at the hearings

of the Parliamentary Committee that examined Bill C-231 indicated that there was general acceptance of the provisions establishing the Commission by the Members of Parliament from Western Canada. Mr. Jack Horner did express concern that in the future the research function of the Commission would merely substantiate the orders and the regulations issued by the various regulatory committees of the Commission. He urged that an independent advisory body be established to initiate research projects.[27]

5. Goals of Transportation Policy

There was limited discussion by the parliamentarians on the goals and objectives of transportation policy. Several of the Members questioned the philosophy of the bill by noting that the railways were being given too much freedom. The view was expressed on several occasions that, if the forces of competition were allowed to operate with no restrictions, many areas of the country, where one mode of transport was in a monopoly position, would not receive the benefits of a competitive and efficient transportation system. In these regions of the country, governmental control and regulation should be continued. The national unity aspects of transportation policy were referred to on several occasions by the Members of Parliament. They noted that references to this objective should be strengthened in the provisions of the bill.[28]

6. Inequities in the Freight Rate Structure

The issue of inequities within the freight rate structure was raised on several occasions by Members of Parliament. The most persistent questioner on this issue was Mr. G. Regan.[29] In Mr. Regan's view, the recommendations of the Royal Commission and the provisions of the bill did not offer a solution to this problem. The Royal Commission had failed to deal with this problem in its Report and, in Mr. Regan's view, the Commissioners had neglected the most serious problem facing the Maritimes and Western Canada. In response to his charge, officials of the Department of Transport explained that the removal of legislative restrictions on the railways would enable them to compete with other modes of transport. The forces of competition would gradually eliminate inequities in the freight rate structure. Mr. Regan attempted to have officials of the Department of Transport admit that because the provisions in the Railway Act, designed to alleviate inequities in the freight rate structure, had been eliminated, the Canadian Transport Commission would be limited in their ability to deal with this problem. Officials of the Department merely reiterated their contention that the removal of legislative restrictions on the railways would ultimately eliminate inequities in the freight rate structure, and failed to deal with Mr. Regan's initial allegation.[30]

7. Summation

A review of the issues raised by Western Canadian Members of Parliament during the hearings of the two Parliamentary Committees reveals that the 150% - 30,000 pounds provisions of the maximum rate formula, the definition of a captive shipper, the obligation on the part of the Canadian Transport Commission to release costing data, and the continued existence of the Crow's Nest Pass rates were the major issues of concern. Thus, there was almost unanimous agreement among the provincial governments, the Members of Parliament, and the various pressure groups from Western Canada as to the nature of the amendments that should be enacted to the legislation if it was to offer Western Canada greater protection from the monopoly position of the railways.

C. Report of the Parliamentary Committee

The Standing Committee on Transport and Communications drafted its report to the House of Commons on November 24, 1966. Although the report contained a series of amendments to the bill, the vast majority of these were of a minor, technical nature and did not alter the major provisions of the bill. Since the Committee prepared its report in camera, there are no written records of the Committee's deliberations. It is interesting to note that the amendments accepted by the Committee were proposed by the Minister of Transport, Mr. Pickersgill, with the approval

of the Cabinet.[31] After only twenty minutes of discussion, the Committee approved its report to the House of Commons. The preparation and approval of the Committee's report after only twenty minutes of discussion is an indication of the extent to which the Committee's proceedings were dominated by Mr. Pickersgill and the Chairman, Mr. Macaluso. In addition, it provides an interesting commentary on the independence and the importance of Parliamentary Committees in the decision-making process.

Only seventeen of the Committee members attended the meeting and of the seventeen members present only two were from Western Canada -- Mr. R. Cantelon and Mr. J. E. Pascoe. The Members of Parliament from Western Canada who had dominated the hearings of the Parliamentary Committee, such as Mr. J. Horner, Mr. H. A. Olson, Mr. E. Schreyer and Mr. L. R. Sherman did not attend the Committee meeting. It is interesting to speculate on the absence of many of the Western Members of Parliament from the final Committee meeting. During an interview, Mr. J. Horner offered a partial explanation when he noted that many of the Western Members of Parliament had realized from the beginning that the Committee was controlled by the Chairman and by Mr. Pickersgill to such a degree that only those amendments that had been approved by Mr. Pickersgill would be included in the Committee's report. As a result, the Western Members of Parliament abandoned their attempts to influence the nature

of amendments included in the report and decided to take the issues to the floor of the House of Commons.[32] During an interview, Mr. J. W. Telford indicated that Mr. Pickersgill "ran the Committee with an iron hand", and that it was evident to all observers that the Committee would not recommend any amendments that did not have the approval of the Minister.[33] Government Members were not encouraged to ask questions and were instructed to vote for the amendments proposed by the government. A review of the transcripts of the Committee's hearings indicated that Government Members did not take an active part in the Committee's work. Perhaps this explains why the Western Canadian Members of Parliament did not attend the hearing when the Committee's report was prepared.

The amendments proposed by the Committee to those sections of the bill dealing with the objectives of transportation policy, the structure and composition of the Canadian Transport Commission, the Crow's Nest Pass rates, the criteria for the determination of rates, and the provisions relating to costing procedures are isolated for particular attention.[34]

1. Goals of Transportation Policy

The amendments to Clause I of the bill, outlining the objectives of transportation policy, were very minor, and they did not alter the philosophy of the bill. A clause was added stating that one of the goals of transportation

policy was protecting the interests of the users of transportation facilities. The addition of this clause placed more emphasis on the "national unity" aspects of transportation policy but did not meet the demands of the provinces and many of the pressure groups that reference to the elimination of discriminatory practices be included as one of the objectives of transportation policy. The Committee also recommended the removal of the declaration that the forces of competition guide the operation of the transportation system except in areas where monopoly conditions were in existence. This amendment placed greater emphasis on the development of an efficient and competitive transportation system as the primary goal of transportation policy.

2. Structure and Composition of the Canadian Transport Commission

There were only minor amendments to the clauses outlining the powers and composition of the Canadian Transport Commission. For example, a new clause was added stipulating that the Vice-President, who was to be a barrister, shall determine questions of law in cases before the Commission. The provision that the Secretary of the Commission must reside in the City of Ottawa was removed from the legislation in the Committee's report. Finally, several of the research functions assigned to the Commission in Section 15 of the bill were amended in such a manner that the Commission would have the power to engage in research projects pertaining to

transportation operations "within, into or from Canada". The original provisions merely gave the Commission the power to regulate transportation operations within Canada.

The appeal procedures were amended in such a manner that any order or rule issued by the Commission pertaining to the issuance or repeal of a license to operate a commercial air service, a motor vehicle, water transport, or commodity pipeline could be appealed to the Minister of Transport rather than to the Governor-in-Council. In addition, the Commission could, at its discretion, receive representations from provincial or municipal governments when considering a case. The provinces had proposed that the Commission be obligated to hear representations from interested groups when considering a case. Thus, the provinces were only partially successful in having their recommendation incorporated into the bill. The provision in the original draft of Bill C-231 stated that any order or rule of the Commission was to be "stayed" pending an appeal by an operator of another mode of transport who considered the regulations to be detrimental to the operation of his business. The railways had recommended that this provision be removed. They noted that the inclusion of such a provision would give other modes of transport the opportunity to interfere in railway operations. The government accepted the railways' argument and this provision in the legislation

was eliminated in the Committee's report. Finally, the provision that all procedures and rules be approved by the Governor-in-Council was eliminated.

3. Crow's Nest Pass Rates

The amendments to those provisions of the bill dealing with the Crow's Nest Pass rates did not alter the main provisions of the bill. For example, the rates on the movement of grain to the port of Churchill were frozen at the rate levied as of December 31, 1966. The Manitoba Government had requested that this amendment be made to the bill to ensure that rates on the movement of grain to Churchill would not increase. Finally, Section 329A of the bill was amended to include flour in the "At and East Rates" on grain moved through Eastern ports for export.

4. Rate Regulation

There were only minor amendments to the provisions dealing with rate regulation. Section 317 of the bill was renumbered by the Committee and reported to the House as Clause 16. The provisions of this clause were amended in such a manner that it was applicable to all modes of transport and not only to the railways. The original Section 317 was deleted from the bill and a new section added in its place. The new section stipulated that shippers moving goods weighing less than 5,000 pounds, and who had no "alternative, effective and competitive mode of transport",

could request that the Commission investigate any tariff levied by the railways that took "undue disadvantage of a monopoly situation". After investigation, the Commission could disallow such a tariff levied by the railway. While this amendment appeared, at least on the surface, to be a major concession by the federal government, Mr. J. W. Telford recalled that at the time the amendment was being proposed, the railways were in the process of changing their rate structure in such a manner that shipments of less than 5,000 pounds would be included within the rate structure designated for express. As a result, these shipments would not come under this provision of the National Transportation Act.

The major provisions of the legislation outlining the maximum and minimum rate formulae were not amended by the Committee. The only amendment included in the report was that the Commission report on the operation of the maximum rate formula to the Governor-in-Council in four years, rather than five years, after the enactment of the bill.

5. Costing Procedures

There were only minor amendments to these sections of the bill. For example, the provision forbidding the Canadian Transport Commission to release costing information to any party was not amended despite the attempts of Western Canadian Members of Parliament to have this clause changed.

Section 387A of the bill was amended so that Sections 317, 336, and 329A of the bill were included in the directives to the Commission when calculating variable costs. Finally, the Commission could hold public hearings when developing or amending costing regulations. These public hearings, however, were to be called at the discretion of the Commission.

6. Conclusion

A review of the amendments proposed by the Parliamentary Committee that examined Bill C-231 reveals that these amendments were of a minor nature and did not alter the major provisions of the bill. The minor amendments to the provisions of the maximum rate formula and to the provisions governing costing procedures indicates that the recommendations proposed by Western Canadian Members of Parliament, provincial governments, and pressure groups were ignored by the federal government. The views of Western Canada were presented in an articulate and persuasive manner by Members of Parliament such as Mr. H. A. Olson, Mr. J. Horner, Mr. E. Schreyer, Mr. L. Sherman and by the legal counsel for the Provinces of Manitoba and Alberta, Mr. A. V. Mauro and Mr. J. J. Frawley. The briefs presented by pressure groups such as the three Prairie Wheat Pools, the Coal Operators' Association of Western Canada, and the Winnipeg Chamber of Commerce outlined in a very persuasive and precise

manner the recommendations proposed by Western Canada. The federal government was aware that Western Canadians believed that the legislation provided no protection from the monopoly position of the railways; however, they made no attempt to alter the provisions of the bill in such a manner as to give greater protection to Western Canada. In fact, many of the statements by Mr. Pickersgill contributed to the growing feeling in Western Canada that the legislation was designed to protect the interests of the railways and of Central Canada. In particular, Mr. Pickersgill's statement on the captive shipper clause and the release of costing data by the Canadian Transport Commission contributed to the growing fear in Western Canada that the provisions of the legislation would offer little or no protection from the monopoly position of the railways.[35]

Despite the assurances of Mr. Pickersgill that the federal government was willing to accept amendments to the bill, it is evident that the Cabinet had approved the bill in its final form prior to its introduction into the House of Commons. The government had rendered a final decision on the various provisions of the bill and it was agreed that there would be no amendments to the most controversal sections of the bill -- the maximum rate formula and the release of costing information.

The Chairman of the Committee on Transport and Communications, Mr. Joseph Macaluso, indicated during the

debate in the Committee of the Whole House that the government had demonstrated its willingness to accept the recommendations found in the briefs of provincial governments and pressure groups. He noted that:

> . . . All the briefs were carefully considered. I want to thank the Minister of Transport and the government in this respect, because it showed that the department and the minister were not inflexible in receiving suggestions from those who presented briefs. I think all members will agree with me that a great many amendments put forward in committee were made as a result of briefs presented by individuals, provincial governments and companies that appeared before the committee. I believe this helped many of us in our consideration of the bill and showed us the importance of [flexibility] in regard to a bill that was in the national interest, and would mean that once and for all Canada would have a national transportation policy. . . . .[36]

As noted earlier, a review of the briefs presented to the Parliamentary Committee and a summation of the recommendations proposed in the Committee's report indicates that the federal government did not accept any amendments that would have changed the major provisions of the bill. In view of the recommendations proposed by Western Canada and the unwillingness on the part of the federal government to accept these amendments, it is difficult to understand how Mr. Macaluso could have made the above statement.

In summary, Western Canada presented its recommendations to the Parliamentary Committee in a very persuasive and articulate manner; however, the federal government chose to ignore these policy recommendations. Thus, Western Canadian recommendations were not incorporated into the

Committee's report and the burden of presenting the case for the West fell to the Members of Parliament from Western Canada during the debate in the House of Commons.

SECTION II: DEBATE IN THE HOUSE OF COMMONS ON BILL C-231

The debate in the House of Commons in December 1966 and January 1967 provided Western Canadian Members of Parliament with a final opportunity to persuade the government to enact amendments that would offer Western Canada greater protection from the monopoly position enjoyed by the railways with regard to the movement of low value bulk commodities. The arguments and amendments advanced by Western Canadian Members of Parliament were not new or original. They had been proposed by the Governments of Manitoba, Saskatchewan, and Alberta as well as by pressure groups from Western Canada at the hearings of the Royal Commission on Transportation, at the hearings of the Parliamentary Committees that examined Bill C-120 and Bill C-231, and at the meetings between federal and provincial representatives at the ministerial and official level. Clearly, the federal government was aware of Western Canadian demands. The only question that remained to be resolved was whether Western Canada could exert enough political pressure to force the government into accepting several major amendments to the bill.

Perhaps the most significant problem faced by Western Members of Parliament during this period was the fact that the overwhelming majority of them were members of the Conservative Party. As a result, it was difficult for the Western Conservative Member of Parliament to convince the government that the opinions and views expressed during the debate represented the views of the electorate of Western Canada and were not merely obstructionist tactics designed to delay the implementation of the bill.

The importance of the debate for Western Canada was emphasized on numerous occasions by Western Members. Mr. J. Horner revealed that the strategy of the Conservative Members of Parliament from Western Canada during the debate was to launch an all-out attack on the provisions of the bill in the hope that public opinion in Western Canada could be aroused to the point that the government would feel compelled to accommodate Western Canadian views to a greater extent in the final policy output.[37]

Western Members of Parliament recognized that Mr. Pickersgill was extremely anxious to have the bill enacted by December 31, 1966. During his opening remarks to the Committee of the Whole House on December 20th, Mr. Pickersgill expressed the hope that the Committee would debate the various clauses of the bill for a limited time, thus ensuring the passage of the bill by the end of the year.[38] Among the reasons necessitating the prompt passage of the bill were the absence of provisions in the estimates for the

payment of additional subsidies to the railways beyond December 31, 1966, and the expiration of the legislation enacted in 1959 that had frozen non-competitive rates. The rates would remain frozen after December 31, 1966 only with the consent and co-operation of the railways.

In reply to Mr. Pickersgill's request, Mr. Horner and Mr. Schreyer accused the government of mishandling the timetable of the House by failing to provide the necessary time to debate such a complex and important piece of legislation.[39] While they both assured the Minister that the Opposition would not filibuster the bill, they noted that it was the responsibility of the Opposition, and Western Canadian Members of Parliament in particular, to examine the implications of the legislation. Clearly, the strategy of Western Members of Parliament was to obtain concessions for Western Canada by prolonging the debate in the Committee to the point that Mr. Pickersgill's concern that the legislation be enacted without delay could be exploited.

A review of the debate in the Committee of the Whole House indicates that Western Canadian Members of Parliament introduced amendments in the following areas: the goals of transportation policy, the structure of the Canadian Transport Commission, the Crow's Nest Pass rates, the criteria for rate control, and costing procedures. Each of these areas will be considered separately.

A. Goals of Transportation Policy

An analysis of the arguments advanced by Western Canadian Members of Parliament reveals that there were certain recurring themes found in every speech. In most instances, the views expressed by the Members had been advanced on numerous occasions by provincial governments and pressure groups from Western Canada. For example, the notion that the objectives of transportation policy should be purely economic in nature was challenged by Members of Parliament such as Mr. J. Horner and Mr. E. Schreyer.[40] Both these Members argued that the Canadian Pacific Railway was not a corporation like General Motors. Rather, the Canadian Pacific Railway performed a very special and unique function in Canadian society that placed it in the category of a public utility subject to governmental regulation. Transportation policy in their view should be designed to meet social as well as economic objectives and should ultimately enhance both the political and economic unity of the nation. Competition should not be the guiding force governing the operation of the transportation system in that in many areas of Canada the railways were in a monopoly position with regard to the movement of particular commodities. Under these conditions, the forces of competition could not function effectively.

Mr. J. Horner summarized the sentiments of Western Canadian Members when he noted that it was essential that

there be general agreement on the goals and objectives of transportation policy before the various provisions of the bill were enacted. He argued that:

> . . . Down through the years, through taxation, the people of Canada have provided adequate transportation facilities to enable the producing areas to get their goods to market and the consuming areas to utilize the goods produced all across Canada. . . . That has been the basic reasoning behind all transportation policies in years gone by. This bill is a revolutionary change from all that. It will set up the railroads as business entities and the suggestion is that we no longer need them as public utilities. In a sense, this is what we are being told; this is what this bill purports to do. Let us look at the possibilities. Are they still public utilities? Are they something similar to General Motors, or are they something similar to a Canadian utility which is providing power, for example, to the city of Ottawa, or something like that? According to my interpretation they certainly still are to quite a large extent public utilities. . . .[41]

Similar views were expressed by Mr. E. Schreyer when he noted that the forces of competition in Western Canada had not developed to the point that they could remove existing inequities in the freight rate structure. In short, Mr. Schreyer challenged the basic philosophy underlying the bill and questioned whether the forces of competition could provide adequate protection for Western Canada. The question that arises from Mr. Schreyer's statement is whether he was expressing the views of the New Democratic Party or whether his views represented the opinions of Western Canadians in general. Mr. Schreyer's comments were similar to the views expressed by Conservative Members of Parliament from Western

Canada. In addition, the provincial governments of Manitoba, Saskatchewan, and Alberta supported Mr. Schreyer's views in their briefs to the Parliamentary Committee that had examined Bill C-231. Thus, it would appear that Mr. Schreyer was expressing a viewpoint that enjoyed widespread support in Western Canada. During the debate he said:

> . . . It seems to me that in putting forward the legislation the government and the minister have committed one rather obvious error. They have taken the railway transportation and freight charges further away from regulation and have put too much faith in competition as an effective means of protecting the public interest. It may well be that certain evidence has come to light in the past years which would indicate that competition has increased in recent years, and has thereby become more effective in protecting the users of transportation services. That premise is certainly open to debate. But even if it were to be conceded that in some respects competition in the transportation industry has increased, it is also a fact that in certain regions of this country this is less true.
>
> . . . I submit that there has not been sufficient evidence put forward to date to indicate that we would be well advised to consider competition as a proper basis for the control of freight charges in this country. I believe the hon. member for Acadia was right when he said that it is in the national interest to continue regarding railway transportation as a public utility. . . .[42]

In response to these rather general comments from Western Members of Parliament, Mr. Pickersgill noted that the government was faced with two possible alternatives when drafting the legislation. One solution was for the government to continue to impose regulations on the railways and continue to compensate them for revenues lost as a result of regulation. The other alternative was to remove all

restrictions imposed on the railways, and thus free them to compete with all other modes of transport. The government, he noted, had accepted the general recommendations of the Royal Commission on Transportation and had drafted legislation in accordance with those objectives.

A. W. Currie noted that, during the period from 1958 to 1966, the Parliament of Canada authorized the payment of $50 million in the form of subsidies to the railways.[43] This sum did not include the deficits of the Canadian National Railway. The majority of the subsidies during this period were not tied to a particular service performed by the railways but were in large part designed to compensate the railways for revenues lost as a result of the freight rate freeze enacted in 1959. The continuation of subsidies that were not directly related to specific railway projects and services was contrary to the recommendations of the Royal Commission.

The acceptance of the recommendations of the Royal Commission as the basis for new legislation was challenged on several occasions by Western Canadian Members of Parliament. The argument was made that a policy that would remove legislative restrictions on the grounds that the railways were approaching bankruptcy was outdated in light of developments in the 1960's. Perhaps Mr. L. R. Sherman, Member of Parliament for Winnipeg-South, expressed the views of many Western Members of Parliament on this point when he

noted:

> . . . Circumstances in the railroad business and circumstances in every facet and every level of society have changed sharply since the MacPherson Royal Commission carried out these investigations. When the MacPherson Royal Commission looked into transportation problems, and railroad problems in particular, in this country the railroad industry was in serious trouble. I submit that this is hardly the case now. I do not think anybody in this committee can argue that the railroad industry is in serious financial trouble today. Its potential for profit, progress and success is unlimited. Witness the bumper wheat crops which have been Canada's good fortune in the past five to seven years; witness the huge wheat contracts signed with other countries round the world; witness, for example, the rise in the potash industry of Saskatchewan, a dream undreamed seven years ago when the MacPherson Commission began its investigation. . . .[45]

In addition to general comments and observations regarding the goals and objectives of transportation policy, Western Members introduced several amendments designed to strengthen the social objectives of transportation policy. The most significant amendment was introduced by Mr. Gerald Baldwin, Member of Parliament for Peace River. Mr. Baldwin's amendment was designed to establish "the equalization of freight rates" as an objective of transportation policy. Specifically, his amendment was to be added to subsection III of Clause I and the amended section read as follows:

> C. each mode of transport, as far as practicable, receives compensation for the resources, facilities, and services that it is required to provide as an imposed public duty; <u>provided however that it is essential to recognize the</u>

> policy of equalization as a means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities between the various parts of the country as well as the encouragement of industry and agriculture in all regions and the development of export trade,[46]

The content of the amendment was hardly original in that the Turgeon Royal Commission of 1948 had recommended such a policy. The government accepted the recommendation of the Turgeon Commission and in 1952 amended the Railway Act so that the equalization of rates became an objective of transportation policy. The intent of the amendment was to impose greater governmental control on the railways by limiting the extent to which rates could vary from one region to another. A second objective of the amendment was to give greater meaning to the term "public interest" found in Section 16 and to give some general policy directive to the Canadian Transport Commission when rendering decisions.

Speaking in support of Mr. Baldwin's amendment, Mr. A. Hamilton noted that the amendment would not defeat or weaken the general philosophy of the bill. Such an amendment in his view could ultimately eliminate the long-standing grievance articulated by Western Canadians that Western Canada suffered from discriminatory freight rates.[47]

The government refused to support the amendment introduced by Mr. Baldwin on the grounds that such a policy of equalization, if fully implemented, could lead to the elimination of the Crow's Nest Pass rates and the Maritime

Freight Rates Act. Clearly, these rates could not be applied equally in all parts of the country without these regions losing the benefit of the rates. Technically, Mr. Pickersgill was correct in his statement that, if the principle of equalization was extended to its logical conclusion, the benefits of the Crow's Nest Pass rates to Western Canada would be lost. In addition, Mr. Pickersgill noted that a policy of equalization was extremely difficult to apply and was in direct opposition to the general philosophy of both the MacPherson Royal Commission and the legislation before Parliament.[48]

Despite the government's initial rejection of Mr. Baldwin's amendment, Mr. Pickersgill introduced an amendment on behalf of the government that incorporated some of the proposals found in Mr. Baldwin's amendment. It is interesting to speculate as to the reasons why the government accepted amendments to Clause I of the bill. One explanation is that the government was planning an amendment to Section 16 of the bill which would establish guidelines for the Canadian Transport Commission in determining when a rate was contrary to the public interest. A similar amendment to Clause I was therefore necessary to ensure that the term "public interest" would be defined in a similar fashion in all parts of the legislation. The inclusion of Clause 16 and the amendment to Clause I were also designed to accommodate the demands of Western Canada for greater

protection from the monopoly position of the railways. With these amendments, the term "public interest" would be defined more explicitly and the national unity aspects of transportation policy would be strengthened. The enactment of these amendments was one of the major concessions made by the government in an attempt to accommodate Western Canadian demands.

Specifically, Mr. Pickersgill's amendment added a section "D" to Clause I of the bill. The new section read as follows:

> (d) each mode of transport so far as practicable carries traffic to or from any point in Canada under tolls and conditions that do not constitute
> (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, or
> (ii) an undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement of the development of primary or secondary industries or of export trade in or from any region of Canada -[49]

With the introduction of Mr. Pickersgill's amendment, Mr. Baldwin withdrew his amendment and Mr. Pickersgill's amendment was accepted in its place. While Mr. Baldwin realized that the government's amendment did not encompass the full intent of his amendment, he reasoned that the amendment introduced by Mr. Pickersgill was the only amendment that was acceptable to the federal government.[50]

Mr. E. Schreyer was extremely critical of Mr. Pickersgill's amendment.[51] He noted that the government amendment did not establish the principle of equalization as an objective of transportation policy in as explicit a manner as the Baldwin amendment. For example, he noted that the equalization of rates would be an objective of transportation policy only if there were no legal and constitutional requirements to the contrary and if the rates, when equalized, did not constitute an unfair disadvantage to one region or another. In Mr. Schreyer's view, the addition of these new clauses offered little or no protection for Western Canada. Any assessment of the accuracy of Mr. Schreyer's comments as to the effectiveness of the amendments must await future decisions by the Canadian Transport Commission. For example, while Mr. Schreyer was correct in his comment that the terms of the amendments introduced by the government were not as stringent as the terms of Mr. Baldwin's amendment, a recent decision of the Canadian Transport Commission in December 1971 did provide some evidence to suggest that these provisions of the legislation do offer some protection for Western Canada.[52]

In summary, despite the attempts of Western Canadian Members of Parliament to amend Clause I of the bill, to modify the objectives of competition and efficiency as the primary goals of Canadian transportation policy, the only concession that could be gained from the government was the

inclusion of two additional clauses that made a very vague reference to equalization as an objective of transportation policy. In addition, the Canadian Transport Commission was given a rather vague directive as to how the term "public interest" should be defined in Clause 16.

B. The Structure of the Canadian Transport Commission

The organizational structure of the proposed Canadian Transport Commission was also questioned by Western Members of Parliament. In most instances, their comments were very general. In fact, there was only one amendment proposed that was specifically designed to alter the structure of the Canadian Transport Commission.

Among the general questions raised by Western Members of Parliament was the desirability of placing both the research and regulatory aspects of transportation policy under the control of the Canadian Transport Commission. Mr. J. Horner, for example, questioned whether the research branch of the Commission would remain an independent entity or whether the research undertaken by the Commission would merely support the decisions rendered by the Commission. In response to these charges, Mr. Pickersgill noted that the research and regulatory branches of the Commission would remain as separate and distinct entities. In particular, the research branch would consider questions that would not

relate in any way to the regulatory activities of the Commission.[53]

The nature of the appointments to the Commission was a subject of concern to Western Canadian Members of Parliament. It was the view of Westerners that future appointments to the Commission should not include representatives from the various segments of the transportation industry.[54] This argument had been made during the hearings of the Parliamentary Committee by the three Prairie Wheat Pools. At that time, the government refused to make any commitment as to the nature of future appointments and Western Members of Parliament were no more successful in obtaining such a commitment from the government during the debate in the House.

The question of regional appointments to the Canadian Transport Commission was debated in the Committee. For example, Mr. George Muir, Member of Parliament for Lisgar, requested that Mr. Pickersgill assure the Committee that all regions of Canada would be represented on the Commission.[55] In reply, Mr. Pickersgill noted that it was the government's intention to appoint individuals from all regions of Canada. However, when making appointments, regional representation would not be the only criterion considered by the government. In Mr. Pickersgill's view, expertise in the field of transportation should be the most important criterion in making appointments.[56]

The only specific amendment introduced by a Western Canadian Member of Parliament designed to alter the structure of the Canadian Transport Commission was proposed by Mr. Gerald Baldwin.[57] Mr. Baldwin observed that once regulatory agencies are created they become increasingly insensitive to public opinion. In addition, there was a tendency for the regulatory agency to be dominated by the industry that it was created to regulate. Thus, it was essential, in Mr. Baldwin's view, that Parliament retain some control over transportation policy in general, and over the activities of the Canadian Transport Commission in particular. Speaking during the debate in Committee, Mr. Baldwin summarized the objectives of his amendment in the following manner:

> . . . I do not accept the proposition that Parliament should be asked to abandon its responsibility in such a vast field of operations, and yield in a practical sense the powers and the authorities to the commission without a safeguard of some kind. I use the words "in a practical sense" because this, of course, is what this bill will do. The government may retort and say, "We have always the power to legislate". But, Mr. Chairman, we have given this tremendous authority over these various fields to the commission, and I am quite sure the commission will continue to be seized of them without too much change for a number of years. It is my belief this house should not be asked to yield up, without some safeguards, its rights and responsibilities to the people who have sent us here.
>
> If this is not done, I am quite convinced that the powers of the commission will grow swiftly and, in due course, it will become harder and harder to find any method of examining or suggesting changes and alterations when it is essential to do so. Once we give up this right, I doubt that we will ever get it back.[58]

Interviews in Western Canada with farm and business groups, as well as with government officials, supported Mr. Baldwin's contention that the Board of Transport Commissioners, during the 1940's and 1950's, had become increasingly identified with the interests of the railways.[59] A similar charge has been made by farm and business groups, as well as by government officials, with regard to the Canadian Transport Commission. Any final assessment of the Commission's identification with the railways must await future decisions. With regard to Mr. Baldwin's assessment as to the role of Parliament in the formulation of transportation policy, it would appear that Parliament has virtually no input into the formulation of transportation policy. The entire area has been turned over to the Canadian Transport Commission and the ability of Parliament to scrutinize the policy decisions of the Commission is negligible.

To ensure the continued involvement of Parliament in the formulation of transportation policy, Mr. Baldwin recommended that a Statutory Committee of the House of Commons be established to scrutinize the activities of the Canadian Transport Commission. While Parliamentary Committees have the authority to examine and review the activities of regulatory agencies, the authority to examine these agencies comes from Parliament and not from the legislation establishing the agency. Mr. Baldwin's proposal

that the Committee's authority come from the legislation establishing the Commission was a new and original proposal.

The Committee would draw its authority from the National Transportation Act and would be constructed in the following manner:

(1) As soon as practical after the commencement of the first session of each parliament, in any event not more than 15 days after the commencement of the said session , a committee of 12 members of the House of Commons (to be known as The National Transport Act Committee) shall be appointed for the duration of such parliament according to the practice of this house with reference to the appointment of members to serve on standing committees.

(2) There shall be a chairman and a vice-chairman of the committee who shall be elected by the members from time to time provided however that the chairman shall be a member of the opposition.

(3) Save where otherwise provided herein the general practice as established by the Standing Orders shall prevail with regard to the meetings and acts of the said committee.

(4) The powers and duties of the committee are:
(a) to examine the annual report made to the Governor-in-Council by the commission and to report to the house with such comments as it thinks fit any items or matters referred to in this report; and
(b) to enquire into any question which is referred to it by the House of Commons and to report to the house upon that question.

(5) The committee may, and at the request of the witness giving evidence shall, take in private evidence whether oral or documentary which in the opinion of the committee relates to a secret or confidential matter.

(6) Where at the request of a witness evidence is taken by the committee in private the committee or member shall not, without the consent in writing of the witness, disclose or publish the whole or part of evidence.

> (7) Every person competent to give evidence touching any matter under discussion in the committee shall be a compellable witness.
>
> (8) A person who gives evidence before the committee shall not without just cause (proof whereof shall lie upon him) refuse
> (a) to be sworn or make a statement;
> (b) to answer a question put to him by the committee or member thereof; or
> (c) to produce any document which he is required by the committee to produce.[60]

In response to Mr. Baldwin's amendment, Mr. Pickersgill noted that the Standing Committee on Transport and Communications could perform these functions and that the government was not prepared to accept his amendment.[61] Despite the attempts of Western Canadian Members of Parliament to ensure that Parliament would retain a degree of control over the activities of the Canadian Transport Commission, Mr. Baldwin's amendment was defeated by a recorded vote of 62 to 30.

C. Crow's Nest Pass Rates

The Crow's Nest Pass rates were the subject of considerable discussion in the Committee. The issue of concern to Western Members of Parliament was the inclusion of a provision in Section 329 that obligated the Canadian Transport Commission to review the compensatory nature of the rates three years after the bill was enacted. Western Members of Parliament were convinced that a review of the rates would be the first step leading to their eventual elimination. During the course of the debate, references were made to statistical data that had been presented to the MacPherson

Royal Commission by the three Prairie Wheat Pools indicating that the railways were not losing money on the movement of grain. Furthermore the government's attention was drawn to the minority report that had been written by Commissioner Rene Gobeil in which he noted that the railways had failed to demonstrate that they were in fact losing money. Mr. J. Horner expressed the views of many Members of Parliament from Western Canada on this issue when he said:

> . . . In the time permitted to me I should like to explain to the house my views in this regard. I would say to the minister, first of all, that many people believe this particular clause in the bill is the thin edge of the wedge. Time and time again it has been stated to western Canada that the Crowsnest pass rates are the Magna Carta of the west. This is an accepted view. But if many people in western Canada see what I see in this bill, they will readily conclude that this bill, and this clause in particular, is the thin edge of the wedge with regard to the eventual destruction or removal of the Crowsnest pass rates. . . .[62]

Mr. Pickersgill attempted to reassure the Members that the inclusion of the review procedure would not be the first step leading to the eventual elimination of the Crow's Nest Pass rates. He stated that the government was merely implementing the recommendation of the MacPherson Royal Commission that an investigation be undertaken to determine if, in fact, the railways were losing money on the movement of grain. The government's position was summarized by Mr. Pickersgill in the following manner:

> . . . Let me repeat: There is no intention whatever, indeed it is forbidden in this bill, to review the Crowsnest rates. They are frozen as hard as any legislation could possibly freeze them for all time to come. We have even improved the situation by freezing them specifically for Churchill.
>
> The review has to do with the cost of moving this grain, and nothing else. The review will not endanger the Crowsnest rates in any way whatsoever; in fact, it will safeguard them, and if hon. gentlemen opposite are right in believing that the rates are compensatory, the sooner someone can establish that contention objectively, the better, because then nobody could attack the rates. This is what we are seeking to accomplish. . . .[63]

Despite the assurances of Mr. Pickersgill, the Conservative Members of Parliament found his explanation inadequate and Mr. Gordon Churchill moved an amendment that would have eliminated Section 329 from the bill.[64]

Mr. Jack Horner, during an interview, recalled the events surrounding the debate on Mr. Churchill's amendment by noting that the Conservatives had introduced the amendment as part of their strategy designed to mobilize public opinion in Western Canada. The Western Conservative Members of Parliament reasoned that the Crow's Nest Pass rates were an emotional issue in Western Canada and that it would be possible to mobilize public opinion in support of their position.[65] While it was extremely unlikely that Mr. Churchill's amendment would be accepted by the government, the Conservative Members of Parliament were hopeful that a prolonged debate could ultimately lead to further concessions by the government. This was the price Western Canadian

Members of Parliament calculated the government would be prepared to pay in their desire to have the bill enacted without undue delay.[66]

After a two-day debate that was dominated by the Conservative Members of Parliament from Western Canada and by Mr. Pickersgill, Mr. Churchill's amendment was passed by a vote of 59 to 58.[67] The defeat of the government in Committee was the first time that the minority Liberal Government had been defeated in the House. The acceptance of the Conservative amendment came as a complete surprise, and there were rumblings from the Liberal caucus that the party whips would enforce attendance in the House for the remaining portion of the debate. Newspaper reports reported Mr. Pickersgill as saying that he had been humiliated by the defeat of the government in Committee.[68]

The government's immediate response was to have a motion passed to delay the vote on the final version of the clause. This would permit the government to introduce additional amendments to the clause at a later date.[69] In addition, Mr. Pickersgill drew to the attention of the House the fact that the acceptance of the Conservative amendment to eliminate Section 329 in its entirety not only removed the review procedure but eliminated a provision that defined those grain products that were eligible to be moved under the Crow's Nest Pass rates. He produced a list of thirty-six grain products that would no longer be covered under the

Crow's Nest Pass Agreement because of the elimination of the definition of grain found in Section 329.

To compensate for the loss of the review provision, Mr. Pickersgill introduced a motion that would have empowered the Canadian Transport Commission to review all statutory rates two years after the enactment of the bill.[70] The amendment was similar to the original provisions of Section 329. The Conservatives immediately questioned the validity of the amendment by noting that the matter had been disposed of when their amendment to Section 329 had been accepted by the Committee. Thus this issue could not be raised again in that session of Parliament. A procedural debate followed the introduction of Mr. Pickersgill's amendment and Members of Parliament from Western Canada, such as Mr. Gordon Churchill, Mr. E. Woolliams, Mr. A. Hamilton, and Mr. J. Horner, used the opportunity not only to denounce the amendment but to restate the advantages and importance of the Crow's Nest Pass rates for Western Canada.[71] Mr. J. Horner recalled that the Conservatives would have been willing to accept Mr. Pickersgill's amendment if there had been some reference in the amendment to the effect that the Crow's Nest Pass rates would be excluded from the general review of all statutory rates.[72]

After much debate, the legality of Mr. Pickersgill's amendment was appealed to the Chairman of the Committee of the Whole House. After deliberation, the Chairman noted

that the rules clearly stated that once an issue had been decided by a committee, the issue could not be raised in the same form in the same session. The essence of the argument in his view was whether Mr. Pickersgill's amendment differed in substance from Section 329 of the bill. The Chairman ruled that Section 329 dealt exclusively with the Crow's Nest Pass rates while Mr. Pickersgill's amendment referred to all statutory rates. In addition, Section 329 provided for a single review of the Crow's Nest Pass rates after a three-year period while Mr. Pickersgill's amendment proposed a continuing review of all statutory rates. Finally, Section 329 stipulated that the Canadian Transport Commission review the Crow's Nest Pass rates after a three-year period while Mr. Pickersgill's amendment stated that such a review would take place at the request of the railways. These differences, in the Chairman's view, differentiated the two clauses and he ruled that Mr. Pickersgill's motion was in order.[73]

The Conservatives immediately appealed the ruling to the Speaker of the House. A procedural debate again developed as both the government and the opposition presented its case to the Speaker. After one day's deliberation, the Speaker ruled that Mr. Pickersgill's amendment was not in order. In reaching this decision, the Speaker reasoned that once a rule had been negated, it could not be considered again that session. In his view, there was no substantive

difference between Mr. Pickersgill's amendment and those provisions of the bill that had been deleted by the Conservative amendment.[74]

With the ruling of the Speaker, the only remaining issue with regard to the Crow's Nest Pass rates was the definition of grain that had been excluded from the bill by the deletion of Section 329. To remedy this situation, Mr. Pickersgill introduced an amendment to Section 470 that was designed ". . . to give protection to all the rates on products that are not directly protected by statute but which are generally referred to as the Crow's Nest Pass rates".[75] This amendment was unanimously accepted by the Committee and the debate on those sections of the bill pertaining to the Crow's Nest Pass rates was concluded.

The deletion of the review procedure found in Section 329 was a major political victory for the Western Canadian Members of Parliament. The injection of Western Canadian views into the final policy output on this particular issue did not occur because Western Canadian Members of Parliament had been successful in convincing the government, on the basis of their arguments, that the review procedure should be eliminated from the bill. The acceptance of this amendment by the government was assisted by the failure of the Liberals to have enough Members present for the vote in Committee and by the ruling of the Speaker that Mr. Pickersgill's amendment was not in order.

D. Rate Regulation

The debate in the Committee on those provisions of the bill outlining the criteria for the determination of freight rates presented Western Canadian Members of Parliament with an opportunity to reiterate the arguments that had been advanced on earlier occasions by spokesmen from Western Canada. A review of the speeches by Western Canadian Members of Parliament revealed that they were convinced that freight rates in Western Canada would increase if all regulations were removed and the railways were given a free hand to determine their own rates within the general guidelines proposed in the legislation.[76] For example, the maximum rate formula designed to protect certain regions of Canada from the monopoly position of the railways provided no protection for Western Canada. The definition of the captive shipper found in Section 336 as well as the 150% - 30,000 pounds provisions of the maximum rate formula led many Western Members to the conclusion that no shipper would take advantage of the formula. Rates calculated under the formula, in their view, would be higher than existing rates. In addition, the provisions of Clause 16 -- "the public interest" clause -- were the subject of considerable debate. For example, Western Members were critical of the absence of any guidelines indicating how the term "public interest" should be defined or what constituted a prima facie case. Western Members used the vague terminology of the clause to urge the

government to enact amendments that would place greater legislative restrictions on the activities of the railways.

In response to these general criticisms, Mr. Pickersgill argued that the maximum rate formula would in fact offer protection to those shippers that were truly captive.[77] The inclusion of Clause 16 in the bill was a direct result of representations made to the federal government from Western Canada.[78] Mr. Pickersgill noted that this was the most general of the clauses establishing the criteria for the determination of rates and in many ways could be seen as the replacement clause for those clauses in the Railway Act that forbade "unjust discrimination" and "undue preference" with regard to railway practices. Western Members found Mr. Pickersgill's explanation inadequate and as each of the four pertinent sections of the bill were considered in Committee, specific amendments were proposed to two of the four sections.

There was only limited debate on the provisions of the minimum rate formula and Western Members of Parliament did not move any specific amendments to this particular clause. However, there were several specific amendments proposed to the maximum rate formula that were designed to alter the provisions of the formula in such a manner that it would provide greater protection for Western Canada. For example, Mr. L. Sherman moved an amendment that would have extended captive shipper status to all those shippers whose

rates had been lowered as a result of the enactment of the Freight Rate Reduction Act of 1959.[79] The enactment of this legislation had resulted in lower freight rates in Western Canada in particular. Clearly, the extension of captive shipper status to these shippers would have been of direct benefit to Western Canada and would have placed the onus on the shipper to declare himself to be captive within the terms of the Act. This amendment had been proposed by the Government of Manitoba during the hearings of the Parliamentary Committee. The recommendation was rejected by Mr. Pickersgill at that time and was again dismissed by the government on the grounds that such an amendment would alter the basic philosophy underlying the maximum rate formula. In addition, Mr. Pickersgill observed that, in his view, it would be impossible to draft a maximum rate formula that would offer greater protection to shippers of bulk commodities. His views on Mr. Sherman's amendment were summarized in the following manner:

> . . . The hon. member for Acadia and the hon. member for Medicine Hat made it very clear earlier that the maximum rate formula envisaged here would not offer an alternative which would be more attractive to the bulk shippers than the rates they are now paying. Therefore I do not think any maximum rate formula we could possibly write into the legislation would meet with the situation of bulk shippers. . . .[80]

Mr. Sherman's amendment was subsequently defeated by a vote of 63 to 40.

Mr. H. A. Olson was extremely critical of the provisions of Section 336.[81] He noted that it would be impossible to improve this section by the enactment of specific amendments, and he subsequently moved an amendment designed to eliminate the section in its entirety from the bill. Using many of the arguments advanced by the Government of Alberta in its brief to the Parliamentary Committee, Mr. Olson encouraged Members of Parliament to concentrate their efforts on having the government accept amendments to Clause 16. In Mr. Olson's view, an amended Clause 16 would offer Western Canada more protection than would any of the other clauses. The government rejected Mr. Olson's amendment on the grounds that the deletion of this clause would alter the basic philosophy of the bill -- that the railways should be free to set rates within the limits of a maximum and a minimum formula. Despite support from Members of Parliament such as Mr. E. Schreyer, Mr. J. Horner, Mr. L. Kindt, and Mr. R. Cantelon, Mr. Olson's amendment was defeated by a vote of 56 to 33.

Mr. E. Schreyer moved an amendment designed to eliminate the figure of 150% from the maximum rate formula and to substitute in its place a figure calculated by the Canadian Transport Commission that would guarantee the railways a minimum level of earnings.[82] In Mr. Schreyer's view, such an amendment would result in the elimination of a formula that did not accurately reflect conditions in the

railway industry at the present time with a formula that would give greater protection to the captive shipper. Mr. Pickersgill objected to the amendment on the grounds that the 150% and 30,000 pounds figures used in the maximum rate formula were taken from research studies undertaken by the MacPherson Royal Commission.[83] In reply, Mr. Schreyer indicated that neither the Commission nor the government had advanced any arguments to justify the acceptance of these figures. He implied that these figures had been injected into the legislation at the urging of the railways.[84] The debate concluded with Mr. Pickersgill noting that he had more confidence in the advice given to him by his advisers than in the advice being given to Western Members of Parliament by their advisers. With the defeat of Mr. Schreyer's motion, by a vote of 46 to 16, the debate on Section 336 concluded.

During the course of the debate, Western Members of Parliament came to the view that the provisions of Clause 16 of the Act, if amended, could provide the most protection for Western Canada.[85] As a result, the provisions of this clause were debated at length and the government was persuaded to accept two amendments. The issue of particular concern to the Western Members of Parliament was that there was no definition of the term "public interest" in the clause. Western Members of Parliament reasoned that, if the clause was to offer any protection for Western Canada, it was

essential that the term be defined more precisely.

In response to Western Canadian demands, Mr. Pickersgill introduced an amendment to Clause 16 that gave greater meaning to the term "public interest" and offered direction to the Canadian Transport Commission when considering cases under this clause of the Act. Specifically, Mr. Pickersgill's amendment to subsection 3 of Clause 16 inserted the same terminology that had been added by the government in an amendment to Clause 1. The amended section of Clause 16 read as follows:

> (a) whether the tolls or conditions specified for the carriage of traffic under the rate so established are such as to create
> (i) an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or
> (ii) an undue obstacle to the interchange of commodities between points in Canada or an unreasonable discouragement of the development of primary or secondary industries or of export trade in or from any region of Canada.[86]

Mr. Pickersgill noted that the addition of this amendment to Clause 16 was designed to meet Western Canadian demands. However, Western Members of Parliament were not satisfied with Mr. Pickersgill's amendment and they continued to pressure the government to further amend Clause 16. For example, Mr. G. Baldwin noted that subsection 4 of Clause 16 did not permit shippers to use the provisions of this clause to appeal a rate that had been established by the Canadian Transport Commission under Section 336.[87] In

Mr. Baldwin's view, such a restriction would have a direct impact on Western Canada in that, should a shipper request that the Commission grant him captive shipper status, the shipper could not utilize the provisions of Clause 16 to appeal the rate set by the Commission if, in the shipper's view, the rate set by the Commission was too high. Mr. J. Horner noted that the amendment proposed by Mr. Pickersgill made reference to "unfair disadvantage beyond any inherent in the location or volume of traffic".[88] In Mr. Horner's view, this provision would provide no protection for Western Canada and would merely place the railways in the position of having the power to determine where industries would locate and whether certain industries would survive. It was essential that the term "public interest" be defined more precisely if the clause was to provide protection for Western Canada. In summarizing his position, Mr. Horner said:

> . . . This is where I come to the crux of my problem. I say this clause does not give him enough protection from discriminatory action by the railroads. Many people feel that the railroads are in a position, through their regulations, to rule out unjustly a plant, a manufacturer or an industry. This gives the railroads a power to which I do not feel they are entitled. I do not think this house feels they are entitled to it and I do not think the people of Canada feel the railroads are entitled to that power. . . .
>
> . . . The citizen says he wants protection from discriminatory action by each one of these modes of transportation. As I say, clause 16 really does not give that protection. The minister's amendment does not go quite far enough although it goes farther than clause 16 and I commend the minister for suggesting it. The minister's amendment may be acceptable to the committee, and I have no objection to it. However, I wanted to speak on it before it was

> passed. I wanted to point out that it did not go far enough. There should be some words added either before or after "public interest" or there should be a definition of public interest in this bill. What does public interest mean?[89]

In reply, Mr. Pickersgill indicated that since the terminology in Clause 1 and in subsection 3 of Clause 16 were identical, the government would be willing to introduce a further amendment to Clause 16 to indicate that the definition of the term "public interest" in Clause 16 would include the public interest as described in Clause 1.[90] Such an amendment would expand the definition of public interest to include more than the term "unfair disadvantage", yet at the same time would ensure that the Canadian Transport Commission retained the power to interpret the phrase "the public interest" as they saw fit.

Although Western Members of Parliament were not completely satisfied with this amendment, the Conservatives were quick to realize that the government had met their demands in part and had drafted two amendments that were designed to give greater protection to Western Canada.[91] As a result, they did not pursue the issue and Mr. Pickersgill's two amendments to Clause 16 were accepted by the Committee.

During the last days of the Committee debate, however, Mr. R. Cantelon introduced a further amendment designed to define more precisely the term "public interest" in Clause 16. Specifically, his amendment would have amended

subsection 2 of Clause 16 to read ". . . may prejudicially affect the business of the complainant or the public interest".[92] The inclusion of the words "the business of the complainant" would in Mr. Cantelon's view offer more protection to the small businessman in Western Canada to appeal a particular rate to the Canadian Transport Commission under the provisions of Clause 16.

Mr. Pickersgill's immediate response to this amendment was that the inclusion of such a clause would result in the Commission being inundated with a large number of complaints that, in the Minister's view, would be of a frivolous nature.[93] In addition, the inclusion of such a provision could result in the Commission becoming involved in the detailed regulation of rates. Such a practice would not conform with the general philosophy of the bill. With the defeat of Mr. Cantelon's motion, the Committee concluded its debate on Clause 16.

There was only limited debate on Section 317 and no amendments were proposed to this section by Western Canadian Members of Parliament.

E. Costing Procedures

The debate in Committee on those sections of the Act pertaining to costing regulations and procedures provided Western Canadian Members of Parliament with an additional opportunity to criticize the provisions of Section 336 and Clause 16. There were three issues that were of particular

concern to Western Canada -- the release of costing data to Members of Parliament to enable them to assess the impact of the maximum rate formula on the existing rate structure; the development of costing orders and regulations by the Canadian Transport Commission; and the release to the public of costing data obtained by the Commission from the railways. Each of these issues will be discussed separately.

1. Release of Costing Data to Members of Parliament

Members of Parliament, provincial Premiers, and their officials, and pressure groups from Western Canada had urged the federal government to release adequate costing data so that the impact of the maximum rate formula could be assessed with greater accuracy. The federal government had consistently refused to release this data on the grounds that the competitive position of the two railways would be restricted by the release of such data. The railways had consistently supported the government's position on this issue. During the debate in Committee, Western Members of Parliament renewed their demands that the costing data be released. The government refused to move from its original position, and dismissed Western demands with reasons that had become well known to Western Members of Parliament. Thus, despite the concerted efforts of provincial and federal politicians, the federal government continued to refuse to release this data.[94]

2. Determination of Costing Regulations

Provincial governments, Members of Parliament, and pressure groups from Western Canada indicated on several occasions to the federal government the importance they attached to the development of adequate costing procedures by the Canadian Transport Commission. In a cost-oriented rate structure, the development of costing regulations was a crucial factor. Western Canadian Members of Parliament, during the debate in Committee, attempted to obtain from Mr. Pickersgill an assurance that interested groups, as well as the provincial governments, would have the opportunity to make representations to the Commission on this matter. In reply, Mr. Pickersgill assured the Members that one of the first acts of the Commission would be the development of such costing regulations and that Western Canada would be invited to make representations at that time.[95] It would appear that Mr. Pickersgill was in a position to make these kind of assurances to Western Canada. During this period, there were persistent rumors circulating in Ottawa to the effect that Mr. Pickersgill would be appointed to the Canadian Transport Commission once the legislation had been enacted.

3. The Release of Costing Data in the Possession of the Commission

Section 387C forbade the Canadian Transport Commission to release any costing data that was obtained from

the railways. The provincial governments had attempted to persuade the federal government, during the hearings of the Parliamentary Committee, to amend Section 387C in such a way that the Commission would be obligated to release this data. The government refused to accept this proposal on the grounds that the release of this data would destroy the competitive position of the railways. The Western Canadian response was that there was open collusion between the railways with regard to the setting of rates. In addition, it would be impossible in the future for interested parties to take cases to the Commission under the various sections of the Act without accurate and complete costing data.

Western Canadian Members of Parliament renewed their demands during debate in the Committee and Mr. L. R. Sherman moved an amendment that would have removed Section 387C in its entirety from the bill.[96] In response, Mr. Pickersgill reiterated the traditional arguments advanced by the federal government as to why this data could not be released. Mr. Pickersgill summarized the government's position in the following manner:

> . . . I think, however, it is not unreasonable for us, in seeking to be fair to one section of the community also to seek to be fair to another section of the community. I believe that when we are telling the railways that we do not want to subsidize them, that we want them to earn their own living, we should not do anything that will give them the feeling that they will be inhibited in doing so. I do not agree with hon. gentlemen opposite who say that they think a shipper, in his bargaining with the railway, should be told what the railway's costs are to help him make his

> bargain to obtain a lower rate unless the railways are told what the shipper's financial position is so that the railways can decide how much he can afford to pay. . . .
> . . . I believe the presence of this clause in the bill would reassure the railways in this respect. There would be less resistance to providing this kind of information, which the commission really must have if it is to do its duty properly, if the railways knew this information was protected by statute. . . .[97]

After a short debate, Mr. Sherman's motion was defeated.

A compromise motion was introduced by Mr. David Lewis.[98] Mr. Lewis' motion amended Section 387C to the effect that costing data would not be released by the Canadian Transport Commission "unless in the opinion of the commission such publication is necessary in the public interest. . . ." In an interview with Mr. Pickersgill, he indicated that this was precisely the same amendment he would have proposed if he had had the opportunity.[99] Because of the similarity between the two motions, Mr. Lewis' motion was accepted by the government. Western Members of Parliament supported the amendment since they knew that this was the only concession that the government was prepared to make on this issue.[100]

The second concession that was made by the government as a result of Western Canadian representations was that Mr. Pickersgill assured the Committee that the Canadian Transport Commission would release all costing data presented by the railways in cases involving applications for captive shipper status and the setting of a maximum rate, and in cases involving the "public interest" under Clause 16.

The Committee concluded its clause-by-clause study of the bill on January 26, 1967. After a very brief debate, at which time one or two speakers from each party summarized their party's views on the bill, the bill passed third reading on January 27, 1967 by a vote of 70 to 53.[101] Among the seventy Members of Parliament voting in favour of the bill were sixty-seven Liberals, two Social Creditors, and one Independent from Quebec. The only Liberal from the Prairies, the Hon. Roger Teillet, did not vote. Among the fifty-three Members of Parliament who voted against the bill, sixteen of them came from Manitoba, Saskatchewan, and Alberta.[102] Among the more prominent Western Canadian Members of Parliament who did not vote were Messrs. Baldwin, Woolliams, Bigg, Dinsdale, Diefenbaker, Hamilton, Gundlock, Harkness, Horner (Hugh), Kindt, McIntosh, and Thompson. In total, thirty-one of the forty-seven Members of Parliament from Western Canada were not present for the vote.

SECTION III: THE SENATE RECEIVES THE BILL

The bill received first reading in the Senate on January 31, 1967 and, after a three-day debate on second reading, the bill was sent to the Standing Committee on Transport and Communications for detailed study. The Committee examined the bill for two days and it was sent back to the Senate without amendment. The bill received third reading and Royal Assent on February 9.

During the debate on second reading, the Honourable Jean Paul Deschatelets, the Government Leader in the Senate, outlined the major provisions of the bill and stressed the willingness of the government to accept further amendments to the bill.[103] The amendment in the House of Commons to Section 329 of the bill was used as an example by Mr. Deschatelets to demonstrate the government's willingness to accept further amendments. Among the Senators from Western Canada who spoke during the debate were the Honourable G. S. Thorvaldson (Winnipeg South), the Honourable M. Asseltine (Rosetown, Saskatchewan), the Honourable N. Paterson (Thunder Bay), and the Honourable Hazen Argue (Regina).[104] The major issues stressed during their speeches were the Crow's Nest Pass rates and rail line abandonment. Those clauses establishing the criteria for the determination of freight rates were not discussed by the Senators from Western Canada, and one was left with the impression, after having read their speeches, that they did not understand the implications of those provisions of the bill. Perhaps the only exception was Senator Hazen Argue who did indicate during the course of his speech that he had a greater understanding of the provisions of the bill and their implications for the West than his colleagues when he challenged the basic philosophy of the bill and indicated that if all legislative restrictions were removed freight rates in Western Canada would increase. With the exception of Mr. Argue, however, Western

Canadian Senators gave no indication that they fully understood the various provisions of the legislation.

The only Senator to fully understand the implications of the bill was the Honourable O. H. Phillips from Prince Edward Island.[105] During his speech, Senator Phillips noted that the proposed legislation did not establish a national transportation policy but merely transferred transportation problems from the House of Commons and the Cabinet into the hands of the bureaucrats in the Canadian Transport Commission. The basic philosophy of the bill was challenged on the grounds that transportation policy should promote social as well as economic objectives. The provisions of the maximum rate formula were isolated for particular attention by Senator Phillips and he indicated that, in his view, the 30,000 pounds - 150% provisions of the clause provided little protection to the captive shipper. With the exception of Mr. Phillips' speech, the speeches during second reading contained only limited references to the actual provisions of the bill and to the implications that the enactment of the bill would have on the various regions of Canada.

The Senate Standing Committee on Transport and Communications examined the bill for two days.[106] The Minister of Transport, Mr. Pickersgill, and his Deputy Minister, Mr. Baldwin, presented evidence to the Committee. In addition, Mr. J. J. Frawley presented a brief on behalf of the Government of Alberta. The discussions during the Committee

hearings were dominated by Mr. Pickersgill. The Senators repeatedly asked Mr. Pickersgill to explain the meaning of various clauses and on each occasion Mr. Pickersgill used the occasion to outline, in a detailed manner, the government's position. On no occasion was Mr. Pickersgill challenged by the Senators to defend the government's position. The Senators merely accepted the government's explanation and moved on to the next clause.

The most interesting moments of the Committee hearings were when Mr. J. J. Frawley presented his brief on behalf of the Government of Alberta. In his presentation to the Committee, Mr. Frawley reiterated the arguments advanced by the Government of Alberta on numerous occasions that the provisions of Clause 16 and Section 336 offered little or no protection for Western Canada, and Alberta in particular.[107] It is interesting to note that the Committee had delayed the vote on those sections of the bill establishing the criteria for the determination of rates until Mr. Frawley had made his presentation. However, five minutes after Mr. Frawley had completed his statement, and without any discussion of the brief, the Committee approved those sections of the bill without amendment.

The Senate Committee approved the bill without amendment and the report of the Senate Committee was forwarded to the Senate for debate. The Senate accepted the report and the bill was given third reading and Royal Assent on February 9, 1967.

The performance of Western Canadian Senators during the debate did nothing to enhance the role of the Senate as the defender of regional interests within the Canadian federal system nor as the chamber of sober second thought. The Senators from Western Canada did not assist Western Canadian Members of Parliament and the Governments of Manitoba, Saskatchewan, and Alberta in presenting the West's case. They did not understand the provisions of the legislation and the potential impact that the legislation would have on Western Canada. In addition, they gave no indication that they understood the amendments that had been proposed by Western Canada.[108]

SECTION IV

Section IV of the chapter is devoted to an outline of the strategy employed by Western Canadian Members of Parliament during the debate in the Committee of the Whole House and to an assessment of the extent to which Western Canadian views were accommodated in the final policy output. Such a review facilitates a comment on the role of the Western Canadian Member of Parliament as a spokesman for the interests of Western Canada.

A. Strategy of the Western Canadian Members of Parliament

The strategy employed by Western Canadian Members of Parliament during the debate in the Committee has been briefly referred to in Section I. The essence of their

strategy was to launch an all-out attack on the various provisions of the bill during the debate in Committee in the hope that public opinion in Western Canada could be aroused to the point that the federal government's minority position in the House of Commons could be exploited to the advantage of the West.[109] In addition, Western Canadian Members of Parliament attempted to exploit the government's desire to have the bill enacted after a relatively short debate in Parliament.

There is a general consensus, among those Western Canadians involved in the decision-making process leading to the enactment of the National Transportation Act, that Western Members of Parliament presented the West's case in a very articulate and persuasive manner. In a series of interviews with officials in the Provinces of Manitoba, Saskatchewan, and Alberta, there was unanimous agreement that the Western Canadian Members of Parliament made a significant contribution to the presentation of Western Canadian views to the federal government.[110] A review of the debate in the House of Commons confirms the contention of both government and business officials as to the contribution made by the Western Members of Parliament during the debate. Members such as Mr. J. Horner, Mr. H. A. Olson, Mr. G. Baldwin, Mr. R. Cantelon, Mr. G. Churchill, Mr. E. Schreyer, and Mr. L. R. Sherman made significant contributions to the debate in the House and to the debate during

the hearings of the Parliamentary Committees. Those amendments that were incorporated into the legislation by the government were introduced largely as a result of the demands of Western Canadian Members of Parliament for revisions in the legislation that would provide greater protection for Western Canada from the monopoly position of the railways. In summary, the opposition to the bill in the House was led by Members of Parliament from Western Canada.

The arguments advanced by Western Canadian Members of Parliament were not original in that they proposed amendments that had been advanced by the provincial governments and pressure groups from Western Canada on earlier occasions. It is evident that the Western Members of Parliament were assisted during the debate by provincial officials. For example, officials of the Governments of Manitoba and Alberta prepared research material that was placed at the disposal of Western Members.[111] In addition, the legal counsel for the Provinces of Manitoba and Alberta, Mr. A. V. Mauro and Mr. J. J. Frawley, met with Members of Parliament to brief them on various aspects of the bill and to acquaint them with their provinces' position on various issues. Mr. A. V. Mauro recalled in an interview that he had met on several occasions during the debate with the Conservative Members of Parliament from Manitoba and on one occasion with the entire Western Caucus of the Conservative Party. Mr.

J. J. Frawley indicated that he had several lengthy meetings with Mr. J. Horner and Mr. H. A. Olson to brief them on the position of the Alberta Government.

The importance of the contribution of Western Canadian Members of Parliament in the presentation of Western Canadian views cannot be overemphasized. In the final steps leading to the enactment of the National Transportation Act, it was the Western Canadian Members of Parliament who bargained with the federal government in an attempt to obtain concessions for Western Canada. In summary, the strategy employed by Western Canadian politicians involved a joint effort on the part of the Members of Parliament and the Ministers and officials of the three Prairie Provinces.

B. The Success of the Western Strategy

The success of the strategy employed by Western Canadian Members of Parliament can be assessed in part by the extent to which Western Canadian views were accommodated in the final policy output. While there are other criteria that can be used to measure the effectiveness of the Members of Parliament, such as the content and the importance of the amendments accepted by the government and the manner in which the Members of Parliament presented their case, the number of amendments accepted by the government and the substance of those amendments would seem to be the most useful criteria to measure the success of the Western Members

of Parliament in presenting their views to the federal government.

A review of the concessions made by the federal government during the debate in Committee indicates that Western Canadian Members of Parliament were successful in having their views accommodated by the federal government in several important provisions of the bill. Among those areas where Western Canadian views were included in the final policy output were the amendments proposed to Clause 1 that placed greater stress on the social objectives of transportation policy. In addition, the inclusion of Clause 16 in the report of the Parliamentary Committee that had studied the bill, and the two amendments enacted to the clause during the debate in the Committee of the Whole House, are examples of the concessions made by the federal government to accommodate Western Canadian views. In interviews with officials in the Provinces of Manitoba, Alberta, and Saskatchewan, as well as with the Honourable J. W. Pickersgill and officials of the Canadian Transport Commission, there was unanimous agreement that the inclusion of Clause 16 was a direct response to the demands of Western Canada.[112] For example, Mr. Pickersgill noted that this clause was the most general provision pertaining to freight rates found in the legislation and could be seen as the federal government's response to Western Canadian demands that the references to "unjust discrimination" and "undue

preference" found in the Railway Act be included as part of the legislative restrictions placed on the railways. Both Mr. A. V. Mauro and Mr. G. Blair, legal counsel for the Provinces of Manitoba and Saskatchewan during the enactment of the legislation, indicated that, in their view, Clause 16, if interpreted by the Canadian Transport Commission in a reasonable manner, could ultimately provide Western Canada with more protection than did the provisions found in the Railway Act pertaining to "unjust discrimination".[113] While Mr. J. J. Frawley and Mr. J. W. Telford expressed reservations as to the protection offered by Clause 16, they did acknowledge that the inclusion of this clause in the bill was a major concession made by the federal government in response to the demands of Western Canada.[114]

The removal of the review procedure to determine the compensatory nature of the Crow's Nest Pass rates was a political victory for Western Canada. Unfortunately, it is difficult to attribute the removal of this clause to the persuasiveness of Western Canadian arguments or to the effectiveness of the strategy employed by Western Canadians. The accommodation of Western Canadian views on this particular issue can be directly attributed to good fortune and to ineptness on the part of the Liberal Government.

The amendments enacted to Section 387C with regard to the release of costing data by the Canadian Transport

Commission, and the assurances given to the House that Western Canadian views would be solicited in the preparation of costing regulations, can be attributed in large part to the demands articulated by Western Canada for such amendments.

On other issues of extreme concern to Western Canadians, the proposals advanced by Western Members of Parliament were totally rejected by the federal government. For example, the attempts to alter the basic philosophy of the bill, and to place greater emphasis on the social objectives of transportation policy, were virtually ignored by the federal government. The proposals to revise the provisions of the maximum rate formula and to include a more liberal definition of a captive shipper in Section 336 were dismissed in total by the federal government. Finally, the attempts to have a more precise definition of the term "public interest" in Clause 16 were met only in part by the federal government. When pressed to include a more explicit definition, Mr. Pickersgill noted that such a proposal was in direct conflict with the general philosophy of the bill. Thus, one is forced to conclude that Western Canada was unsuccessful in having several of the sections of the bill that were of particular concern to the West amended in such a way that they accommodated the views of Western Canada. It should be noted, however, that certain amendments were enacted as a result of demands exerted on the federal government by Western Canada. The acceptance of these amendments

made the bill more acceptable to Western Canada.

There are several reasons that can be advanced to explain why the Western Members of Parliament were only partially successful in having their views accommodated in the final policy output. One explanation is that, many of the amendments proposed by Western Canada were not acceptable to the federal government on the grounds that the amendments contradicted the general philosophy of the bill.[115] Despite the assurances of Mr. Pickersgill at various stages in the decision-making process that the government would be willing to accept amendments if they would improve the bill, it became evident that the government would not accept any amendments that would alter the basic philosophy of the bill. As a result, the government dismissed many Western Canadian amendments on the grounds that they detracted from the overall philosophy of the bill.

This is the conventional explanation that governments offer when pressed by the Opposition to accept major amendments to any legislation. The position of the federal government in this instance conformed with past practices and could not be characterized as being an unusual position for the government to assume during the debate. Amendments have been consistently rejected by governments in the past on the grounds that any amendment to the major provisions of a bill could be seen as a vote of non-confidence in the government. The reasonableness of the government's position

is of course subject to debate. In Mr. Pickersgill's view, it was not unreasonable for the Cabinet to take the position that, once the general guidelines and philosophy of the legislation had been finalized, those provisions of the bill were no longer subject to amendment. In the case of the National Transportation Act, the government's position was strengthened by the argument that the recommendations of the Royal Commission on Transportation were being implemented. The federal government's position that the major provisions of the bill were not subject to amendment was unacceptable to many Western Canadians. In their view, the basic philosophy of the bill, as well as many of its provisions, offered little or no protection for those parts of Canada outside the Provinces of Ontario and Quebec. As a result, they urged the federal government to accept amendments to the bill that would have made it more acceptable to the other regions of Canada.

In an interview with Mr. A. V. Mauro, he indicated that the extent to which Western Canadian views were accommodated in the final policy output was one of degree.[116] He reasoned that Mr. Pickersgill realized that the two issues where Western Canadian Members of Parliament could mobilize public support for their position were the Crow's Nest Pass rates and rail line abandonment. Mr. Mauro noted that in Mr. Pickersgill's view the issue of freight rates was no longer as important an issue in Western Canada as it

was twenty-five or thirty years ago. In addition, those provisions of the bill establishing the criteria for the determination of rates were so complex that the average voter in Western Canada would not understand the issues involved nor take a great interest in the debate in Parliament. On the two issues where Mr. Pickersgill calculated that the Western Canadian Members of Parliament could be successful in mobilizing public support, the government proposed amendments to the legislation that accommodated several of the major grievances articulated by Western Canadians, thereby defusing these issues in the West as a potential threat to the government.[117]

In summary, then, the government accepted the policy proposals from Western Canada on issues where they calculated that the West could mobilize public opinion to the point that it could pose a threat to the minority position of the government in the House. Those provisions of the bill establishing the criteria for the determination of freight rates were, in Mr. Pickersgill's view, not such an issue. Thus the majority of the recommendations proposed by Western Canada were ignored by the federal government.

A second explanation for the limited success of Western Canada in having its policy recommendations accepted by the federal government was offered by Mr. J. Horner.[118] Mr. Horner recalled that in 1966 and 1967 the Western Conservative Caucus was divided on the issue of leadership.

There was considerable political manoeuvering within the Conservative Party to determine who would be the next national leader of the party and who would be the next leader of the party in Western Canada. Because of the division within the caucus, there was no unified action on the part of the Conservative Party in opposition to the bill.

Initially, there was very little interest among Conservative Members of Parliament with regard to those provisions of the bill dealing with freight rates. Western Members were slow to realize the impact that these provisions of the legislation would have on Western Canada. Mr. Horner recalled a meeting in Mr. Hamilton's office in the early fall of 1966 at which time several Members of Parliament from the West met to discuss the bill. Mr. Hamilton was preoccupied with the issue of rail line abandonment and, when various Members were assigned to study the various sections of the bill, Mr. Hamilton indicated that those sections pertaining to freight rates were so complex that they did not warrant detailed study by the caucus. In Mr. Hamilton's view, these clauses would not be the subject of much debate in the House. Despite the views of Mr. Hamilton, Mr. Horner persisted in his attempts to interest his colleagues in those provisions of the bill dealing with freight rates. By the time the standing committee had completed its study of the bill, Mr. Horner had persuaded the

other Western Members of Parliament, as well as the Conservative Members from the Maritimes, that those provisions of the bill dealing with freight rates would have a very negative impact on Western Canada, and on the Maritimes, if they were enacted in their present form.

During the debate in the Committee of the Whole House, Mr. Horner led the Conservative opposition to the bill. He recalled that there was virtually no communication with the Social Credit or New Democratic Party Members during the course of the debate. On several occasions, Mr. H. A. Olson and Mr. E. Schreyer moved amendments that the Conservatives would have supported it they had known that the amendments were forthcoming. One was left with the impression that Western Canadian Members of Parliament did not function as a cohesive group during the debate, and that this could have limited their effectiveness. In short, personal jealousies within the ranks of the Western Conservative Caucus and the lack of communication with other Western Members of Parliament weakened the presentation of Western Canadian views during the debate.

The revelation by Mr. Horner as to the existence of divisions in the Conservative Caucus and the lack of communication with Members of Parliament who were not members of the Conservative Party offers some insights as to the role of the Western Canadian Member of Parliament as a spokesman for regional interests. Hoffman and Ward

offer some clues as to how the Members perceive their various roles within the political system.[119] In an attempt to determine how Members of Parliament envisage their role as spokesmen for provincial or regional interests at the federal level, a questionnaire was administered to the Members of Parliament requesting that they designate their "dominant focus of representation" as being the nation, the constituency, or the province. In reporting the results of the questionnaire, Dr. Ward noted that the political affiliation of the Member, the region from which the Member was elected, and the rural/urban composition of the constituency were significant variables in determining the Member's "focus of representation". The results confirmed that there was a greater tendency for Members of Parliament from rural areas to be more oriented toward the constituency while the dominant orientation of the urban Member of Parliament was more towards the nation as a whole. The Creditistes were the only Members whose major orientation was dominantly provincial. The Members of the New Democratic Party were largely nation-oriented, while the majority of the Conservative Members were constituency-oriented. Members of Parliament from Western Canada perceived their "dominant focus of representation" as the constituency. For example, the survey indicated that 28% of the Members of Parliament from the West perceived the nation as the dominant focus of their attention, while 67% indicated that they perceived the

constituency as the dominant focus of their attention. Only 5% of the Members from Western Canada perceived their dominant focus of attention as being equally shared between the nation and the constituency. It is significant that none of the Members of Parliament perceived their role as representative of the province as being dominant.

It is extremely difficult to comment on the role of Members of Parliament from Western Canada as spokesmen for the interests of Western Canada on the basis of one case study. An analysis of the events surrounding the enactment of the National Transportation Act reveals some initial insights as to the role of Western Members of Parliament. There is considerable evidence to support the findings of Dr. Norman Ward that Western Members of Parliament do not perceive themselves as spokesmen for Western Canada as a region. Evidence to support this view is found in the strategy employed by the Conservative Members during the debate and in the failure of the Members of Parliament from the West to function as a cohesive unit within the House of Commons.

One impression that emerges from the case study is that the Members of Parliament from Western Canada did make an effort to articulate a regional point of view during the debate in the House of Commons and to function as a cohesive group. Interviews with provincial officials in the three Prairie Governments lend support to this view. While

differing political affiliations limited the ability of the Members of Parliament to develop a common policy, a review of the debate in the House of Commons reveals that Western Members of Parliament articulated views that enjoyed widespread support in Western Canada. Thus, the conclusions emerging from the case study with regard to the role of the Western Member of Parliament as a spokesman for a region are inconclusive.

A key element in the strategy of the Western Members of Parliament during the debate was that public opinion in Western Canada could be aroused on the issue of freight rates to the point that the minority position of the government in the House could be exploited. Unfortunately, the press coverage during the entire debate was extremely limited and the debate on the issue of freight rates received virtually no attention in the Western Canadian press. Newspaper reports in the Calgary Herald, the Edmonton Journal, the Regina Leader Post, and the Winnipeg Free Press were examined and, on the basis of this review, it can be concluded that the Western Canadian press did not cover any aspect of the debate in detail.[121] Perhaps the only exception was the Winnipeg Free Press. Two lengthy articles were written by Mr. Maurice Westin explaining in very general terms the basic provisions of the bill.[122] With the exception of these articles, all the newspapers in Western Canada printed very short resumes of each day's debate

prepared by the Canadian Press. In particular, the debate did not attract the attention of the editorial writers in Western Canada.

The only issue during the debate that attracted wider attention was the debate on the Crow's Nest Pass rates. For example, the Calgary Herald wrote an editorial on January 20, 1967 supporting the actions of Western Canadian Members of Parliament.[123] The ruling of the Speaker on Mr. Pickersgill's amendment to Section 329 resulted in the following headline in the Calgary Herald: "Western MP's Win Fight To Guard Grain Rates".[124] With these exceptions, however, the press in Western Canada did not provide extensive coverage of the debate in the House. Mr. J. Horner recalled that, when he returned to Western Canada after the debate in the House on the Crow's Nest Pass rates, one of the television commentators in the West characterized the week in Parliament as being "very quiet and routine".[125] Clearly, the press in Western Canada did not assist Western Members during the debate by attempting to mobilize public support on the issue of freight rates. The limited response in the press to the debate on the provisions of Bill C-231 would seem to confirm Mr. Pickersgill's contention that the issue of freight rates was an issue that would not arouse widespread concern in Western Canada.

While it is difficult to conclude that any one of these factors or any combination of them was directly

responsible for the limited accommodation of Western Canadian views, there was a consensus among Members of Parliament, provincial politicians and officials, and representatives of the various pressure groups from Western Canada, that these variables -- the failure of the Members of Parliament from Western Canada to act as a cohesive group and to perceive themselves as spokesmen for regional interests, the inability of the Members of Parliament to arouse support in Western Canada on the issue of freight rates, and the position of the federal government that certain provisions of the bill were not subject to amendment -- offer an explanation of the limited success of Western Canada in having its views accommodated in the final policy output.

FOOTNOTES

[1]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7994-7998.

[2]Ibid., pp. 7989-7994.

[3]In interviews with the Honourable E. C. Manning and with Mr. A. V. Mauro, they indicated that Mr. Douglas Fisher followed the proceedings of the Royal Commission with considerable interest and it is possible that he was aware of Mr. MacPherson's illness.

[4]Canada, Parliament, Parliamentary Debates (House of Commons), 2nd Session, 26th Parliament, (1964-1965), Vol. VIII, pp. 7990-7992.

[5]Members of Parliament raised the issue of the maximum rate formula on several occasions throughout the Committee's hearings. In particular, the issue was raised when the railways and the Province of Alberta presented their briefs. For details see Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Transport and Communications (House of Commons), 1st Session, 27th Parliament, (1966), Nos. 24, 28, and 39. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1966).

[6]Briefs of the Coal Operators' Association of Western Canada, the Canadian Manufacturer's Association, and the Mining Association of Canada. These briefs are found in Parliamentary Committee Hearings (1966), Nos. 31, 27, and 37, respectively.

[7]Brief of the Canadian Manufacturer's Association, op. cit., pp. 1937-1945, and Brief of the Coal Operators' Association of Western Canada, op. cit., pp. 2147-2149.

[8]Parliamentary Committee Hearings (1966), No. 24, p. 1772.

[9]Ibid., No. 29, p. 2114.

[10]Ibid., No. 24, p. 1784.

[11]Ibid., p. 1780.

[12]Ibid., p. 1781.

[13]It is difficult to assess the reasonableness of these figures. The federal government indicated that they would not result in higher freight rates. On the other hand, the provinces contended that freight rates would increase under the captive shipper clause.

[14]Parliamentary Committee Hearings (1966), No. 23, p. 1671.

[15]Ibid., No. 24, p. 1781.

[16]Ibid., No. 23, pp. 1669-1670.

[17]Interviews with officials of the Alberta Wheat Pool, Western Co-op Fertilizers Ltd., the Canadian Manufacturer's Association, United Grain Growers, and with Mr. J. W. Telford.

[18]Parliamentary Committee Hearings (1966), No. 24, pp. 1800-1802.

[19]Ibid., No. 23, p. 1668.

[20]Canada, Parliament, Minutes of Proceedings and Evidence, Standing Committee on Railways, Canals and Telegraph Lines, (House of Commons), 2nd Session, 26th Parliament, (1964-1965), No. 13, pp. 784-785. These documents will hereafter be referred to as the Parliamentary Committee Hearings (1965).

[21]Parliamentary Committee Hearings (1966), No. 29, pp. 2102-2105.

[22]Ibid., p. 2115.

[23]Ibid., No. 28, pp. 2047-2048.

[24]Ibid., No. 29, p. 2105.

[25]Ibid., p. 2109.

[26]Ibid., p. 2108.

[27]Ibid., No. 37, p. 2478.

[28]The comments of the Members of Parliament are found throughout the proceedings of the Committee. In particular, see Parliamentary Committee Hearings (1965), No. 12 and 13.

[29]Ibid., No. 13, pp. 772-779.

[30]Ibid..

[31]Interview with the Honourable J. W. Pickersgill. See also Parliamentary Committee Hearings (1966), No. 41. Included in this document was the Thirteenth Report of the Committee to the House of Commons. While the Committee hearings were held in camera, a brief summary of the proceedings if found on p. 2923.

[32]Interview with Mr. J. Horner.

[33]Interview with Mr. J. W. Telford.

[34]The amendments outlined in succeeding paragraphs were found in the Committee's report and will not be footnoted.

[35]Parliamentary Committee Hearings (1966), No. 23, p. 1671 and No. 24, p. 1781.

[36]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1967), Vol. III, p. 12309.

[37]Interview with Mr. J. Horner, August 17, 1971.

[38]Canada, Parliament, Parliamentary Debates (House of Commons), 1st Session, 27th Parliament, (1966-1967), Vol. III, pp. 11372-11374. These debates will hereafter be referred to as Parliamentary Debates (1966-1967).

[39]Ibid., pp. 11375-11380.

[40]Ibid., pp. 11379-11385.

[41]Ibid., p. 11376.

[42]Ibid., p. 11380.

[43]A. W. Currie, Economics of Canadian Transportation (Toronto: University of Toronto Press, 1967), pp. 17-18.

[44]Parliamentary Debates (1966-1967), pp. 11498-11499.

[45]Ibid., p. 11466.

[46]Ibid., p. 11549. The portion of the quotation which is underlined is the amendment moved by Mr. Baldwin.

[47]Ibid., pp. 11558-11559.

[48]Ibid., p. 11550.

[49]Ibid., p. 11567.

[50]Ibid., p. 11568.

[51]Ibid., pp. 11577-11578.

[52]Details of the Canadian Transport Commission's decision on the Rapeseed Case will be outlined in Chapter XII.

[53]Parliamentary Debates (1966-1967), p. 11711.

[54]Ibid., p. 11398.

[55]Ibid., p. 11607.

[56]Ibid..

[57]Ibid., pp. 11392-11393.

[58]Ibid., pp. 11394-11395.

[59]In June 1971, a number of farm and business groups in Western Canada were interviewed. For a detailed list of these interviews see the bibliography. The general conclusion emerging from these interviews was that the Board of Transport Commissioners was identified with the interests of the railways.

[60]Parliamentary Debates (1966-1967), p. 11709.

[61]Ibid., p. 11711.

[62]Ibid., p. 11853.

[63]Ibid., p. 11916.

[64]Ibid., p. 11951.

[65]While there were no public opinion surveys conducted in Western Canada that would indicate what the views of Western Canadians were with regard to the Crow's Nest Pass rates, the Conservative Members of Parliament calculated, on the basis of earlier developments in Western Canada, that the Crow's Nest Pass rates was an issue that would arouse public opinion in opposition to the federal position.

[66]Interview with Mr. J. Horner.

[67]A review of Hansard indicated that Mr. Pickersgill was the only government Member to speak during the debate.

[68]Calgary Herald, January 19, 1967.

[69]Parliamentary Debates (1966-1967), p. 11959.

[70]Ibid., p. 12119.

[71]Ibid., pp. 12165-12168.

[72]Interview with Mr. J. Horner.

[73]Parliamentary Debates (1966-1967), pp. 11239-11240.

[74]Ibid., pp. 12269-12271.

[75]Ibid., p. 12272.

[76]For the general comments of the Western Canadian Members of Parliament, see ibid., pp. 11378-11382, 11384-11387, 11398-11399, 11466-11470, and 11546-11548.

[77]Ibid., p. 11500.

[78]Interview with the Honourable J. W. Pickersgill.

[79]Parliamentary Debates (1966-1967), pp. 11995-11999.

[80]Ibid., p. 12021.

[81]Ibid., pp. 11999-12002.

[82]Ibid., pp. 12043-12044.

[83]Ibid., p. 12044.

[84]Ibid., p.12046.

[85]Interview with Mr. J. Horner. See also comments made by Mr. H. A. Olson, ibid., p. 11999.

[86]Ibid., p. 11620.

[87]Ibid., pp. 11621-11622.

[88]Ibid., p. 11625.

[89]Ibid..

[90]Ibid., p. 11627.

[91]Interview with Mr. J. Horner.

[92]Parliamentary Debates (1966-1967), p. 12195.

[93]Ibid., pp. 12196-12197.

[94]Ibid., pp. 12051-12059.

[95]Ibid., pp. 12062-12063.

[96]Ibid., p. 12060.

[97]Ibid., p. 12063.

[98]Ibid., p. 12072.

[99]Interview with the Honourable J. W. Pickersgill.

[100]Interview with Mr. J. Horner.

[101]Parliamentary Debates (1966-1967), pp. 12363-12364.

[102]Those Members from the Prairie Provinces voting against the bill were: Mr. H. Ballard, Mr. J. Horner, Mr. M. Lambert and Mr. F. Fane from Alberta; Mr. R. Cantelon, Mr. N. Korchinski, Mr. J. Ormiston, Mr. R. Rapp, and Mr. L. Watson from Saskatchewan; Mr. G. Churchill, Mr. R. Forbes, Mr. S. Knowles, Mr. M. Mandziuk, Mr. G. Muir, Mr. E. Schreyer and Mr. R. Simpson from Manitoba.

[103]Canada, Parliament, Parliamentary Debates (Senate), 1st Session, 27th Parliament, Vol. II, (1966-1967), pp. 1341-1347.

[104]Ibid., pp. 1384-1401.

[105]Ibid., pp. 1377-1382.

[106]Canada, Parliament, Proceedings of the Standing Committee on Transport and Communications, Standing Committee on Transport and Communications(Senate), 1st Session, 27th Parliament, (1966-1967), No. 11, pp. 191-282.

[107]Ibid.. For details of Mr. Frawley's presentation, see pp. 256-282.

[108]This assessment of the role of Western Canadian Senators was revealed in interviews with Mr. A. V. Mauro, Mr. J. J. Frawley, and Mr. Gordon Blair.

[109]The strategy of Western Canada during the debate in the House of Commons was revealed in interviews with Mr. A. V. Mauro, Mr. G. Blair, Mr. J. W. Telford, Mr. J. J. Frawley, the Honourable E. C. Manning, and Mr. J. Horner.

[110]The important role of Western Members of Parliament during the debate was confirmed in interviews with Mr. A. V. Mauro, Mr. G. Blair, Mr. J. W. Telford, Mr. J. J. Frawley, the Honourable E. C. Manning, Mr. J. Horner, Mr. K. Setter (Economist with the Government of Saskatchewan), Mr. V. Steichisin, Mr. D. Jones (Chairman, Railway Committee

of the Canadian Transport Commission), Mr. O. Broughton (Secretary of the Alberta Wheat Pool), and Mr. R. Phillips (Research Director of the Saskatchewan Wheat Pool).

[111]The role of the provincial governments in counselling the Western Members of Parliament was revealed in interviews with the Honourable E. C. Manning, Mr. J. W. Telford, Mr. J. J. Frawley, and Mr. A. V. Mauro.

[112]There is general agreement that Clause 16 was introduced by the federal government at the urging of Western Canada. This was confirmed in interviews with the Honourable J. W. Pickersgill, Mr. R. Cope, Mr. J. J. Frawley, Mr. A. V. Mauro, Mr. J. W. Telford, the Honourable E. C. Manning, Mr. J. Horner, Mr. G. Blair, and Mr. F. Lemieux (Counsel for the Saskatchewan Government).

[113]Interviews with Mr. G. Blair and Mr. A. V. Mauro.

[114]Interviews with Mr. J. J. Frawley and Mr. J. W. Telford.

[115]This was revealed during interviews with the Honourable J. W. Pickersgill, Mr. R. Cope, Mr. J. J. Frawley, Mr. A. V. Mauro, Mr. J. W. Telford, the Honourable E. C. Manning, Mr. J. Horner, Mr. G. Blair, and Mr. F. Lemieux.

[116]Interview with Mr. A. V. Mauro.

[117]Interview with the Honourable J. W. Pickersgill.

[118]Interview with Mr. J. Horner.

[119]David Hoffman and Norman Ward, Bilingualism and Biculturalism in the Canadian House of Commons (Ottawa: Queen's Printer, 1970), pp. 77-83.

[120]Ibid..

[121]Newspaper reports during the debate on Bill C-231, in the Parliamentary Committee and in the Committee of the Whole House were reviewed. This review led to the conclusion that there was only limited coverage of the debate in the Western Canadian press.

[122]Winnipeg Free Press, January 30 and 31, 1967.

[123]Calgary Herald, January 20, 1967.

[124]*Ibid.*, January 27, 1967.

[125]Interview with Mr. J. Horner.

CHAPTER XII

WESTERN CANADA AND THE NATIONAL TRANSPORTATION ACT

INTRODUCTION

The preceding chapters have revealed the limited extent to which Western Canadian policy inputs were accommodated at the various stages leading to the final enactment of the National Transportation Act. For example, the policy recommendations advanced by Western Canada during the hearings of the Royal Commission on Transportation were largely rejected by the Commissioners in the preparation of their report. While Western Canada had advocated the adoption of a cost-oriented rate structure, Western Canadian politicians and the representatives of various pressure groups were unsuccessful in their attempts to convince the Commissioners that the forces of competition would not provide sufficient protection to those regions of Canada where the railways were in a monopoly position with regard to the movement of certain commodities.

During the discussions in the Parliamentary Committees and with federal politicians and officials with regard to the provisions of Bill C-120 and Bill C-231, Western Canada pressed for a more liberal definition of the

captive shipper clause, revisions in the maximum rate formula and modifications in the goals and objectives of transportation policy so that the social objectives of transportation policy would be as important as the economic objectives. In the final stages of the decision-making process, Western Canadian Members of Parliament extracted several concessions from the government during the debate in the Committee of the Whole House. By and large, however, their major recommendations were ignored by the government. Thus the inevitable conclusion that can be drawn from the foregoing analysis is that Western Canadian views were accommodated to a very limited extent in those provisions of the bill outlining the criteria for the determination of freight rates. Mr. J. J. Frawley, legal counsel for the Alberta Government, characterized the Western Canadian position during the enactment of the legislation as "fighting battles that had been lost during the hearings of the Royal Commission on Transportation".[1]

The federal government had expressed the view on several occasions during the debate on the provisions of Bill C-231 that the enactment of the legislation would resolve many of the future problems facing the transportation industry.[2] The development of a national transportation policy that would be acceptable to all regions of Canada was the federal government's objective. However, a review of developments since 1967 indicates that, in Western Canada

in particular, there is widespread opposition among government and business officials to many of the provisions of the legislation. Thus, it would seem that the opposition expressed by Western Canadians to various sections of the bill prior to its enactment has continued. In short, transportation policy, and the issue of freight rates, continues to be a contentious issue that occupies the attention of government officials.

During the past four years, there have been several specific issues that have emerged with regard to freight rates. For example, the development of costing regulations by the Canadian Transport Commission, the enactment of legislation by the Thatcher Government in Saskatchewan designed to tax the mineral holdings of the Canadian Pacific Railway, the introduction of a Private Member's Bill by Mr. Hu Harries to amend several sections of the National Transportation Act, and the initiation of test cases by the governments of the three Prairie Provinces to determine the precise meaning of various sections of the National Transportation Act. Each of these issues will be referred to in the chapter.

In addition, the federal and provincial governments have held a series of bi-lateral discussions on the issue of freight rates. These discussions were initiated as a result of the actions of Premier Thatcher during the Constitutional Conference of 1969 when he raised the issue of freight rates for discussion. The nature of the discussions

between the two levels of government will be outlined and an attempt will be made to review the strategy being employed by the Prairie Governments during these discussions.

A. Policy Issues

1. Costing Regulations

(a) Legislative Provisions

The development of costing regulations by the Canadian Transport Commission was central to the operation of those provisions of the Act that established the criteria for the regulation of freight rates. Mr. Pickersgill had assured Western Members of Parliament that the development of costing regulations would be the first issue taken up by the Commission. He honoured his commitment and it was the first issue to emerge after the enactment of the National Transportation Act.

Costing regulations are a series of rules and regulations that outline the various factors that are to be taken into account in the calculation of the fixed and variable costs of the railways in transporting goods from point A to point B.[3] For example, among the factors considered are the depreciation of railway equipment, cost of capital base, net to gross investment ratio and the rate of return to capital.

There are specific provisions in the legislation that provide guidelines for the Commission.[4] For example, Sections 387A, 387B, and 387C outline certain factors that

the Commission must take into account in the development of a costing formula. Section 387A stipulates that the Commission must take into account factors such as depreciation, the "cost of money expended", and whether expenditures of the railways were made from borrowed money, when determining railway costs. When attempting to compute the costs of a portion of a particular undertaking of the railways, the Commission was directed to calculate the costs on the basis of the costs involved in financing the entire operation. It was left to the discretion of the Commission to determine what percentage of the total costs should be used in calculating the cost of the particular portion of the operation. For example, when calculating the cost of moving a commodity from Toronto to Vancouver and from Toronto to Calgary, the railway would first determine the costs involved in moving the good from Toronto to Vancouver. The costs involved in moving the good from Toronto to Calgary would be calculated as a percentage of the costs involved in moving the good to Vancouver. The exact percentage would be determined by the Canadian Transport Commission. The cost of future operations was to be calculated on the basis of estimates that were considered to be reasonable by the Commission.

Section 387B specifically directed the Commission to scrutinize the costing procedures developed by the MacPherson Royal Commission. When costing regulations were developed, they were to be published in the Canada Gazette.

Any interested party, including transport companies and provincial and municipal governments, were free to request, within twenty days of their publication, that public hearings be held regarding the content of the regulations. Finally, Section 387C stipulated that the Commission was not obligated to release confidential information received from a company unless the Commission was of the view that the information was in the public interest.

(b) The Development of the Costing Regulations

Part V of the Act, dealing with the legislative provisions governing freight rates, was proclaimed on March 23, 1967. However, that portion of the Act establishing the Canadian Transport Commission was not proclaimed until September 23, 1967. In the interim, the Board of Transport Commissioners acted as the regulatory agency designated to implement Part V of the Act. There are several reasons that explain the delay on the part of the federal government in having the sections of the National Transportation Act pertaining to freight rates and to the Canadian Transport Commission proclaimed. For example, the delay in proclaiming the sections pertaining to freight rates was designed to permit the Board of Transport Commissioners to have the opportunity to familiarize themselves with the new regulations. With regard to the establishment of the Commission, Mr. Pickersgill indicated that it took several months for

the government to select the personnel for the Commission and to assemble its supporting staff. These factors would explain the delay in the proclamation of these sections of the Act.[5]

Section 387 directed the Commission to develop costing regulations and, on April 5, 1967, the Board issued Costing Order Number 123994 that outlined the costing regulations for the various sections of the Act. The announcement of these costing orders was the subject of particular concern to Western Canada. The Prairie Provinces and the three Prairie Wheat Pools were concerned that the Board of Transport Commissioners had not made any attempt to isolate those factors that should be included by the railways when they calculated their fixed and variable costs for moving goods.[6] If the cost-oriented rate structure was to function, it was essential that the variables used to calculate costs be outlined in the costing regulations. The costing regulations issued by the Board merely obligated the railways to categorize various costs into several major subject areas. There had been no attempt to define the criteria for determining fixed and variable costs. Mr. R. Phillips, Research Director of the Saskatchewan Wheat Pool, summarized Western Canadian opposition when he wrote:

> . . . This [the regulations] caused considerable furor, mainly because the Transport Board Order did not deal in sufficient scope or detail with how the railways ought to undertake the required costing but seemed rather to be a classification of railway accounts which would be accepted for the various purposes. . . .[7]

On August 1, 1967, the Provinces of Manitoba, Saskatchewan, and Alberta petitioned the Governor-in-Council to disallow the Transport Board Order and to direct the Board not to develop new costing regulations until the section of the Act establishing the Canadian Transport Commission was proclaimed and public hearings could be held regarding the content of the new regulations. The appeal was dismissed by the Governor-in-Council on the following grounds:

1. The bringing into force of Part V of the Act required the Board to prescribe costing regulations.

2. The Board was not required to hold hearings respecting the initial establishment of the said regulations, but provision is made in the Railway Act for hearings upon any amendment proposed thereto, which procedure the appellants did not elect to follow.

3. The regulations made by the Order are valid regulations and not contrary to the spirit of the amended Railway Act, and that the Board has complied with the relevant provisions of the Act. . . .[8]

In August 1967, the Board of Transport Commissioners met in Winnipeg to consider plans for receiving briefs regarding future rail line abandonments in Western Canada. The three Western Provinces used the occasion to renew their attack on the costing order issued by the Board. They urged the government to proclaim Section I of the Act without delay and to have the Canadian Transport Commission develop a new costing order. The Board of Transport Commissioners indicated that the government was prepared to proclaim

Section I of the Act in September and to appoint personnel to the Commission in October. While the decision of the federal government to proclaim those provisions of the Act pertaining to the structure of the Commission by the end of 1967 had been finalized prior to the meeting of the Board of Transport Commissioners in Winnipeg in August, Mr. R. Phillips indicated that, in his view, the opposition of the farm groups and the provincial governments to the costing order issued by the Board contributed to the federal government's decision to establish the Canadian Transport Commission in September 1967. It is interesting to note that Mr. Pickersgill did not resign from his position in the Cabinet as Minister of Transport until September 18, 1967. As a result, Mr. Pickersgill would have been involved in the Cabinet's decision not to accept the appeal of the three Prairie Provinces that the costing studies prepared by the Board of Transport Commissioners be discontinued.

With the creation of the Commission, procedures were established for the development of new costing regulations. In the interim, the costing regulations developed by the Board of Transport Commissioners were to be used by the Commission. In November 1967, the Railway Committee of the Commission met with officials from the railways, from the three Prairie Provinces and from the Canadian Co-operative Wheat Producers Ltd. to discuss procedures for the development of costing regulations. This group of officials met

on several occasions as a special study group to consider problems related to the costing regulations. The Committee agreed that the Canadian Transport Commission would engage a United States consulting firm to assist them with this inquiry.

A public inquiry into the costing regulations commenced on September 5, 1968.[10] Over 500 invitations were sent to interested groups urging them to present briefs to the Committee. In addition, notice of the inquiry was published in 54 Canadian newspapers. The public hearings lasted for twenty-five days. During that time, there were 2,990 pages of transcript and 25 exhibits filed with the Committee. The railways, the three Prairie Wheat Pools and the three Prairie Provinces used the occasion to present briefs outlining their views as to what components should be included by the railways in determining fixed and variable costs. No attempt will be made to outline the nature of the recommendations contained in the briefs of the Governments of Manitoba, Saskatchewan, and Alberta, and in the briefs of the railways. The subject of railway accounting is not directly related to the subject matter of the dissertation. It should be noted, however, that the briefs presented by the Prairie Wheat Pools and the Prairie Provinces were very comprehensive and challenged many of the arguments raised by the railways.

In August 1969, the costing regulations were issued by the Commission. These regulations differed from the earlier regulations in that the new regulations directed the railways to consider factors such as depreciation of railway equipment, cost of capital, and the net to gross investment ratio when calculating fixed and variable costs. The regulations stipulated that within 30 days of their publication both railways were to publish a costing manual containing a complete description of their costing methods and procedures. Interested parties were given time to consider the regulations that were over 200 pages in length. The Canadian Pacific Railway appealed the regulations to the Supreme Court. The railway contended that the Canadian Transport Commission had moved beyond its jurisdiction by requiring the railways to consider various costing items in a particular manner. The provinces and the federal government argued that the Commission had the powers necessary to develop a costing formula. The Supreme Court permitted Canadian Pacific to proceed with their appeal and the case was heard by the Court in 1970. In November of 1970, the Supreme Court dismissed the appeal of Canadian Pacific and the costing regulations were finalized.[11]

In a series of interviews with various groups in Western Canada, there was general agreement that Western Canada had a significant input into the development of the costing formula and that many of their views were accommodated

in the final costing orders.[12] While it was recognized that they did not achieve all their objectives, the general consensus was that the regulations were adequate for the implementation of the pertinent sections of the Act. There was more concern expressed over the fact that the Commission was not obligated to release costing information than there was to the costing regulations themselves.

The Commission has not released costing information that many groups in Western Canada believe is essential if they are to apply to the Commission for protection under the various sections of the Act. In many instances, provincial governments are forced to develop their own costing data at great expense or rely on comparative data from the United States. Despite the effort and expense, the provincial governments cannot be certain that the statistics upon which they are basing their case are the same statistics used by the railways and by the Commission. Recently, in cases dealing with rail line abandonment and the continuation of passenger services, the Canadian Transport Commission has released costing data that it used in rendering its decision.[13] The provinces see this as an encouraging development.

Despite these developments, officials of the Governments of Manitoba, Saskatchewan, and Alberta, as well as representatives of farm groups in Western Canada, are of the opinion that until the Canadian Transport Commission is obligated by law to release all costing data, the ability of

the West to argue their case before the Commission is severely restricted.[14] In response to this allegation, Mr. M. Burwash, Director of Economics for the Commission, indicated that the provinces would not be in a position to use this detailed costing information even if it was released.[15] Its complexity would limit the extent to which the provinces could use the data in their presentations to the Commission. In addition, he noted that in past hearings the provincial governments have attempted to discredit the railways' figures rather than attempting to determine the precise nature of the railways' costs. Such practices have not assisted the Commission in assessing the railways' figures. The accusation of Western Canada that there is collusion between the two railways with regard to the setting of rates and the determination of costs was denied by Mr. Burwash.[16] He did, however, agree with Western Canadian claims that the Commission does not have the expertise nor the staff to adequately assess the costs submitted by the railways for examination. The practice in the past has been for the Commission to merely reduce the costs submitted by the railways by a specific amount and not to study the costs in detail. This statement strengthens the contention of Western Canadians that the Canadian Transport Commission does not in fact study the railways' costing figures in any depth.

Therefore, while Western Canadian views were accommodated in the costing regulations developed by the

Canadian Transport Commission, Western Canadian officials retain the view that, until Section 387C of the Act is amended obligating the Commission to release all costing data, Western Canadians are restricted as to the kind of presentations they can bring to the Commission. In future negotiations with the federal government regarding amendments to the National Transportation Act, Western Canada will urge the federal government to amend this particular section.[17]

2. The Mineral Taxation Act

The second issue that emerged in Western Canada with regard to freight rates was the enactment in April 1970 of amendments to the Mineral Taxation Act by the Saskatchewan Legislature.[18] These amendments when proclaimed would increase the level of taxation on the mineral rights on property owned by the Canadian Pacific Railway from 10¢ per acre to 50¢ per acre. These amendments were enacted as a result of a deadlock in the negotiations between the potash producers and Canadian Pacific for a reduction in freight rates on the movement of potash to Vancouver for export. The discussions began in February 1970 when the Canadian Pacific Railway raised the freight rates on potash by 5%. In addition, the railway announced that the rates would increase by a further 6% in November 1970.

In 1968, Premier Thatcher raised the issue of freight rates at the Constitutional Conferences held in Ottawa. In Mr. Thatcher's view, the high level of freight rates restricted Western Canadian economic development and

he urged the federal government to call a special federal-provincial conference to consider the matter. When the federal government did not respond to his request, the Government of Saskatchewan entered the negotiations in an attempt to obtain lower freight rates for Saskatchewan potash.[20] This was the first occasion since the enactment of the National Transportation Act where one of the provincial governments from Western Canada had entered into direct negotiations with the railways. The Governments of Manitoba and Alberta followed the proceedings with great interest.

Negotiations with the railways concluded on November 5, 1970 with the announcement that the railways had agreed to withdraw the 5% rate increase imposed in February as well as the 6% increase on rates that had been planned for November. In return, the producers agreed to buy or lease from the railways covered hopper cars for shipping potash. Both the railways and the producers of potash were convinced that such a practice would result in great efficiencies in the movement of potash to export markets.

The Honourable A. C. Cameron, Minister of Mineral Resources in the Saskatchewan Government, noted the significance of the rate reductions in the following manner:

> . . . To secure a reduction of this magnitude at this time, when the U.S. railways are seeking a 15% increase in rates, and pressures in Canada are mounting for general upward revisions of rates, confirms our claim that freight rates in Saskatchewan are of a discriminatory nature. . . .[21]

Premier Thatcher was extremely pleased with the success of the negotiations. In his view, the enactment of amendments to the Mineral Taxation Act "provided the railways with sufficient incentive to re-assess the potash freight rate structure to the West Coast. . . ."[22] The successful intervention of the Saskatchewan Government had convinced Premier Thatcher that, if enough political pressure was exerted, the railways could be forced into the position where they would reduce their rates. Thus, the first confrontation between a provincial government in Western Canada and the railways had been resolved. Clearly, the precedent has been established for further legislative action by provincial governments to obtain lower freight rates from the railways.

3. Private Member's Bill of Mr. Hu Harries

On December 10, 1969, Mr. Hu Harries, Liberal Member of Parliament for Edmonton-Strathcona, introduced a Private Member's Bill in the House of Commons to amend the National Transportation Act.[23] To date, this has been the only amendment proposed by a Member of Parliament to those sections of the Act pertaining to freight rates. The fact that Mr. Harries is a Liberal Member of Parliament from Western Canada contributed to the significance of the bill.

Specifically, Mr. Harries' bill would have added an additional subsection to Section 95 of the National Transportation Act to prevent the railways from engaging in long and short haul discrimination when setting rates. Under the terms of the bill, any railway or motor vehicle operator

operating within the legislative authority of the Parliament of Canada that engaged in practices that resulted in long and short haul discrimination would be guilty of an indictable offence and would be subject to a fine of $10,000 or the difference between the actual rate levied and the lowest possible rate that could have been charged for the entire route. Mr. Harries contended that long and short haul discriminatory practices on the part of the railways were negating the attempts of the federal government to promote economic development and to eliminate regional economic disparities. Such practices on the part of the railways, in his view, should be outlawed.

The bill was never debated in the House of Commons. In a letter, Mr. Harries indicated that he received no support from the Governments of Manitoba, Saskatchewan, and Alberta for his bill. While several Members of Parliament from Western Canada indicated to him in private conversations that they supported the bill in principle, they gave him no assurances that they would support the bill in caucus. The only support that Mr. Harries received for his bill from pressure groups in Western Canada was four letters from Chambers of Commerce in the interior of British Columbia. The limited response led him to the conclusion that the issue of freight rates was not a very "live" issue in Western Canada at that time.[24] While the bill was never enacted and did not receive widespread support in the West, the amendment proposed to the National Transportation Act was

significant in that it was designed to alleviate a long-standing Western Canadian grievance with regard to freight rates.

4. Cases Before the Canadian Transport Commission

Since the Act was enacted in 1967, there have been only eight applications for an investigation of specific rates by the Railway Transport Committee.[25] There are several reasons advanced to explain the limited number of cases that have come before the Canadian Transport Commission. For example, among the reasons advanced by officials of the Commission is that the costing regulations used by the Commissioners in their interpretation of the various sections of the Act were only finalized in late 1970.[26] Thus, any group or individual considering an appeal to the Commission withheld their application until the costing procedures were completed. A second explanation offered by officials of the Commission is that the provisions of the legislation offer adequate protection to shippers in all parts of Canada and that there is no need to bring cases to the Commission for investigation.

In a series of interviews in Manitoba, Alberta, and Saskatchewan with business and governmental officials, additional factors were cited to explain the limited number of applications to the Commission.[27] For example, both business and governmental officials were of the opinion that the time lag between the initial presentation of a case to the

Commission and the final decision of the Commission was so great that they were reluctant to present a case. Businessmen, for example, preferred to try to negotiate a lower rate with the railways and only present a case to the Commission if negotiations with the railways were deadlocked.[28] The cost of taking a case to the Canadian Transport Commission was cited as a second reason for the limited number of applications. It is estimated that it would cost approximately $25,000 to $30,000 to present a case.[29] Many of the business concerns in Western Canada do not possess the necessary expertise nor the fiscal resources to present a case before the Commission. A third factor that has limited the number of applications from Western Canada is the belief on the part of both business and governmental officials that the Canadian Transport Commission does not adequately represent Western Canadian views and that the Commission is identified with the interests of the railways. With few exceptions, this sentiment was expressed by every group interviewed in Western Canada.[30]

At present, there are three cases before the Canadian Transport Commission that are of particular concern to Western Canada: the application of the Canadian Cattlemen's Association for captive shipper status under Section 336, and the applications of the Prince Albert Pulp Company and the Western Canadian Seed Processors Ltd. under Clause 16. These three cases will be isolated for particular attention. To date, the Commission has not made a final

decision in any of the cases. Preliminary hearings have been held; however, a final decision is pending further investigation by officials of the Commission.

(a) Section 336 - the captive shipper clause

From March 23, 1967 to March 23, 1971 there were no applications to the Commission under this section of the Act, nor were there any representations made to the Commission suggesting that this section of the Act was ineffective. Since March 1971, the Commission has received applications from Domtar and from the Canadian Cattlemen's Association for "captive shipper" status. The application of the Canadian Cattlemen's Association will be considered in detail as it is of particular concern to Western Canada.

At a meeting of the National Livestock Transportation Committee of the Association in Winnipeg on February 15, 1971, the decision was made to apply to the Canadian Transport Commission for captive shipper status under Section 336 of the Act.[31] The minutes of the meeting reveal that the railways and the Association had reached an impasse over rates levied for the movement of live cattle to the Toronto market. On March 3, 1971, the Association wrote to the Canadian Transport Commission requesting that they be made a "captive shipper" within the terms of the Act. In support of their application, the Association noted that trucks did not provide an alternative form of transport for the movement

of live cattle to the Toronto market. Faced with rising freight rates of approximately 25% over a two-year period and the reluctance of the railways to lower rates, the Association concluded that they had no alternative but to apply for captive shipper status.

The Railway Transport Committee acknowledged receipt of the letter and informed the Association that they would advise them as to future procedure. The procedures outlined in the Act governing "captive shippers" are extremely complex. The Association will be forced to present evidence to the Commission to support their contention that they are a captive shipper. Having received the evidence, the Commission must then decide if in fact the Association is a captive shipper with respect to the movement of livestock. Thus, there could be considerable delay before the Association is declared a captive shipper. If their application is accepted, however, they will be the first group to obtain such a status. The decision of the Commission and the reasons advanced in support of their decision will be of considerable importance to future applications.

(b) Section 334

There have been no instances to date when a rate has been disallowed because it was not compensatory. There were two occasions when trucking firms drew to the attention of the Commission particular railway rates. It was established "that the ton/mile earnings on the shipments were far too

high for the rates to have been non-compensatory".[32] At the present time, the Commission is investigating a rate respecting transborder traffic.

(c) Clause 16 - the public interest clause

There have been four applications under this section of the Act. On April 24, 1970, the Prince Albert Pulp Company Ltd. made application respecting the international rates levied on the export of pulp. On May 7, 1970, the Anglo Canadian Pulp and Paper Mills Ltds. made application regarding freight rates on newsprint from points in Canada to points in the United States. The Saskatchewan Wheat Pool, Agra Industries Ltd., Co-op Vegetable Oils Ltd., and Western Canadian Seed Producers Ltd. presented a joint application regarding the rates levied on the movement of rapeseed oil to Eastern Canada on October 19, 1970.

(i) The Rapeseed Case

On October 19, 1970, the Saskatchewan Wheat Pool, Agra Industries Ltd., Co-op Vegetable Oils Ltd., and Western Canadian Seed Producers presented an application to the Canadian Transport Commission with regard to freight rates levied on the movement of rapeseed meal and oil into Eastern Canada. Their case was supported by the Governments of Manitoba, Saskatchewan, and Alberta.

The processors argued that the rates levied by the railways on the two byproducts of rapeseed -- meal and oil --

restricted the ability of Western Canadian rapeseed producers to market their product in the Eastern Canadian market.[33] At the present time, rapeseed is shipped to Eastern Canada on the Crow's Nest Pass rates. However, byproducts of rapeseed are excluded from these low rates and as a result processed products can be shipped to Western Canada at lower rates than the processed products can be shipped from Western Canada into the Eastern Canadian market. This disparity in rates could ultimately lead to the relocation of the processing industry in Eastern Canada. The Western processors supported their case by noting that flour is moved to Eastern Canada on the Crow's Nest Pass rates, thus, in their view, it was only logical that these rates should be extended to rapeseed meal and oil.

The Railway Committee of the Canadian Transport Commission held hearings in Winnipeg on April 29 and 30 to determine if the Western producers had produced a prima facie case.[34] Section 16 specifically stipulates that before the Commission can consider a case, the appellant must prove that he has a prima facie case. The Canadian National and Canadian Pacific Railways, the three Prairie Provinces, and the processors retained lawyers to present their views to the Commission during the two day hearings held to determine if a prima facie case did exist. In many ways the discussions during the hearings were similar in nature to the debate that had taken place in the Parliamentary Committee and in

the House of Commons during the enactment of the National Transportation Act. The three Prairie Provinces and the Western processors were united in their view that the inclusion of Clause 16 in the Act had been the major concession made by the federal government to accommodate the views of Western Canada. However, the absence of a precise definition of the terms "prima facie" and "public interest" limited the usefulness of this section.

The Western processors argued that it was the intention of Parliament that the decision as to whether an applicant had presented a prima facie case was to be determined in the course of discussions between the Commission and the applicant.[35] In supporting this view, the processors argued that the Commission should not conduct detailed hearings at which time any interested party could be invited to present evidence. It was the responsibility of the Commission to determine, without outside assistance, if a prima facie case had been presented. The three Prairie Governments supported this interpretation of Clause 16 and the Western Canadian position was summarized by Mr. J. E. Foran, legal counsel for the Western Canadian producers, in the following manner:

> . . . I again suggest, Mr. Commissioner, that the proper interpretation of Section 16 is that the application is to be determined as prima facie by the Commission, without the service or prior to service, and that the matter of prima facie is a matter solely between the applicant, and between the Committee, and again, I repeat it is my contention that the proper interpretation of Section 16 contemplates that safeguard for the Committee,

> to avoid placing expenses, time upon respondents for an obviously frivolous and vexatious application. . . .[36]

The Chairman of the Railway Committee, Mr. David Jones, ruled that the Commission should be free to gather advice from all interested parties when deciding if in fact a prima facie case did exist. As a result, he ruled that any interested party should have the opportunity to present evidence to the Commission.[37] This ruling dismissed the claims of Western Canada that only the applicant and the Commission should decide if a prima facie case did in fact exist.

With regard to the criteria that should be used by the Commission to determine if a prima facie case did exist, the legal counsel for the three provincial governments and the Western Canadian processors noted that the term "prima facie" had been defined in many legal texts and that the most accepted definition of the term was "at first glance". Thus the applicant was merely required to present facts that "at first glance" would indicate to the Commission that specific actions were detrimental to the public interest.[38]

In their attempts to illustrate to the Commission that the rates on rapeseed meal and oil were "prejudicial to the public interest", the Western processors and the three Prairie Governments argued that the rates restricted the industrial development of Western Canada and created "undue"

obstacles to the interchange of commodities within Canada. In addition, the provincial governments noted that the rates detracted from the economic policies of both federal and provincial governments that were designed to promote economic development in all regions of Canada.[39]

With regard to the criteria for determining the existence of a prima facie case, the railways noted that the applicant was required to meet two conditions. The two requirements were that the applicant present his facts in a clear and concise manner and that he produce concrete evidence to support his facts. The railway position was summarized in the following manner:

> . . . This is the whole thrust of our position in this phase of the argument, that it is encumbent upon the applicant to bring evidence forward sufficiently to establish, or to at least present them on cross-examination to make that determination so that the Commission can make their determination as to whether on the balance of probabilities there is in fact a prima facie case. . . .[40]

In addition to their arguments as to what constituted a prima facie case, the railways argued during the hearings that Section 16 of the Act did not apply to agreed charges levied by the railways. At the present time, rapeseed oil and meal move to Eastern Canadian markets under agreed charges.[41] The railways noted that agreed charges were regulated by the Transport Act and not by the Railway Act. "Agreed charges" are rates negotiated by the railways and the shipper as a method of meeting competition. An agreed charge is a contract between the railway and the

shipper under which the shipper agrees to ship all, or a specified percentage, of his shipments between certain points via the railway in return for a lower rate. The provisions of the Railway Act and the National Transportation Act make no reference to agreed charges. Agreed charges are regulated by the terms of the Transport Act.[42]

There was no reference in Section 16 to the Transport Act; thus, the railways concluded that agreed charges were exempted from the provisions of Section 16. It was precisely this argument that the railways used in 1952 and 1953 in their presentation to the Turgeon Royal Commission on Agreed Charges. At that time, they noted that the amendment to the Railway Act enacting the one and one-third rule did not apply to agreed charges on the grounds that agreed charges were regulated by the Transport Act. The Royal Commission accepted the arguments of the railways, and the recommendation by the Royal Commission was accepted by the federal government.

The provinces were forced to argue that the phrase "any act or omission" in Section 16 included agreed charges and that agreed charges were not exempted from the provisions of Section 16. In an interview with Mr. R. Cope, Vice-President of the Canadian Transport Commission, he indicated that the government had not excluded any reference to the Transport Act in Section 16 in a deliberate attempt to exclude agreed charges from the provisions of that section.[43]

He did, however, acknowledge that the decision rendered by the Commission on this particular issue would be of extreme importance to Western Canada. Both the legal counsel for the Governments of Alberta and Saskatchewan, Mr. J. J. Frawley and Mr. F. Lemieux, indicated that, if the Commission ruled in favour of the railways, Section 16 of the legislation would offer little or no protection to Western Canada from the monopoly position of the railways.[44]

It is interesting to speculate as to the reasons for the failure of the three Prairie Provinces to raise this issue during the debate on the provisions of the legislation. It would appear that government officials did not realize that, by not specifically including a reference to the Transport Act or to agreed charges in the provisions of Section 16, the railways could argue that agreed charges were excluded from the provisions of that section of the legislation.

On November 2, 1971, the Canadian Transport Commission rendered a decision on the case.[45] The decision established important precedents in that the Commission revealed for the first time its interpretation of the phrases "public interest" and "prima facie case". The Commission ruled that the expression "prima facie" should be given its ordinary meaning - "at first sight" or "on the face of it", when applied to Section 16. While the Commission recognized that Parliament had stipulated that certain factors be

taken into account when defining the term "public interest", they argued in their decision that the definition of the phrase should be as flexible as possible, and that no rigid criteria should be laid down in this case that would limit future interpretations of the term. An excerpt from the Commission's decision summarizes their views as to the meaning of the term "public interest":

> . . . It is at this point that I believe the meaning of the expression "public interest" should be considered. I will not attempt to compile an exhaustive definition of that expression but will confine myself to the circumstances of the present case on the principle that Parliament intended the Commission to have a wide discretion in the matter, and that it would be improper for me to attempt to establish criteria for the application of the test of public interest to future cases in which the circumstances will undoubtedly be at variance from those in the present case. . . .
>
> . . . In my opinion, all that an Applicant has to do to obtain leave to appeal is to persuade the Commission that the acts, omissions or rates may affect the public interest, and, in the present case, the main thrust of the Application is that the present scale of rapeseed rates may be such as to create either an unfair disadvantage to the Applicants beyond the disadvantage deemed to be inherent in their location, an undue obstacle to the interchange of rapeseed products between points in Western Canada and points in Eastern Canada, an unreasonable discouragement to the development of rapeseed processing as a secondary industry in Western Canada and an unreasonable discouragement to the export of processed rapeseed from Western Canada to foreign markets; whether this proves to be the case is another question that must await the outcome of the Commission's investigation and hearings. . . .[46]

The legal counsel for the Saskatchewan Government, Mr. F. Lemieux, is of the opinion that the decision of the

Commission indicates that Section 16 of the Act will provide protection for Western Canada.[47] In his view, the underlying philosophy of the decision, that the provisions of Section 16 should be made as simple and as general as possible, provides Western Canada with greater protection from the monopoly position of the railways.

Finally, the Commission ruled that agreed charges were not excluded from the terms of Section 16 of the National Transportation Act. In the view of the Commissioners:

> . . . If parliament had intended to exclude agreed charges from the application of Section 16 of the National Transportation Act, it would have said so, either in Section 4 or in Section 16 itself. . . .[48]

(ii) The Prince Albert Pulp Company Ltd. Application

The Prince Albert Pulp Company Ltd. filed its application with the Canadian Transport Commission in April 1970.[49] In their brief, the Company contended that existing freight rates on the movement of woodpulp from Prince Albert to markets in Minnesota and Wisconsin did not reflect the geographical advantage of the plant in relation to other plants located in Hinton, Alberta and Kraft, British Columbia. They noted that, under the existing rate structure, rates for the movement of woodpulp being shipped into the United States were "grouped" so that the rates charged for the movement of woodpulp into the United States from their plant were the same as the rates levied on woodpulp shipped from Hinton and Kraft even though Prince

Albert was closer to the United States market. They noted that pulp mills located in Dryden and Thunder Bay were approximately the same distance from the United States market as was the Prince Albert plant but that the rates were lower for the movement of pulp from the mills at Dryden and Thunder Bay.

To further illustrate their contention, the following statistics were presented. The rate differential on the movement of pulpwood to Wisconsin markets between Prince Albert and Kraft was 60¢ per ton in favour of Prince Albert despite the fact that pulp shipped from Kraft would move an extra 545 miles to reach the Wisconsin market. However, the rate differential on the movement of pulp from Prince Albert and Dryden was $4.80 per ton against Prince Albert despite the fact that Prince Albert was only 256 miles farther from the American market.[50] On the basis of these figures, the Prince Albert Pulp Company argued that they were not realizing the full geographical advantages of their location with regard to the movement of pulp into the United States because of unreasonably high rates. On movements of pulpwood to Vancouver for export, the Prince Albert Pulp Company noted that they were denied the advantages of the grouping procedure. For example, pulpwood moving from the Prince Albert plant moved at a much higher rate than pulpwood being shipped from Hinton and Kraft to Vancouver. It was on the basis of the above evidence that the Prince Albert Pulp Company concluded that excessively high freight rates were

restricting their ability to compete for markets.

The Government of Saskatchewan intervened in support of the application made by the pulp company from Prince Albert.[51] In presenting its case, the Government of Saskatchewan argued that the term "public interest" as defined in Section I of the Act and in Section 16, was designed to ensure that the transportation system promoted the economic well-being of the nation by encouraging the interchange of commodities between the various regions of Canada. It was considered to be in the "public interest" that resource and industrial development be encouraged in Saskatchewan. The freight rates levied on pulp being exported from Prince Albert did not reflect the locational advantage that it possessed over other pulp mills in Canada with regard to distribution points in the United States. It was on these grounds that the Saskatchewan Government concluded that the rate levied was a violation of Clause 16 of the Act.

In October 1970, the Province of Alberta intervened in the case in support of the application of the Prince Albert Pulp Company.[52] The Alberta Government urged the Canadian Transport Commission to adjust the rate structure in such a manner "as to protect the Canadian pulpwood industry in competing in the continental market and to offer to each producing pulp mill rates which reflect locational position after taking into account rail costs for the specific routes of movement".[53] The Government of Manitoba did not intervene

in the case; however, the Government of Ontario intervened and opposed the Saskatchewan application. The Ontario Government was concerned that any adjustment in the rates on pulp moving from Saskatchewan would reduce possible markets for Ontario plants located in Thunder Bay and Dryden.[54]

During the initial hearings before the Railway Committee in October and November 1970, the railways argued that the Canadian Transport Commission did not possess jurisdiction over international rates.[55] Thus the Commission could not consider the application of the Prince Albert Pulp Company. However, in June 1971, the Commission ruled that it did have jurisdiction over international rates. The railways did not appeal the decision and further hearings were held by the Commission to determine if a prima facie case did exist and whether the "public interest" was involved.

In November and December 1971, the Railway Transport Committee, under the chairmanship of Mr. David Jones, held hearings in Ottawa to determine if the Prince Albert Pulp Company had sufficient evidence to establish a prima facie case under the provisions of Section 16 of the National Transportation Act. Spokesmen for the Prince Albert Pulp Company, the Canadian National and Canadian Pacific Railways, and for the Governments of Alberta, Manitoba, Saskatchewan, and Ontario presented evidence at the hearings.

On February 10, 1972, the Railway Transport Committee rendered its decision.[56] The Committee ruled that the Prince Albert Pulp Company had presented sufficient

evidence to the Committee to establish a prima facie case. In rendering its decision, the Committee followed the precedent established in connection with the rapeseed case. The Commission ruled that the expression "prima facie" should be given its ordinary meaning -- "at first sight" or "on the face of it". While reaffirming their view that the criteria for determining a prima facie case should not limit the ability of applicants to bring cases before the Commission, the Commissioners did indicate that, before they would rule that an applicant had presented a prima facie case under the provisions of Section 16, the applicant must demonstrate that the rate being levied by the railway constituted more than an element of unfairness between the applicant and his competition. Before the Commission would agree to initiate further investigations, the applicant was required to prove that the rate levied by the railway was detrimental to the "public interest" and not only to the applicant.

The Commissioners reaffirmed the definition of the "public interest" outlined in their earlier decision. The view was expressed that, if a rate levied by a railway had a detrimental effect on the level of economic development, personal income or capital formation within a particular area, this would be considered to be prejudicial to the "public interest". The reference in the decision to the level of economic development and the level of capital

formation within a region as factors that would be taken into account when determining if a rate was prejudicial to the "public interest" incorporated many of the arguments advanced by the Provinces of Saskatchewan and Alberta in their presentations to the Committee. Thus, it would appear that the two decisions rendered by the Commission with regard to the definition of the terms "prima facie" and "public interest" indicates that the provisions of Section 16 of the legislation may offer more protection to Western Canada than many officials and politicians in the West had originally anticipated.

The importance of the decisions rendered by the Canadian Transport Commission, and the implications arising from these decisions, is recognized by officials of the Commission and by federal and provincial officials. There is general agreement that the future course of negotiations between the federal and provincial governments on the issue of freight rates will be determined in large part by the nature of the final decisions rendered by the Commission in the rapeseed and Prince Albert Pulp Company cases.[57] In an interview with Mr. David Jones, Chairman of the Railway Committee, he noted that the Committee is aware that with each decision an important precedent is being established by the Committee.[58] As a result, the Railway Committee has held extensive public hearings on each case before rendering an initial decision regarding the definition that the Commission will accept of the terms "prima facie" and "public interest". This procedure was designed to ensure

that all interested parties would have the opportunity to present their views. He noted that Western Canada should not be discouraged by the length of the delay before the Committee renders final decisions in these two cases. Once precedents are established, future cases will be resolved in a shorter period of time.

B. Federal-Provincial Discussions on the Issue of Freight Rates

Beginning in 1968, the federal government and the Governments of Manitoba, Saskatchewan, and Alberta entered into a series of discussions relating to the general issue of freight rates. These discussions are still continuing at the present time. The decision of the three Prairie Provinces to engage in these discussions and to raise the issue of freight rates at the Constitutional Conference of 1968 was the first indication that the provinces were revising the strategy that they had employed on earlier occasions in their attempts to influence federal policy relating to freight rates.

Provincial politicians and their officials were unanimous in their agreement that the strategy employed by the Western Canadian provinces from 1945 to 1968 had been only marginally successful.[59] The presentation of cases to the Board of Transport Commissioners and the presentation of briefs to Royal Commissions and to Parliamentary Committees had not resulted in Western Canadian views being

accommodated to any great extent in federal policy outputs. As a result, the Provincial Premiers decided, at a meeting of the Prairie Economic Council in the summer of 1968, that they would raise the issue at the political level by including references to freight rates in their briefs presented at the Constitutional Conference.[60] Thus, the decision was made to abandon the traditional strategy of the 1950's and early 1960's and demand that the federal government seek a solution to transportation problems in Western Canada through regular federal-provincial discussions at the ministerial and the official level. Despite the fact that there were more extensive consultations with the Governments of Manitoba and Saskatchewan during the enactment of the National Transportation Act, the three Prairie Provinces were unanimous in the view that many of their recommendations had not been accommodated in the final policy output. As a result, the Saskatchewan Government urged the Governments of Alberta and Manitoba to encourage the federal government to consult with the provinces on a regular basis with regard to any changes in transportation policy. This strategy was supported by the Alberta and Manitoba Governments and the issue was raised for discussion at the Constitutional Conferences held in 1969.

In addition to the general dissatisfaction with past strategy, there were other factors that encouraged the provinces to alter their tactics. For example, all three of

the Premiers were convinced that the issue of freight rates was an issue that could be exploited to their political advantage. They reasoned that the issue of freight rates would serve to illustrate the feelings of alienation that were said to be present in Western Canada. The arrogant and indifferent attitude of the railways in their dealings with the provincial governments and with various industries in Western Canada was an important factor that motivated Premier Thatcher to raise the issue of freight rates at the December 1969 Constitutional Conference.[61] A third factor that encouraged the Premiers to alter their tactics was the negative impact of freight rates on the level of economic development in Western Canada. All three Premiers were convinced that freight rates were a major barrier to the future economic development of Western Canada. Finally, the retirement of Mr. J. J. Frawley as legal counsel to the Alberta Government was an important factor in persuading the Alberta Government that it should alter its tactics.[62] Mr. Frawley had been totally committed to the traditional strategy employed by Alberta of presenting cases to the Board of Transport Commissioners and arguing Alberta's case before Royal Commissions and Parliamentary Committees. With the retirement of Premier Manning and Mr. Frawley, the government was free to adopt new tactics in their dealings with the federal government.[63] In summary, these were some of the factors that resulted in a change in the strategy employed

by the provincial governments.

One of the most important features of the new strategy devised by the three Prairie Provinces in 1968 was their attempt to develop a common regional policy in their dealings with Ottawa. It became increasingly apparent to politicians and officials in the three provinces that one of the factors that had limited the success of Western Canada in having their views accommodated in the final provisions of the National Transportation Act was the failure on the part of the three Prairie Governments to develop a united policy position in their dealings with the federal government. A review of the briefs presented to the Royal Commission on Transportation of 1959 and to the Parliamentary Committee of 1966 revealed that there were variations in the policy positions of the three Prairie Governments. Furthermore, the bargaining techniques employed by the three provinces during the consultations with the federal government in 1965 and 1966 placed emphasis on different policy goals and objectives. Emerging from the events surrounding the enactment of the National Transportation Act was the realization that, if Western Canada was to present its views in a more effective and more forceful manner, an attempt would have to be made to develop a common regional policy. The activities of the politicians in the three Prairie Provinces since 1968 have been directed towards this goal.

1. Constitutional Conferences of 1968 and 1969

It was agreed at the meeting of the Prairie Economic Council in the summer of 1968 that Premier Thatcher would be the spokesman for Western Canada. However, Premiers Weir and Strom agreed to lend their support during the discussions. In a series of remarks to the Constitutional Conference of December 1969, Premier Thatcher stated the grievances of Western Canada on the issue of freight rates. It should be noted that there was virtually no relationship between the issue of freight rates and constitutional reform. All the provinces used the occasion to raise issues that were of longstanding concern to them. During the course of the conference, Premier Thatcher commented on the issue of freight rates in the following manner:

> . . . But as we go out to get new industries, which are so vital, and as we try to diversify, we run into a major roadblock. There is no use of the Federal Government helping us to get new industries if the railroads are allowed to negate the advantage by freight rates which are not competitive.
>
> Now, we have had this problem for years. But it is becoming worse and worse as freight rates go up.
>
> We think that the current freight rate structure is absolutely discriminatory against my province and, I think, against the Prairies. While our Government from time to time has taken strong action against the railroads on the rates, we never try to make them a whipping boy. I am not trying to do that today. Because it has been our opinion that the railroads have been run by reasonable men who had the national interest at heart.
>
> However, only recently there has been a series of events that have taken place which make us wonder if the C.P.R. and C.N.R. are simply impervious to the best interests of Western Canada.

> It is very obvious we lack trucking competition and we lack water competition. And that lets them pretty well set any rates they want.
> . . .
> . . . I think, if there is any single thing that is contributing to the national disunity in Western Canada, it is the attitude of the railroads in giving us competitive rates.
> We do not want freight rates any better than any other part of Canada. But we do think we are entitled to the same rates.
> I have heard our Prime Minister time and again talk about the need for national unity. I think the time has come when somebody should tell these railroads that out in Western Canada we are not second rate citizens, that we are entitled to the same rate for our natural products as other parts of Canada. And, if we don't get them, no matter what industries you help us build, how can we compete? They have got us right by the throat. And, believe me, they are taking advantage of the situation.
> So far as Western Canada is concerned, I say again where regional disparity is concerned, we think the railroads are at fault. And we think somebody in the Federal Government should take a long hard look at this. The problem has been with us for many decades, but the time has certainly come when we should do something about it. . . .[64]

Premier Strom, speaking at the Constitutional Conference of February 1969, referred to the issue of freight rates in the following manner:

> . . . We would therefore ask the Government of Canada to remove these inequities. For example, we would suggest the appointment of a commission on tariffs and freight rates to examine any problems and to recommend solutions. . . .[65]

At the Constitutional Conference of December 1969, the issue of freight rates was raised again by Alberta. In his remarks, the Alberta Premier noted the impact of freight rates on the economic development of Western Canada:

> . . . Alberta has always felt this very keenly. And if there is any suggestion of a study or any review of the matter, then of course we are vitally interested, because, even though we are a "have" province and we have had a considerable amount of growth, we do have problems in interesting industry in coming because of the unfair freight rates at the present time. . . .[66]

In reply to the demands of the Western Canadian Premiers for a joint federal-provincial study on the question of freight rates, Prime Minister Trudeau noted that the matter could be discussed at a federal-provincial conference once the federal government had the opportunity to review its policy. With regard to the discriminatory nature of freight rates in Western Canada and in the Maritimes, Prime Minister Trudeau replied:

> . . . It is certain that we do not want to be unfair to any part of Canada. And it is difficult to see how we can be unfair to all parts of Canada. Somebody must be getting something good out of it; and we have to find out who it is. . . .[67]

2. Bi-lateral Meetings

Emerging from the discussions at the Constitutional Conferences of 1968 and 1969 was an agreement that the provinces and the federal government would meet to discuss transportation policy.[68] While the provinces urged the federal government to discuss the matter will all the Prairie Provinces collectively, the federal government indicated that the initial discussions should be between the federal government and each individual province. Once this

series of bi-lateral negotiations had been completed, the federal government would meet with all the provincial governments to discuss the issue of freight rates.

A series of meetings were held between federal officials and officials from each Prairie Province in 1970 to discuss the terms of reference for the proposed policy review. It was agreed that each province would prepare a brief outlining its grievances and submit this brief to officials in the Ministry of Transport for their consideration. To date, the Provinces of Manitoba and Saskatchewan have presented their briefs to the federal officials. The Alberta brief has not been presented. The document was before Cabinet when the Social Credit Government was defeated in August 1971. With the change in government in Alberta, there could be some delay in the submission of their brief to the federal government.

The brief of the Manitoba Government was presented to federal officials in May 1971.[69] The arguments advanced by the Manitoba Government were similar to those presented to the federal government during the debate on the provisions of the National Transportation Act. Thus, it would appear that the position of the Manitoba Government has not changed despite the coming to power of the New Democratic Party in June 1969.

The major theme of the Manitoba brief was that the railways enjoyed a monopoly position in Western Canada with

regard to the movement of bulk commodities and that the provisions of the National Transportation Act offered no protection for Western Canada. Those sections of the bill isolated for particular criticism were the provisions establishing the criteria for the application of the maximum rate formula, the definition of a captive shipper, and the absence of any definition of "public interest" in Clause 16. In addition, the delay and expense involved in taking a case before the Canadian Transport Commission did not provide Western Canada with an adequate avenue to appeal the freight rate increases imposed by the railways. Finally, statistical evidence was presented to illustrate the impact of long and short haul discriminatory practices on the future economic development of Western Canada and on the price of commodities transported from Eastern Canada by rail to Manitoba.

In an interview with officials of the Manitoba Government prior to the recent decisions of the Canadian Transport Commission with regard to Section 16, they revealed that in future discussions the Manitoba Government would urge the federal government to establish a special task force composed of federal and provincial officials to study existing inequities in the freight rate structure.[70] In addition, the Manitoba Government will recommend a revision of the provisions of the maximum rate formula found in the National Transportation Act, a more liberal definition

of the term "captive shipper", and a more precise definition of the terms "public interest" and "prima facie" in Clause 16. Finally, the Manitoba Government will propose that a provision be included in the National Transportation Act to eliminate long and short haul discrimination as it is practised by the railways at the present time. It is possible that the recent decisions of the Commission may persuade the Government of Manitoba that revisions to Clause 16 are not necessary. If the Manitoba Government comes to accept this view, this would place them in agreement with the Saskatchewan Government.

The brief prepared by the Saskatchewan Government was presented to federal officials in January 1971.[71] The Saskatchewan brief did not contain any specific recommendations for possible amendments to the National Transportation Act. The brief merely reiterated the statements made by Premier Thatcher at the Constitutional Conferences and cited specific instances where the high level of freight rates limited the economic development of Western Canada. The rates on potash and woodpulp were cited in the brief to illustrate the negative impact of freight rates on the economy of Saskatchewan. In an interview with Mr. K. Setter, an economist with the Government of Saskatchewan, he indicated that the Saskatchewan Government in future negotiations would urge the federal government to revise the maximum rate formula and to re-define the term "captive shipper".[72] However, he did indicate that the Saskatchewan Government would

not urge the federal government to define the term "public interest" in a more precise manner. In Mr. Setter's view, the absence of any definition of the term "public interest" in the clause enables the Saskatchewan Government to raise almost any matter of concern by citing the provisions of Clause 16. The Manitoba and Alberta Governments have contended that a more precise definition of the term "public interest" would offer more protection to Western Canada. At the present time, there would appear to be a difference of opinion at the official level between officials of the Manitoba, Alberta, and Saskatchewan Governments on the amendments to Clause 16.

While the Alberta Government has not presented its brief to the federal government, Mr. J. W. Telford revealed Alberta's position on the issue of freight rates.[73] The major theme of the Alberta position is that freight rates in Western Canada are discouraging the economic development of Western Canada and negating the attempts of the federal government to promote regional economic development. Among the specific policy recommendations that will be advanced by the Alberta Government will be a revision of the maximum rate formula, a re-definition of the captive shipper clause and a revision of Clause 16 to include a more precise definition of the term "public interest".

A review of the policy positions of the three Prairie Provinces indicates that there is virtually unanimous

agreement on those provisions in the National Transportation Act that require amendments. In addition, it is interesting to note that Western Canada's opposition to certain provisions of the bill has remained unchanged since the enactment of the National Transportation Act despite the fact that the political affiliation of the governments in the three Prairie Provinces has changed. This would strengthen the view that the Western Canadian position on the issue of freight rates has not varied significantly over time nor with the political affiliation of the government in each province.

3. Consultations between the Prairie Provinces

While the federal government was meeting with each provincial government to discuss the issue of freight rates, the Governments of Manitoba, Saskatchewan, and Alberta held a series of meetings in 1969 and 1970 in an attempt to develop a common policy position. The Prairie Provinces utilized the Prairie Economic Council as the forum for these discussions.[74] After preliminary discussions at the ministerial level, it was agreed that a technical committee composed of officials from the three governments would meet on a continuing basis to discuss policy matters pertaining to freight rates. Among the matters discussed by officials at the four meetings held in 1969 and 1970 was the application of the Prince Albert Pulp Company to the Canadian Transport Commission, the preparation of a joint submission to the

Commission on behalf of the Western rapeseed processing industry, and the possibility of convening a federal-provincial conference on freight rates. The convening of a federal-provincial conference was discussed at some length and various aspects of the issues to be raised at such a conference were referred to each province for detailed study.

The continuing federal-provincial and inter-provincial discussions indicate that Western Canada has abandoned its traditional strategy of reacting to federal policy decisions and attempting to change policy decisions that have been finalized by the Cabinet. In addition, Western Canada has come to recognize that the presentation of cases to the Canadian Transport Commission is a very long and costly process. It is recognized that they must inject their policy inputs into the decision-making process before the federal government has finalized its policy position if Western Canadian views are to be accommodated to a greater extent in federal policy outputs in the future. Discussions with officials of the Ministry of Transport and with the Minister of Transport are now seen as the most important and the most effective channels of communication for the injection of Western Canadian views.[75]

Officials in the three Prairie Governments have been encouraged by the initial response of the federal government during the discussions. There was a unanimous feeling among the officials in all the Prairie Governments that the

federal government was bargaining "in good faith" and that they were genuinely interested in hearing Western Canadian views on various aspects of the issue of freight rates.[76] The crucial question in the view of Western officials is to what extent can the federal government accommodate the views of Western Canada without arousing opposition from Eastern Canada to such policy changes. Mr. Pickersgill recalled during an interview that economic arguments on the issue of freight rates that are not accompanied by political power will receive very little attention from the federal government. This statement has particular meaning for Western Canada and summarizes in very succinct terms an important factor that has limited the ability of the political actors of Western Canada to have amendments enacted that would offer more protection for Western Canada.[77]

4. Future Activities by the Federal and Provincial Governments

Bi-lateral discussions between the federal government and each of the Prairie Governments should be concluded by the end of 1971 or very early in 1972. The federal government will then meet with the provincial governments collectively to discuss various matters pertaining to freight rates. Despite recent changes in the political affiliation of the Governments of Saskatchewan and Alberta, provincial officials are extremely confident that Western Canada can develop a common policy position with regard to freight rates.[78] While it is recognized that each of the

Prairie Provinces has different interests to protect, provincial officials realize that, if they are to gain any concessions from the federal government, the Prairie Provinces must adopt a common position.

Provincial officials are hopeful that the federal government will call a federal-provincial conference on the issue of freight rates within the next two years. Federal officials in the Ministry of Transport have begun to collect the necessary data for such a conference. If the federal-provincial discussions at the official level can be concluded by mid-1972, provincial officials are confident that a federal-provincial conference could be held in 1973. It is recognized by both federal and provincial officials that the issue must ultimately be resolved at the political level. Discussions at the official level can merely "clear the path" for such solutions. Thus, it would appear that the enactment of the National Transportation Act did not reduce the opposition in Western Canada to the major provisions of the bill that pertain to freight rates and that the issue of transportation policy, and freight rates in particular, continues to be a contentious issue between the governments of the three Prairie Provinces and the federal government.

In conclusion, the short-term objective of the provincial governments from Western Canada is to have the federal government enact several amendments to the National Transportation Act that will provide more protection for

Western Canada. However, the long-term objective of the Western Canadian strategy is to urge the federal government to establish a permanent federal-provincial committee or council to coordinate transportation policy. While there have been only limited discussions with the federal government on this issue, Mr. J. W. Telford indicated that the organization of the Council of Resource Ministers could be used as a possible model.[79] A federal-provincial committee would establish a permanent forum for the discussion of transportation policy. Such a council would permit the injection of regional policy inputs at a very early stage in the policy-making process and would encourage a continuing dialogue between federal and provincial officials. Western officials are hopeful that if such a committee was established, Western Canadian views could be presented to the federal government in a more persuasive manner, and more results would be forthcoming.

FOOTNOTES

[1]Interview with Mr. J. J. Frawley, September 8, 1971.

[2]The federal position was outlined in Chapter VIII.

[3]This definition was provided by Mr. M. Burwash, Director of Economics for the Canadian Transport Commission, in an interview on September 7, 1971.

[4]The details in succeeding paragraphs are taken from Section 387 of the National Transportation Act.

[5]Interview with the Honourable J. W. Pickersgill.

[6]Interviews with Mr. J. W. Telford, Mr. J. J. Frawley, and Mr. R. Phillips.

[7]This quotation was taken from a speech made by Mr. R. Phillips to the Annual Meeting of the Saskatchewan Wheat Pool in 1970, entitled "A Decade of Railway Rationalization".

[8]Canadian Transport Commission, Judgments, Orders, Regulations and Rulings, Pamphlet #15, August 1969, p. 327.

[9]Interview with Mr. R. Phillips.

[10]Canadian Transport Commission, Judgments, Orders, Regulations and Rulings, Pamphlet #15, August 1969, p. 327.

[11]Canadian Pacific Railway Company vs Province of Alberta and Attorney-General for Canada, Supreme Court of Canada Bulletin (1970-71).

[12]This view was confirmed in interviews with officials of the Manitoba Pool Elevators on September 3, 1971, with Mr. R. Phillips of the Saskatchewan Wheat Pool, and with Mr. O. Broughton of the Alberta Wheat Pool. This point was further substantiated in interviews with Mr. A. V. Mauro, Mr. J. W. Telford, Mr. J. J. Frawley, Mr. F. Lemeiux, and Mr. G. Blair.

[13]This information was obtained in interviews with Mr. J. W. Telford and with Mr. M. Burwash.

[14]This view was expressed by officials of the Manitoba Pool Elevators, Mr. R. Phillips, Mr. O. Broughton, Mr. A. V. Mauro, Mr. J. W. Telford, Mr. J. J. Frawley, Mr. F. Lemieux, Mr. G. Blair, and officials of the Edmonton Chamber of Commerce, the Calgary Chamber of Commerce, the Canadian Manufacturer's Association (Alberta Branch), and Western Co-op Fertilizer Ltd..

[15]Interview with Mr. M. Burwash.

[16]The accusation that there was collusion between the railways was made by Mr. J. W. Telford, Mr. J. J. Frawley, Mr. K. Setter, Mr. V. Steichisin, and Mr. F. Lemieux. Officials of the Canadian Transport Commission denied this accusation.

[17]The Western Canadian position on this issue was revealed in interviews with Mr. J. W. Telford, Mr. K. Setter, Mr. J. Heads, and Mr. F. Lemieux.

[18]An Act to Amend the Mineral Taxation Act, 1970, 19 Eliz. II, Ch. 44.

[19]Details surrounding the discussions with the railways were taken from a letter written by the Honourable W. R. Thatcher, Premier of Saskatchewan, to the author on November 25, 1970. Details in succeeding paragraphs were taken from this letter.

[20]Ibid..

[21]Regina Leader Post, November 5, 1970.

[22]Letter from Premier Thatcher to author of November 25, 1970.

[23]An Act to Amend the National Transportation Act, 1969, 18 Eliz. II. This bill was given first reading on December 10, 1969; however, it was never debated in the House of Commons.

[24]Letter received from Mr. Hu Harries, M.P., of October 15, 1971.

[25]Details of the cases brought to the Canadian Transport Commission were taken from a letter from Mr. H. Arbique, Secretary to the Commission, to the author of May 21, 1971. Further information was obtained in interviews with Mr. Arbique on September 7, 1971 and with Mr. David Jones, Chairman of the Railway Committee of the Commission, on September 10, 1971. The details of the rapeseed case and of the Prince Albert Pulp case were also discussed with Mr. J. J. Frawley, Mr. F. Lemieux, Mr. K. Setter, Mr. J. W. Telford, and Mr. G. Blair. Details in succeeding paragraphs are drawn from these interviews.

[26]Interviews with the Honourable J. W. Pickersgill, Mr. R. Cope, Mr. H. Arbique, and Mr. M. Burwash.

[27]Interviews with Mr. J. W. Telford, Mr. K. Setter, Mr. J. Heads, Mr. F. Lemieux, Mr. J. J. Frawley, and Mr. A. V. Mauro.

[28]Interviews with officials of the Calgary Chamber of Commerce, the Edmonton Chamber of Commerce, the Canadian Manufacturer's Association (Alberta Branch), Western Co-op Fertilizer Ltd., and the Canadian Cattlemen's Association indicated that there was great reluctance on the part of businessmen in Western Canada to present a case to the Canadian Transport Commission.

[29]The costs involved in taking a case to the Commission were estimated to be approximately $30,000. This figure was confirmed by government officials in the three Prairie Provinces and by the legal counsel for the provinces. There was agreement among these individuals that Western Canadian business concerns did not possess the necessary expertise nor the fiscal resources to gather the necessary data to present a case to the Canadian Transport Commission. For example, to present a case under Clause 16 one must provide evidence to the Commission establishing a <u>prima facie</u> case. To prove such a case, detailed costing figures must be presented. In many cases Western Canadian business concerns would be forced to hire consulting firms to prepare their case. Thus there is a relationship between the cost of presenting a case to the Commission and the absence of qualified individuals employed by Western Canadian business concerns.

[30]While it is true that the Canadian Transport Commission has not rendered any decisions on the freight rate cases before it, there is the feeling in Western Canada that those individuals appointed to the Railway Committee are

closely identified with the interests of the railways. It is true that this feeling in Western Canada cannot be substantiated by references to actual decisions rendered by the Railway Committee; nevertheless, there is a feeling in Western Canada that the Railway Committee does not adequately represent Western Canadian views. This view was expressed by officials of the three Wheat Pools, Mr. J. W. Telford, Mr. J. J. Frawley, Mr. F. Lemieux, and Mr. J. Heads. The only exception was Mr. K. Setter who indicated that the Chairman of the Railway Committee, Mr. David Jones, was not captive of the railways. In an interview with Mr. Jones, I was left with the impression that he recognizes that the Canadian Transport Commission is open to the charge. He is determined, however, not to become identified with the interests of the railways. In addition, he realized that, as a Western Canadian, he should attempt to bring the Western Canadian position to the attention of the Commission. He did not see himself, however, as a spokesman for Western Canada.

[31]Details regarding the application of the Canadian Cattlemen's Association were obtained in an interview with Mr. G. Littke, Economic Consultant to the Association, on June 28, 1971.

[32]Letter from Mr. H. Arbique, May 21, 1971.

[33]Details of the rapeseed case were obtained in interviews with Mr. J. W. Telford, Mr. J. J. Frawley, Mr. F. Lemieux, Mr. K. Setter, Mr. A. V. Mauro, and Mr. D. Jones.

[34]Canadian Transport Commission, Proceedings and Evidence in the Matter of the Application of the Saskatchewan Wheat Pool, Agra Industries Ltd., Co-op Vegetable Oils Ltd., and the Western Canadian Seed Processors Ltd. pursuant to Section 16 of the National Transportation Act, April 29 and 30, 1971, Winnipeg, Manitoba (Vancouver: All West/Bemister Reporting Ltd.).

[35]Ibid., pp. 38-51 and pp. 57-60.

[36]Ibid., p. 38.

[37]Ibid., pp. 46-49.

[38]Ibid., pp. 60-61, 73-75, 81-83, and 88.

[39]Ibid., pp. 57-60, 71-73, 85-86, and 88.

[40]Ibid., pp. 106-107.

[41]Ibid., pp. 124-125.

[42]For a detailed discussion of agreed charges and their relationship to the Transport Act, see Chapter III.

[43]Interviews with the Honourable J. W. Pickersgill and Mr. R. Cope.

[44]Interviews with Mr. J. J. Frawley and Mr. F. Lemieux.

[45]Canadian Transport Commission, IN THE MATTER OF the Application dated October 14, 1970, of the Saskatchewan Wheat Pool, Agra Industries Limited, Co-op Vegetable Oils Ltd., and Western Canadian Seed Processors Ltd., pursuant to Section 23 of the National Transportation Act for leave to appeal the acts, omissions or rates of the named respondents, Order No. R-13001, File No. 30637.2, November 2, 1971. Details in succeeding paragraphs were taken from this document.

[46]Ibid., pp. 16, 19-20.

[47]Letter received from Mr. F. Lemieux of November 5, 1971.

[48]Canadian Transport Commission, Order No. R-13001, p. 33.

[49]Canadian Transport Commission, IN THE MATTER OF the Application of the Prince Albert Pulp Company Ltd. pursuant to Section 16 of the National Transportation Act for leave to appeal the acts, omissions and/or rates of the named respondents, April 1970. This document was obtained from Mr. K. Setter. Details in succeeding paragraphs are taken from this brief.

[50]Ibid., pp. 8-9.

[51]Canadian Transport Commission, Intervention of the Government of Saskatchewan in the Matter of the Application of the Prince Albert Pulp Company Ltd., August 1970. Details in succeeding paragraphs were taken from this document.

[52]Canadian Transport Commission, Intervention by the Province of Alberta in the Matter of the Application of the Prince Albert Pulp Company Ltd., October 1, 1970.

[53]Ibid., p. 5.

[54]This information was obtained in an interview with Mr. F. Lemieux.

[55]This information was obtained in interviews with Mr. F. Lemieux and Mr. K. Setter.

[56]Canadian Transport Commission, Railway Transport Committee Decision In the Matter of Section 23 of the National Transportation Act, Ottawa, February 10, 1972, File No. 26901.97.1. Details in succeeding paragraphs were taken from this document.

[57]Interviews with Mr. J. W. Telford, Mr. K. Setter, and Mr. J. Heads.

[58]Interview with Mr. David Jones.

[59]Interviews with Mr. J. W. Telford, Mr. K. Setter, and Mr. J. Heads.

[60]Details of the new Western Canadian strategy were revealed in interviews with Mr. J. W. Telford, Mr. K. Setter, and Mr. A. V. Mauro.

[61]Interview with Mr. K. Setter.

[62]Interview with Mr. J. W. Telford.

[63]Ibid..

[64]Honourable R. Thatcher, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), pp. 340-343.

[65]Honourable H. Strom, Statement to the Constitutional Conference, February 1969, Proceedings (Ottawa: Queen's Printer, 1969), p. 178.

[66]Honourable H. Strom, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), p. 373.

[67]Right Honourable P. E. Trudeau, Statement to the Constitutional Conference, December 1969, Unrevised Proceedings (Ottawa: Queen's Printer, 1969), p. 365.

[68]This was revealed in interviews with Mr. J. W. Telford and Mr. K. Setter. Details in succeeding paragraphs are drawn largely from these two interviews.

[69]Government of Manitoba, Preliminary Statement on Freight Rates Affecting Manitoba, May 1971. This document was presented by the Honourable A. R. Paulley, Minister of Labour in the Government of Manitoba, to the Honourable D. Jamieson, Minister of Transport. Details in succeeding paragraphs were taken from this brief.

[70]Interview with Mr. John Heads, Director of Economic and Transportation Research, Department of Industry and Commerce, Government of Manitoba.

[71]Government of Saskatchewan, Details of Preliminary Statement by the Government of Saskatchewan on Freight Rates Affecting Saskatchewan, January 1971. Details in succeeding paragraphs were taken from this brief.

[72]Interview with Mr. K. Setter.

[73]Interview with Mr. J. W. Telford.

[74]Details of the discussions were obtained in interviews with Mr. J. W. Telford and Mr. K. Setter.

[75]This opinion was expressed by Mr. J. W. Telford, Mr. K. Setter, and Mr. J. Heads.

[76]This opinion was expressed by Mr. J. W. Telford, Mr. K. Setter, and Mr. J. Heads.

[77]Interview with the Honourable J. W. Pickersgill.

[78]Interviews with Mr. J. W. Telford, Mr. K. Setter, and Mr. J. Heads. Premier Lougheed of Alberta made a similar point in an interview reported in the Globe and Mail of January 21, 1972.

79 Interview with Mr. J. W. Telford.

CHAPTER XIII

CONCLUSIONS

An analysis of the events surrounding the enactment of the National Transportation Act of 1967 provides some meaningful insights as to the nature of the decision-making process within the Canadian federal system. The first objective of the dissertation was to examine the decision-making process within the Canadian federal system in an area of federal jurisdiction. The analysis was designed to determine if, in fact, the consultative procedures employed by the federal government in areas of federal jurisdiction varied from the consultative procedures employed by the federal government in areas of provincial jurisdiction. A second objective was to assess the extent to which the policy inputs of the political actors of Western Canada were accommodated in the final policy output -- the National Transportation Act. The analysis was designed to outline and to assess the effectiveness of the channels of communication utilized by the political actors of Western Canada to convey their views to the federal government. It was hypothesized that a study of the development of transportation policy by the federal government over the past one hundred years, and an assessment of

the extent to which Western Canadian views were accommodated in federal policy outputs, could offer a partial explanation for the continuation of the phenomenon known as Western Canadian Alienation as a recurring dimension in the political history of Western Canada. For purposes of analysis, the two issues raised for discussion will be considered separately.

A. Western Canadian Policy Inputs and Transportation Policy

1. Effectiveness of the Channels of Communication

There have been three major channels of communication utilized by the political actors from Western Canada to convey their views to the federal government -- political tactics on the part of Western Canadian Members of Parliament in the House of Commons urging the federal government to revise existing legislation; the presentation of briefs to Royal Commissions established to review transportation policy; and representations to the Board of Transport Commissioners and the Canadian Transport Commission. Despite the fact that the channels of communication utilized by the political actors to convey the views of Western Canada to the federal government varied from time to time and the spokesmen for Western Canada differed on occasion, the issues and grievances raised for discussion did not vary significantly over time. In short, the issue of freight rates has been a subject of concern to Western Canadians for a prolonged period of time.[1]

(a) Members of Parliament

Members of Parliament from Western Canada, as a result of their political tactics in the House of Commons, have on occasion successfully exerted pressure on the federal government to revise federal policy in such a manner that Western Canadian policy inputs were accommodated to a greater extent. For example, the Progressive Members of Parliament in the 1920's were in a position to influence federal policy to a greater extent than their representation in the House warranted. They successfully exploited the minority position of the government to extract a series of concessions from the federal government as their price for keeping the government in office.

The position of the Western Canadian Member of Parliament as a spokesman for the interests of Western Canada at the federal level is very different from that of a provincial government. Western Canadian Members of Parliament are federal politicians and are limited in their ability to articulate a regional or provincial point of view by factors such as party discipline. While Members of Parliament from the West have raised the issue of freight rates for discussion in the House of Commons on numerous occasions, in most instances the Members from the West viewed the issue of freight rates as a partisan rather than as a regional issue. For example, the strategy employed by the Conservative Members of Parliament during the enactment of the National Transportation Act was designed to defeat

the minority Liberal government. Because of the limitations imposed on Members of Parliament, their ability to articulate a regional point of view is severely limited. As a result, representations to Royal Commissions and to the Board of Transport Commissioners came to be seen as being more effective channels for conveying Western Canadian views to the federal government.

(b) Royal Commissions and Regulatory Agencies

Prior to 1959, the two channels of communication that were most often utilized by the political actors from Western Canada to convey their views to the federal government were briefs to Royal Commissions and applications to the Board of Transport Commissioners. As was noted earlier, the establishment of four Royal Commissions during the period from 1897 to 1959 provided the political actors from Western Canada (provincial politicians and officials, and pressure groups) with the opportunity to convey their views to the federal government. During this same period, numerous applications were presented to the Board of Transport Commissioners that were designed to modify certain pricing practices on the part of the railways that had a severe impact on Western Canada. While the political actors were largely unsuccessful in their dealings with the Board of Transport Commissioners, and only marginally more successful in having their views accommodated in the recommendations of the Royal Commissions, these two channels of communication

were relied on most heavily by the political actors from Western Canada prior to 1959. Discussions between federal and provincial officials at federal-provincial conferences was the one channel of communication that was not utilized by the political actors from Western Canada.

2. Effectiveness of the Political Actors

As noted in Chapter I, there were three criteria used to assess the effectiveness of the political actors of Western Canada in conveying their views to the federal government. The first criterion was to compare the demands of Western Canada with the provisions of the final policy output. A second criterion was to determine the extent to which Western Canadians utilized various channels of communication to convey their views to the federal government. Finally, the effectiveness of the political actors was assessed by an analysis of the extent to which they prepared the necessary documentation to argue their case persuasively before federal officials. However, in the final analysis, any assessment of the effectiveness of the political actors must be judged by the extent to which their views were accommodated in the final policy output.

(a) Policy Demands and the Content of the Final Policy Output

An assessment of the policy demands of Western Canada during the period from 1870 to 1959 revealed that

Western Canadian politicians were successful on several occasions in having their policy demands accommodated by the federal government.[2] For example, policy demands of Western Canada resulted in the establishment of the Board of Railway Commissioners in 1903, and in a major revision of the Railway Act in 1888, 1897, and 1903. These policy demands precipitated the enactment of several amendments that established more rigid criteria for the determination of freight rates. The negotiation of the Crow's Nest Pass Agreement in 1897 was in large part the response of the federal government to the demands of Western Canada for lower freight rates on agricultural products moving from Western Canada for export and for lower freight rates on goods moving into Western Canada. The actions of the Progressive Members of Parliament in the 1920's were largely responsible for the reinstatement of the Crow's Nest Pass rates in 1924 and their extension to all points on all railways west of Fort William including the Port of Vancouver. The amendments to the Railway Act proposed by the Royal Commission on Transportation of 1948 incorporated many of the policy recommendations advocated by Western Canadians. As noted earlier, the establishment of the Royal Commissions of 1948 and 1959 was largely in response to the demands of Western Canada for a review of federal transportation policy.

In the period prior to 1959, the political actors of Western Canada were successful in having the federal government enact legislation that would offer greater protection for Western Canadians. During the same period, however, they were less successful and less effective in their attempts to influence the manner in which the legislative provisions establishing the criteria for the determination of freight rates were administered by the Board of Transport Commissioners. As noted earlier, the decisions of the Board in cases dealing with "unjust discrimination" and "undue preference" and the Board's interpretation of the "one and one-third rule" in the 1950's reveal the limited success of Western Canadian political actors in influencing the decisions of the Board. On each of these major policy issues, the Board failed to accommodate the policy demands of Western Canada.

Western Canadian attempts to influence the content of the recommendations of the Royal Commission on Transportation of 1959 and the legislative provisions of the National Transportation Act were less successful than in the period prior to 1959. As noted earlier, many of the important policy recommendations proposed by the provincial governments and pressure groups from Western Canada to the Royal Commission were ignored by the Commissioners in their report. With regard to the provisions of the National Transportation Act of 1967, the political actors in Western Canada enjoyed only limited success in influencing the

provisions of the Act pertaining to freight rates. Western Canada was successful in having the review procedure eliminated from the provisions of the legislation pertaining to the Crow's Nest Pass rates and the goals of transportation policy revised to the extent that greater emphasis was placed on the "national unity" aspects of transportation policy. The major amendment included in the National Transportation Act by the federal government as a result of the demands of Western Canada was the "public interest" clause. This clause was the most general and all-encompassing clause establishing the criteria for the determination of freight rates and was included in the legislation by the federal government in an attempt to meet the demands of Western Canadians for the continuance of legislative provisions such as "unjust discrimination" and "undue preference" as criteria for the determination of rates. Recent decisions of the Canadian Transport Commission indicate that this clause may be extremely important in protecting the interests of Western Canadians.

(b) Frequency of Western Representation to the Federal Government

There is unanimous agreement among the federal and provincial officials involved in transportation policy that Western Canadians have used every possible occasion to present their views to the federal government. As has been noted on earlier occasions, Western Canadian politicians have continually agitated for revisions in transportation

policy and have utilized every possible channel of communication to convey their views to the federal government. On each occasion when transportation policy has been discussed at hearings held by the Board of Transport Commissioners, Royal Commissions, and Parliamentary Committees and in debates in the Senate and in the House of Commons, Western Canadians have taken a very active part in the debate and have argued Western Canada's case in as persuasive a manner as possible. The failure of the political actors in Western Canada to have their views accommodated in the final policy output does not indicate that the West's case was not put in a persuasive manner. In many instances, the West did not have the necessary political power to support its demands. As a result, the federal government was under no pressure to accommodate those demands. It appears that this lack of political power has forced the provinces, at least, to adopt different tactics in dealing with the issue today.

(c) Preparation of Documentation

A survey of the documentation prepared by Western Canada on the subject of freight rates during the period from 1870 to 1971 indicates the extent to which the political actors of Western Canada have prepared the necessary documentation to support their views. For example, on numerous occasions the governments of the three Prairie Provinces have retained experts in the field of transportation to prepare special reports for presentation to the

federal government. Furthermore, each provincial government employed civil servants to advise the Cabinet on a regular basis on transportation matters. In Alberta, the Alberta Freight Rate Bureau was established in the mid-1940's as a specialized agency designed to coordinate Alberta's position on transportation policy. While the Provinces of Manitoba and Saskatchewan did not establish a separate bureau, specialized units within a governmental department were established to coordinate the policy position of the two governments.

A review of the briefs submitted to the Royal Commission on Dominion-Provincial Relations and to the Royal Commissions on Transportation of 1948 and 1959 reveals the nature of the documentation prepared by the Prairie Provinces and by pressure groups in Western Canada. The briefs appear to have been well researched, and documented Western Canadian grievances in a very precise fashion. Statistical data was included in the briefs to further substantiate their arguments. During the hearings of the Royal Commission on Transportation of 1959, for example, the three Prairie Provinces and the three Prairie Wheat Pools retained outside experts to prepare studies assessing the costs involved in moving grain under the Crow's Nest Pass rates. It was largely on the basis of these studies that the Royal Commission reduced the figures presented by the railways as to the losses incurred in the movement of grain under the Crow's Nest Pass rates.

During the enactment of the National Transportation Act, both provincial governments and pressure groups from Western Canada prepared extensive documentation outlining their views on every aspect of the legislation. A review of the proceedings of the two Parliamentary Committees that examined the bill in 1965 and 1966 revealed that it was the provincial governments and the pressure groups from Western Canada that presented the most comprehensive and detailed submissions. In addition, the provincial governments assisted the Members of Parliament from the West during the debate in the House of Commons in December 1966 and January 1967 by providing the Members with the necessary documentation to argue the West's case. Thus, it is evident that the political actors from Western Canada have consistently marshalled all available resources to prepare the necessary documentation to support their views.

3. Summary

Mr. A. V. Mauro, legal counsel for the Manitoba Government during the enactment of the National Transportation Act, observed that Western Canadian politicians have, over the years, enjoyed considerable success in having their policy proposals accepted by the federal government.[3] In his view, Western Canadian politicians have been more successful in influencing the content of federal transportation policy than the provisions of federal legislation enacted in any other policy area within federal jurisdiction.

This assessment of the effectiveness of political actors of Western Canada would appear to be slightly exaggerated. While Western Canada has successfully urged the federal government to undertake a major review of transportation policy on at least three occasions and has successfully persuaded the federal government to enact specific amendments to the Railway Act, the political actors from the West have been less successful in having their views accommodated in the administrative rules, regulations and decisions issued by the various federal regulatory agencies.

During the period from 1959 to 1968, only a limited number of Western Canadian policy proposals were accommodated by the federal government. The vast majority of the proposals advanced by Western Canadians during the hearings of the Royal Commission in 1959 with regard to freight rates were ignored by the Commissioners. In addition, the political actors from Western Canada enjoyed very limited success in their attempts to influence the provisions of the National Transportation Act. Thus, one is forced to conclude that, while it was the representations of Western Canadian politicians that led the federal government to undertake major reviews of transportation policy on several occasions, Western Canadian politicians have had only a limited number of their specific policy proposals accepted by the federal government.

Beginning with the discussions with federal officials with regard to the provisions of the National Transportation

Act during the period from 1962 to 1966 and with the Federal-Provincial Constitutional Conferences of 1968 and 1969, the three Prairie Provinces revised their strategy and began to raise the issue of freight rates as a subject of discussion at the political level. The factors that resulted in this change in strategy have been referred to in earlier chapters. In summary, provincial officials came to realize that the strategy of consulting indirectly with the federal government through the Board of Transport Commissioners and through the hearings held by Royal Commissions had proven to be inadequate and that direct consultations between the two levels of government at the official and the political level was a more effective vehicle for Western Canadians to convey their views to the federal government. As a result, a series of meetings between the provinces and the federal government were convened in 1970 and 1971 to discuss the issue of freight rates. Increasingly, Western Canadian politicians and officials have come to realize that direct consultation with federal officials is the most effective channel of communication for conveying their views to the federal government. Political tactics of Members of Parliament in the House of Commons and representations before Royal Commissions and the Canadian Transport Commission are no longer recognized as being as effective a channel of communication for conveying Western Canadian views on the subject of freight rates as they have been in the past.

In conclusion, it is evident that the political actors in Western Canada have utilized different channels of communication to convey their views to the federal government with varying degrees of success. Furthermore, certain channels of communication have been utilized more frequently on different occasions over the past one hundred years. Finally, Western Canadian politicians have demonstrated their willingness and their ability to revise their strategy to meet changing circumstances and conditions.

B. Transportation Policy and Western Canadian Alienation

Transportation policy, and the issue of freight rates in particular, has been referred to by many authors writing on Western Canadian politics as an important economic dimension of the phenomenon known as Western Canadian Alienation. Furthermore, a feeling of political impotence on the part of Western Canadians has been characterized as being a recurring political dimension of this phenomenon. It is interesting to speculate as to the relationship between a feeling of political alienation among elite groups in Western Canada and the extent to which Western Canadian policy inputs have been incorporated into federal transportation policy.

Despite the efforts of Western Canada to have its views accommodated by the federal government, Western Canadian policy inputs designed to alleviate long-standing grievances with regard to transportation policy have been

largely ignored by the federal government. As a result, Western Canada continues to exert pressure on the federal government to correct these grievances. In the past, the federal response to these demands was the establishment of Royal Commissions to examine these grievances or the enactment of minor revisions to the Railway Act. Western Canadian demands have not been accommodated by these actions on the part of the federal government and a feeling of alienation among elite groups in Western Canada has become increasingly prevalent during the 1960's.

For example, provincial politicians indicated on frequent occasions in the 1960's that one of their major grievances was the failure on the part of federal officials to consult with the provinces prior to the enactment of federal legislation.[4] In addition, the allegation was made that the federal government did not consider Western Canadian views prior to the implementation of federal policy. This concern on the part of provincial politicians and pressure groups has not been confined exclusively to transportation policy but has been extended to include monetary and fiscal policy, tariff policy, and resource development. In a series of interviews in Western Canada with government officials and representatives of pressure groups, the view was expressed on numerous occasions that the events surrounding the enactment of the National Transportation Act characterize the decision-making process in other policy areas within federal jurisdiction. Thus, it would appear

that the events surrounding the enactment of the National Transportation Act and, in particular, the failure on the part of the federal government to consult with the provinces prior to the introduction of the legislation, was a contributing factor to the feeling of alienation that has been articulated by the political actors of Western Canada during the 1960's.

C. Consultations between Federal and Provincial Governments

A review of the events surrounding the enactment of the National Transportation Act of 1967 has led to some important insights into the decision-making process within the Canadian federal system. The case study has illustrated that the consultative procedures and the channels of communication utilized by the federal government in their dealings with the provinces in areas of federal jurisdiction do in fact differ from the channels of communication and the consultative procedures employed by the federal government in areas of provincial jurisdiction. The consultations between the two levels of government during the enactment of the legislation indicated that the federal government solicited the views of the provinces indirectly and that direct consultations between federal and provincial politicians and officials were so general in nature that the provincial governments were uncertain as to the precise nature of the federal proposals until the legislation was tabled in the

House of Commons. In short, the provinces were placed in a defensive position and attempted to react to federal proposals that had been approved by the Cabinet. Increasingly, officials in the Governments of Manitoba, Alberta, and Saskatchewan came to accept the view that, if Western Canada is to have an input into federal policies that are of concern to Western Canada, specialized channels of communication must be established to permit the input of regional views prior to the finalization of policy by the Cabinet.

The study of the National Transportation Act also revealed that provinces do not receive equal treatment from the federal government during the consultations between the two levels of government. Variables such as the working relationships that develop between federal and provincial officials and the perceptions that federal and provincial officials have of their counterparts, the political affiliation of the governmental parties at the federal and provincial level, and the bargaining techniques employed by the two levels of government influence the nature and extent of consultations between the two levels of government. While these variables were important in the decision-making process during the enactment of the National Transportation Act, no attempt has been made to suggest that these variables are of central importance in every policy area nor under all circumstances. Future studies in other policy areas will reveal the extent to which the decision-making process

and the consultative procedures outlined in this dissertation are characteristic of the decision-making process in the Canadian federal system.

With the change in strategy on the part of the provincial governments in their dealings with the federal government since 1968, provincial officials and politicians have come to realize that the most effective channel of communication to convey the views of Western Canada to the federal government is direct consultation with federal officials prior to the approval of the legislation by the Cabinet. Provincial officials involved in transportation policy have expressed the view that, if there is to be regularized consultation between the two levels of government in the field of transportation policy and a greater input of regional and provincial views into the formulation of federal policy, specialized structures must be developed. While the discussions between the provinces and the federal government have been very tentative in nature, many of the officials in the three Prairie Provinces have indicated that the development of such a structure should be the long-term objective of the current federal-provincial discussions. An organization patterned along the lines of the Council of Resource Ministers would provide a forum for representatives from both the federal and provincial governments to exchange views and to discuss proposed federal policy initiatives. Another alternative would be to have meetings between

regional councils, such as the Prairie Economic Council, and Ottawa. Such regularized consultation would permit the provinces to influence federal policy prior to its approval by Cabinet and could permit the federal government to take regional demands and concerns into account in the formulation of national transportation policy.

The increasing interest on the part of provincial officials in the establishment of such a structure further illustrates their concern that, at the present time, existing channels of communication do not permit the regularized input of regional views into the policy-making process. In their view, special structures or channels of communication must be established within the federal system to accomplish this task.

D. Co-operative Federalism: A New Phase

A review of the decision-making process surrounding the enactment of the National Transportation Act offers some insights as to future developments in the nature of the decision-making process in policy areas within federal jurisdiction. It appears that co-operative federalism is entering a new phase that places greater emphasis on the consultations between the two levels of government in the formulation of policy. The nature and the extent of the consultations between the two levels of government prior to the finalization of policy that characterizes the new phase of co-operative federalism moves far beyond the consultations

envisaged by K. C. Wheare and A. H. Birch in their writings on co-operative federalism. Thus, the co-operative federalism of the 1970's can be distinguished qualitatively from the concept of co-operative federalism that developed during the 1950's and 1960's. A second feature of the new co-operative federalism is a growing recognition by both federal and provincial officials of the existence of distinct regional entities within the Canadian federal system.

In the future, the provinces will probably demand that they be consulted by the federal government prior to the development and finalization of policies in areas that, under the constitution, are within federal jurisdiction but which they perceive to be of vital interest to them. While the federal government has engaged in limited consultations with the provincial governments in these policy areas in the past, it has been on a completely ad hoc, informal basis. However, they have not been elevated to the position that policy discussions on matters traditionally falling under provincial jurisdiction have been.

The demands of the Western Canadian provinces for such consultation in the development of transportation policy have been referred to earlier. Four additional examples serve to further illustrate the position of the provinces on this particular issue. During the 1960's, the Government of Quebec has consistently argued that it should be given the opportunity to participate at the international level in policy areas within provincial jurisdiction. At

the Federal-Provincial Conference held in Ottawa in November 1971 to discuss the issue of unemployment, the Government of Ontario proposed the establishment of a continuing federal-provincial committee at the Prime Ministerial level to develop and coordinate economic policy for the entire nation.[5] Implicit in Ontario's proposal was the suggestion that, since both the federal and provincial governments influence the economy, they should develop their policies together. In other words, the supremacy of Ottawa in this area was questioned. While the federal government noted that the development of economic policy for the entire nation was the responsibility of both the federal and provincial governments and their respective legislatures and not the function of a federal-provincial committee, both the Prime Minister and the Minister of Finance, Mr. Benson, recognized the need for greater consultation between the two levels of government in the formulation and development of economic policy.

A third example that illustrates the growing demand among the provincial governments for greater consultation are the proposals of the Ontario Government that they be represented in any discussions between officials of the Government of Canada and the Government of the United States on revisions to the Canada-United States Auto Pact, and on any proposed revisions in general trading agreements with the United States.[6] The demand of the Ontario Government

was rejected by the federal government on the grounds that international trade and the negotiation of trade pacts were the exclusive responsibility of the federal government. In the Speech from the Throne opening the Second Session of the Twenty-Ninth Legislature, the Government of Ontario reiterated its demands for greater consultation with the federal government prior to the introduction of federal legislation in policy areas such as agriculture, energy, and urban affairs. The following quotation illustrates the growing demand by the Ontario Government for greater consultation:

> "Ontario intends to make strong representations to the federal Government, emphasizing the need for full provincial consultation and participation in formulating national policies of vital concern to the provinces, including future considerations of national policy relating to agriculture, communications, energy, foreign investment, international trade and urban affairs, with particular emphasis on urban renewal and housing". . .[7]

The Government of Alberta on several occasions in the 1960's has demanded that the federal government consult with them in the development of a national energy policy. Premier Strom reiterated this demand at the Constitutional Conferences held in 1969 and on each occasion the federal government gave a general assurance that the interests of Alberta would be considered by the federal government in the formulation of policy.[8] With the change of government in Alberta in August 1971, the Conservative Government continued to pursue this issue with federal officials. Premier Lougheed indicated on several occasions that his government

was considering the possibility of establishing an office in Washington, D.C. to act as a "listening post" for the Alberta Government in policy areas that involve the interests of Alberta.[9] In addition, the Alberta Government requested that their representative be present at discussions involving the development of a national energy policy for Canada.

The initial response of the federal government to the proposal was negative. Speaking in the House of Commons on November 8, 1971, the Honourable Mitchell Sharp indicated that the formulation of energy policy was within federal jurisdiction under the Constitution and did not involve the provinces.[10] However, after further negotiations, the Alberta Government announced on January 27, 1972 that an agreement in principle had been reached with the federal government that would assure that in the future the Alberta Government would be consulted with regard to all energy matters prior to the formulation of federal policy.[11] While the exact nature of the representation from the Alberta Government and the precise nature of the committee that would be established were not revealed, the Honourable Donald Getty, Minister of Inter-Governmental Affairs for the Alberta Government, was reported as having said that:

> Prime Minister Trudeau has given the Alberta Government a guarantee of prior consultation in changes in national energy policy.[13]

While the commitment of the federal government to prior consultations is somewhat vague, the tone of the Alberta announcement was very optimistic with regard to the nature and the extent of future consultations with the federal government. It is important to note, however, that the federal government has given similar assurances to the provinces on several occasions in the past. Furthermore, if the consultative procedures employed by the federal government during the enactment of the National Transportation Act are characteristic of the federal government's current attitude with regard to consultations, it would appear that the Alberta Government will not have gained any real concessions from the federal government.

It is impossible to conclude on the basis of the agreement reached with the Government of Alberta that the federal government is prepared to engage in consultations with the provinces on a regularized basis prior to the finalization of federal policy. The agreement as announced in the press was very vague and only commits the federal government to consult with the provinces during the development of energy policy. The nature of consultations, and the timing of the consultations, were not revealed. However, it is possible to speculate that the federal government, faced with an ever-increasing demand on the part of the provinces for such consultation, will be forced to move in this general direction. If the federal government continues to request more consultation with the provincial governments

with regard to the imposition of cost controls on many expensive shared-cost programmes, such as post-secondary education, medicare and hospitalization, the federal government may have to be prepared to engage in consultations with the provincial governments in areas of federal jurisdiction if any agreement is to be reached in areas of provincial jurisdiction. In short, if agreements important to the fulfillment of the policies of the federal government are to be concluded in areas of provincial jurisdiction, the federal government will, in all probability, at the same time be forced to engage in consultations with the provincial governments in areas of federal jurisdiction. What is being recognized is the interdependence of governments -- the idea of exclusive jurisdiction is being eroded.

If this concept of co-operative federalism is to function effectively, there must be a willingness on the part of the provincial governments to engage in consultations with the federal government on policy issues that are within provincial jurisdiction. To date, there is little evidence to suggest that the provincial governments are prepared to engage in such consultations.

A second characteristic of the new co-operative federalism is a growing recognition by both the federal and provincial governments of the existence of distinctive regional identities within the Canadian federal system. Increasingly, federal-provincial discussions may be characterized by bargaining between the federal government and the

various regional entities. Several recent events indicate such a development. For example, the federal government has recognized the existence of regional entities by establishing the Department of Regional Economic Expansion. In addition, the proposed amending formula for the British North America Act and the constitutional restriction on the federal spending power recognized the existence of distinctive regional entities within Canada. The federal government's proposed reform of the Senate envisaged the continued existence of regional representation. Current negotiations between the provinces and the federal government in policy areas such as transportation and pollution suggest that discussions in these areas will, in the future, be dominated by attempts to develop a policy that is acceptable to the region as a whole rather than to each particular province.

Recent developments also suggest that some of the provinces are coming to share a similar view. Increasingly, there is a growing recognition by the provincial governments in Western Canada that they must develop a common and unified policy in dealing with the federal government. The attempts on the part of the three provincial governments in Western Canada to develop a common regional policy in its dealings with the federal government was largely in response to the limited success of the political actors from Western Canada in having their views accommodated in the provisions of the National Transportation Act. In retrospect, the

events surrounding the enactment of the National Transportation Act may have been a watershed in the strategy employed by the three Prairie Provinces in their dealings with the federal government.

Recent statements by the Premiers of the three Prairie Provinces suggest that the Prairie Economic Council will become an increasingly more important mechanism for developing a united Western Canadian position on various issues.[13] At the present time, the Prairie Provinces are attempting to develop a common policy in the area of transportation. In 1970, they developed a common regional policy with regard to federal legislation establishing national marketing boards and the proposed federal stabilization fund for the Western farmer. The Maritime Provinces are attempting to develop a common policy with regard to regional disparities.

While there is much evidence to support the view that federal-provincial relations in the future will be dominated by discussions between the federal government and various regions within the federal system, it is important to note that the development of a regional policy may be extremely difficult. Provincial governments within a particular region with differing political affiliations and the existence of problems peculiar to only one province inhibit the development of a regional policy position. Premier Lougheed acknowledged the existence of such problems when

he commented on the attempts of the three Prairie Provinces to develop a common policy on the issue of transportation. He noted that in many areas the Prairie Provinces are in agreement. However, he acknowledged that each province ". . . will also have to make its own agreement on special circumstances affecting individual provinces. . . ."[14] This statement would seem to summarize the dilemma faced by the provinces in developing a common regional policy in their dealings with the federal government where collective action is thought necessary. The provinces will move in this direction if it appears that it will strengthen their bargaining position with Ottawa.

Co-operative federalism is entering a new phase that places greater emphasis on the importance of consultations between the two levels of government in areas of both provincial and federal jurisdiction. Although the provinces may be reluctant to consult with the federal government before initiating policies in areas of provincial jurisdiction, they may be forced to engage in such consultations if they expect the federal government to consult with them in areas of federal jurisdiction. With the ever-increasing interdependence between the governments in the federal system, specialized structures will be developed to permit the input of both provincial and regional views into the policy-making process at the federal level. Traditional channels of communication, such as the Member of Parliament,

Parliamentary Committee hearings and Royal Commissions, do not permit the injection of provincial views to the extent desired by the provinces. In the past, consultations between the provincial and federal governments have proven to be inadequate because of their non-structured nature. In the future, it would appear that the provinces will press for more frequent discussions with Ottawa in areas of federal jurisdiction. These discussions may be characterized by federal-provincial conferences of first ministers, by specialized conferences such as those currently held between the Ministers of Finance (Tax Structure Committee), or by a series of bi-lateral discussions such as were held before the Victoria Constitutional Conference in June 1971. A final alternative may be the emergence of bi-lateral discussions with regional groupings of provinces where common policy positions may be developed.

FOOTNOTES

[1]For a discussion of this point, see Chapters I to V of the dissertation.

[2]The conclusions outlined in this chapter are supported by information obtained in a series of interviews conducted from May 1971 to September 1971 with officials of the Governments of Manitoba, Saskatchewan, and Alberta, as well as with officials of the Canadian Transport Commission. In addition, interviews were conducted with representatives from the pressure groups that participated in the events surrounding the enactment of the National Transportation Act. The following is a list of the individuals interviewed:

Dr. A. Platt, Research Director, UFA Co-op.
Mr. O. Broughton, Secretary, Alberta Wheat Pool.
Mr. Ivan Radke, Traffic Supervisor, United Grain Growers.
Mr. D. Wood, Western Co-op Fertilizers Ltd..
Mr. G. W. Barnes, Managing Director, Coal Operators' Association of Western Canada.
Mr. R. Boulware, Calgary Transportation Authority.
Mr. E. H. Laborde, Calgary Transportation Authority.
Mr. G. Littke, CanCrude Consultants Ltd..
Mr. C. R. Compston, Canadian Manufacturer's Association.
Mr. Owen Anderson, Executive Assistant to the Honourable H. E. Strom.
Mr. W. D. Kennedy, Edmonton Chamber of Commerce.
Mr. Hu Harries, M.P..
Mr. Charles Dolan, Constitutional Advisor to the Government of Alberta.
Mr. J. W. Telford, Manager, Alberta Freight Rate Bureau.
Honourable E. C. Manning.
Mr. J. Horner, M.P..
Mr. E. M. Jones, Traffic Manager, Province of Saskatchewan.
Mr. K. Setter, Economist, Government of Saskatchewan.
Mr. R. H. Phillips, Research Director, Saskatchewan Wheat Pool.
Mr. F. W. Hamilton, Manitoba Wheat Pool.
Dr. F. Anderson, University of Saskatchewan (Regina).
Mr. J. Schaefer, Economic and Transportation Research, Government of Manitoba.
Mr. V. Stechishin, Canada Transportation Services.
Mr. R. A. Wallace, Secretary, Cabinet Committee on Planning and Priorities, Government of Manitoba.

Honourable J. W. Pickersgill, President, Canadian Transport Commission.
Mr. D. Jones, Chairman, Railway Transport Committee, Canadian Transport Commission.
Mr. R. Cope, Vice-President, Canadian Transport Commission.
Mr. H. Arbique, Secretary, Canadian Transport Commission.
Mr. J. Henley, Director of Traffic, Canadian Transport Commission.
Mr. M. Burwash, Director of Economics, Canadian Transport Commission.
Mr. Gordon Blair, M.P..
Mr. J. J. Frawley, Q.C., Counsel for the Alberta Government.
Mr. F. Lemieux, Counsel for the Saskatchewan Government.
Mr. A. V. Mauro, Former Counsel for the Manitoba Government.

[3]Interview with Mr. A. V. Mauro.

[4]This point has been discussed in detail in Chapter II.

[5]For details of the conference, see the Globe and Mail and the Toronto Star of November 17, 18, and 19, 1971. The proposal of the Ontario Government and federal reaction to the proposal were outlined in these reports.

[6]Toronto Star, November 23, 1971.

[7]Globe and Mail, March 1, 1972.

[8]See the opening statement of the Premier of Alberta to the Constitutional Conference of February 1969.

[9]For details of the Alberta proposal, see the Globe and Mail of November 16, and 27, 1971, and January 27, 1972.

[10]Canada, Parliament, Parliamentary Debates (House of Commons), 3rd Session, 28th Parliament, (1971), Vol. 115, No. 207, pp. 9406-9407.

[11]Globe and Mail, January 27, 1972.

[12]Ibid..

[13]Toronto Star, November 23, 25, 27 and 30, and December 2, 1971. Peter Desbarats, in a series of articles, interviewed the Premiers of Manitoba, Alberta, and Saskatchewan.

[14]Globe and Mail, January 27, 1972.

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The Saskatchewan Seed Grain Co-operative Limited.

Saskatchewan Timber Board.

Saskatchewan Wheat Pool.

The Saskatoon Board of Trade and the City of Saskatoon.

United Grain Growers Limited.

Joint Submission of Canadian National Railways and of Canadian Pacific Railway Company.

Joint Submission by the Provinces of Manitoba and Alberta.

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A. Briefs Presented to the Parliamentary Committee of 1965

The text of the following briefs can be found in: Canada. Parliament. House of Commons Standing Committee on Railways, Canals and Telegraph Lines. Minutes of Proceedings and Evidence, 2nd Session, 26th Parliament, Numbers 12 to 19, 1964-65.

Board of Transport Commissioners for Canada.

Branch Line Association of Manitoba.

Canadian Industrial Traffic League.

Canadian Manufacturer's Association.

Coal Operators' Association of Western Canada.

Department of Transport. Hon. J. W. Pickersgill, Minister of Transport.

National Farmers' Union.

North-West Lines Elevators Association.

Provinces of Manitoba, Alberta and the Maritimes.

Winnipeg Chamber of Commerce.

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Canadian Co-operative Wheat Producers Limited.

Canadian Industrial Traffic League.

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Canadian National Railways.

Canadian Pacific Railway.

Coal Operators' Association of Western Canada.

Department of Transport. Hon. J. W. Pickersgill, Minister of Transport; Mr. J. R. Baldwin, Deputy Minister; Mr. R. R. Cope, Director of Railways and Highways Branch; and Mr. Jacques Fortier, Legal Counsel.

Government of Alberta.

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Manitoba Branch Lines Association.

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VII. UNPUBLISHED MATERIAL

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Compston, C. R., Alberta Manager, Canadian Manufacturer's Association, Edmonton, Alberta. June 15, 1971.

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APPENDIX A

A CHRONOLOGY OF THE EVENTS LEADING TO THE ENACTMENT OF THE NATIONAL TRANSPORTATION ACT

I	II	III	IV
Establishment	Draft Bill	Bill C-120	Consultations
of the Royal Commission on Transportation (May 13, 1959) 1st Volume of Report (March, 1961) 2nd Volume of Report (December, 1961)	prepared by the Diefenbaker Govt. prior to its defeat in February, 1963	First Reading - September 14, 1964 Committee Hearings - February 25 - March 25, 1965	between federal and provincial officials - July, 1965 to August, 1966

V	VI	VII	VIII
Bill C-231	Senate	Royal Assent	The National Transportation Act
First Reading - August 29, 1966 Second Reading - September 8, 1966 Committee Hearings - October 6 to November 24, 1966 Committee of the Whole House - December 20-21, 1966 and January 9-27, 1967 Third Reading - January 27, 1967	First Reading - January 31, 1967 Second Reading - February 6, 1967 Committee Hearings - February 7 & 8, 1967 Third Reading - February 9, 1967	February 9, 1967	

APPENDIX B

QUESTIONNAIRE

The following questionnaire was administered to officials in governments of the three prairie provinces, to officials of the Canadian Transport Commission and the Department of Transport as well as to selected pressure groups in Western Canada.

"The objective of this questionnaire is to ascertain the views of pressure groups, governmental officials and politicians from Western Canada regarding the nature of the decision-making process in the Canadian federal system. In particular, an attempt will be made to examine: (a) the content of Western Canadian inputs into the decision-making process in policy areas that are within federal jurisdiction and are of vital concern to Western Canada; and (b) the extent to which Western Canadian inputs are accommodated by the federal government in the final policy output. The events surrounding the enactment of those provisions of the National Transportation Act of 1967 dealing with freight rates provide a useful case study.

PART I

1. Name of pressure group (or government official)

2. Name of person interviewed

3. Official position of the respondent

4. Place and Date of Interview

5. Did the group (or government) present a brief to the Royal Commission on Transportation (1959)?

6. Did the group (or government) present a brief to the Parliamentary Committee that examined the legislation in 1966?

7. Did the group make representations to:
   a) the Federal Government
   b) the Provincial Government
   c) MP's from Western Canada

   on the subject of freight rates or on transportation

in general while the Transportation Act was before the House of Commons?

If so, on what occasions? What was the nature of the representations?

PART II

1. In recent times, there has been considerable discussion in Western Canadian newspapers and magazines as well as by politicians on the subject of Western Canadian Alienation.

   a) Do you think there is such a phenomenon as "Western Canadian Alienation"? If so, is this feeling of alienation widespread among the population at large, or is it confined to "elite" groups?

   b) What would you consider to be the dimensions of Western Canadian Alienation?

   c) One recurring theme found in the speeches of Western Canadian politicians is that Western Canada does not have an effective input into the decision-making process at the federal level. Do you agree or disagree with this view? What has been your experience in your dealings with the federal government?

   d) Do you feel that the federal government recognizes problems that are of particular concern to Western Canada? What has been your experience in your dealings with the federal government?

PART III: FREIGHT RATES

1. Do you consider the issue of freight rates to be a long-standing grievance articulated by Western Canadian politicians?

2. In recent statements, Western Canadian politicians have expressed the view that the present freight rate structure has a negative impact on the economy of Western Canada. Do you agree? If so, what particular aspects of the freight rate structure do you feel discriminate against Western Canada? Can you cite instances where industries did not locate in Western Canada because of the freight rate structure?

3. Is your group (or government) concerned with the issue of freight rates? If so, what action has your

group (or government) taken with regard to freight rates since the National Transportation Act was enacted?

a) sent letters/briefs to MP's

** b) sent letters/briefs to Provincial Governments

c) sent letters/briefs to Prime Minister, Minister of Transport or Cabinet Minister from your province

d) sent letter/brief to Canadian Transport Commission requesting a hearing under the terms of the National Transportation Act

4. a) What particular grievance did you express in your representations?

b) What groups supported your stand? What groups opposed your stand?

5. What response did you receive from the individuals or agency?

6. Is your group (or government) engaged in research at the present time on the subject of freight rates? If so, what particular aspects of the problem are you studying? What conclusions are revealed as a result of your study? What do you plan to do with the results of your study?

* 7. Why did you raise the issue of freight rates at the Constitutional Conferences of 1968 and 1969 when the issue had not been raised at previous conferences?

PART IV: DECISION-MAKING PROCESS

1. With regard to the decision-making process, within the federal system, of the various channels of communication available to pressure groups (or to provincial governments) to convey their views to the Federal Government, what channels have you utilized?

a) letters to MP's from your province

b) briefs to provincial governments

c) provincial government raises issue at Federal-Provincial Conference

d) briefs to Royal Commissions and Task Forces

e) briefs and letters to Prime Minister and Cabinet

f) briefs and letters to Canadian Transport Commission

g) presenting a brief to the CTC requesting an investigation under the terms of the National Transportation Act

h) raise the issue in the media

2. Of the various channels of communication available to you, what channels do you feel are most effective in conveying your views to the Federal Government?

(Refer to options in question 1 and have respondent rank each alternative from 1 to 8 starting with the most effective channel.)

3. With regard to Members of Parliament from your province -

a) Are the MP's from your province effective spokesmen for Western Canadian interests at the federal level?

b) If so, why? If not, why not?

c) Do Government or Opposition MP's perform the above function more effectively?

** 4. With regard to the role of Provincial Governments -

a) How effective are provincial governments in raising issues that are of concern to Western Canada at Federal-Provincial Conferences?

b) It has been said that a provincial government that is of a different political affiliation than the federal government is more effective in presenting the province's point of view at the federal level? Do you agree? What has been your experience?

c) How do you visualize the role of provincial governments in their dealings with the federal government in the decision-making process?

- as a spokesman for provincial interests at the federal level?

- as an intermediary between pressure groups and the federal government?

* 4B. With regard to the role of pressure groups -

a) How effective are pressure groups in raising issues of concern to Western Canada at the

federal level?

b) Do pressure groups support the provincial government in their dealings with the federal government?

** 5. In policy matters that are within federal jurisdiction and are of concern to Western Canada -

a) Do you approach the provincial government and attempt to gain its support for your views?

OR

b) Do you encourage the provincial government to make representations on your behalf to the federal government that express your interests?

OR

c) Do you by-pass the provincial government and deal directly with the federal government?

d) What groups support you in your dealings with the federal government?

* 5B. In policy matters that are within federal jurisdiction and are of particular concern to Western Canada -

a) Do you approach pressure groups in your province and attempt to gain their support for your views?

OR

b) Do you encourage pressure groups to make representations on your behalf to the federal government that express your views on a particular matter?

c) What groups support you in your dealings with the federal government?

6. With regard to Royal Commissions:

a) Do you believe that Royal Commissions in general take into account the views expressed by Western Canadians? What has been your experience?

b) Do you believe that there is adequate representation from Western Canada on Royal Commissions?

7. With regard to the Macpherson Royal Commission of 1959, and in particular, with those aspects of the Report dealing with railways:

a) Do you believe that the Royal Commission took into account the views expressed by Western Canadians?

b) Do you believe that there was adequate representation from Western Canada on the Royal Commission?

** 8. With regard to the Prime Minister and the Cabinet:

a) In matters of federal jurisdiction that are of direct concern to Western Canada (wheat, oil, transportation), do you prefer to deal with the federal government directly, thus by-passing the provincial government, or do you prefer to approach the federal government through the provincial government?

b) In matters of federal jurisdiction that are of direct concern to Western Canada, do you consult with Members of Parliament from the province prior to your dealings with the federal government?

9. There have been statements by Western Canadian politicians to the effect that Western Canada does not possess adequate representation on federal boards and regulatory agencies. Do you agree or disagree? Can you give specific examples to support your view?

PART V: DECISION-MAKING IN THE ERA OF CO-OPERATIVE FEDERALISM

1. With regard to the formulation of federal policy in areas of federal jurisdiction that are of concern to the provinces (wheat, oil, transportation, taxation, foreign ownership), do you believe that there is adequate consultation with provincial governments and pressure groups prior to the enactment of legislation? Can you cite specific examples to support your views?

* 2. When the federal government did consult you prior to the enactment of federal policy, was it

a) prior to first reading of the Bill in the House of Commons?

b) after first reading of the Bill but prior to the Committee stage?

c) at the Committee stage?

d) prior to final Cabinet approval of the Bill?

Can you give specific examples based on past experience to illustrate the consultative process followed by the federal government?

3. With regard to the nature of the consultations:

   a) Was the federal government prepared to accept major changes in its proposed legislation (changes that would alter the objectives or scope of the Bill)?

   OR

   b) Were the consultations merely confined to a discussion of the technical details of the Bill which if changed would not alter the Bill in any substantial way?

   c) Can you cite examples to illustrate the consultative process followed by the federal government?

4. Do you believe that the federal government accommodated your views as a result of the consultations? If so, to what extent? Can you cite specific examples to illustrate the extent to which your views were accommodated?

5. During your consultations with the federal government, who acted as the spokesman for the federal government?

   a) high ranking civil servants (Assistant Deputy Minister, Deputy Minister)

   b) Cabinet Ministers involved with the legislation

   c) MP's from your province

   Can you cite specific examples?

* 6. What form did the consultations take between your government and the federal government?

   a) letters/briefs between civil servants at the federal and provincial levels

   b) letters/briefs between Cabinet Ministers at the federal and provincial levels

   c) letters/briefs between Prime Minister and Premier

   d) conversations between Prime Minister and Premier

   e) conversations with MP's

   Rank the above on the basis of the frequency with which they are used.

   Rank the above on the basis of effectiveness.

* 7. How do you envisage your role in the decision-making process?

a) as the defender of provincial interests

b) as the spokesman for the electorate of your province

c) as the spokesman for particular groups within the province that would be affected by the legislation

In your dealings with the federal government, do you consider it to be an advantage to be a member of a political party different than the party in power at the federal level?

** 8. What form did the consultations take between your group and the federal government?

a) letters to high-ranking civil servants

b) letters to Prime Minister and Cabinet

c) letters to provincial civil servants

d) letters to provincial Premier and Cabinet

e) letters to MP's

f) letters to MLA's

Rank the above on the basis of the frequency with which they were used.

Rank the above on the basis of effectiveness.

** 9. How do you envisage your role in the decision-making process?

a) as the defender of provincial interests

b) as the spokesman for particular groups within the province that would be affected by the legislation

10. In your consultations with the federal government, was the federal government willing to make changes in their legislation to meet your criticisms or was the federal government merely paying lip service to your representations with no intention of seriously considering your proposals?

PART VI: NATIONAL TRANSPORTATION ACT

With regard to the enactment of the National Transportation Act of 1967, and, in particular, with those provisions of the Act dealing with freight rates:

1. Did the federal government consult with pressure groups and the provincial governments prior to the enactment of federal policy? If so, was it:

   a) prior to first reading of the Bill in the House of Commons?

   b) after first reading of the Bill but prior to the Committee stage?

   c) at the Committee stage?

   d) prior to final Cabinet approval of the Bill?

   Can you give specific examples based on past experience to illustrate the consultative process followed by the federal government?

2. With regard to the nature of the consultations:

   a) Was the federal government prepared to accept major changes in its proposed legislation (changes that would alter the objectives or scope of the Bill)?

   OR

   b) Were the consultations merely confined to a discussion of the technical details of the Bill which, if changed, would not alter the Bill in any substantial way?

   c) Can you cite examples to illustrate the consultative process followed by the federal government?

3. Do you believe that the federal government accommodated your views as a result of the consultations? If so, to what extent? Can you cite specific examples to illustrate the extent to which your views were accommodated?

4. During your consultations with the federal government, who acted as the spokesman for the federal government?

   a) high ranking civil servants (Deputy Ministers, Assistant Deputy Ministers)

b) Cabinet Ministers involved with the legislation

c) MP's from your province

Can you cite specific examples?

* 5. What form did the consultation take between your government and the federal government?

a) letters/briefs between civil servants at the federal and provincial levels

b) letters/briefs between Cabinet Ministers at the federal and provincial levels

c) letters/briefs between Prime Minister and Premier

d) conversations between Prime Minister and Premier

e) conversations with MP's

Rank the above on the basis of the frequency with which they were used.

Rank the above on the basis of effectiveness.

** 6. What form did the consultations take between your group and the federal government?

a) letters to high-ranking civil servants

b) letters to Prime Minister and Cabinet

c) letters to provincial civil servants

d) letters to provincial Premier and Cabinet

e) letters to MP's

f) letters to MLA's

Rank the above on the basis of the frequency with which they were used.

Rank the above on the basis of effectiveness.

7. In your consultations with the federal government, was the federal government willing to make changes in the legislation to meet your criticisms or was the federal government merely paying lip service to your representations with no intention of seriously considering your proposals? Can you cite specific examples?

8. With regard to the role of the Parliamentary Committee that examined the Bill in 1966:

   a) Was the Committee interested in the recommendations proposed by your government (or group)?

   b) Were your recommendations accepted by the Committee in their report to Parliament?

   c) Did the federal government ultimately accept these recommendations?

9. What is your assessment of the role of the Parliamentary Committee in the decision-making process?

10. With regard to the role of Members of Parliament from Western Canada during the debate in the House of Commons and in the proceedings of the Parliamentary Committee:

    a) How effective were the Members of Parliament in their role as spokesmen for the interests of Western Canada?

    b) Can you cite evidence to support your views?

11. What was your overall assessment of your meeting with the Parliamentary Committee? In your view, was the meeting beneficial in conveying your opinions?

PART VII: CANADIAN TRANSPORT COMMISSION

1. It has been said that Western Canada does not have adequate representation on the Canadian Transport Commission. Do you agree with this statement? If so, why? If not, why not?

2. Politicians from Western Canada have expressed the view that the Canadian Transport Commission is a spokesman for, and a defender of, the railways. Do you agree or disagree with this statement?

3. Do you believe the Canadian Transport Commission, in its decisions on matters dealing with freight rates, has discriminated against Western Canada? Can you cite specific examples to support your view?

4. With regard to the provisions in the National Transportation Act establishing the terms of reference for the Canadian Transport Commission, does the legislation provide for

   a) sufficient opportunity to make representations before the Board?

b) sufficient information as to the reasons for the Board's decisions?

PART VIII

1. In your view, is there a need for new channels of communication within the Canadian political system for the input of Western Canadian views at the federal level? If so, what form should these new channels of communication take?

NOTE:

* Questions marked in this fashion will be administered to provincial governments.

** Questions marked in this fashion will be administered to pressure groups.

Questions with no markings will be administered to both provincial governments and to pressure groups.

APPENDIX C

EXCERPTS FROM THE NATIONAL TRANSPORTATION ACT OF 1967

14-15-16 ELIZABETH II.

CHAP. 69

An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions.

[*Assented to 9th February, 1967.*]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

National Transportation Policy.

1. It is hereby declared that an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the 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

(*a*) regulation of all modes of transport will not be of such a nature as to restrict the ability of any mode of transport to compete freely with any other modes of transport;

(*b*) each mode of transport, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided that mode of transport at public expense;

(*c*) each mode of transport, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty; and

(*d*) each mode of transport, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute

(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, or

(ii) an undue obstacle to the interchange of commodities between points in Canada or 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;

and this Act is enacted in accordance with and for the attainment of so much of these objectives as fall within the purview of subject matters under the jurisdiction of Parliament relating to transportation.

PART I.

CANADIAN TRANSPORT COMMISSION.

Short Title.

Short title.

2. This Act may be cited as the *National Transportation Act.*

Interpretation.

Definitions.

3. In this Act,

"Commission."

(*a*) "Commission" means the Canadian Transport Commission established by this Act;

"Commodity pipeline."

(*b*) "commodity pipeline" means a pipeline for the transmission of commodities and includes all branches, extensions, pumps, racks, compressors, loading facilities, storage facilities, reservoirs, tanks, interstation system of communication by telephone, telegraph or radio and real or personal, movable or immovable property and works connected therewith, but does not include a pipe line for the transmission solely of oil and gas, or either;

"Minister."

(*c*) "Minister" means the Minister of Transport;

"Motor vehicle undertaking."

(*d*) "motor vehicle undertaking" means a work or undertaking for the transport of passengers or goods by any vehicle, machine, tractor, trailer or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and capable of use upon a highway; and

(*e*) "oil" and "gas" means oil and gas as those substances are defined in section 2 of the *National Energy Board Act*. "Oil" and "gas".

Application.

4. This Act applies to the following modes of transport: Application.

(*a*) transport by railways to which the *Railway Act* applies;

(*b*) transport by air to which the *Aeronautics Act* applies;

(*c*) transport by water to which the *Transport Act* applies and all other transport by water to which the legislative authority of the Parliament of Canada extends; and

(*d*) transport by a commodity pipeline connecting a province with any other or others of the provinces or extending beyond the limits of a province; and

(*e*) transport for hire or reward by a motor vehicle undertaking connecting a province with any other or others of the provinces or extending beyond the limits of a province.

5. (1) Except as otherwise expressly provided by this Act, the provisions of the *Railway Act* relating to sittings of the Commission and the disposal of business, witnesses and evidence, practice and procedure, orders and decisions of the Commission and review thereof and appeals therefrom apply in the case of every inquiry, complaint, application or other proceeding under this Act, the *Aeronautics Act* or the *Transport Act* or any other Act of the Parliament of Canada imposing any duty or function on the Commission; and the Commission shall exercise and enjoys the same jurisdiction and authority in matters under any such Acts as are vested in the Commission under the *Railway Act*. Application of *Railway Act*.

(2) For greater certainty and the avoidance of doubt, but without limiting the generality of subsection (1), it is declared that the following provisions of the *Railway Act*, namely sections 12, 13, 18 to 21, 30, 32 to 41 and 43 to 72 apply *mutatis mutandis* in respect of any proceedings before the Commission pursuant to this Act, the *Aeronautics Act* or the *Transport Act*, and in the event of any conflict between those provisions of the *Railway Act* and the provisions of the *Aeronautics Act* or the *Transport Act* those provisions of the *Railway Act* prevail. Avoidance of doubt.

Constitution of Commission.

Commission established.

6. (1) There shall be a commission, to be known as the Canadian Transport Commission, consisting of not more than seventeen members appointed by the Governor in Council.

Court of record.

(2) The Commission is a court of record and shall have an official seal which shall be judicially noticed.

Tenure.

(3) Each commissioner holds office during good behaviour for the term of his appointment to the Commission which shall not exceed a period of ten years from the date of his appointment but he may be removed for cause by the Governor in Council at any time.

Retirement age.

(4) Notwithstanding anything in the *Public Service Superannuation Act*, a commissioner may continue to hold office upon attaining the age of sixty-five years but he ceases to hold office upon reaching the age of seventy years.

Reappointment.

(5) A commissioner on the expiration of his first or subsequent term of office on the Commission is, if not disqualified by age, eligible for reappointment for a period not exceeding ten years.

Remuneration of members.

(6) Each commissioner shall be paid such remuneration for his services as the Governor in Council may from time to time determine.

President and vice-presidents.

7. (1) One of the commissioners shall be appointed by the Governor in Council to be President of the Commission and two commissioners shall be appointed by the Governor in Council to be vice-presidents of the Commission.

Barrister or advocate.

(2) One of the persons appointed to be vice-president shall be a barrister or advocate of at least ten years' standing at the bar of any province of Canada.

Powers of vice-presidents.

(3) The vice-president who qualifies under subsection (2) has all the powers of the President, but those powers shall not be exercised by him except in the absence or disability of the President, and whenever he has acted it shall be conclusively presumed that he so acted in the absence or disability of the President within the meaning of this section.

Duty of one vice-president.

(4) One of the vice-presidents shall, under the general directions of the Commission, be charged with the superintendence of the programs of study and research necessary to achieve the objectives mentioned in section 1 and to the performance by the Commission of its duties under section 15.

Duty of other vice-president.

(5) The vice-president who qualifies under subsection (2) shall, under the general directions of the

Commission, be charged with the superintendence of the work of the committees of the Commission.

Presiding officer.

(6) At all proceedings of the Commission the President, when present, shall preside and the vice-president who qualifies under subsection (2), when present, shall preside in the absence of the President; and the opinion of the vice-president who qualifies under subsection (2) upon any question arising that in the opinion of the Commissioners is a question of law shall prevail except that if the President is himself a barrister or advocate of at least ten years' standing at the bar of any province of Canada, the opinion of the President shall prevail upon any such question of law arising when he is presiding.

Prohibited interests.

8. (1) No member or officer of the Commission shall, directly or indirectly,

(*a*) have any interest in, or in any undertaking of, any railway company, air transport company, commodity pipeline company, shipping company or motor vehicle undertaking or have any interest in the obligations of any such company or undertaking;

(*b*) engage in manufacturing or selling aircraft, ships, railway rolling stock, motor trucks, trailers or buses, or pipeline equipment, or in the transport of goods or passengers by any mode of transport for hire or reward; or

(*c*) have any interest in any device, appliance, machine, patented process or article, or any part thereof that may be required or used as part of the equipment of any railway or rolling stock thereof, aircraft, ship, pipeline, motor truck, trailer or bus, or of any work or undertaking subject to this Act, the *Railway Act*, the *Aeronautics Act* or the *Motor Vehicle Transport Act*.

Disposing of interest.

(2) Where any interest prohibited under subsection (1) vests in any member or officer of the Commission by will or succession for his own benefit, he shall, within three months thereafter, absolutely dispose of such interest.

Staff, etc.

Secretary.

9. (1) There shall be a Secretary of the Commission who shall be appointed by the Governor in Council to hold office during pleasure.

Acting secretary.

(2) In the absence of the Secretary from illness or any other cause, the Commission may appoint from its staff an acting secretary, who shall thereupon act in the place of the Secretary and exercise his powers.

Duties of Secretary.

10. (1) The Secretary of the Commission shall

(*a*) keep a record of all proceedings conducted before the Commission or any committee or commissioner;

(*b*) have the custody and care of all records and documents belonging or appertaining to the Commission or filed in the office of the Secretary;

(*c*) obey all rules and directions that may be made or given by the Commission, or the President, touching his duties or office, and in the event of a conflict of such rules or directions, those made or given by the Commission prevail; and

(*d*) have every regulation and order of the Commission drawn pursuant to the direction of the Commission, duly signed and sealed with the official seal of the Commission and filed in the office of the Secretary.

Record books.

(2) The Secretary shall keep in his office suitable books of record, in which he shall enter a true copy of every regulation and order of the Commission, and every other document that the Commission may require to be entered therein, and such entry constitutes and is the original record of any such regulation or order.

Certified copies.

(3) Upon application of any person, and on payment of such fees as the Commission may prescribe, the Secretary shall deliver to the applicant a certified copy of any regulation or order of the Commission.

Staff of Commission.

11. (1) Such other officers and employees as are necessary for the proper conduct of the business of the Commission may be appointed in the manner authorized by law.

Staff.

(2) The officers and employees attached to the Commission may be paid out of moneys appropriated by Parliament for the purpose.

Offices in Ottawa.

12. (1) The Governor in Council shall, upon the recommendation of the Minister, provide within the City of Ottawa, a suitable place in which the meetings of the Commission may be held, and also suitable offices for the commissioners, and for the Secretary, and the other officers and employees of the Commission, and all necessary furnishings, stationery and equipment for the conduct, maintenance and performance of the duties of the Commission.

Offices elsewhere than in Ottawa.

(2) The Governor in Council, upon the recommendation of the Minister, may establish at any place or places in Canada such office or offices as are required for

the Commission, and may provide therefor the necessary accommodation, furnishings, stationery and equipment.

Paid twice monthly.

13. The salaries or other remuneration of all officers and employees of the Commission, and all the expenses of the Commission incidental to the carrying out of its duties and functions, including all actual and reasonable travelling expenses of the commissioners and the Secretary, and of such members of the staff of the Commission as may be required by the Commission to travel, necessarily incurred in attending to the duties of their office, shall be paid twice monthly out of moneys provided by Parliament.

Powers and Duties.

Interpretation of functions.

14. It is the duty of the Commission to perform the functions vested in the Commission by this Act, the *Railway Act*, the *Aeronautics Act* and the *Transport Act* with the object of co-ordinating and harmonizing the operations of all carriers engaged in transport by railways, water, aircraft, extra-provincial motor vehicle transport and commodity pipelines; and the Commission shall give to this Act, the *Railway Act*, the *Aeronautics Act* and the *Transport Act* such fair interpretation as will best attain that object.

Duties of the Commission.

15. (1) In addition to its powers, duties and functions under the *Railway Act*, the *Aeronautics Act* and the *Transport Act*, the Commission shall

(*a*) inquire into and report to the Minister upon measures to assist in a sound economic development of the various modes of transport over which Parliament has jurisdiction;

(*b*) undertake studies and research into the economic aspects of all modes of transport within, into or from Canada;

(*c*) inquire into and report to the Minister on the relationship between the various modes of transport within, into and from Canada and upon the measures that should be adopted in order to achieve co-ordination in development, regulation and control of the various modes of transport;

(*d*) perform, in addition to its duties under this Act, such other duties as may, from time to time, be imposed by law on the Commission in respect of any mode of transport in Canada, including the regulation and licensing of any

such mode of transport, control over rates and tariffs and the administration of subsidies voted by Parliament for any such mode of transport;

(*e*) inquire into and report to the Minister upon possible financial measures required for direct assistance to any mode of transport and the method of administration of any measures that may be approved;

(*f*) inquire into and recommend to the Minister from time to time such economic policies and measures as it considers necessary and desirable relating to the operation of the Canadian merchant marine, commensurate with Canadian maritime needs;

(*g*) establish general economic standards and criteria to be used in the determination of federal investment in equipment and facilities as between various modes of transport and within individual modes of transport and in the determination of desirable financial returns therefrom;

(*h*) inquire into and advise the government on the overall balance between expenditure programs of government departments or agencies for the provision of transport facilities and equipment in various modes of transport, and on measures to develop revenue from the use of transport facilities provided or operated by any government department or agency; and

(*i*) participate in the economic aspects of the work of intergovernmental, national or international organizations dealing with any form of transport under the jurisdiction of Parliament, and investigate, examine and report on the economic effects and requirements resulting from participation in or ratification of international agreements.

Powers in relation to shipping.

(2) The Commission may examine into, ascertain and keep records of, and make appropriate reports to the Minister on,

(*a*) the shipping services between Canadian ports and from ports in Canada to ports outside Canada that are required for the proper maintenance and furtherance of the domestic and external trade of Canada;

(*b*) the type, size, speed and other requirements of the vessels that are and in the opinion of the Commission should be employed in such services;

(c) the cost of marine insurance, maintenance and repairs, and wages and subsistence of officers and crews and all other items of expense in the operation of vessels under Canadian registry and the comparison thereof with similar vessels operated under other registry;

(d) the water transportation industry and undertakings and services directly related thereto;

(e) the terms, conditions and usages applying to transportation of goods and passengers by water within, into and from Canada;

(f) the work of international and intergovernmental organizations and agencies that concern themselves with the transportation of goods and passengers by water; and

(g) such other marine matters as the Minister may request or as the Commission may deem necessary for carrying out any of the provisions or purposes of this Act.

Idem.

(3) The Commission shall

(a) exercise and perform on behalf of the Minister such powers, duties or functions of the Minister under the *Canada Shipping Act* as the Minister may require; and

(b) exercise and perform any other powers, duties or functions in relation to water transport conferred on or required to be performed by the Commission by or pursuant to any other Act or any order of the Governor in Council.

Consultation.

(4) In carrying out its duties and functions under this section, the Commission may consult with persons, organizations and authorities that in the opinion of the Commission are in a position to assist the Commission in formulating and recommending policy and the Commission may appoint and consult with committees being representative of such persons, organizations and authorities.

Delegation and examinations.

(5) The Commission may delegate, in whole or in part, to any other body or authority subject to the legislative authority of the Parliament of Canada any of the powers or duties of the Commission in respect of safety in the operation of commodity pipelines and such delegated body or authority may exercise and shall perform the powers or duties so delegated.

Apportionment of toll.

(6) Where a person who transports goods by a mode of transport other than rail charges a toll, expressed as a single sum, for the carriage of traffic partly by one mode of transport and partly by a different mode of transport, the Commission, for the purpose of determining whether a toll charged is contrary to any Act of the Parliament of

Canada, may require such person to declare forthwith to the Commission, or may determine, what portion of such single sum is charged in respect of the carriage of traffic by the mode of transport by which such person transports goods.

Definitions. "carrier". **16.** (1) In this section,

(*a*) the expression "carrier" means any person engaged for hire or reward in transport, to which the legislative authority of the Parliament of Canada extends, by railway, water, aircraft, motor vehicle undertaking or commodity pipeline; and

"Public interest". (*b*) the expression "public interest" includes, without limiting the generality thereof, the public interest as described in section 1.

Special appeal and investigation. (2) Where a person has reason to believe

(*a*) that any act or omission of a carrier or of any two or more carriers, or

(*b*) that the effect of any rate established by a carrier or carriers pursuant to this Act or the *Railway Act* after the commencement of this Act,

may prejudicially affect the public interest in respect of tolls for or conditions of the carriage of traffic within, into or from Canada, such person may apply to the Commission for leave to appeal the act, omission or rate, and the Commission shall, if it is satisfied that a *prima facie* case has been made, make such investigation of the act, omission or rate and the effect thereof, as in its opinion is warranted.

Matters to be considered. (3) In conducting an investigation under this section, the Commission shall have regard to all considerations that appear to it to be relevant, including, without limiting the generality of the foregoing,

(*a*) whether the tolls or conditions specified for the carriage of traffic under the rate so established are such as to create

(i) an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or

(ii) an undue obstacle to the interchange of commodities between points in Canada or 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; or

(*b*) whether control by, or the interests of a carrier in, another form of transportation service, or control of a carrier by, or the interest in the carrier of, a company or person engaged in another form of transportation service may be involved.

Directing order.

(4) If the Commission, after a hearing, finds that the act, omission or rate in respect of which the appeal is made is prejudicial to the public interest, the Commission may, notwithstanding the fixing of any rate pursuant to section 336 of the *Railway Act* but having regard to section 334 of that Act, make an order requiring the carrier to remove the prejudicial feature in the relevant tolls or conditions specified for the carriage of traffic or such other order as in the circumstances it may consider proper, or it may report thereon to the Governor in Council for any action that is considered appropriate.

Committees.

17. (1) For the purposes of performing its duties under this Act the Commission shall establish the following committees consisting of not less than three commissioners, exclusive of the President who shall be *ex officio* a member of every such committee:

(*a*) railway transport committee;
(*b*) air transport committee;
(*c*) water transport committee;
(*d*) motor vehicle transport committee;
(*e*) commodity pipeline transport committee; and
(*f*) such other committees as the Commission deems expedient.

Chairmen of committees.

(2) In respect of each such committee the Commission shall appoint a commissioner to be chairman of the committee who shall be the chief executive officer of the committee and shall in the absence or disability of both the President and the vice-president who qualifies under subsection (2) of section 7 preside at all sittings of the committee and exercise all the powers of the President.

Effect of committee action.

(3) Notwithstanding anything in the *Railway Act* or the *National Energy Board Act* governing matters before the Commission, a committee of the Commission may, in accordance with the rules and regulations of the Commission, exercise all the powers and duties of the Commission and the orders, rules or directions made or issued by a committee of the Commission have effect, subject to subsection (4), as though they were made or issued by the Commission.

When review required.

(4) Where an order, rule or direction made by a committee of the Commission in respect of a matter related to a particular mode of transport, not being a matter of a specific rate, licence or certificate, is objected to by an operator of another mode of transport on the ground that the order, rule or direction discriminates against or is otherwise unfair to his operations, the Commission shall, otherwise than by that committee of the Commission, review the order, rule or direction, in accordance with such rules of procedure as the Commission may prescribe therefor, and shall confirm, rescind, change, alter or vary the order, rule or direction or rehear the matter thereof.

Appearance of other interests in Canada.

(5) At any hearing of the Commission for the purpose of making any order or giving any direction, leave, sanction or approval in respect of any matter under the jurisdiction of the Commission, the Commission may, notwithstanding any provision of the *Railway Act*, the *Aeronautics Act*, the *Transport Act*, the *National Energy Board Act* or this Act, permit the representative or agent of any provincial or municipal government or any association or other body representing the interests of shippers or consignees in Canada to appear and be heard before the Commission subject to such rules of procedure as the Commission may prescribe.

Member presiding.

(6) Notwithstanding anything in this section, the President and the vice-president who qualifies under subsection (2) of section 7 shall not both sit on any hearing before a committee of the Commission.

Appeal.

18. (1) An applicant, or an intervener on an application to the Commission, for

(*a*) a licence under the *Aeronautics Act* to operate a commercial air service,

(*b*) a licence under this Act to operate a motor vehicle undertaking,

(*c*) a licence under the *Transport Act* to engage in transport by water, or

(*d*) a certificate of public convenience and necessity under this Act in respect of a commodity pipeline

may appeal to the Minister from a final decision of the Commission with respect to the application, and the Minister shall thereupon certify his opinion to the Commission and the Commission shall comply therewith.

Idem.

(2) Where pursuant to any power vested in the Commission by this or any other Act of the Parliament of Canada the Commission suspends, cancels or amends any licence to operate any transportation service or any certificate of public convenience and necessity in respect

of a transportation service, the carrier whose licence or certificate has been suspended, cancelled or amended may appeal to the Minister, and the Minister shall thereupon certify his opinion to the Commission and the Commission shall comply therewith.

Time for appeal.

(3) An appeal to the Minister under this section shall be brought within thirty days of the date of the decision, ruling or order appealed from or within such longer period as the Minister may allow.

Rules.

(4) The Commission may make rules prescribing the manner in which appeals to the Minister may be made.

Regulations.

19. (1) Without affecting its powers under any other Act to make regulations, the Commission may make rules and regulations for the attainment of the objects of this Act and in particular, but without limiting the generality of the foregoing, may make rules and regulations

(*a*) respecting the manner in which any committees of the Commission shall perform their functions and the duties and functions to be performed by the committees of the Commission;

(*b*) respecting the manner in which the various functions of the committees of the Commission are to be co-ordinated;

(*c*) respecting the proceedings of the Commission and its committees in the performance of duties under this Act; and

(*d*) respecting the assignment of duties to officers of the Commission and the delegation of functions thereto.

Conflict of powers.

(2) Where there is a conflict between any regulations made by the Commission under this Act in respect of a particular mode of transport and any regulations made under any other Act in respect of that particular mode of transport, the regulations made under this Act prevail.

44. The heading preceding section 317 and sections 317 and 318 of the said Act are repealed and the following substituted therefor:

When tolls may be disallowed.

"**317.** Notwithstanding section 336, where in the opinion of the Commission there is, in respect of the carriage of goods in less than carload quantities under five thousand pounds to or from any point in Canada, no alternative, effective and competitive service by a common carrier other than a rail carrier or carriers or a combination of rail carriers, the Commission may investigate the tariff of tolls applying to the carriage in those quantities to or from such point in Canada and if the Commission finds that the tariff of tolls of a railway company, or any portions of the tariff, are such as to take undue advantage of a monopoly situation favouring rail carriers in respect of the carriage of such goods or class of goods, the Commission may disallow such tariff of tolls or any portion thereof and may require the railway company to substitute within a specified period of time a tariff of tolls satisfactory to the Commission or it may prescribe other tolls in lieu of any tolls so disallowed."

50. Sections 328 and 329 of the said Act are repealed and the following substituted therefor:

Crows Nest Pass rates.

"**328.** (1) Rates on grain and flour moving from any point on any line of railway west of Fort William to Fort William or Port Arthur, over any line of railway now or hereafter constructed by any company that is subject to the jurisdiction of Parliament, shall be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897.

Rates on grain and flour for export through West Coast.

(2) Rates on grain and flour moving from any point on any line of railway west of Fort William to Vancouver or Prince Rupert for export over any line of railway now or hereafter constructed by any company that is subject to the jurisdiction of Parliament shall be governed by the provisions of paragraph 2 of General Order No. 448 of the Board of Railway Commissioners for Canada dated Friday the 26th day of August, 1927.

Rates on grain and flour for export through Churchill.

(3) Rates on grain and flour moving for export from any point west of Fort William or Armstrong to Churchill over any line of railway of any company that is subject to the jurisdiction of Parliament shall be maintained at the level of rates applying on the 31st day of December, 1966.

Non-application of section 3.

(4) Notwithstanding section 3, this section is not limited or in any manner affected by the provisions of any Act of the Parliament of Canada, or by any agreement made or entered into pursuant thereto, whether general in application or special or relating only to any specific railway or railways.

329. (1) In this section, Definitions.

(*a*) "Eastern port" means any of the ports of Halifax, Saint John, West Saint John and Montreal and any of the ports on the St. Lawrence River to the east of Montreal; "Eastern port."

(*b*) "Eastern rates" means, "Eastern rates."

(i) in relation to grain, the freight rates applying on the 30th day of November, 1960, to the movement of grain in bulk for export from any inland point to an Eastern port, and

(ii) in relation to flour, the freight rates applying on the 30th day of September, 1966, to the movement of flour for export from any inland point to an Eastern port;

(*c*) "inland point" means, "Inland point."

(i) in relation to grain, any of the railway points along Georgian Bay, along Lake Huron or along any waterways directly or indirectly connecting with Lake Huron and not being farther east than Prescott, but including Prescott, and

(ii) in relation to flour, any point in Canada east of the 90th degree of west longitude;

(*d*) "flour" means flour milled from grain; and "Flour."

(*e*) "grain" means the commodities referred to in paragraph (6) of Order No. 121416 of the Board of Transport Commissioners for Canada dated the 18th day of July, 1966. "Grain."

(2) For the purpose of encouraging the continued use of the Eastern ports for the export of grain and flour, Maintaining existing effective rates.

(*a*) rates for grain moving in bulk for export to any Eastern port from any inland point over any line of a railway company subject to the jurisdiction of Parliament shall be maintained at the level of rates applying on the 30th day of November, 1960, to the movement of such grain to Eastern ports; and

(*b*) rates on flour moving for export to an Eastern port from any inland point over any line of a railway company subject to the jurisdiction of Parliament shall be maintained at the level of rates applying on the 30th day of September, 1966, to the movement of such flour to Eastern ports.

(3) The Commission shall from time to time determine in respect of Determining rates for comparison.

(*a*) the movement of grain in bulk for export, and

(*b*) the movement of flour for export,

by railway to an Eastern port from an inland point a level of rates consistent with section 334 and shall cause such rates to be published in the *Canada Gazette*.

Payment of assistance.

(4) The Governor in Council may, on the recommendation of the Commission, authorize the Minister of Finance to pay out of the Consolidated Revenue Fund to a railway company under the jurisdiction of Parliament that carries at Eastern rates grain moving in bulk for export to an Eastern port from an inland point, or flour moving for export from an inland point to an Eastern port, when the Eastern rates for such grain or flour, as the case may be, are less than the rates determined and published by the Commission under subsection (3), an amount equal to the difference between

(*a*) the total amount received by the company in respect of that year for the carriage of such grain or flour, and

(*b*) the total amount that the company would have received in respect of that year had the grain or flour been carried at the rates determined and published by the Commission under subsection (3) instead of at the Eastern rates.

Prevailing rates.

(5) Until such time as the Commission determines and publishes a level of rates under subsection (3),

(*a*) the railway proportions of rates for the movement of grain in bulk for export from an inland point to an Eastern port that have been filed by a railway company with the Board of Transport Commissioners for Canada in accordance with paragraph 2 of Order No. 103860 of that Board dated February 23rd, 1961, and that have been approved by that Board shall be deemed to be the rates determined and published by the Commission under subsection (3); and

(*b*) the rates applying on the 30th day of September, 1966, for the movement of flour for export from an inland point to an Eastern port shall be deemed to be the rates determined and published by the Commission under subsection (3)."

53. Sections 334 to 337 of the said Act are repealed and the following substituted therefor:

Rates to be compensatory.

"334. (1) Except as otherwise provided by this Act all freight rates shall be compensatory; and the Commission may require the company issuing a freight tariff to furnish to the Commission at the time of filing the tariff or at any time, any information required by the Commission to establish that the rates contained in the tariff are compensatory.

Determination of compensatory freight rate.

(2) A freight rate shall be deemed to be compensatory when it exceeds the variable cost of the movement of the traffic concerned as determined by the Commission.

Determination of variable cost.

(3) In determining for the purposes of this section the variable cost of any movement of traffic, the Commission shall

(*a*) have regard to all items and factors prescribed by regulations of the Commission as being relevant in the determination of variable costs; and

(*b*) compute the costs of capital in all cases by using the costs of capital approved by the Commission as proper for the Canadian Pacific Railway Company.

Disallowance of non-compensatory rate.

(4) The Commission may disallow any freight rate that after investigation the Commission determines is not compensatory.

Inquiry into rate.

(5) Where the Commission receives information by way of a complaint or otherwise containing *prima facie* evidence that a freight rate shown in a tariff filed with the Commission is not compensatory, the Commission shall conduct an investigation to determine if such rate is compensatory, and in any other case the Commission may, of its own motion, conduct such an investigation.

(4) Subsections (1) to (3) shall be in force during the two years after the coming into force thereof and expire at the end of that period. Limited period.

336. (1) A shipper of goods for which in respect of those goods there is no alternative, effective and competitive service by a common carrier other than a rail carrier or carriers or a combination of rail carriers may, if he is dissatisfied with the rate applicable to the carriage of those goods after negotiation with a rail carrier for an adjustment of the rate, apply to the Commission to have the probable range within which a fixed rate for the carriage of the goods would fall determined by the Commission; and the Commission shall inform the shipper of the range within which a fixed rate for the carriage of the goods would probably fall. Application to set range for fixed rate.

(2) After being informed by the Commission of the probable range within which a fixed rate for the carriage of the goods would fall, the shipper may apply to the Commission to fix a rate for the carriage of the goods, and the Commission may after such investigation as it deems necessary fix a rate equal to the variable cost of the carriage of the goods and an amount equal to one hundred and fifty per cent of the variable cost as the fixed rate applicable to the carriage of the goods in respect of which the application was made (hereinafter in this section referred to as the "goods concerned"). Fixing the rate.

(3) In determining the variable cost of the carriage of goods for the purposes of this section, the Commission shall Determination of variable cost.

(*a*) have regard to all items and factors prescribed by regulations of the Commission as being relevant in the determination of variable costs;

(*b*) compute the costs of capital in all cases by using the costs of capital approved by the Commission as proper for the Canadian Pacific Railway Company;

(*c*) calculate the cost of carriage of the goods concerned on the basis of carloads of thirty thousand pounds in the standard railway equipment for such goods; and

(*d*) if the goods concerned may move between points in Canada by alternative routes of two or more railway companies, compute the variable cost on the basis of the costs of the lowest cost rail route.

Acceptance of fixed rate.

(4) Where a fixed rate is made under this section, the Commission shall forthwith notify the shipper of the rate so fixed, and if within thirty days of the mailing of the notice to the shipper by the Commission, the shipper enters into a written undertaking with a railway company, in a form satisfactory to the Commission, to ship the goods concerned by rail in accordance with this section, the company shall file and publish a tariff of the fixed rate which shall be effective upon such date as the Commission may, by order or regulation, direct.

Effect of accepting fixed rate.

(5) When a shipper enters into a written undertaking as provided in subsection (4),

(*a*) the shipper shall cause to be shipped by rail, for a period of one year from the date the fixed rate takes effect and for so long thereafter as the fixed rate as originally fixed or as altered under paragraph (*a*) of subsection (7) remains in force, all shipments of the goods concerned except such shipments as the Commission may from time to time authorize to be shipped for experimental purposes by another mode of transport; and

(*b*) the charges for any shipments of the goods concerned in the standard railway equipment for goods of that type shall be

(i) except in any case coming under subparagraph (ii) or (iii), at the fixed rate on the basis of a minimum carload weight of thirty thousand pounds, and for shipments under thirty thousand pounds, at the prevailing rate under the tariffs of the company for goods of that type unless the shipper assumes the charges for a shipment of thirty thousand pounds at the fixed rate,

(ii) except in any case coming under subparagraph (iii), if the carload weight of a single shipment of the goods concerned is fifty thousand pounds or more, at a rate to be determined by deducting from the fixed rate an amount equal to one half the amount of the reduction in the variable cost of the shipment of the goods concerned below the amount of the variable cost with reference to which the fixed rate was established, but rates need be determined under this subparagraph only as required and then for minimum carload weights

based on units of twenty thousand added to thirty thousand and a rate for a carload weight in excess of fifty thousand pounds and between any two minimum carload weights so established shall be the rate for the lower of such minimum carload weights, or

(iii) at such rate less than the fixed rate, on the basis of such minimum carload weight, as the shipper may negotiate with a railway company at the time he enters into the written undertaking or at any time thereafter, and every such rate so negotiated shall be filed and published in accordance with regulations, orders or directions made by the Commission.

Failure to ship goods by carrier.

(6) The Commission may require any shipper for whom a rate has been fixed under this section to supply any information to the Commission, or to make available for the inspection of the Commission, shipping books, shipping records and invoice records of every kind for the purpose of verifying that the shipper has complied with paragraph (*a*) of subsection (5); and where it is shown to the Commission that the shipper has contravened that paragraph, or where the shipper defaults in giving the Commission any information required by it, the Commission may authorize cancellation of the fixed rate in respect of the goods concerned.

Rights of company.

(7) Where a fixed rate has been cancelled pursuant to an authorization under subsection (6), the company may recover from the shipper for all goods shipped at the maximum rate the difference between charges at the maximum rate and charges based on the rate in effect on such goods immediately before the effective date of the maximum rate, and, in addition, the company is entitled to liquidated damages at the rate of ten per cent of the maximum rate on all goods shipped by the shipper otherwise than in accordance with the provisions of the written undertaking referred to in subsection (4).

Termination or alteration of fixed rate.

(8) At any time after the expiration of one year from the date the fixed rate became effective in respect of the carriage by rail of the goods concerned,

(*a*) the Commission may, upon being satisfied of a change in the variable cost in relation to which a rate was fixed under this section, alter the fixed rate as the Commission may specify;

(*b*) the shipper may give notice in writing to the Commission and to any railway company with whom he had shipped the goods concerned that the shipper no longer desires to be bound by the written undertaking entered into in respect of the goods concerned on and after a date specified in the notice, not being earlier than ten days from the date of the notice, and thereupon his undertaking is terminated as of the date so specified, and the fixed rate shall be cancelled in respect of the goods concerned; and

(*c*) where the Commission is satisfied that there is available to the shipper in respect of the goods concerned an alternative, effective and competitive service by a common carrier other than a rail carrier or carriers or combination of rail carriers, the Commission by order may, upon the application of a railway company, authorize the cancellation of the fixed rate as originally fixed or as altered under paragraph (*a*) in respect of the goods concerned, upon such date, not being earlier than ten days from the date of the order, as is stated in the order.

Form and content of application.

(9) An application under this section shall be in such form and contain such information as the Commission may by regulation or otherwise require and without limiting the generality of the foregoing,

(*a*) an application under subsection (1) shall be accompanied by copies of all letters and documents exchanged between the shipper and any railway company in respect of the negotiations between the shipper and the rail carriers for an adjustment in the rate applicable to the goods to be shipped or received by the shipper; and

(*b*) in the case of an application under subsection (2) the shipper making the application shall pay to the Receiver General for the use of Her Majesty such fee, if any, as may be determined by the Commission but not exceeding in any event twenty-five dollars.

Application of *Maritime Freight Rates Act.*

(10) This section is subject to the *Maritime Freight Rates Act* and Term 32 of the Terms of Union of Newfoundland with Canada.

Existing level of rates prevails for fixed period.

(11) This section does not apply in respect of any freight rate in effect upon the 1st day of August, 1966, including any freight rate payable by a shipper at a level provided for on the principles of the *Freight*

Rates Reduction Act, until that freight rate advances above the level payable by a shipper as of the 1st day of August, 1966.

Meaning of "company" in relation to rail route for goods of shipper.

(12) If the goods of a shipper pass over any continuous rail route in Canada operated by two or more railway companies, the expression "company" as used in this section shall be taken to mean each such company.

Meaning of "shipper".

(13) In this section "shipper" means a person sending or desiring to send goods between points in Canada or who receives or desires to receive goods shipped between points in Canada.

Advance in rates upon removal of "bridge toll".

(14) Notwithstanding subsection (11), where immediately before the coming into force of this section a reduced freight rate was in effect pursuant to section 46S, an advance in that rate shall be deemed not to be an advance in the freight rate payable by a shipper until that freight rate advances to a level beyond any level authorized by the Commission under section 46SA after the commencement of the *National Transportation Act*.

Expiration of subsection (11).

(15) Subsection (11) expires two years after the coming into force of this section unless, before that date, a later date is fixed for its expiration by proclamation of the Governor in Council in which case that subsection expires on such later date.

Report on operation of section.

(16) As soon as practicable after the expiration of four years from the coming into force of this section the Commission shall, after holding such public hearings as it may deem expedient and hearing the submissions of interested parties, report to the Governor in Council on the operation of this section and matters relevant thereto and, having regard to the national transportation policy, shall make such recommendations to the Governor in Council with respect to the operation of the section as the Commission considers desirable in the public interest.

70. The said Act is further amended by adding thereto, immediately after section 387 thereof, the following sections:

Allowances included in "costs."

"387A. (1) In computing the costs of the undertaking of the company for the purposes of sections 314A to 314J, 317, 329, 334, 336, 387B and this section, there shall be included such allowance on a periodic basis

(*a*) for depreciation, and

(*b*) in respect of the cost of any money expended, whether or not the expenditure was made out of borrowed money,

as to the Commission seems reasonable in the circumstances.

Computation of costs of a portion of an undertaking.

(2) Without limiting the powers of the Commission under this Act to determine costs,

(*a*) if the costs of a portion of the undertaking of the company or of a particular operation of the company are to be computed for a particular period, such of the costs of the whole undertaking of the company or any other portion of such undertaking thereof as, in the opinion of the Commission, are reasonably attributable to that portion of the undertaking or to the particular operation, as the case may be, in respect of which the costs are being computed, may be included in such computation of costs, irrespective of when, or in what manner, or by whom such costs were incurred; and

(*b*) if the costs of a portion of the undertaking of the company or of a particular operation of the company are to be computed in respect of future operations of the company, they shall be determined in accordance with estimates made on such basis as to the Commission seems reasonable in the circumstances.

Effect of determination of costs.

(3) Any determination of costs by the Commission for any of the purposes of this Act is final and binding upon all parties interested or affected thereby.

Components of costs.

387B. (1) The Commission shall by regulation prescribe for any of the purposes of this Act the items and factors, including the factors of depreciation and the cost of capital as provided in subsection (1) of section 387A, which shall be relevant in the determination of costs, and, to the extent that the Commission deems it proper and relevant to do so, the Commission shall have regard to the principles of costing adopted by the Royal Commission on Transportation appointed by the Order-in-Council dated the 13th day of May, 1959, in arriving at the conclusions contained in the report thereof, and to later developments in railway costing methods and techniques and to current conditions of railway operations.

Notice of amendments.

(2) When the Commission proposes to amend any regulations made under subsection (1), the Commission shall give notice of the proposed amendment in the *Canada Gazette* and in such additional publications as it deems desirable, and any transportation company, organization, provincial authority or municipal authority in Canada may, within twenty days from the day of the publication of the notice in the *Canada Gazette*,

(*a*) request the Commission to hold hearings on the matter of the proposed amendment; or

(*b*) give notice to the Commission that it intends to submit to the Commission views and recommendations on the matter of the proposed amendment, which views and recommendations shall be submitted in writing not later than forty days from the day of the publication of the notice in the *Canada Gazette*;

and the proposed amendment shall be brought into force not earlier than sixty days from the day of the publication of the notice in the *Canada Gazette* unless within the period limited therefor by this subsection a request is received by the Commission to hold hearings, or a written submission is received by the Commission setting out views and recommendations, on the matter of the proposed amendment.

When only written submissions made.

(3) Where a written submission seeking a change in a proposed amendment mentioned in subsection (2) is received by the Commission within the time limited therefor by that subsection and no request to hold hearings on the matter of the proposed amendment is received by the Commission within the time limited therefor by that subsection, the Commission shall allow a further period of thirty days for

the circulation of the submission and the receipt of comments thereon; and the Commission may thereafter

(*a*) bring the proposed amendment into force as originally proposed or as altered after receipt of the written submission and replies thereto, on a day fixed by the Commission; or

(*b*) hold hearings on the proposed amendment.

When hearings requested or held.

(4) Where a request to hold hearings on a proposed amendment mentioned in subsection (2) is received by the Commission within the time limited therefor by that subsection, or where hearings are held under subsection (3) on the proposed amendment, the Commission shall

(*a*) circulate any written submissions received pursuant to subsection (2) that have not already been circulated pursuant to subsection (3); and

(*b*) hold such hearings as in its opinion are necessary to enable all persons who wish to do so to present their views to the Commission;

and thereafter the Commission may bring the proposed amendment into force, as originally proposed or as altered after such hearings, on a day fixed by the Commission.

Amendments proposed by other than Commission.

(5) Where an amendment to a regulation made under this section is proposed by a person other than the Commission and the amendment has merit in the opinion of the Commission, the Commission shall circulate the proposal and replies thereto and, if the Commission considers it desirable to do so, the Commission may

(*a*) bring the proposed amendment into force on a day fixed by the Commission, which shall not be earlier than ninety days from the day that the proposed amendment was received by the Commission; or

(*b*) hold hearings on the matter of the proposed amendment and bring the proposed amendment into force, as originally proposed or as altered after such hearings, on a day fixed by the Commission.

Information bearing on costs.

387c. Where information concerning the costs of a railway company or other information that is by its nature confidential is obtained from the company by the Commission in the course of any investigation under this Act, such information shall not be published or revealed in such a manner as to be available for the use of any other person, unless in the opinion of the Commission such publication is necessary in the public interest.