



Ontario Northland Transportation Commission Act Modernization

**Written Submissions to the Standing Committee on the Legislative Assembly
Bill 245 - Accelerating Access to Justice Act, 2021**

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Ontario Northland Transportation Commission (“Ontario Northland”) is a Crown agency operated under the mandate of the Ontario Ministry of Transportation. Ontario Northland’s mandate is to provide efficient, safe and reliable transportation services in Northern Ontario and operate rail freight, passenger rail, intercity bus and remanufacturing services throughout Northern Ontario and into Manitoba and Quebec.

ISSUE:

Railways have cost sharing and safety relationships with adjacent land owners and users of provincial, municipal and private roads, especially at railway crossings. A clear forum should exist to resolve disputes as they arise.

The Land Planning Tribunal (“LPAT”) currently has jurisdiction over some aspects of the operations of railways in Ontario. The provisions in the LPAT Act are a revision of the clauses in the repealed Ontario Municipal Board Act, which has created some confusion with regard to the correct forum for resolution of disputes related to Ontario Northland Railway (“ONR”). The proposed amendments to the Ontario Northland Transportation Commission Act (“ONTCA”) in section 75 of Bill 245 will again change the jurisdiction of the land tribunal as it relates to Ontario railways and will create more confusion regarding the tribunal or other venue that has jurisdiction to hear disputes between Ontario Northland and third parties regarding ONR operations.

RECOMMENDATION:

Ontario Northland is recommending that the proposed revisions to the ONTC Act in section 75 of Bill 245 not be passed by the Legislature or if passed, not proclaimed until the modernization of the ONTC Act is completed.

BACKGROUND:

Ontario Northland was incorporated by the Province in 1902 as the Timiskaming & Northern Ontario Railway with a mandate to construct a railway and other services in Northern Ontario. In 1942, the name was changed to Ontario Northland Transportation Commission with the passage of the *Ontario Northland Transportation Commission Act*, R.S.O. 1990, c. O.32 (the “ONTC Act”).

Section 24 of the ONTC Act provides that Ontario Northland has, in respect of Ontario Northland Railway (“ONR”), all the powers, rights, remedies and immunities conferred upon any railway company by *The Railways Act*, R.S.O. 1950, c.331. The most recent major revision to *The Railways Act* was in 1937. *The Railways Act* confers broad jurisdiction on the Ontario Municipal Board and its successors (collectively “the Tribunal”) to make orders, provide consent and hear complaints on matters relating to railways in Ontario. Ontario Northland Railway is the only remaining railway in Ontario that is governed by *The Railways Act* and over which the Tribunal has jurisdiction.

In addition to the jurisdiction under *The Railways Act*, section 71 of the now repealed *Ontario Municipal Board Act* provided the Tribunal with clear jurisdiction over railways:

railway and utility matters

(a) to inquire into, hear and determine any applications made, proceedings instituted and matters brought before it under the provisions of any general or special Act relating to railways or public utilities or any of them where by such Act any jurisdiction or power is for such purpose conferred on the Board;

complaints of breach of railway or utility statutes, orders, agreements, etc.

(b) to hear and determine any application with respect to any railway or public utility, its construction, maintenance or operation by reason of the contravening or failure to comply on the part of any person, firm, company, corporation or municipality of or with the requirements of this or any other general or special Act, or of any regulation, rule, by-law or order made thereunder, or of any agreement entered into in relation to such railway or public utility, its construction, maintenance or operation;

railway and public utility rates and tolls

(c) to hear and determine any application with respect to any tolls charged by any person, firm, company, corporation or municipality operating a railway or public utility in excess of those approved or prescribed by lawful authority, or which are otherwise unlawful, unfair or unjust.

The *Local Planning Appeal Tribunal Act* largely replicated s. 71(b) and (c), however, s. 71(a) was not included in the LPAT Act.

Bill 245 proposes to introduce additional changes to the Tribunal jurisdiction over railways as shown in the following comparison between s. 30(1)(a) of the LPAT Act and the proposed s. 43(1)(a) of the ONTC Act:

(a) to hear and determine any application with respect to ~~any~~ railway ~~or public utility~~, its construction, maintenance or operation by reason of the contravening of or failure to comply on the part of ~~any person, firm, company, corporation or municipality~~ the Commission with the requirements of ~~this or any other general or special~~ any Act, or of any regulation, rule, by-law or order made ~~thereunder~~ under any Act, or of any agreement entered into in relation to ~~such~~ a railway ~~or public utility~~, its construction, maintenance or operation; and

Ontario Northland and MTO are collaboratively working together to complete a modernization of the ONTC Act which will include a review of the dispute resolution provisions that would apply to Ontario Northland.

ANALYSIS:

The proposed amendments to the ONTC Act in Bill 245 may be interpreted to further limit the jurisdiction of the Tribunal over railways, by removing reference to applications by ONTC regarding third parties' failure to comply with the railway's requirements.

The Railways Act jurisdiction may be continued in the LPAT Act or the Ontario Land Tribunal Act which state the Tribunal has jurisdiction over all matters conferred on it by that or any other Act. In addition, s. 24(1) of the ONTC Act states that Ontario Northland has all the powers, rights, **remedies** and immunities conferred upon any railway company by *The Railways Act*, but *The Railways Act* does not in other respects apply to the railway and is not binding upon the Commission. The amendment to the ONTC Act and the existing s.24(1) along with the elimination of any specific jurisdiction of a Tribunal to address railway matters creates confusion regarding what jurisdiction the Tribunal actually has over ONR and may result in challenges to the Tribunal's jurisdiction.

With the work on the modernization of the ONTC Act underway, a change in the existing jurisdiction of the Tribunal over Ontario railways would appear to be premature.

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