REPORT

OF

ROYAL COMMISSION

ON

AGREED CHARGES

FEBRUARY 21, 1955

W. F. A. TURGEON
COMMISSIONER

CANADA

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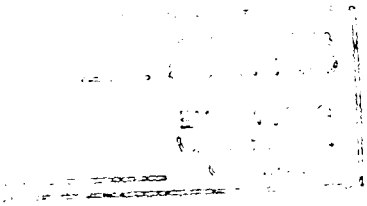

ROYAL COMMISSION ON AGREED CHARGES

1955

HONOURABLE W. F. A. TURGEON, *Commissioner*

G. A. SCOTT,
Special Adviser

C. W. RUMP,
Secretary

ROYAL COMMISSION ON AGREED CHARGES

Ottawa, February 21, 1955.

To His Excellency the Governor General in Council.

MAY IT PLEASE YOUR EXCELLENCY:

I have the honour to hand you herewith my report of the Inquiry conducted by me into the application and effects of agreed charges authorized under Part IV of the Transport Act, pursuant to Order in Council P.C. 1954-760 of May 20th, 1954, and to the Commission issued to me in that behalf on the same date, under the Great Seal of Canada.

Your obedient servant,

W. F. A. TURGEON,
Commissioner.

P. C. 1954-760

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 20th May, 1954.*

The Committee of the Privy Council have had before them a report from the Right Honourable Louis S. St. Laurent, the Prime Minister, representing:

That the Royal Commission on Transportation in its report dated February 9th, 1951, recommended that the Railway Act should 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 territory shall not exceed transcontinental rates by more than one-third;

That pursuant to this recommendation and to give effect thereto, the Railway Act was amended by Chapter 22 of the Statutes of 1951 (second session) by the addition of Section 332B which is now Section 337 of the Railway Act, Chapter 234, Revised Statutes 1952;

That representations have been made by the Government of the Province of Alberta in connection with the approval given on February 11th, 1954, by the Board of Transport Commissioners for Canada of an application of the Canadian Freight Association for approval of an agreed charge on cast iron pipe from Toronto, Ontario, and Trois Rivieres, Quebec, to points in the Province of British Columbia;

That in this case the Board held that upon a proper construction of Section 337 of the Railway Act and Section 32 of the Transport Act the so-called one and one-third rule does not apply to the making of agreed charges;

That these representations in effect request that legislation be introduced to extend the application of the one and one-third rule to the making of agreed charges; and

That it is considered expedient to have an inquiry made into the matter aforesaid.

The Committee, therefore, on the recommendation of the Prime Minister, advise that, pursuant to Part I of the Inquiries Act, the Honourable W. F. A. Turgeon, Q.C., LL.D., a member of the Queen's Privy Council for Canada, be appointed a Commissioner to inquire into the application and effects of agreed charges as may be authorized by the Board under Part IV of the Transport Act, taking into account the aforesaid representations and other relevant considerations, including developments since the Royal Commission on Transportation submitted its report on February 9th, 1951, and to report his findings and recommendations thereon.

The Committee further advise that for the purposes aforesaid the Commissioner shall have the powers vested in, or which may be conferred on, a Commissioner under Parts I and III of the Inquiries Act, and that all departments of the Government Service of Canada shall afford the Commissioner, and persons acting under his authority, all possible assistance and co-operation in the matters of the inquiry.

R. B. BRYCE,
Clerk of the Privy Council.

THE ROYAL COMMISSION

CANADA

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS shall come or whom the same may in anywise concern.

GREETINGS:

WHEREAS The Royal Commission on Transportation in its report dated February 9th, 1951, recommended that the Railway Act should 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 territory shall not exceed transcontinental rates by more than one-third.

AND WHEREAS pursuant to this recommendation and to give effect thereto, the Railway Act was amended by Chapter 22 of the Statutes of 1951 (Second Session) by the addition of Section 332B which is now section 337 of the Railway Act, Chapter 234 of the Revised Statutes of Canada, 1952.

AND WHEREAS representations have been made by the Government of the Province of Alberta, in connection with the approval given on February 11th, 1954, by the Board of Transport Commissioners for Canada of an application of the Canadian Freight Association for approval of an agreed charge on cast iron pipe from Toronto, Ontario, and Trois Rivieres, Quebec, to points in the Province of British Columbia.

AND WHEREAS in this case the Board held that upon a proper construction of Section 337 of the Railway Act and Section 32 of the Transport Act the so-called one and one-third rule does not apply to the making of agreed charges.

AND WHEREAS these representations in effect request that legislation be introduced to extend the application of the one and one-third rule to the making of agreed charges.

AND WHEREAS it is expedient in the public interest to have an inquiry made into the matter aforesaid.

AND WHEREAS Our Governor in Council by Order P.C. 1954-760 of the twentieth day of May, one thousand nine hundred and fifty-four (a copy of which is hereto annexed) has authorized the appointment under Part I of the Inquiries Act, Chapter 154 of the Revised Statutes of Canada, 1952, of Our Commissioner therein and hereinafter named to inquire into the application and effects of agreed charges as may be authorized by the Board under Part IV of the Transport Act, taking into account the aforesaid representations and other relevant considerations, including developments since Our Royal Commission on Transportation submitted its report on the ninth day of February, one thousand nine hundred and fifty-one, and to report his findings and recommendations thereon.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada We do by these Presents nominate, constitute and appoint the Honourable W. F. A. Turgeon, one of our Counsel learned in the law and a member of Our Privy Council for Canada to be Our Commissioner to conduct such inquiry.

To HAVE, hold, exercise and enjoy the said office, place and trust unto the said W. F. A. Turgeon together with the rights, powers, privileges, and emoluments unto the said office, place and trust, of right and by law appertaining, and as more particularly set out in the said Order in Council, during Our pleasure.

AND we do hereby authorize Our said Commissioner to have, exercise and enjoy all powers conferred upon him under Parts I and III of the Inquiries Act.

AND we do hereby require all departments and agencies of the Government of Canada to furnish to Our said Commissioner all possible assistance and co-operation in the matter of the said inquiry.

IN TESTIMONY whereof we have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS: The Honourable James Wilfred Estey, Puisne Judge of the Supreme Court of Canada and Deputy of Our Right Trusty and Well-beloved Counsellor, Vincent Massey, Member of Our Order of the Companions of Honour, Governor General and Commander-in-Chief of Canada.

At Our Government House, in Our City of Ottawa, this Twentieth day of May in the year of Our Lord One thousand nine hundred and fifty-four and in the Third year of our Reign.

By Command,

C. STEIN,

Under Secretary of State.

REPORT OF

ROYAL COMMISSION ON AGREED CHARGES

This inquiry concerns aspects of railway law and practice. It originated in a request made in March, 1954, by the Government of Alberta to the Government of Canada for the introduction of legislation with the object of applying to agreed charges, made under Part IV of the Transport Act, the rule, known as the one and one-third rule, established by Section 337(2) of the Railway Act in the case of transcontinental competitive rates. The rule provides for maximum tolls to what is called "intermediate territory" in the case of all tariffs publishing such competitive rates.

For the purpose of freight tariffs Section 337(1) of the Railway Act divides Canada into three zones:

"(a) 'eastern territory' means any point on a line of railway east of Port Arthur, Ontario, or Armstrong, Ontario;

(b) 'western territory' means any point on a line of railway in British Columbia to which competitive transcontinental tolls apply;

(c) 'intermediate territory' means any point between eastern territory and western territory on any line of railway; and

(d) 'transcontinental freight traffic' means freight traffic (i) having its origin in eastern territory and its destination in western territory, or (ii) having its origin in western territory and its destination in eastern territory."

The one and one-third rule was enacted in pursuance of a recommendation made in the report, dated the 9th of February, 1951, of the Royal Commission on Transportation which was constituted on the 28th December, 1948. The recommendation and the consequent enactment were intended to remedy a situation which, for many years, had given rise to controversy between the railways, on the one hand, and the consumers and distributors in intermediate territory (especially in Calgary and Edmonton) on the other.

In order to meet water competition at Pacific ports the railways maintained competitive rates from eastern territory to those ports which were generally much lower than the rates applied for the same kind of traffic on the shorter haul to intermediate points where there was no competition. They defended this practice on the ground that, without these low, competitive rates, they would lose the whole of this coast-bound traffic, while through them they secured at least a portion of it, and that the traffic they did so secure was remunerative because it furnished sufficient revenue to cover the out of pocket costs of the haul and to make, in addition, some contribution, however small, to the overhead expenses of the railway. As to the rates to intermediate points, they said that these were just and reasonable in themselves, that in the absence of carrier competition there was no valid reason for reducing them, and that they could not properly be compared to or measured by rates set to meet competition. The complainants admitted the soundness of this contention in part only; they persisted in objecting that the difference between the intermediate rates which they had to pay and the transcontinental competitive rates was so great as to constitute an unjust discrimination against them. The rule enacted in 1951 was intended to meet this complaint. It provides that no intermediate rate can exceed the transcontinental competitive rate by more than one-third. Its full context is as follows:

"(2) Tariffs naming a competitive toll for any transcontinental freight traffic shall provide that

(a) the toll for freight traffic having its destination at a point in intermediate territory, and

(i) having its origin at the same point in eastern or western territory,

(ii) being of the same description, and

(iii) carried in the same direction and under the same conditions and arrangements as to weight and otherwise,

as the transcontinental freight traffic for which the competitive toll is named, shall not exceed by more than one-third the competitive toll so named to the point of destination in eastern or western territory, as the case may be, nearest to the point of destination in intermediate territory; and

(b) the toll for freight traffic having its origin at a point in intermediate territory, and

(i) having its destination at the same point in eastern or western territory,

(ii) being of the same description, and

(iii) carried in the same direction and under the same conditions and arrangements as to weight and otherwise,

as the transcontinental freight traffic for which the competitive toll is named, shall not exceed by more than one-third the competitive toll so named between such point of destination and the point of origin in eastern or western territory, as the case may be, nearest to the point of origin in intermediate territory."

This statutory provision was acceptable to the complainants but the railways claimed that it imposed upon them too great a sacrifice of revenue by the reduction of their rates to intermediate territory. Some time after the adoption of the rule they revoked some of their transcontinental competitive rates and increased others, thus showing their willingness to abandon the transcontinental traffic rather than accept the enforced reduction for the shorter haul.

The situation remained unsatisfactory for some time. Finally the railways took steps to overcome their difficulty by substituting agreed charges for competitive rates on transcontinental traffic. They began this new practice in March, 1953, by entering into an agreed charge with the Canada Iron Foundries Limited and the National Iron Corporation Limited for the shipment of pipe, cast iron, and fittings for same from Toronto and Trois Rivieres to Prince Rupert, Vancouver and Watson Island, B.C.

When this agreed charge came before the Board for approval it was opposed by Counsel for the Province of Alberta, the City of Edmonton and the Edmonton Chamber of Commerce. Besides asking that the application for approval be rejected, counsel argued, alternatively, that if the agreed charge were to become effective it should be deemed to be a competitive rate within the meaning of Section 337(2) of the Railway Act and subject therefore to the one and one-third rule. This contention was rejected by the Board and no appeal was taken to the Supreme Court on the question of law involved. Instead, the Government of Alberta, as stated above, asked the Government of Canada to have the legislation amended so as to apply the rule to all agreed charges to the West Coast. The Government of

Canada, having considered the representations so made, decided that action should be deferred until the matter had been investigated. So it is that the introductory part of the Order in Council, after setting out the facts brought to the notice of the Government by the Government of Alberta, concludes by saying:

> "That these representations in effect request that legislation be introduced to extend the application of the one and one-third rule to the making of agreed charges; and
>
> "That it is considered expedient to have an inquiry made into the matter aforesaid."

Up to this point the Order in Council deals only with the proposal to apply the one and one-third rule to agreed charges. But its next paragraph extends the scope of the inquiry far beyond this narrow field. It instructs me, as Commissioner:

> "To inquire into the application and effects of agreed charges as may be authorized by the Board under Part IV of the Transport Act, taking into account the aforesaid representations and other relevant considerations, including developments since the Royal Commission on Transportation submitted its report on February 9th, 1951....."

And the Order in Council goes on to say that I am to report my findings and recommendations on all these matters.

The effect of this language was to put under review the whole subject of the agreed charge method of rate-making, including the course it has followed from its inception until now, the effect it has had upon various business interests, and the question whether it should be retained in our freight rate system either in its present form or in a different form better suited to present conditions of transportation. The announcement of the inquiry brought forth representations from the railways, the steamship lines, certain Provincial Governments, truckers, shippers and other persons and districts affected one way or another by the practice of agreed charges.

The inquiry began by the holding of a meeting in Ottawa on September 13th, 1954, which was attended by representatives of the interested parties. The discussion at this first meeting helped to bring out the issues involved and the attitude in respect to them taken by those intending to follow the inquiry. In October regional meetings were held in Winnipeg, Regina, Edmonton and Vancouver at which preliminary representations were submitted on behalf of the Governments of the four Western Provinces and by a number of shippers and associations representative of shippers and of other business interests. The final public sittings which I held took place in Ottawa beginning on the 2nd November and ending on the 21st December. In all, thirty-nine sitting days were devoted to the inquiry.

The following Counsel took part in the proceedings:

Hugh E. O'Donnell, Q.C.	Canadian National Railways
N. J. MacMillan, Q.C.	" " "
W. G. Boyd	" " "
H. J. G. Pye	" " "
A. H. Hart	" " "
John L. O'Brien, Q.C.	Canadian Pacific Railway Company
F. C. S. Evans, Q.C.	" " " "
K. D. M. Spence	" " " "
G. P. Miller	" " " "

C. W. Brazier, Q.C.	Province of British Columbia
H. E. B. Coyne, Q.C.	Canadian Canners Limited
Dean F. C. Cronkite, Q.C.	Province of Saskatchewan
W. B. Francis, Q.C.	Saskatchewan Federated Co-operatives Limited
J. J. Frawley, Q.C.	Province of Alberta
T. E. Garside, Q.C.	City of Edmonton
Hazen Hansard, Q.C.	Canada Steamship Lines Limited Canadian Iron Foundries Limited Dominion Steel & Coal Corporation
F. R. Hume, Q.C.	Canadian Trucking Associations
M. L. Rapoport	" " "
D. H. Jones	Great Northern Railway Company
Nicol Kingsmill	New York Central Railway System
MacDonald Millard, Q.C.	Calgary Chamber of Commerce City of Calgary
R. E. Moffat	Manitoba Federation of Agriculture and Co-operation
Gordon S. Nisbet	International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
H. L. Rowntree	Canada Packers Limited
C. D. Shepard, Q.C.	Province of Manitoba
F. D. Smith, Q.C.	Maritimes Transportation Commission
S. Bruce Smith, Q.C.	Edmonton Chamber of Commerce

A list of the Briefs submitted and of the witnesses who appeared will be found at the end of this report.

I think that my best course, in entering now upon the consideration of the recommendations which I should make, will be to adopt the order of procedure that was followed in the submission of evidence and argument at the final sittings in Ottawa. We will thus come at once to the essential question of the Inquiry: having regard to past experience and to the views put forward by all interested parties, what policy should be pursued from now on in respect to agreed charges?

This brings us to the case of the railways, that is the Canadian National Railways and the Canadian Pacific Railway Company. The railways show that they are in a bad way financially; their revenue has been declining, they have exhausted the possibilities of bettering their position by general freight rate increases, and the only practical recourse left to them is to secure by all fair means a larger share than they are now getting of the traffic which is offered for transportation. For this purpose they look upon the practice of agreed charges as a potent instrument. It provides a procedure for ratemaking which was unknown in railway practice until it was created in the United Kingdom in 1933. Up to that time, in that country as in Canada, all tariffs of tolls were published by the railways in such a way as to leave shippers free to take them or (especially in recent years) to use them merely as standards by which they could bargain with other classes of carriers for more advantageous treatment. Even the lowest competitive rates did not ensure to the railways any fixed proportion of the traffic for which they bid. For the first time in railway history the agreed charge procedure enabled the railways to approach a shipper or a group of shippers and to enter into a contract for the transportation, during a stated period, of all, or of any ascertained part, of the goods to be shipped for a charge agreed upon between the parties.

The railways point out that Parliament enacted this agreed charge legislation in 1938 for the express purpose of helping them to cope more effectively with carrier competition, especially truck competition, which was making serious inroads upon their business by methods which they themselves were prevented from following by the restrictions of the Railway Act. The record shows that this new practice has been of valuable assistance to the railways, and it will be appropriate to quote here some figures which will tell how it has been applied and what effect it has had on revenue.

The report of the Royal Commission on Transportation already referred to says at page 88 that, between the coming into force of the Transport Act in 1938 and the end of the year 1950, 45 agreed charges had been made, 38 of which were to meet highway competition and 7 to meet water competition. Of this number 23 were in force on December 31st, 1950, involving 73 shippers. The gross revenue produced by agreed charges for the two major railways in 1950 was estimated at approximately $10 million.

The present record shows, that by the end of 1954, 35 additional agreed charges had been made raising the total since 1938 to 80. Of these agreed charges 51 were in force on December 31st, 1954 and the number of shippers concerned was 202. The railways' gross revenue from this source in 1954 was estimated at $20,627,820.

The growing importance of agreed charges in the revenues of Canadian railways is indicated in the following tabulation which shows the dollar value of agreed charge revenue and the percentage of agreed charge revenue to total revenue.

Year	Estimated Revenue from Agreed Charges for a full year	Percentage Agreed Charge Revenue is of estimated Total Revenue for a full year
1949	$ 8,420,437.50	2.4%
1951	10,910,136.00	2.5
1952	12,239,388.00	3.5
1953	16,061,535.00	4.4
1954	20,627,820.00	6.2

It will be of interest to note that the estimated revenue from agreed charges in 1954 represents an increase of more than 25 per cent over the figure for 1953, despite the fact that the overall revenues of Canadian railways showed substantial declines in 1954 as compared with 1953.

But the railways say that, while the agreed charge practice has proved helpful to them, they have been hampered in having recourse to it by the procedure (they call it the "shackling" procedure) which they are compelled to follow in each case. They ask for greater freedom of action in the bringing into effect of an agreed charge. Under the present practice every agreed charge must receive the approval of the Board of Transport Commissioners for Canada before it becomes effective. Persons who are not parties to the charge may file objections to it. This calls for a hearing by the Board. Thereupon all parties acquire, practically, the status of litigants. Witnesses must be heard; questions of law and of fact, of substance and of procedure, are raised and must be determined; delays are inevitable, and sometimes the Board is unable to dispose finally of the application for approval until much time has gone by. Meanwhile the agreed charge contract stands in abeyance. It is hard, the railways say, to get shippers to enter into a contract under these conditions. They ask for a procedure which will make an agreed charge effective, without having to be submitted to the Board for approval, at the end of a short period (they suggest 15 days) after notice of it has been filed with the Board and published.

I will consider in detail later on the amendments to the present legislation which the railways have submitted for giving effect to the procedure which they wish to have adopted.

Some of the other parties concerned expressed themselves as being opposed to the practice of agreed charges and asked to have it abolished; others agreed that the practice should be continued but subject to conditions which differ, more or less in each case, from those proposed by the railways. I will consider these various submissions as I go along.

I come back to the position of the railways.

It is true that our railways are in a very adverse financial condition. Moreover, prospects for the near future do not appear hopeful. These facts have received much publicity in recent months and much stress was laid upon them at the inquiry by high ranking officers of the companies concerned. A few quotations from their evidence will define the position.

Mr. S. W. Fairweather, Vice-President of Research and Development, Canadian National Railways, said on November 10th, 1954:

> "Q. At this particular time, Mr. Fairweather, could you make some observation as to the condition of the railway industry, as to its health or otherwise?
>
> A. I think that anyone who gives any consideration to the railway industry in Canada could come to no other conclusion but that it is a sick industry. It is not a healthy industry. I think, too, that no one could give consideration to this problem without realizing that a sick railway industry is not good for the people of Canada. I think, too, that if you go further into the subject you will find that the sickness of the railway is not due to any fundamental defect of the railway as a functioning organization. It is a strange thing that, notwithstanding all this, railway net revenues keep sliding away, sliding away, despite all the technological improvements that are put into effect. The problem of producing enought net revenue to meet the overhead costs of the railway is becoming increasingly more difficult. The fact that in a year where we have suffered only a slight decline in industrial output, the Canadian National Railways is forced, as it will likely be forced this year, to admit an income deficit running better than $20 million, makes one pause and consider, especially when one considers that it is only recently the capital structure of the Canadian National was adjusted to a basis upon which it was supposed to earn its keep one year with another....."

And Mr. Fairweather added:

> "Our drop in revenue this year as compared with last year is of the order of $50 million. I do not think I am going beyond the case when I say that the outlook for 1955 is for an even poorer showing. I would say that 1955 will probably produce gross revenues somewhat lower than in 1954, and that would be true in my view, even if there is no further drop in industrial production in Canada."

At about this same time the newspapers quoted Mr. Donald Gordon, President of the Canadian National Railways, as having said in a speech at Toronto on November 4th, 1954:

> "Present indications are for a revenue decline in 1954 of not less than $60 million below 1953. Despite far-reaching efforts to reduce costs, it is likely that we shall fail to meet our interest charges on outstanding debt by at least $25 million."

For the Canadian Pacific Railway Company, Mr. C. D. Edsforth, Assistant General Traffic Manager, said in his evidence, on November 3rd, 1954:

"MR. SPENCE: Now, what is the revenue position of the Canadian Pacific, Mr. Edsforth, at the present time? Have you made any estimate of what the revenue will be for 1954 or what the variation, what the change in revenue will be?

MR. EDSFORTH: Yes, we have made an estimate as recently as last September, and on the basis of our estimate it would appear that we will have an overall reduction in our gross revenues in 1954 as compared with 1953 of something in the neighbourhood of $50 million. Our reduction to the end of September this year is slightly over $39 million. That is all revenue, not just freight alone; that takes in the other categories too."

(NOTE: Since the close of the Inquiry I find that the Canadian Pacific Railway Company has issued a statement dated January 28, 1955, showing that through a heavy reduction in working expenses in 1954 the decrease in their net earnings for that year as compared with those of 1953 are of the relatively small figure of $1,851,646. The figures given in the Canadian Pacific Railway Company's statement are as follows:

From January 1	1954	1953	
Gross Earnings	$422,642,423	$470,571,371	$47,928,948 decr.
Working Expenses...	395,609,497	441,686,799	46,077,302 decr.
Net Earnings	27,032,926	28,884,572	1,851,646 decr.)

"MR. SPENCE: Has there been a heavy decline in revenue in any particular part of the traffic of the railway?

MR. EDSFORTH: Yes, there has been. There has been quite a heavy decline in revenue from grain and grain products all over Canada, not only in the West but in the East as well. There has also been a very noticeable decline in our revenue from manufactured goods, that is quite substantial.

MR. SPENCE: Yes. The decline in revenue on grain traffic is not due to competition, I suppose?

MR. EDSFORTH: No, that is due to world market conditions.

MR. SPENCE: Yes, but is the category of manufactured goods one that is subject to competition?

MR. EDSFORTH: Very much so. That is, I would say, perhaps the most subject to competition. That has been our experience so far.

MR. SPENCE: Is that high rated traffic, would you call it?

MR. EDSFORTH: Generally speaking it is, for the greater part. There are some things in there that are not but mainly your manufactured goods are the high rated commodities, as we call them....."

As to the impracticability of relying for increased revenue upon higher freight rates I find that the Board of Transport Commissioners for Canada made the following statement in a judgment they rendered on February 15th, 1954:

"As a result of these recent rail traffic trends, we are now more strongly than ever of the opinion that the long succession of general freight rate increases, mainly due to added costs of labour which is the largest single factor

and to increased costs of materials, has brought about a loss of traffic by the railways to competing modes of transport not only of traffic which the railways formerly regarded as vulnerable because it was highly competitive, but a loss as well of traffic which was formerly non-competitive but which has now become subject to competition by reason of the aforementioned long succession of rate increases. Thus the law of diminishing returns is now, in the inexorable economic sense, beginning to assert itself. We are convinced therefore that, unless the several underlying conditions adversely affecting the railway industry in general changes markedly for the better, means other than general rate increases imposed on the basis of the past will have to be found in the future if the railways of Canada are to be maintained in a healthy operating position.

"One of the most obvious and immediate means of meeting a downward trend in traffic is to effect savings in operating costs. As we have seen, both of our major railways through a modernization programme, and particularly by dieselization, are seeking to effect savings in operating costs. Because of declining rail traffic volume, the railways are also making on a unit basis expenditure reductions in certain segments of the current maintenance programme, but to the extent that such unit basis curtailment only amounts to deferment, it may not be looked upon otherwise than with misgiving."

The latter part of this statement in the Board's judgment calls attention to the possibility of the railways helping themselves out of their difficulties by effecting savings. These remarks lead to further considerations. For instance, circumstances indicate that we are now in a period where recourse might be had to increased co-operative action under the Canadian National — Canadian Pacific Act, 1933. In the report of the last Royal Commission on Transportation beginning at page 219, a chapter is given to this subject. When that report was written the railways were operating under a steady growth in the volume of traffic and at the same time freight rates were being increased. Conditions today are very different and should be more conducive to economy. Among other things the report said:

"2. At the time of enactment economic conditions and the tactics of the two railways fully justified the legislation.

3. The results achieved under the Act have been two-fold: (i) economies have resulted which exceeded a million dollars a year in the 1930's: (ii) the railways have been deterred from damaging and wasteful competition. In judging of the success of the Act both results must be considered.

4. The possibility of making further economies is restricted by the growth which has taken place in the volume of traffic; but the importance of preventing extravagant competition remains. No one appearing before this Commission recommended or favoured the repeal of the Act."

So the Commission recommended that the Act be kept in force and that the annual report of its operation should contain greater detail than theretofore in respect to the results achieved. For instance, this annual report must now show:

"(vi) An estimate of the annual value, having regard to the traffic conditions and cost of railway operations obtaining at the time of the report, of continuing co-operative measures, such as the pooling of trains."

During this Inquiry I questioned Mr. S. W. Fairweather about action taken under the Act. He said that certain studies of co-operative measures of economy are now in hand between the two railways and that, at the same time, his company (Canadian National Railways) is engaged in working out substantial economies within its own organization.

Returning now to the unfavourable financial position of the railways, I think everybody will admit the accuracy of Mr. Fairweather's observation, quoted above, that "a sick railway industry is not good for the people of Canada". Not only do we need good service from the lines we have, but our country's present and future development calls for the building of new lines. This task will, of course, be carried on mainly by the Canadian National Railways. To illustrate what is actually going on, I cannot do better than to quote a press summary published on January 17th, 1955, of Canadian National Railways extension activities now under way or completed recently:

> "The C.N.R. has forecast it will complete construction of a 27 mile branch line in Ontario this year and a 158 mile branch line in Quebec by the end of 1956.
>
> A return tabled in the Commons today said a 27 mile line from Hillsport to Manitouwadge Lake, Ontario, is expected to be ready for operation by December 1, 1955. The line is being built at a cost of $4,312,500.
>
> The railway said it expects to complete 45 miles of a line from the south-west end of Lake Cache to Beattyville and Chibougamau, Quebec, this year and the remaining 113 miles in 1956. The line will cost about $11,050,000.
>
> The return said the date for completion of a 46 mile line from Terrace to Kitimat, B.C. has been extended to December 31, 1955. Originally the target date was November 1 last. About 41 miles of line, being built at a cost of $11,500,000 now have been finished.
>
> A branch line from Sheridon to Lynn Lake, Manitoba, was completed December 31, 1954, and began regular operations January 1. The 152 mile line cost $16,933,750.
>
> The railways said $500,000. will be spent this year improving freight terminal services on the Island of Montreal. The work will form part of a $10,000,000 modernization project authorized in 1951. A total of $167,528. was spent in 1954 and expenditures since 1951 amount to $1,068,654."

And Canada's outlying regions, rich in natural resources, will continue to call for the building of railways as well as roads.

Moreover, our country's dependence for its social and economic life on efficient and continuous railway service has been made evident by events of recent years and recent months. The provisions of the Statute enacted on the 30th August, 1950 (14 Geo. VI Chap. 1) to put an end to a railway strike which was paralyzing the country, bear witness to the importance which Parliament attaches to the maintenance of stability in the operations of the railways themselves and of their subsidiary services.

It is apparent therefore from the foregoing recital of existing conditions that, at this time, careful consideration must be given to whatever suggestions the railways themselves have to make for action by legislation which will enable them to improve their position as earners of revenue and thereby continue to perform with due efficiency the task which the national interest imposes upon them. What they are asking for is a free hand for action in certain directions. They realize that, in present conditions, they cannot prosper by waiting for business to come their way under fixed regulations as it did when they had practically a monopoly of transportation. They ask to be relieved from certain handicaps in order to be able to engage freely in the pursuit of business in a large and growing competitive field. In so far as this can be done without injustice to others, I think appropriate action should be taken.

The railways see in the sphere of activity opened up by the agreed charge method of rate-making the possibility of achieving results which will contribute considerably to the improvement of their financial position. But they say that these results can be obtained only if certain reforms are made in agreed charge procedure.

The confidence expressed by the railways in the success of the activities which they intend to pursue if they get what they are asking for, and consequently their great expectations in the way of increased earnings, may cause some surprise among those who do not possess the familiar knowledge of the incidence of transportation practice which must be attributed to experienced railway management. In considering what recommendations I am to make I must assume that the proposed reforms are capable of producing the impressive results hoped for by those who advance them.

Therefore the practice of agreed charges has become an important factor in the study of the means of relief which ought to be given to the railways.

Before proceeding to deal more particularly with the legislative action which should now be recommended, I think it well to outline as briefly as possible the development of the situation in which the transportation industry finds itself today.

Since the end of the war (1945), as the following statistics show, the general economy of Canada has been rising at a steady rate. During the same period, railway traffic increased steadily until 1953 and thereafter showed a reduction.

GROSS NATIONAL PRODUCT AND RAILWAY TONNAGE CARRIED

1945 - 1954

	Gross National Product at Market Prices	Gross National Expenditure in Constant Dollars, 1935-1939=100	Canadian Pacific and Canadian National Railways Total Tons Carried (combined)
	Million Dollars	Million Dollars	Million Tons
1945	11,850	9,315	122.6
1946	12,026	9,045	117.4
1947	13,768	9,165	130.5
1948	15,613	9,438	130.7
1949	16,462	9,722	121.7
1950	18,203	10,330	120.5
1951	21,450	10,935	136.1
1952	23,185	11,646	138.7
1953	24,350	12,090	132.5
1954	23,900 (P)	12,200 (P)	120.6
	INDEX (1945=100)		
1945	100.0	100.0	100.0
1946	101.5	97.1	95.8
1947	116.2	98.4	106.4
1948	131.8	101.3	106.6
1949	138.9	104.4	99.3
1950	153.6	110.9	98.3
1951	181.0	117.4	111.0
1952	195.7	125.0	113.1
1953	205.5	129.8	108.1
1954	201.7	131.0	98.4

(P) Preliminary figures supplied by Dominion Bureau of Statistics.

Since the railways have been performing more and more transportation service it might have been expected that this would result in a satisfactory revenue position. We find, however, that in both gross and net revenues the railways have not only failed to keep pace with general business activity but that their revenue position has actually deteriorated.

The railways being so essential a part of our economic life, one might well wonder why it is that they find themselves in the acute position of which they complain. I think this question can be answered, in part, by a brief study of the conditions under which our railways earn their revenue.

It is an understandable necessity that the railways must obtain sufficient revenue to meet their costs of providing transportation service. As the bulk of the railway traffic was carried at relatively low commodity rates, it was early appreciated that the general revenue level would have to be raised by applying higher rates on traffic of greater value so that the railways' operating costs would be balanced against their gross revenues. In other words, the low rates were balanced by higher rates on other commodities, if they could be levied. To accomplish this objective the rate structure was made to resemble a sliding scale based largely on the principle of what each type of traffic could afford to pay, rather than on the actual cost incurred in its movement. Therefore, while one commodity may have paid a rate as high as 20 cents per ton mile, other commodities, which cost equally as much to move, paid substantially less. Under such a system it is clear that, unless affected by other factors, the situation was somewhat self-governing. On the one hand, too high rates impeded the flow of traffic, while, on the other hand, too low rates resulted in inadequate railway revenues. Whatever may have been the particular shortcomings of a rate structure which might produce this result, the fact remains that it was essentially based on Canada's needs, because it was related to the movement, largely for export, of the products of our basic industries.

On a cost basis there may be said to be three rates applicable to any shipment. The first, and highest, is a rate which would return to the railways the direct or "out of pocket" cost of providing the service plus an equitable share of the overhead costs which the railway must necessarily incur, but which are not specifically identified with any particular traffic. These two items, direct cost plus a share of overhead costs, make up the total cost. There is little or no possibility of the railways being able to establish rate scales in which the rates for individual traffic movements would exactly cover the total costs of such movements. In practical application the upper rate limit is either what can be obtained in the face of other transportation competition, or if such competition does not exist, by looking to the value of the service rendered. In this latter case the rate would be of course a maximum rate to the shipper. Therefore, from a consideration of the respective interests of the shipper and the railway, a rate will generally be fixed somewhat below this ceiling so as to allow the largest possible volume of traffic to move with the greatest benefit to railway and shipper alike.

The second, and lowest, rate would be one which would return to the railway only the direct cost of providing the service, in other words the out of pocket cost. Certainly the railways could not long operate if they recovered only the out of pocket cost of doing business.

Between these two extremes there lies a wide margin within which will be found what I may call the third rate, that is, one which covers the out of pocket costs and in addition makes varying contributions, although less than in the case of the first and highest rate, towards the overhead expenses of the railway. It is within this margin that the majority of railway rates fall.

So long as the railways had a monopoly of inland transportation the broad basis of the rate structure was reasonably satisfactory. But during the past twenty years the railways have lost their monopoly position. No longer can they obtain increased revenues from the high value commodities as an offset to the lesser revenues obtained from the low-value commodities, because a substantial volume of the high-value commodities are now moved, or have the option of being moved, by highway transport. Thus that part of the traffic wherein the high-value commodities lie has ceased to be a monopoly and has become intensively competitive; but the railways are required to charge for their services within a regulatory framework which restricts their ability to meet the competition effectively.

If one bears in mind that motor transport may be profitably operated at ton-mile rates substantially less than the ton-mile rates by rail at the upper end of the rate scale, it is apparent that the truck operator can establish a rate below that quoted by the railway but sufficiently above truck costs to make the service profitable to him. Therefore, while the railway has established these high rates under near monopoly conditions in an effort to reach a satisfactory average revenue from all traffic, the high rated traffic under competitive conditions may move by motor truck at a lower rate.

This condition sets limits to the degree by which low rates applied on low-value commodities can be offset by higher rates on other types of traffic. And, as the highway system has expanded and more suitable truck facilities have developed, so, actual and effective competition between the railways and the highways has increased. The result is a loss to the railways in depleted traffic generally accompanied by reduced earnings from so much of the competitively rated traffic as remains with them.

It may be urged that the solution to a situation such as this would be the raising of the rail rates at the lower end of the scale, that is, upon such low-value commodities as coal, gravel and other basic raw materials. It is doubtful that such a proposal would meet any degree of acceptance, or that it would be of benefit to the railways or to the country at large. It seems desirable that the maintenance of low railway rates on low-value traffic in the non-competitive field should be a prime requirement of the rate structure.

I do not submit the foregoing as a detailed explanation of "the railway problem", but only as an indication of certain features of the freight rate structure which are basic to the matters before me. I think it evident that it must be borne in mind that, as appears from the foregoing, the railways have been compelled to operate most of the time under comprehensive regulation which was designed originally for conditions specifically different from those existing today. Basically it was the regulation of monopoly in the public interest. With the exception of water transportation, where such existed, the shipper had no other carrier to which he could turn for service. As such, the regulation recognized only such competition as would occur between different rail carriers and between rail and water carriers. It did not recognize a situation wherein the railways would be faced with active and intense competition for a particular part of its traffic, the high rated traffic. Today the railways operate under two different sets of conditions: one, where they still have a monopoly and present regulation remains suitable; the other, where they are faced with intense competition, and present regulation puts them in an unfair position because it binds them almost as closely as it did in the time of their monopoly.

Before leaving this subject of the unsatisfactory situation which exists today, it is interesting to note what the railways say of it from the broader economic point of view. They contrast the average costs of operation of rail and highway carriers and submit that the "true economic cost" of truck transportation is probably four or

five times that of rail transport. The failure of the railways to hold their own in spite of this apparent cost advantage is ascribed to the admitted superiority of highway service and costs on some traffic, the obsolete rate structure of the railways constructed for use under monopoly conditions and the restrictive effect of regulation which hampers the railways in adjusting their rates and services to meet modern competitive conditions. The railways contend that the result of handicaps so placed on them is an uneconomic distribution of the available traffic among the various competing transport agencies, so that much traffic which could be handled more economically by rail has been transferred to the highways. Mr. Fairweather testified that in his opinion the economic waste resulting from this process is as high as $150,000,000 per annum.

I now approach the subject of agreed charges, but I think it well to say at the outset that I am not overlooking the fact that for many years the railways have been able to have recourse, in the field of competition, to the use of what are called competitive rates. I have already mentioned this. These competitive rates have been used to meet both water and truck competition right down to and including, for instance, the much publicized action which was taken in 1954 to cope with truck competition between Montreal and Toronto. In transcontinental traffic, where the competition to be met was not truck competition, recourse continued to be had to competitive rates (and not agreed charges) until 1953. And, whatever may be done as a result of this report, the practice of competitive rates will no doubt continue to be available to the railways.

But it was recognized in 1938 that the use of competitive rates did not suffice to arm the railways against the competition of the trucks. It was in that year that the Transport Act was passed with the particular intent of giving the railways a new weapon to meet such competition. The situation which, in the opinion of the Government, called for action, was described in the following language by the Minister who introduced the bill which legalized the practice of agreed charges:

> "We have in this country at the present time an intolerable situation, in that our railway tariffs are the barometer for what other forms of transportation may charge. We have built up over the years a rate structure which I think we all believe is absolutely essential to the well-being of Canada. The basis of that rate structure is that low-priced commodities shall be carried at a low rate, and that the natural products of our country, particularly those of our prairies, shall be carried the great distances to our seaboard at export rates, which are undoubtedly the lowest on this continent. I believe Canada has the lowest ton mile rates of any country in the world.
>
> "To permit our railways to carry these commodities long distances at exceedingly low rates, it was necessary that the structure provide that the rates on commodities of a greater value and moving shorter distances should be proportionately higher. The rate structure having been built on that basis, the result is vulnerable to competition from motor trucks. These motor trucks are interested only in high-grade commodities, and serious inroads have been made in the tonnage of these commodities carried by the railroads. The railroads have attempted to meet that competition by a general reduction in commodity rates, that is, by applying competitive tariffs.....
>
> "But in the matter of rates the railway is, in the long run, helpless. For instance, a large manufacturer or dealer in an important railway commodity can go to the railway and say: 'I have been offered a certain rate for movng my business by truck. I prefer to move by railway, but you must meet that truck rate.' The traffic officers give the matter some study and find that it is in the interest of the railway to retain that business, and so say to the shipper:

'We will meet the rate; we will cut our tariff to hold your business'... But that does not hold the business at all. It may hold it for a while; but after a few months the trucker may come back and say: 'I have worked out my schedules so that I can now cut that rate again, and I will take your business.' The railway having gone as far as it could go, cannot cut its rate again and so must say to the shipper: 'Very well; we throw up our hands; move your business by truck'.

"I claim, Mr. Speaker, and we all know, that the railways are capable of moving a ton-mile of freight at a cheaper rate than any other mode of transportation except the bulk carriers, and it seems to me that having that fundamental advantage the railways should be placed in a competitive position where they can reap the benefit of that fundamental advantage. It seems to me hardly fair to make the railways forever the regulator of rates on highway traffic. We have a good many cases before the Railway Board for tearing up branch lines on which all the traffic has been lost to the trucks. Of course, when we attempt to take up such a branch line, we have serious objections from shippers all along the line, even though they are not users of the railway. The basis of their objection is not that they need the railway themselves for moving their goods; but they say: 'We need the railway to regulate truck rates; do not leave us at the mercy of the truckers'. Surely it is not reasonable to ask that the railways be maintained merely to set a rate under which trucks must operate to take competitive business.

"Great Britain had this trouble perhaps to a greater extent than Canada, because their distances are shorter and a larger proportion of railway business there is vulnerable to truck competition than would be the case in Canada. In the old country the principle of agreed charges has been adopted and applied, and I am told that after a thorough trial the British people are well satisfied with agreed charges as a means of straightening out their transportation difficulties. My deputy minister spent some months in England within the last year studying the question. He made a thorough report on the subject, and I was convinced by his report that our earlier information was correct and that agreed charges are working out to the benefit of the public as well as of the transportation industry itself. I urge that every member give some study to the question....."

This statement of Government policy and the measure introduced to give it effect, (enacted as Part IV of the Transport Act) aroused the keen opposition of the trucking industry as was naturally to be expected. The industry's spokesmen expressed the belief that the operation of the agreed charge practice would bring about their ruin — a misfortune not only for them but also for the shippers who would thus be deprived of the benefit of competition. When the last Royal Commission on Transportation was called upon to consider an application by the railways for a freer and easier procedure in the making of agreed charges, the truckers again appeared and opposed the application on the grounds that they had advanced against the original legislation in 1938. And on this present occasion the Canadian Trucking Associations argued before me once again, not only that the railways' request for a freer procedure should be rejected but that Part IV of the Transport Act should be repealed, thus abolishing the agreed charge even in its present restricted form. It will be well, therefore, to review the position of the trucking industry as it was in 1938 and as it is today in order to see whether there is any evidence of the great damage which the industry feared to see happen through the effect of agreed charges.

The evidence before me shows that the number of motor truck registrations in Canada was 220,109 in 1938, 616,071 in 1950 and 824,159 in 1953. It also shows that the number of trucks of large capacity has increased considerably. In 1945

there were 24,857 trucks of more than 5 ton capacity to be compared with 56,203 of these in 1953. The number of trucks of over 10 tons capacity in 1945 was 1,848 and this figure had risen to 18,166 in 1953.

It must be pointed out that by far the greater part of the 824,159 motor trucks registered in 1953 were what are called "private" trucks, which means trucks owned and operated by firms who do their shipping with their own vehicles. The practice of agreed charges cannot affect them prejudicially. The only way the railways can make use of the practice in so far as these firms are concerned is by convincing them that it would be to their advantage to discontinue trucking and to contract for the shipment of their goods by rail. This was done, for instance, in the case of Agreed Charge No. 48 effective April 1st, 1952, between Canadian National Railways, Canadian Pacific Railway, Northern Alberta Railways, the Winnipeg River Railway and Imperial Oil Limited and North Star Oil Limited on petroleum products; and Agreed Charge No. 49, effective October 1st, 1952, on lubricating oils and greases and petroleum products between Canada Steamship Lines Limited, Canadian National Railways, Canadian Pacific Railway, Chesapeake & Ohio Railway Company (Pere Marquette District), Northern Alberta Railways, Northern Navigation Company Limited, Northwest Steamships Limited, Ontario Northland Railway and the British American Oil Company Limited, Canadian Oil Companies Limited, Imperial Oil Limited and McColl Frontenac Oil Company Limited.

In so far as the "for-hire" truckers are concerned, (those who make up what is called the trucking industry, who form themselves into associations, and who are hostile to the railways' practice of agreed charges) they account for about 65,000 trucks out of the total number registered, with some 15,000 operators, and they represent a capital investment which may be estimated at somewhere between $250,000,000 and $300,000,000. Some of these trucking companies have developed into what may be called large scale motor carriers. One of them, for instance, is reported as having 1482 units comprised of 310 trucks, 350 tractors, 800 trailers and 22 service vehicles.

In 1938 this for-hire trucking industry was represented by about 16,000 trucks as compared with the 65,000 in 1953.

I think it will help to a better understanding of the problem of the railways in meeting highway competition and the value which agreed charges have for that purpose, if I pause to outline briefly at this point the chief economic characteristics of the trucking industry as they appear to me.

The differences in the types of service rendered by the railways and the motor trucks is sufficiently well known to require no elaboration here. It will be sufficient to point out that with its speed, convenience in loading and unloading, less stringent packing requirements and other features the highway vehicle has become a most effective means of transportation for all but the lowest-valued bulk commodities, wherever distances and condition of the highways are favourable. These advantages are not present in all highway carriers but they are sufficiently general, with their continuing extension to new traffic, to warrant a full reconsideration of the respective roles that these two main types of transport may and ought to perform in the immediate future.

The above characteristics of motor transport offer an explanation of the growth in this type of transport, but not a complete one. Two other features of highway transport must also be included to provide a full explanation of the peculiar difficulties of the railways in meeting this type of competition. The first is the great diversity in size and extent of individual highway carriers' operations, and the second is the combination of the freedom from rate regulation of the highway carriers and the comparatively strict rate regulation that still applies to the railways.

Let us take first, the factor of diversity in highway carriers as compared with organization of the railways into two transcontinental systems plus a small number of local carriers. When mention is made of the trucking industry a vast number of independent organizations are referred to, each with its own capitalization, operating characteristics and costs, and its own specialized traffic and area of operation. When reference is made to highway competition of the railways, we must include the even larger and more diverse group of private carriers, which include everything from nationwide corporations to individuals owning only one vehicle. When we add to these characteristics that of relative ease of entry into the industry and the relatively quick liquidation of uneconomic operations, we may gain some conception of the formidable nature of the competition that highway transport in general offers to the older, more rigidly constituted, types of transport.

Basic to the competitive strength of highway transport is the fact that while individual operators may retire from business or go bankrupt, there is always the possibility of replacements moving in quickly. Overhead costs in highway operations are small compared to railway operations: no privately-owned and maintained road is required, and the equipment has many alternative uses or users. Under such conditions, it would seem to be almost impossible to eliminate highway competition or the ever-present threat of highway competition except by a most drastic and cumbersome form of regulation of not only the common and contract carriers but also of private carriers.

The organization that is characteristic of the railways, while well-adapted to that mode of transport, suffers in competition with highway transport in its lack of flexibility and heavy overhead costs. By and large, in any area railways are either in business to stay or else gone for good. There can be no thought of quickly discarding unprofitable lines for brief periods as a means of adjusting to fluctuating traffic condtions; and losses in any one locality are a strain on the whole system.

This brings us to the second characteristic of highway transport today, and that is its relative freedom from regulation. While the regulation of any industry is something imposed on it from the outside interfering with its method of operation and pattern of development, in the case of highway transport the comparative freedom from rate regulation is not the result of an arbitrary decision on the part of governments. Highway transport seems to have escaped the regulatory strait-jacket because of its own essential characteristics, which are such as to make a comprehensive and effective regulation of rates a practical impossibility, and at the same time an almost superfluous step in so far as the public interest is concerned.

At the present time, rate and route regulation exist over intra-provincial traffic in the provinces of Manitoba, Saskatchewan, British Columbia and Quebec but not in Alberta and the Maritime Provinces. Ontario regulates the routes over which truckers may operate but does not regulate the rates charged.

The Government of Canada, on June 15, 1954, passed the Motor Vehicle Transport Bill, to give to the provinces authority to regulate extra-provincial traffic with the same regulations as apply to intra-provincial carriers. In September 1954, a conference was held in Winnipeg, attended by all the provinces except Quebec and Newfoundland (which provinces have not adopted this legislation), to consider its application. But at this conference it was agreed that provincial boards should not attempt to control rates charged by carriers engaging in extra-provincial operations.

The trucking industry as a whole favours rate regulation by provincial boards, but in Alberta where complete freedom exists in these matters the government of the province favours free and unfettered competition between the railways and motor carriers, as well as between the motor carriers themselves.

While recognizing that many differences of opinion and of practice can be cited in connection with this problem, I cannot ignore the tenor of the representations made in the course of the present inquiry of which a consensus would be that the regulation of highway transport after the pattern of railway rate regulation would generally be impracticable and ineffective. According to Mr. Fairweather, no one advocates the regulation of highway transport in the interest of the railways. Nor does the situation in highway rate regulation existing today in nearly every province and interprovincially suggest that the opposite view commands a following anywhere in Canada. The suggestions regarding the possible establishment of some measure of co-ordination between motor and railway transportation made in the report of the last Royal Commission on Transportation still seem to be far away from acceptance.

I return now to the subject of agreed charges. The Canadian National Railways submitted to the last Royal Commission on Transportation a request for amendments to the Transport Act designed to make the procedure respecting agreed charges more expeditious and more "flexible". These proposals were similar in substance to those now made by both railways. In its report dated February 9th, 1951, the Commission gave its reasons for declining to recommend the adoption of the proposed amendments. I need not repeat them all here, but I think that the guiding view of the Commission is expressed in the paragraph of the "Conclusions" numbered 3 on page 95 which reads:

> "The present Act has not yet had a fair trial. It was first introduced in 1937 and enacted in 1938, when economic conditions were vastly different from those existing today. Then followed the period of the war and the 'freezing' of rates until September 15, 1947. Since then the country has enjoyed a period of comparative economic prosperity which has perhaps made extensive use of the agreed charge unnecessary."

In effect this language meant that, in the opinion of the Commission, the time had not yet come, in 1951, to undertake a revision of agreed charge legislation. Economic conditions did not then prompt the taking of such a step as a matter of urgency. But the situation has altered greatly since then. As things are now, the railways need relief in the form of better means to compete with others in the pursuit of their business as purveyors of transportation.

I was interested in hearing the evidence and the argument put forward by the trucking industry in support of their opposition to the submission of the railways. I was mainly impressed by the fact that this industry has attained great vigour and seems to be bound towards further advances. Better roads, the completion of the national transcontinental highway, the strengthening of the industry by the tendency within it towards the formation of larger companies, the continued improvement in the services rendered, all these things are present and they all make for progress. The figures I have quoted show that the trucking business is now one of Canada's great industries. In so far as the evidence goes it is more prosperous than the railway industry. It, too, has experienced some reverse through the recent decline in general business activity but nothing like the reverse suffered by the railways. And, after all, the legislative relief proposed by the railways will simply enable them to do from now on what the trucks have always had the right to do, that is to approach shippers freely with business proposals that can promptly be made effective. There always have been truckers who carry goods for shippers by contract. It is true that the making of long-term shipper-carrier contracts calls for the confidence of each party in the ability and responsibility of the other regarding the performing of the contract. It seems to me that many truckers must now be qualified to do business of this kind and that more and more of them will eventually reach the same position. Certainly there is no legal impediment in their way.

It is true, however, as I have shown, that the practice of agreed charges was introduced into Canada mainly for the purpose of enabling the railways to cope more effectively with the competition of the trucks. This purpose must therefore be kept in view when changes in the law are being considered, and must prevail against objection, so long as it does not go so far as to create an injustice towards truckers or others. I am satisfied that in this case no injustice can be asserted. The proposed changes in the law will probably make things easier for the railways and enable them to secure more business. This is what they are intended to do and is in conformity with the aim of the original legislation. But these changes will merely remove from the railways certain restrictions from which the trucks have always been free and will remain free. There can be nothing unjust in this.

I am impressed with the belief that the motor industry has become a factor of permanent value in Canada's economic life and that no legislation concerning railways, and, more specifically, the legislation of the kind now contemplated, can cause it vital damage.

The Order in Council instructs me to consider the developments which have taken place since the last Royal Commission on Transportation made its report.

I think the most striking development to be noted during the last few years is the growth in the size, the efficiency and the prosperity of the trucking industry, on the one hand, and, on the other hand, the great deterioration to be seen in the financial position of the railways despite all they have achieved in the way of improving their property and their services. This railway situation is opposed to the national interest.

In particular reference to agreed charges I find that public feeling has become more favourable to them. In 1950 the Province of Manitoba, the Province of Alberta, the Canadian Manufacturers' Association and the Canada Steamship Lines Limited were all opposed to agreed charges, and asked to have the practice abolished. On this present occasion Manitoba and Alberta have changed their position; Manitoba has joined British Columbia in proposing that agreed charges continue and be made effective without the leave of the Board, and Alberta admits that agreed charges should continue although subject, as now, to the Board's approval. The Province of Saskatchewan also favours the continuation of the agreed charge practice. The suggestions which each of these provinces make in regard to the future operation of agreed charges will be discussed further on.

The Canada Steamship Lines Limited now agrees to the continuation of agreed charges on certain conditions concerning their own right to participate in such agreed charges as are initiated by the railways. Their proposal in this regard is reasonable and I am recommending that it be adopted.

The Canadian Manufacturers' Association in their submission to me did not ask that agreed charges be abolished but they think the restrictions which now surround them should be maintained.

At this point I think it well to set out briefly the substance of the complaints against agreed charges made by various parties on the grounds that the practice is injurious to their own business interests or to the interests of certain localities. I do this because, while I do not think, after careful study, that any of these objections should prevail against the conclusion at which I have arrived in favour of maintaining the agreed charge practice and of making it more "flexible", I feel that in justice to these parties, the nature of their objections should be made known in this summary manner to those whose duty it will be to read and consider this report. The record will show fully, in each case, the evidence and the argument submitted in support of the objections taken.

For the sake of convenience I am also summarizing in this same grouping the views of certain other parties who support agreed charges in principle, in some cases with proposed modifications, and with whose individual submissions I do not think it necessary, in view of my conclusions, to deal at greater length.

CANADIAN TRUCKING ASSOCIATIONS: This body can be taken as representing the trucking industry which is the principal opponent of agreed charges and the one most directly affected by this practice. This industry says:

1. That the prime intent of agreed charges is to bind shippers to the use of railway facilities with a view to the ultimate destruction of highway transport competition.

2. That the revenue position of highway carriers is equally as important a national consideration as rail carrier revenue.

3. That there is no objection to the railways making contract rates but there is opposition to the provisions in the agreed charges which preclude motor carriers from participating in the traffic or prevent the shipper from considering other means of transport.

4. That, even if the law does not prevent motor carriers from making similar contracts, they are unable to do so because of the difficulty of securing a shipper's consent to bind himself for an extended period to a trucking company.

5. That stabilization of transportation agencies will not be possible so long as one form of transportation is permitted to discriminate against another.

6. That the railways should be free to meet competition with competitive rates and this would do for the railways equally as well as agreed charges.

7. That the increasing number of agreed charges has deterred the expansion of motor transport hauling of petroleum products in Western Canada, and if generally applied, will similarly retard the development of the trucking industry.

8. That agreed charges hinder the growth of competitive transportation because carriers are loathe to purchase new equipment or improve their services in the face of the uncertainty of new agreements.

9. That agreed charges are conducive to the creation of a monopoly in rail transportation.

10. That agreed charges have created and will continue to create animosities between the railways and the trucking industry.

11. That agreed charges represent the lowest rate the consumer will receive because there will be no reason to lower the rates when competition is eliminated.

CANADA PACKERS LIMITED: This company opposes the practice of agreed charges on the following grounds:

1. They lead to unjust discrimination among those engaged in the same industry.

2. The Railway Act provides the means for the railways to meet their competition by the establishment of competitive rates with little formality.

3. The operations and goods of all industries do not necessarily lend themselves to agreed charges.

4. The terms imposed by the railways with respect to the conditions of agreed charges are not consistent.

5. The withdrawal of competitive rates in favour of agreed charges penalizes those who do not make an agreement.

6. The increased use of agreed charges serves to increase the burden of rail rates on the remaining shippers compelled to use rail services.

7. That, in any event, the law should provide that the making of agreed charges is not to apply to the packing industry, because this industry operates on a very small margin of profit and requires a day-to-day vigilance in its business which is incompatible with the assumption of fixed freight charges for a long term.

THE INDUSTRIAL DEVELOPMENT COUNCIL OF CANADIAN MEAT PACKERS: This body expressed opposition to the practice of agreed charges because of the economic aspects of the industry and for the following specific reasons:

1. It is contrary to the fundamental purpose of the Railway Act.

2. It is contrary to the trend of other legislation enacted by the Parliament of Canada for the protection of the public.

3. It has the object and result of applying the exclusive patronage system to one form of transportation.

4. It is a disruptive influence and possibly a disastrous one when part of an industrial group is operating under an agreed charge while the other part is free.

5. It is too potent a weapon to be placed in the hands of any one group.

6. The continuation of agreed charges postpones the time when Canada will have a national transportation policy designed to develop all forms of transport and preserve the inherent advantages of each.

7. The agreed charge system in spite of safeguards is still open to discrimination and preference.

8. The agreed charge restricts competition in transportation and is therefore detrimental to the public interest.

9. In the meat packing industry a small variation in transportation costs could lose a sale. This operates to prevent the making of agreed charges.

10. As the railways make more agreed charges the traffic which is left has to bear a greater proportion of the transportation costs.

11. The only permanent solution is the enactment of legislation fair to all types of carriers for the best service to the people of Canada.

CANADIAN CANNERS LIMITED: While the evidence adduced by this company had particular reference to agreed charges on canned goods and vegetables from eastern to western Canada, certain objections in principle were also raised:

1. The established selling basis of canned goods is f.o.b. where packed and the company could not sign a contract respecting the shipping of traffic over which it has no control.

2. The railways do not make sufficient effort to contact receivers or a large number of shippers who might be affected by an agreed charge.

3. The agreed charge rate does not always equal competitive rates by other forms of transport or assist in meeting foreign competition.

4. The agreed charge would deny the company the opportunity of meeting foreign competition on imports to the Pacific Coast which are not bound to agreed charges.

MANITOBA FEDERATION OF AGRICULTURE AND CO-OPERATION: This body stated that it was speaking in the interest of the 45,000 farm families in Manitoba who are members of one or more of various groups who are affiliated within the Federation. The statement declared:

1. That the Federation is opposed to the one and one-third rule as being unsound in principle and therefore is opposed to it being made applicable to agreed charges.

2. As to the practice of agreed charges the Federation said that while, on the one hand, they understood the need of the railways to preserve their traffic, they also sympathized on the other hand, with the desire of other forms of transportation to remain in the field.

The Federation's brief was presented to me early in the proceedings, at the sittings held in Winnipeg, and the spokesman said that the Federation reserved the right to present further suggestions if this appeared to be advisable after the inquiry had gone more fully into the subjects involved. No further representations were made.

THE WINNIPEG CHAMBER OF COMMERCE: This organization made the following suggestions:

1. That all interested parties should have the opportunity to examine the evidence as to why competition cannot be met by competitive rates. (This suggestion seems to apply to proceedings for the Board's approval of an agreed charge under the present practice).

2. That a company of integrity does not need to be bound by a written contract.

3. That it might be more difficult for a small company to commit 75% or more of its business to the railways than it is for large companies to do so.

4. That some types of business require shipments f.o.b. the factory.

THE VANCOUVER BOARD OF TRADE: This body made the following submissions:

1. The establishment of the agreed charge practice was a departure from general rate-making practices and believed contrary to the recommendations of the Royal Commission on Transportation respecting a uniform rate structure.

2. The use of agreed charges could lead to discrimination in competitive transportation.

3. The majority of agreed charges are established to meet motor competition but motor transport is not a carrier under the Transport Act.

4. An agreed charge rate forces competing shippers to become parties to the agreement.

5. Agreed charge rates at close to cost levels make other rates higher than necessary. This results in subsidization to the volume shipper and to the agreed charge territory.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA stated that, under the restrictive covenant in agreed charge contracts the motor truck is no longer dealing with a market that is strictly competitive and that with every truck taken off the highway because of this situation about three employees are laid off. They urged that notice of the introduction of each agreed charge be given to truck carriers concerned and that in order that this could be accomplished the Transport Act be amended to extend the definition of a carrier to "any person engaged in the transport of goods or passengers for hire or reward, over which the Government of Canada exercises legislative jurisdiction, and include any company that is set out in the Railway Act".

SASKATCHEWAN FEDERATED CO-OPERATIVES LIMITED and its wholly-owned subsidiary, CONSUMERS' CO-OPERATIVE REFINERIES LIMITED: This company summarized its submission as follows:

1. The present pattern of agreed charges should be continued and perhaps enlarged upon.

2. The principle should be recognized by Parliament as an integral part of the transportation picture in Canada and the Act so amended.

3. Shippers and the public interest of Canada, particularly the latter, should be protected by regulatory powers being placed under the jurisdiction of the Board of Transport Commissioners, with reasonable latitude given to shippers to qualify. In other words, the agreed charges formula should not be a tool supported unwittingly or otherwise by the railroad to enable one shipper to have competitive advantage over other shippers.

4. Procedures should be simplified, if possible.

5. The "one and one-third formula" should be available to intermediate points through the medium of an agreed charge.

6. Agreed charge rates should, at all times, be compensatory.

"We have understandingly made no comment on the agreed charges in relation to water-borne transportation, as such is not a factor in western Canada".

THE CITY OF EDMONTON, THE EDMONTON CHAMBER OF COMMERCE, and the CALGARY CHAMBER OF COMMERCE presented briefs which I think can best be dealt with when I come to examine the whole case put forward on behalf of the Province of Alberta. They all ask for the application of the one and one-third rule to agreed charges.

Representations were also made by a number of other interested parties including such companies as the British American Oil Company Limited, the Shell Oil Company of Canada Limited, the Imperial Oil Limited, Husky Oil & Refining Limited, The Steel Company of Canada, Limited, Algoma Steel Corporation, Limited, Canadian, Oil Companies, Limited, H. J. Heinz Company Limited, Page-Hersey Tubes Limited, the Carnation Company Limited, Campbell Soup Company, Green Giant of Canada Limited, Libby, McNeill & Libby, Limited, etc., which were mainly expressive of the desire of these firms to have the practice of agreed charges continued and made "freer".

I have now about reached the point where I can define more precisely the form which I think should be given to agreed charge practice for the future. All that remains first to be done is to set out briefly the features of the different proposals which have been submitted to me by some of the interested parties. These are: The Canadian Pacific Railway Company, the Canadian National Railways, the Provinces of Manitoba, British Columbia and Alberta, the Maritimes Transportation Commission, the Canadian Industrial Traffic League, the Canada Steamship Lines Limited and the Great Northern Railway Company.

The Canadian Pacific Railway Company and the Canadian National Railways have agreed on the form of amendments which they think should be made to Part IV of the Transport Act. These affect only Section 32 of the Act. Their main object is to do away with the present requirement s. s.(2) of the Board's approval of an agreed charge. Instead of this they propose that a duplicate original of the agreement

setting out the particulars of the agreed charge shall be filed with the Board within seven days of the date of the agreement and that the agreed charge shall become effective 15 days after the date of the filing.

The railways then deal with the case of any shipper who considers that his business has suffered or will suffer unjust discrimination by an agreed charge. The present subsection (8) provides that in such a case the Board may give the shipper relief by fixing a charge for the transport of his goods "including the conditions to be attached thereto". Instead of the words just quoted which leave the conditions of the fixed charge to the discretion of the Board, the railways propose that the Board shall be confined in the relief it may grant in the following manner; their draft amendment says:

> "it (the Board) may fix a charge not lower than the agreed charge to be made by such carrier for the transport of such goods and the shipper shall be deemed a party to the agreement from and after the date of the shipper's application or such later date as may be fixed by the Board, and the terms of the agreement shall apply *mutatis mutandis* to the transport of such goods."

The railways also propose that any party to an agreed charge which has been in effect for at least one year may withdraw from the agreement upon giving 90 days' written notice to the other parties.

The above are the most important changes in legislation submitted by the railways. They make no provision for the taking of objections to an agreed charge or for its disallowance by the Board. On the other hand, they say nothing about Section 33 of the Transport Act which provides for the holding of an investigation by the Board into complaints made in respect of an agreed charge when the Minister of Transport is satisfied that such an investigation should be held in the national interest. I shall have occasion to refer again later to this Section 33. No action has ever been taken under it although it has formed part of the Statute since 1938.

The Provinces of Manitoba and British Columbia propose that the agreed charge shall become effective without application to the Board for approval 30 days after the filing with the Board of a duplicate original of the agreement "unless disallowed as hereinafter provided". They also propose that a shipper who complains of unjust discrimination in respect to his business may obtain a fixed charge for the shipment of his goods upon conditions to be laid down by the Board. In the matter of "disallowance" above referred to, these provinces propose, in the first place, that any shipper or carrier may give notice of objection to the Board and that in such case the Board shall fix a day for hearing the objection, "not more than 30 days from the filing thereof unless otherwise ordered by the Board." They then set out the following procedure:

(9) The Board, at any time after the agreed charge has been filed, or a charge fixed either upon its own motion or upon motion of any shipper or carrier may disallow such agreed charge if the Board is of the opinion —

(a) that the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act;

(b) that the rate to be charged is not compensatory to the carrier and is lower than necessary to meet the competition;

(c) that the agreed charge unjustly discriminates against or grants an undue preference to a shipper as against any other shipper.

(10) On any such motion the Board shall have regard to all considerations that appear to it to be relevant and in particular to the effect that the making of the agreed charge, or the fixing of a charge, is likely to have or has had on —

(a) the net revenue of any carrier; and

(b) the business of any shipper by whom or in whose interests objection is made to an agreed charge.

In practice these proposals of British Columbia and Manitoba would mean that, while the agreed charge does not require the approval of the Board to become effective, it may be disallowed at any time before or after it has come into effect, upon any of the grounds above set out. But after having put forward the foregoing propositions, counsel for Manitoba and British Columbia, said on the argument, that they agreed with the form of amendment submitted by the Maritimes Transportation Commission which reads:

"(10) At any time after an agreed charge has been filed or becomes effective, the Board either on its own initiative or upon complaint of —

(a) any shipper,

(b) the government of any Province or any transportation commission, rate bureau, or similar organization maintained in whole or part by the said government, and,

(c) any public body or association representing an agricultural or business interest which may be directly or indirectly concerned with an agreed charge, and

(d) any carrier, may disallow such agreed charge if the Board is of the opinion that —

(i) the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act;

(ii) the agreed charge unjustly discriminates against or grants an undue preference to a shipper as against any other shipper."

As in the case of Manitoba and British Columbia, the Maritimes Transportation Commission proposes that an agreed charge shall become effective 30 days after filing but subject to disallowance on any of the above grounds before or after it takes effect.

The main proposal put forward by the Canadian Industrial Traffic League is the following:

"(2) Any such agreed charge requires the approval of the Board and the Board, before approving such charge shall satisfy itself that (a) the object to be secured by the making of the agreement cannot, having regard to all the circumstances, be adequately secured by means of a special or competitive tariff of tolls under the Railway Act or this Act; (b) the charge proposed in the agreement is compensatory; and the burden of proof justifying the proposed agreed charge shall be upon the carrier filing the agreement."

The League also proposes the fixing of a charge by the Board in the case of any shipper suffering unjust discrimination by reason of an agreed charge. This proposal

is substantially the same as the present s. s.(8) of Section 32. The League also asks that s. s.(11) of Section 32 be retained in the Statute with only a slight change in its present form. This s. s.(11) provides for the making of an application to the Board for the withdrawal of its approval of an agreed charge in cases where the Board has given its approval without restriction of time and the agreed charge has run for more than one year.

Canada Steamship Lines Limited and the Great Northern Railway Company have drafted amendments to Section 32 of the Transport Act which define their respective positions in regard to the practice of agreed charges. I am recommending the adoption of these amendments and will deal with them later.

In so far as the Provinces of Alberta and Saskatchewan are concerned the legislation which they recommend is of special interest in view of the circumstances surrounding this inquiry, and I propose to deal at a later stage with the representations which they have made.

By way of a digression which I think is useful to make, I will now examine briefly that part of the railway legislation at present in force in the United Kingdom which has to do with matters of the same kind as those that have claimed my attention during this inquiry. I do this for two reasons in particular: (1) because our agreed charge practice was inspired originally by the provisions of the (British) Road and Rail Traffic Act, 1933, which inaugurated this departure from orthodox rate-making, and (2) because during this inquiry much stress was laid by counsel and witnesses for the Canadian National Railways and the Canadian Pacific Railway Company upon the great measure of freedom which, it was said, British railways now enjoy in the transportation field as compared with the restrictive and hampering conditions which surround the industry in Canada.

All, or practically all, the railways in the United Kingdom are publicly owned. They are managed by a government appointed body called the British Transport Commission, composed of a maximum of fourteen members other than the Chairman. The Statute which prescribes and defines the duties of the British Transport Commission is The Transport Act, 1953. These duties are diversified but it will suffice, for present purposes, to say, quoting the Statute, that the British Transport Commission is required "to provide railway services (and certain other services) for Great Britain, due regard being had, as respects all the services and facilities mentioned in this subsection, to efficiency, economy and safety of operation and to the needs of the public, agriculture, commerce and industry".

The British Transport Commission sets up its own "charges" (rates) for the carriage of merchandise or passengers by railway in the form of "charges schemes" which are submitted for approval to another body called the Transport Tribunal. These schemes provide, not for fixed or standard charges, but only for maximum charges. In cases where it may not be practicable for a scheme to fix a maximum charge the British Transport Commission is authorized to make such charges as may be reasonable. All questions arising between a shipper and the British Transport Commission as to the reasonableness of the maximum charges themselves, or of any other charge applied where there is no maximum, are determined by the Transport Tribunal "to the exclusion of any other Court". An important innovation in railway practice is that which provides that the only charges which the British Transport Commission are required to publish are the maximum charges. All other charges are fixed as a matter of agreement between the British Transport Commission and the user of the railway, and no shipper has the right to be told what charge another shipper, even his competitor in business, is paying.

This innovation carries with it the further important change that the British Transport Commission is no longer bound by the limitations of older railway legislation, (and of present Canadian legislation) respecting "undue preference", etc.

Agreed charges are provided for in legislation similar in wording, in most respects, to our own.

All the "freedom" which is to be seen in the foregoing methods of rate-making is now sanctioned by legislation which recognizes that in the competitive transportation field, the railways must be as free as their competitors in the pursuit of business opportunities. Our Canadian railways do not ask for this full measure of freedom. They agree that, for the present at least, they must carry on their business, as in the past, subject to the requirements of the Railway Act. The only increase in freedom which they now ask for is in respect to the practice of agreed charges.

It is important, however, to point out that all the large measure of freedom which the British railways enjoy prevails only in the competitive field. I take it that the competitive field in the United Kingdom is a much larger proportion of the whole than is the case in Canada.

But it is interesting to note that in the United Kingdom there is still a transportation field in which the railway possesses a monopoly, and that in this field the old restrictions applicable to monopolies continue to govern railway practice. Thus section 22 of The Transport Act, 1953, provides that any person desiring to send merchandise by railway "in circumstances in which that merchandise cannot reasonably be carried by any other means of transport" may complain to the Transport Tribunal against any charge which he considers unfair or unreasonable. In such a case the Transport Tribunal may require the British Transport Commission to disclose to the complainant the charges which other shippers are paying in similar circumstances. In the result the Transport Tribunal, if not satisfied by the British Transport Commission that the charge complained of is fair and reasonable, "may make such order in the matter as they consider just".

This exception to the rule against the disclosure of charges applies to such traffic as coal, minerals and iron and steel in bulk which call for transportation by railway. It may also apply to all kinds of traffic in those (probably few) parts of Great Britain where the railways have no truck or other competition to meet.

There is another restraint upon the freedom of the railways and the rule of non-disclosure which is to be found in the competitive field itself. The cases to which I refer raise certain questions which are sometimes raised in Canada when it is alleged that a rate is non-compensatory or creates an unfair disadvantage to another carrier as occurred for instance in the case of the so-called "Johnson and Johnson Limited agreed charges case" referred to in the Board of Transport Commissioners' judgment dated January 6, 1942. (C.N.R. vs C.S.L. — 1945 A.C. 204).

Agreed charges in the United Kingdom are provided for in s. s.(4) of Section 21 of The Transport Act, 1953, and are made subject to the fourth schedule to that Act and to certain provisions of the Road and Rail Traffic Act 1933 and the Railways Act, 1921. The effect of this legislation is that complaint may be made to the Transport Tribunal that a charge, whether or not it is an agreed charge, made by the British Transport Commission, places coastal carriers, as competitors, at an undue or unfair disadvantage or is inadequate. In such case it is the duty of the Transport Tribunal to dispose of the issue summarily by hearing evidence and argument on short notice. Here again the charge complained of is of course disclosed. The Act then says that "if..... (after hearing the parties)... the Tribunal are of opinion that, having regard to all the circumstances, the charges in question or any of them —

(a) place coastal carriers at an undue or unfair disadvantage in the competition, or

(b) are inadequate, having regard to the cost of affording the service or services in respect of which they are made"

and that in either case the action of the Commission is by reason of "its prejudical effect upon the interests of coastwise shipping undesirable in the national interests, may make any such order as they might have made upon an inquiry under the said subsection (3)". (The subsection (3) here referred to is s. s.(3) of Section 39 of the Road and Rail Traffic Act, 1933).

The Act then provides that any body representative of the interests of traders ("shippers" in Canada) may object to any order made by the Tribunal under this procedure whereupon another inquiry pertaining to this objection is held. In the course of the proceedings the Tribunal may cancel or vary any agreed charge which has been complained of.

The Act then goes on to provide for the taking of further action in certain circumstances, but I do not believe that it would be profitable to follow the subject to any greater length.

Canal carriers also are protected against "unfair competition" by the railways whether by means of agreed charges or otherwise. But in this case the complaint is first made to the Minister who refers it to the Transport Tribunal if he thinks that a *prima facie* case has been made out. Mr. H. S. Vian-Smith in his book entitled "The Transport Act, 1953," describes this procedure as follows:

> "In so far as the interests of canals are concerned, the new Act retains the provisions of the 1921 Act and extends them to cover canal carriers. It also extends these provisions to cover all charges made by the Commission for the carriage of merchandise by railway other than maximum or standard charges. Thus canal and canal carriers' interests may make representations to the Minister to the effect that charges made by the Commission for rail freight transport (other than maximum or standard charges) are detrimental to the public interest, and are inadequate having regard to the cost of affording the services or service concerned. If the Minister is satisfied that a *prima facie* case has been made out, he may refer the matter to the Transport Tribunal which, after hearing all parties whose interests are affected, can vary or cancel such rates and make such other order as it deems appropriate or expedient."

It is to be noted that no protection of this sort is extended to road hauliers who also compete with the railways.

I have endeavoured in the foregoing pages to describe the situation which exists today in the field of Canada's transportation economy, particular consideration being given to the position of the railways. The result of my analysis convinces me that this situation is unsatisfactory but also that it can be remedied in some measure by a reform in the practice of agreed charges, the only subject upon which I am directed to make recommendations. This reform must tend to enable the railways to grapple more expeditiously and therefore more efficiently with the strong and supple competition which confronts them. In my opinion the time has come to do what the Royal Commission on Transportation refrained from doing in 1951 when conditions were very different from those which now exist and sufficient time had not gone by to test the value of what was still looked upon as a most radical and therefore potentially dangerous departure from sound methods of rate-making.

Having considered the suggestions made to me by the railways, on the one hand, for an almost perfect degree of freedom in the carrying out of their agreed charges

practice, and, on the other hand, those made by others who believe that agreed charges, if allowed to continue, should be hedged about with various degrees of restrictive regulation, I take the view that the object to be attained, as nearly as possible, is to set the railways free, but with the safeguard of certain precautions intended to preserve the rights of other interested parties.

1. It is my opinion, in the first place, that the procedure for bringing an agreed charge into effect should be simplified and shortened. This reform is of first importance to the railways and to shippers. I would do away with the requirements of the Board's prior approval and allow the agreed charge to become effective upon the expiry of a reasonable time after its filing. During the inquiry a great deal of importance seemed to be attached to the question whether such a reasonable time would be 15 days, as proposed by the railways, or 30 days as proposed by those who, while favouring the abolition of the present necessity of obtaining the Board's approval, were anxious to assure the giving of sufficient notice to other interested parties. After looking into the reasons for providing some period of time for this purpose, I think that the railways' suggestion of 15 days would probably meet all due requirements but I also feel that it would be better, all things considered, to allow some extra time as a precaution which may be useful in some cases. Therefore I would allow a lapse of 20 days as a reasonable interval between the dates of the filing and of the coming into effect of the agreed charge.

2. The next case to be dealt with is that of the shipper who considers that his business has suffered, or is likely to suffer, from unjust discrimination by reason of an agreed charge. I have already referred to the present provisions of the Statute, which provide for his relief upon conditions to be laid down by the Board, and I have also quoted the railways' suggested amendment to this procedure which would limit the Board's discretion considerably in such cases. I cannot accede to the railways' suggestion on this point. I believe that a shipper who feels that he is injured in his business interests by an "unjust discrimination" should also feel that in bringing his case to the Board he is applying to an impartial tribunal which has unrestricted power to give him the remedy which his case warrants. This has been the practice hitherto and the evidence convinces me that, on the whole, it has proved satisfactory to all concerned. I would not change it.

3. The subject of agreed charges has occasioned much controversy in the past between the Canada Steamship Lines Limited and the railways (C.N.R. vs. C.S.L. — 1945 A.C. 204). The company protested to the Royal Commission on Transportation that the unrestricted use of the agreed charge by the railways "would force water carriers to the wall." This opposition has now been withdrawn and it has been agreed between the company and the railways that provision is to be made to allow water carriers to become parties to any agreed charge upon certain conditions. I think this arrangement should be made part of agreed charge legislation and I will set it out in full further on.

4. Another matter now requiring attention is the position in respect to agreed charges of United States railways having lines in Canada. The Great Northern Railway Company appeared before me by counsel and proposed that this company be allowed, under certain conditions, not to initiate agreed charges, but to become a party, if it so desires, to any such agreement entered into by Canadian railways. This proposal met with the approval of the Canadian National Railways and the Canadian Pacific Railway Company, and I recommend that it be provided for in the Statute.

5. I agree with the railways' proposal that an agreed charge may be terminated in respect to any party by withdrawal by that party upon 90 days' notice in cases where the agreement has been in effect for at least one year.

6. The agreement having become effective and provision having been made for the relief of shippers complaining of unjust discrimination, the railways make no further proposal for the raising of any objection to the agreed charge or for the intervention of the Board in any circumstance, saying only this: that they do not ask to have Section 33 of the Act repealed. On the other hand, as I have already shown, the Provinces of British Columbia and Manitoba, the Maritimes Transportation Commission and the Canadian Industrial Traffic League have submitted proposals providing for action being taken by the Board at any time, upon its own motion or upon the application of any shipper or carrier, which may lead to the disallowance of any agreed charge or to the modification of its provisions. I do not favour the adoption of so broad a provision, which might lead to frequent applications to the Board sometimes on unsubstantial grounds. Once the agreement has become effective and the remedy of a fixed charge has been made readily available to every shipper unjustly affected by it, I think the charge should be allowed to stand for a reasonable time before being made subject to attack by others not so immediately concerned with its operation. I also think that when the proper time comes only such complaints as are founded at least to some extent upon the interests of the public should be allowed to come before the Board. This brings me to a closer study of Section 33 of the Transport Act to which I have already several references.

7. Our Section 33 enacted in 1938 seems to have been suggested by the provisions of Section 39 of the (British) Road and Rail Traffic Act, 1933, now incorporated by reference in the (British) Transport Act, 1953, with provision for a more summary procedure than that set up in the original legislation. I have already dealth with the subject of its present application to British Transport Commission charges in the United Kingdom. The original Statute provided that complaints against the charges were to be made to the Minister of Transport, who was to consult with the Board of Trade, and if satisfied, after such consultation, that the complaint was one which in the national interests should be investigated, was then to refer it to the Transport Tribunal for investigation and review. Complaints to the Minister could be made only by bodies representative of the interests of persons engaged in the coastwise shipping business. And the duty of the Tribunal was (and still is) to find (a) whether the charges placed coastal carriers at an unfair disadvantage or (b) were inadequate for the services rendered having regard to the costs incurred in providing them.

The adaptation of the British legislation to our Transport Act was only partial as appears by reference to our section 33 which says:

> 33. (1) Upon complaint to the Minister by any representative body of carriers that, in the opinion of the Minister, is properly representative of the interests of persons engaged in the kind of business (transport by water or rail, as the case may be), represented by such body that any existing agreed charge places such kind of business at any undue or unfair disadvantage, the Minister may, if satisfied that in the national interest the complaint should be investigated, refer such complaint to the Board for investigation and if the Board after hearing finds that the effect of such agreed charge upon such kind of business is undesirable in the national interest the Board may make an order varying or concelling the agreed charge complained of or may make such other order as in the circumstances it deems proper.
>
> (2) Where under this section the Board cancels or varies an agreed charge, any charge fixed under this Part in favour of a shipper complaining of that agreed charge shall cease to operate, or shall be subject to such corresponding modifications as the Board may determine.

This section gives the right to complain, not only to coastal carriers as in the United Kngdom, but also to rail carriers.

I would recast this Section 33 and provide for the making of complaints not only by carriers but also by bodies representative of the shippers of any locality who can allege that such shippers are unjustly affected by any agreed charge; it being borne in mind that "shippers" are defined in our Act as being all persons who send or receive, or who desire to send or receive, goods by means of a carrier. I would provide that all complaints are to be made to the Minister of Transport and that the Minister may refer them to the Board, if he is satisfied that, in the public interest, they should be investigated by the Board. I say in the "public interest" and not "in the national interest" advisedly. The present Section 33 of our Act says that action by the Minister, and afterwards by the Board, may be taken only when it is considered that the "national" interest is affected by the situation complained of. In the re-draft I would use the words "public" interest. I think this expression more suitable to the kind of case I have principally in mind. An unsatisfactory situation may affect only a locality: a city, a town, and possibly an adjacent area, or any other defined district, and therefore the public in that locality, without necessarily extending its effect so far afield as to concern the "national" interest. I would provide for action to be taken in such a case as well as in cases of more far-reaching importance. The expression "public interest" would cover all cases. In these case I would direct the Board's inquiry to the same considerations as those which prevail in the present British practice, that is, the adequacy of the charge complained of and the question whether it is unjust to the complainants.

I have expressed the opinion that an agreed charge should be allowed to operate for some time before being made subject to attack under Section 33. I think the experience of three months' operation should furnish fair evidence of the effects of the charge upon the carriers and the public. I would fix this period as being a reasonable time.

I have now outlined the substance of the legislation which I think should govern the practice of agreed charges. In order to clarify my recommendations I have thought it advisable to put them into definite form. I have therefore drafted a suggested amendment to The Transport Act which embodies them and which I annex to this report. (Appendix "A"). This draft is, of course, only tentative and is offered only as something which may assist those who will be in charge of whatever legislation is decided upon ultimately.

I now come to deal with the special case presented by Alberta and in which Saskatchewan came to be joined in the last stage of the inquiry. At the beginning Alberta's case was stated broadly, according to the recital in the Order in Council creating this Commission, to be a request for the extension to transcontinental agreed charges of the one and one-third rule which applies under Section 337 of the Railway Act to transcontinental competitive rates. The Order in Council recites:

> "That these representations (those of the Government of Alberta) in effect request that legislation be introduced to extend the application of the one and one-third rule to the making of agreed charges."

The general position of Alberta was stated by the Honourable G. E. Taylor, Minister of Highways, at the meeting I held in Edmonton and may be summarized as follows:

1. That while Alberta had opposed the transcontinental agreed charges before the Board of Transport Commissioners, the Board was unable to grant the relief sought because of the opening words of Section 32 of the Transport Act: "Notwithstanding anything in the Railway Act".

2. That the conflict between the Railway Act and the Transport Act was both unforeseen and unintended by the Royal Commission on Transportation.

3. That it was inconceivable that when the Royal Commission on Transportation directed its proposed remedy be applied to competitive transcontinental tariffs it meant that the remedy would not apply to agreed charges.

4. That it is the requirement that Alberta must pay such disproportionately higher rates than the West Coast which constitutes a discrimination against Alberta. This is the core of the Alberta complaint.

5. That Alberta must have relief from any and all forms of rate-making which require Alberta to pay substantially higher rates than British Columbia coast points.

The contention of the Province of Alberta was supported by the City of Edmonton, the City of Calgary, the Edmonton Chamber of Commerce and the Saskatchewan Federated Co-operatives Ltd.

The basic contention of these parties would appear to be that the Statutes should be amended so as to give to the intermediate territory, under any agreed charge rates established to meet water competition at the Pacific Coast, exactly the same rate treatment it is entitled to under Section 337 of the Railway Act with respect to transcontinental competitive rates.

The case thus stated does not take account of the essential difference between what are two distinct kinds of rates, competitive rates on the one hand and agreed charges on the other. It must be borne in mind that a competitive rate is open to all shippers who may wish to avail themselves of it, without compulsion, and in its use shippers are only required to abide by the governing tariff provisions. Agreed charges, on the other hand, are different in that each one constitutes a contract between the railways and a shipper or shippers, and those who ship on the agreed charges are signatories to a contract either directly by the agreed charge or indirectly by a fixed charge. Not only must the agreed charge shipper observe such conditions as minimum carload weights, but, most important, he must undertake to ship a stated percentage of his traffic by the railway for the duration of the contract. It is therefore apparent that the application of the one and one-third rule to agreed charges in exactly the same manner as it now applies to transcontinental competitive rates poses fundamental difficulties:

1. Whereas the agreed charge is restricted to certain named shippers no such restriction applies in the case of transcontinental competitive rates.

2. An attempt to extend the one and one-third rule to agreed charges would raise complex problems respecting the designation of the "shipper" which do not arise in the case of applying the rule to transcontinental competitive rates.

3. The extension of agreed charge rates by means of the one and one-third rule to an unknown number of parties who have not undertaken any contractual responsibilities would violate the fundamental feature of agreed charges.

The railways strongly oppose the application of the one and one-third rule to agreed charges. They point to the existence of carrier competition at the Pacific Coast whether this be water competition from Eastern Canada via the Panama Canal, water competition from foreign countries, the competition of United States railways to the Vancouver area, or, to some extent, transcontinental truck competition. Of these competitive carriers, water competition has been the principal factor affecting the competitive position of the Canadian railways. As an indication of the intensity of this competition, evidence was adduced by the Province of British Columbia that in the years 1951, 1952 and 1953 waterborne traffic from Eastern Canada into British Columbia was 6,335, 29,592 and 38,376 tons respectively. Also of interest are statistics showing imports through all British Columbia custom ports for selected iron and steel products from the United States and other countries for the years 1951, 1952 and 1953, as follows:

IMPORTS THROUGH ALL BRITISH COLUMBIA CUSTOMS PORTS OF SELECTED IRON AND STEEL PRODUCTS FROM UNITED STATES AND OTHER COUNTRIES 1951, 1952, 1953

(TONS)

COMMODITY[1]	UNITED STATES			OTHER COUNTRIES			TOTAL		
	1951	1952	1953	1951	1952	1953	1951	1952	1953
Castings, steel	464	563	470	—	—	—	464	563	470
Bars, Rods and Billets	1,248	1,154	1,814	8,887	7,981	9,121	10,135	9,135	10,935
Railway Rails	801	2,920	4,091	2,029	1,422	1,511	2,830	4,342	5,602
Rods (for Wire)	113	638	876	1,836	1,841	1,724	1,949	2,479	2,600
Welding Rods or Wires	194	342	154	4	1	2	198	343	156
Plates and Sheets	9,011	24,820	27,830	24,475	21,450	15,752	33,486	46,270	43,582
Angles, Beams, Channels etc.	9,729	12,883	17,283	23,679	38,103	9,830	33,408	50,986	27,113
Masts, Angles, Plates, etc. for ships	1,198	2,562	1,628	648	2,570	372	1,846	5,132	2,000
Shapes or Sections	1,637	1,368	1,385	911	1,511	548	2,548	2,879	1,933
Pipe, cast	—	188	185	11,000	10,592	16,236	11,000	10,780	16,421
Pipes and Tubes, wrought, welded or seamless	9,151	11,107	53,650	23,664	65,841	16,160	32,815	76,948	69,810
TOTAL ABOVE ITEMS	33,546	58,545	109,366	97,133	151,312	71,256	130,679	209,857	180,622

[1] Only items with an aggregate import of more than $50,000 are included.

SOURCE: Bureau of Economics and Statistics, Victoria, B.C.

The railways further point out that water competition to the Pacific Coast is unregulated and the rates reflect not only the economy of low cost water carriage but the availability of cargoes, both outgoing and incoming. These conditions tend to bring about an instability in ocean freight rates which the railways can only meet by being free to deal with each case in the light of the particular conditions prevailing. If the railways, for considerations other than those applying to the particular competitive situation, elect not to meet the competition, not only do they forego traffic and revenues, but Eastern producers are unable to maintain their position in the market.

On this subject of water competition it is interesting to note that Dr. D. Philip Locklin, professor of economics at the University of Illinois, who gave evidence before the Royal Commission on Transportation, has published a new edition of his "Economics of Transportation" (4th edition, 1954) in which he deals, beginning at page 503, with the reduction of railway freight rates to meet water competition. He draws a diagram of three points on a straight line of railway: A, (point of departure) B, (point of arrival and an ocean port) and C, (intermediate railway point), and a circuitous water route from A to B of greater length. He shows the water rate from A to B to be $.80, and the railway rate from A to C to be $1.00, in itself a just and reasonable rate. In these circumstances, he says, the railway is justified in reducing its long haul rate from A to B to $.80 in order to meet the water competition, without reducing the rate from A to C. Among the reasons which Dr. Locklin gives for his conclusion I think the following is of particular interest because it stresses one of the points discussed during the argument at this inquiry, that of the incidence of low water rates upon geographical location. He says:

> "The disadvantage to C in paying $1.00 while B pays only $.80 is not removed by forcing the railroad to charge $1.00 or more at B. The people at B will still get their goods from A for $.80 but they must get them by water. Neither can C reasonably ask for a reduction in its rates to $.80. The rate of $1.00 at C is a normal rate. It is not unreasonable. The fact is that B is, economically speaking, nearer A than is C; and there is no reason for depriving it of its advantage of location."

The railways ask to be permitted to obtain additional revenues in the competitive field without being compelled to appraise the agreed charge rates in the light of a reduction in revenue on similar traffic to intermediate points. The railways have stated that the application of the one and one-third rule to agreed charges would compel them to re-examine the agreed charge rates. Of the nine agreed charges of this type now in effect, five, they say, would have to be cancelled if they were made subject to the one and one-third rule.

At the same time they state that if they were to cancel the agreed charges to the Pacific Coast because of the adverse revenue effect which the application of the one and one-third rule might have, it is difficult to see how the Province of Alberta would be benefitted.

Even beyond the foregoing considerations they ask how Alberta is disadvantaged by a competitively-compelled agreed charge rate to the Pacific Coast. Allowing the railways freedom to reduce their rates to the Pacific Coast does not tend, they say, to increase the rates on traffic to intermediate points such as Edmonton. In fact, the additional traffic which the railways obtain in this competitive field, makes a contribution towards the overhead expenses and thereby reduces the pressure for higher rates in the non-competitive field. Alberta's contention that it is the high rates paid on traffic to non-competitive points which permits the low rates to competitive points is the reverse of the true situation.

Furthermore, the railways find it difficult to understand how the alleged disadvantage of a higher non-competitive rate to Edmonton vis-a-vis a lower competitive rate to Vancouver could be removed by any legislation which might result in the railways increasing the Vancouver rate. To do so would merely result in having the Vancouver market supplied by foreign producers using water transportation. Vancouver purchasers would still obtain their goods but the Canadian railways would have lost the carriage. Undoubtedly this would be entirely to the advantage of the water carriers and to the disadvantage of the railways.

A number of parties filing briefs or appearing before me to present evidence supported the contentions of the railways. The principal views expressed by the Provinces of British Columbia, Saskatchewan and Manitoba; by the City of Winnipeg and the Winnipeg Chamber of Commerce; the Vancouver Board of Trade and the Manitoba Federation of Agriculture and Co-operation; Canada Steamship Lines Limited, The Canadian Industrial Traffic League and by Canada Iron Foundries Limited, The British American Oil Company Limited, Husky Oil and Refining Limited, Canadian Oil Companies, Limited, Dominion Foundries & Steel Limited, The Steel Company of Canada, Limited, H. J. Heinz Company of Canada, Limited, Page-Hersey Tubes Limited, Carnation Company Limited, Stokely-Van Camp of Canada, Limited, Green Giant of Canada Limited, and Libby, McNeill & Libby of Canada Limited, included the following:

1. That the long and short haul principle could not be logically extended to apply where a competitive rate moves traffic to a more distant point and a non-competitive rate moves traffic to an intermediate point.

2. That the application of the one and one-third rule to agreed charges would adversely affect British Columbia without any compensating advantage to Alberta.

3. That agreed charges must be the result of free agreement and the imposition of arbitrary rules would nullify their advantages against carriers not subject to similar regulation.

4. That it would be unfair to the railways to be forced to lower their intermediate rates on a particular commodity covered by an agreed charge.

5. That the transportation factors at an intermediate point may be entirely different from those at a more distant point.

6. That conditions may warrant an agreed charge to intermediate points at a rate less than one and one-third the agreed charge rate to the Pacific Coast.

In addition these parties set out a number of considerations with which I have already dealt.

In the course of final argument counsel for Saskatchewan stated: (Vol. 37 page 4447).

> "The Government of Saskatchewan is not persuaded that the rigid application of the one and one-third rule to the agreed charge, with a view to establish a ceiling for rates at intermediate points, would be either fair or effective. It should be kept in mind that, while the agreed charge is a competitive rate in the sense that it is used to meet competition, yet it differs markedly in one respect from the ordinary competitive rate. In the case of the ordinary competitive rate, the shipper may avail himself of the rate or not as he likes, and to the extent he wishes. In the case of the agreed charge, the shipper agrees, in return for a favourable rate, to use the railway as the carrier for a stated percentage of the total volume of his shipments of the designated commodity.

"In our opinion it would be manifestly unfair to the railway, which has agreed to the low rate in order to secure the volume of traffic, to be forced to lower its general intermediate rates by the application of the one and one-third rule to the special rate on a particular commodity covered by an agreed charge. It is our opinion, therefore, that the general shipper at the intermediate point should not be able to invoke the one and one-third rule automatically in the case of a commodity covered by an agreed charge."

I asked counsel for Saskatchewan to prepare a draft amendment incorporating the views of Saskatchewan, and a proposal for a new subsection 10(a) to follow the present subsection 10 of Section 32 of the Transport Act was submitted:

"10A

(a) In this subsection the words 'eastern territory', 'intermediate territory' and 'western territory' shall have the meaning given to those words by Section 337 of the Railway Act.

(b) Whenever an agreed charge has been made for the carriage of goods from any point in eastern territory to any point in western territory or from any point in western territory to any point in eastern territory, then and in any such event, any shipper in intermediate territory shall be entitled to have a charge fixed by the Board for the carriage of the goods of such shipper in intermediate territory from eastern territory to intermediate territory or from intermediate territory to eastern territory and it shall be a term of the charge so fixed for such shipper in intermediate territory that the rate at which the goods of such shipper shall be carried shall not exceed by more than thirty-three and one-third per cent the rate established by the agreed charge hereinbefore referred to: provided that the goods of the said shipper in intermediate territory shall be offered for carriage under the same conditions as those contained in the agreed charge.

(c) In the fixing of charges under this subsection the Board shall have regard to the distance to which goods are transported in each case with the object of avoiding unjust discrimination as against any shipper.

In reference to the proposed amendment, counsel for Alberta stated: (Vol. 39, Page 4628 and 4629).

"Dean Cronkite, for the Government of Saskatchewan, has filed a proposed amendment to Section 32 of the Transport Act, and I should like to comment on it. It was filed after Dean Cronkite completed his argument — yesterday, as a matter of fact.

"Your lordship may recall that in his argument Dean Cronkite in dealing with the one and one-third rule said that he did not favour a blanket extension of the one and one-third rule to agreed charges. From his argument I think it might be inferred that he regarded my position as being this: that once the agreed charge was filed then the one and one-third rule should apply, and I think Dean Cronkite understood that it would apply, as it were, absolutely.

"Now, certainly that is not my position, my lord. If the one and one-third rule is made to apply to agreed charges, then the conditions of an agreed charge must apply when the one and one-third rule is made applicable.

"Let me explain by saying that when the transcontinental competitive rates were in force — and in fact there are two or three left — in those cases the conditions which attached to the transcontinental competive rates — and I think at once of one namely, the minimum carload of 70,000 pounds — then

> the same conditions, the minimum car loading, must apply for a shipment to intermediate points, because that is a condition of the transcontinental competitive rate, and the one and one-third rule being applicable to that transcontinental rate, the conditions which apply to the transcontinental competitive rate apply with regard to a shipment to intermediate territory where the one and one-third rule is applicable. In the same way, if the one and one-third rule was made applicable to agreed charges, the conditions — and the important one is the assurance of a certain percentage of the traffic — then that would apply. Indeed, I could not conceive of it not applying, and there never has been any intention on my part that that should not be the fact."

and "THE COMMISSIONER: I understand you now, Mr. Frawley. You say that what Dean Cronkite expresses is what you always intended?

MR. FRAWLEY: That is right, my lord. That is his subsections A and B of 10(a)."

This explanation limits substantially the scope of the request by the Province of Alberta which might otherwise have been construed to be and was at first taken to be, the same automatic application of the one and one-third rule to agreed charges as to competitive rates, without any conditions being attached to shipments to intermediate points apart from what now applies in the case of competitive rates, i.e., carload minimum weights and such other conditions as appear on the tariff items as published. In other words, Alberta's request as now formulated is that to obtain a rate to an intermediate point at an amount no more than one-third greater than the agreed charge to the Pacific Coast, a shipper would be required to adhere to the terms of the agreed charge including the condition as to a percentage of his traffic.

It seems to me that the most important point to be considered in regard to the above proposal is its practicability. The establishment of an agreed charge cannot be proclaimed by order of the Board, but requires the positive assent of the shipper. No shipper can otherwise be legally bound to ship any of his traffic by a particular carrier. It is more likely that in a non-competitive area the initiative for obtaining agreed charges would have to come from the consignee (who of course can be deemed to be a "shipper" under the Act) but who at most could contract only for all his incoming traffic. However, it cannot be said with certainty that the consignee would always have control of the routing of his incoming traffic, for this would depend upon the terms of the sale and the consignor's willingness to permit him to specify the routing. Up to the present, agreed charge arrangements seem to have proceeded on the assumption that the manufacturer or the seller would ordinarily be the "shipper" referred to in the Act. To attempt to negotiate agreed charges on the basis of the consignee being the shipper would seem to offer many difficulties, and for many commodities most susceptible to competition, where shipments are concentrated at one or two points of origin and spread among a great number of destinations, it would require either a large number of special contracts or an equally large number of negotiating parties. It is extremely doubtful whether the railways could utilize the agreed charges under such unfavourable conditions.

Therefore, it would seem inescapable that the Alberta proposal would resolve itself into a situation as follows: where agreed charges have been negotiated on transcontinental traffic the shippers (consignees) in Alberta could apply for and be entitled to receive agreed charges to intermediate points under the same essential conditions but at rates no more than one and one-third times the rates on the agreed charge applying on transcontinental traffic. This would be the case whether or not competition existed at the intermediate point (and the meeting of competition has always been a compelling factor in the making of agreed charges) and whether or not the applicant was a party to the transcontinental agreed charge.

Under conditions that obtained only a few years ago it might have been possible to justify this extension of the concept of an agreed charge. But, conditions as they exist today cannot be ignored nor the changes that are still taking place. Chief among these are:

(1) The growth of highway competition between Eastern Canada and all the Western Provinces. This has caused the railways to publish competitive rates on certain commodities where only a short time ago none at all were in effect on these movements, (e.g., canned goods). The one and one-third rule was put in effect at a time when it was still possible to regard Alberta as a non-competitive area in so far as long-haul traffic was concerned. I have already said that increased highway facilities will tend to increase that competition.

(2) The changes in the railways' sources of revenues as between different types of rates and classes of commodities. The railways have lost a considerable volume of the more remunerative types of traffic or have had to reduce rates sharply to retain their share of this traffic. The portion of rail traffic that is secure from competition is daily growing smaller, consisting to an increasing degree, of low-rated traffic in agricultural and mining products. In other words, the freedom to adjust the railway rate structure so as to achieve certain desired results in specific cases has all but disappeared.

(3) The Royal Commission on Transportation recommended an equalized class rate scale and the Government enacted legislation putting this recommendation into effect. The new class rates are to become effective March 1, 1955, and they will have the effect of reducing the difference between the transcontinental rates and the class rates into intermediate territory.

(4) The Royal Commission on Transportation also recommended an equalization of commodity rate scales and legislation now provides for this. These equalized scales will effect reductions in those cases where intermediate territory rates are higher than elsewhere.

Having regard to the foregoing considerations, I am of the opinion that the extension of the one and one-third rule to agreed charges cannot be recommended: firstly, because of the difficulties surrounding the practical application of such a measure; secondly, because if it were found possible to apply it to certain cases, it would on the whole be unproductive of substantial benefit to intermediate territory; thirdly, because having regard to the present unfavourable financial condition of the railways and their urgent need of relief, it would be unwise, while granting them the measure of freedom in the making of agreed charges which I recommend to create at the same time new complications which might hamper them considerably in the exercise of the agreed charge practice; and fourthly, because the position of intermediate territory is being altered beneficially and in a substantial manner as a result of new competitive conditions of transport and of the implementation of the recommendations of the Royal Commission on Transportation regarding the adjustment of freight rates in the Western Provinces.

I have been urged by Counsel for Alberta to consider in particular the plight of the distributors in Alberta cities as a result of the discrepancies between rates from Eastern Canada to Alberta and to the Pacific Coast. The existence of these discrepancies is said to place many parts of Alberta within the distributing territory of Vancouver although they are located closer to Calgary and Edmonton. It was not stated that consumers in these areas would be prejudicially affected by this state of affairs and I do not see how they could be, so that I must conclude that it is only the position of the distributors that is considered to be in jeopardy.

As to this objection, I am not convinced that the location of the distributing trade is solely responsive to the freight rate situation at any given time. Even a

cursory glance into the nature of this business discloses many different factors accounting for its location and size at any point. There are distributors for almost every type of manufactured article, and engaged in all stages of the distribution process. The larger or bulkier the commodity and the more scattered and sporadic its demand, the more concentrated the distribution, so that in some cases there may be no intermediary between manufacturer and consumer. On the other hand, for small standardized articles there may be many stages of distribution.

Freight rates have no great influence on either of these extremes — in the first case, the nature of the demand is the determining factor, in the second case, the freight rates are but a small fraction of the final selling price. Somewhere in between, the effect of freight rates reaches its maximum, but the extent of this maximum effect and the actual commodities to which it applies are matters that cannot be determined by comparisons of freight rates alone.

Finally, methods of distribution have been undergoing changes in the last few years that are parallel to the changes in transportation methods. I recognize that the question of the effect of freight rates on distributing territories has been a controversial subject in the past in Western Canada. But I am inclined to doubt whether in the contemporary situation even when compared with that which existed as lately as in 1950, the question retains much of its former importance. Originally railway points in Western Canada were principally distributing centres, especially for the surrounding agricultural population. The volume of the business in each centre varied almost directly with that of its distributing trade. Consequently there was a very close and continuing scrutinizing of freight rates to see that one point was not placed at a disadvantage in competition with others in attracting and holding this important business.

Today much has changed. Industries have sprung up in Western cities and very prolifically in Edmonton and Calgary; city populations have increased; the advent of faster transport and the use of the motor truck have changed distributing practices. All these factors have favoured the growth of local distribution areas and at the same time diminished the former crucial importance of this trade to Western cities, and no doubt future adjustments in the rate structure will tend to a further decentralization of distribution at railway points. In the light of these factors, all operating in favour of decentralization, I cannot find that such an alteration of freight rate principles as proposed for the purpose of changing a distribution pattern would be of any advantage to Western consumers or that it would actually benefit Western city distributors to the extent claimed for it.

In concluding this report I wish to state that I am greatly indebted to the able collaboration of my special adviser, Mr. George A. Scott, in the solution of many arduous problems presented by the nature of the case before me, and to the care and efficiency of Mr. Charles W. Rump, my secretary, in his organization of the work and the proceedings of the Inquiry. I thank these gentlemen for their very valuable assistance.

The whole of the foregoing is respectfully submitted.

(Sgd) W. F. A. Turgeon,
Commissioner

APPENDIX "A"

Sections 32 and 33 of the Transport Act, Chapter 271, Revised Statutes, 1952, are hereby repealed and the following substituted therefor:

PART IV

AGREED CHARGES

32(1) Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charge or charges for the transport of the goods, or of any part of the goods, of a shipper as may be agreed between the carrier and the shipper.

(2) When the transport is by rail from or to a competitive point or between competitive points on the lines of two or more carriers by rail no agreement for an agreed charge shall be made unless the competing carriers by rail join in making it.

(3) Subsection (1) shall not apply to United States carriers save as between points served exclusively on their lines in Canada by such carriers; provided, however, that when the railway of a United States carrier by rail operates at a point of origin or destination or between the points named in an agreement for an agreed charge made by a Canadian carrier or carriers by rail, and forms all or a part of a continuous route by rail established between such points wholly through Canada or in part through the United States, the competing United States carrier or carriers may, with the concurrence of all the railway companies over whose lines the said continuous route has been established, become party to and participate in the said agreement upon filing with the Board notice of intention to do so whether or not the said agreement became effective before or becomes effective after the passing of this subsection.

(4) Where an agreement for an agreed charge is made by one or more carriers by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by such carrier by water of goods with regard to which such carrier by water is required by this Act to file tariffs of tolls.

(5) An agreed charge shall be made on the established basis of rate making and shall be expressed in cents per hundred pounds or such other unit of weight or measurement as may be appropriate; and the car-load rate for one car shall not exceed the car-load rate for any greater number of cars.

(6) Particulars of an agreed charge including a duplicate original of the agreement shall be filed with the Board within seven days after the date of the agreement and the agreed charge shall become operative twenty days after the date of such filing.

(7) All agreed charges shall, when filed with the Board be published in the manner provided by Section 333(1) of the Railway Act.

(8) Any shipper who considers that his business is or will be unjustly discriminated against by an agreed charge may at any time apply to the Board for a charge to be fixed for the transport of his goods (being the same goods

APPENDIX "A"—*concluded*

as or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates) by the same carrier with which the agreed charge has been made, and, if the Board is satisfied that the business of the shipper is or will be so unjustly discriminated against, it may fix a charge (including the conditions to be attached thereto) to be made by such carrier for the transport of such goods.

(9) Where an agreement for an agreed charge or any amendment thereto is filed and notice of issue is given in accordance with this Act and regulations, orders and directions of the Board, the charge therein shall, unless and until it expires or is otherwise terminated, be conclusively deemed to be the lawful charge in respect of the transport of the goods referred to in the agreement and shall take effect on the date provided for in accordance with subsection (6) of this section, and the carrier shall thereafter, until such agreement expires or is otherwise terminated, make the charge as specified therein.

(10) Notwithstanding anything contained in any agreement for an agreed charge any party to such an agreement which has been in effect at least one year may withdraw from the agreement by giving written notice of withdrawal to all the other parties thereto at least ninety days before the date upon which the withdrawal is to become effective.

33(1) In the case of any agreed charge which has been in effect for at least three months

(a) any carrier, or association of carriers, by water or rail, or

(b) any association or other body representative of the shippers of any locality

may complain to the Minister that the said agreed charge is unjustly discriminatory in respect to the party or parties complaining or places their business at an unfair disadvantage, and the Minister may, if satisfied that in the public interest the complaint should be investigated, refer such complaint to the Board for investigation and if the Board after hearing finds that the effect of such agreed charge upon the business of the complainant or or complainants is undesirable in the public interest the Board may make an order varying or cancelling the agreed charge complained of or may make such other order as in the circumstances it deems proper.

(2) In dealing with any matter referred to it under this section the Board shall have regard to all considerations which appear to it to be relevant and, in particular, to the effect which the making of the agreed charge has had or is likely to have on the net revenue of the carrier or carriers who are parties to it and on the business of the party or parties complaining.

(3) Where under this section the Board cancels or varies an agreed charge, any charge fixed under subsection (8) of Section 32 of this Act in favour of a shipper complaining of that agreed charge shall cease to operate, or shall be subject to such corresponding modifications as the Board may determine. 1938, c.53; 1944-45 c.25 s.12.

LIST OF CITIES WHERE HEARINGS WERE HELD

CITY	DATES
OTTAWA, Ontario	September 13, 1954
WINNIPEG, Manitoba	October 4, 1954
REGINA, Saskatchewan	October 5, 1954
EDMONTON, Alberta	October 7, 1954
VANCOUVER, British Columbia	October 12, 1954
OTTAWA, Ontario	November 2, 1954 to December 21, 1954.

LIST OF BRIEFS AND WITNESSES

BRIEF	WITNESS
Alberta — Government of	Dewey, Dr. Ralph L. Harries, Hu. Taylor, Hon. Gordon E.
Algoma Steel Corporation	Bone, Charles M.
British American Oil Company Ltd.	Henson, H.
British Columbia — Government of	Whelen, G. E.
Calgary Chamber of Commerce	Millard, MacDonald, Q.C.
Calgary, City of	Mackay, Mayor Donald H.
Canada Iron Foundries & National Iron Corporation Ltd.	Blackborow, R. A. Dougherty, J. H. Hansard, Hazen, Q.C.
Canada Packers Limited	Davidson, Edward McDougall, Professor J. L. Perry, Donald Johnson Wiggins, Ford A.
Canada Steamship Lines Ltd.	Hansard, Hazen, Q.C. Paquin, Rosario
Canadian Canners Limited	Caldwell, W. R.
Canadian Forest Products Ltd., Pacific Veneer & Plywood Division	Frewer, P. G.
Canadian Industrial Traffic League	Musselwhite, Stanley Victor
Canadian Manufacturers' Association Inc.	Treloar, Alexander Roy
Canadian National Railways	Blee, David Fairweather, S. W. McCoy, Charles L.
Canadian Oil Companies Limited	Tew, C. H.
Canadian Pacific Railway Company	Barnstead, R. C. Edsforth, C. D. Scott, W. G.
Canadian Trucking Associations	Kavooras, John K. Knudson, Hon. J. K. Parke, G. M. Taylor, Jack

Dominion Foundries & Steel Limited	Dolphin, John B.
Edmonton Chamber of Commerce	Smith, S. Bruce, Q.C.
Edmonton — City of	Hawrelak, Mayor William
Federation of Automobile Dealer Associations of Canada	McCullough, E. A.
Freeman-Wilson Company, Limited	Wilson, H. I.
H. J. Heinz Company of Canada Ltd.	Minhinnick, G. L.
Husky Oil & Refining Limited	Ainsworth, Fred.
Industrial & Development Council of Canadian Meat Packers	Leckie, H. K. Paul, George
International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America	Nisbet, Gordon S.
Manitoba Federation of Agriculture and Co-operation	Wilton, J. D.
Manitoba — Government of	Campbell, Hon. Douglas L.
Manitoba Trucking Association	Wilson, B. H.
Maritimes Transportation Commission	Matheson, Rand H.
Page-Hersey Tubes Limited	Middleton, C. W.
Saskatchewan Federated Co-operatives Limited	Fowler, H. L.
Saskatchewan — Government of	Cronkite, Dean F. C., Q.C. McIntosh, Hon. L. F.
Steel Company of Canada Limited	Dean, Fred W.
Vancouver Board of Trade	Elmer, R. T.
Winnipeg Chamber of Commerce	Downie, Irwin
Winnipeg — City of	Coulter, Mayor Garnet, Q.C.
Campbell Soup Company	No Witness
Carnation Company Limited	" "
Green Giant of Canada Limited	" "
Hudson Bay Route Association	" "
Imperial Oil Limited	" "
Libby, McNeill & Libby of Canada Ltd.	" "
Polymer Corporation Limited	" "
Shell Oil Company of Canada Ltd.	" "
Stokely-Van Camp of Canada Ltd.	" "

Other Appearances

Archambault, C.	Canadian Trucking Associations
Blackborow, R. A.	Canada Iron Foundries & National Iron Corporation
Burt, A. E.	Campbell Soup Company Limited
Coyle, J. P.	Carnation Company Limited
Dodds, I. M.	International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
Edgett, G. F.	Canadian Import Company
Essex, J.	Canadian Cellucotton Products Co.
Fraser, J. K.	International Waxes Limited
Freer, E.	Shell Oil Company of Canada Limited
George, Willis, C.	Canadian Manufacturers' Assoc. Inc.
Gnaedinger, R. I.	Johnson & Johnson, Limited

Hargreaves, J. B. ..... Sterling Fuels
Jackson, A. B. ..... Motor Carriers Branch, British Columbia Public Utility Board
Laferle, Charles ..... Canadian Retail Federation
Landry, A. A. ..... Nestle (Canada) Limited
Langton, George W. ..... Crane Limited and Warden King Limited
Leigh, J. B. ..... Chesapeake & Ohio Railway Company
Lute, I. H. ..... Imperial Oil Limited
Magee, John ..... Canadian Trucking Associations
Mann, H. A. ..... Canadian Industrial Traffic League
Matheson, Rand H. ..... Maritimes Transportation Commission
McCallum, F. S... ..... Canadian Trucking Associations
McLeod, R. P. C. ..... Ontario Northland Railways
Morson, A. E. ..... Imperial Oil Limited
Newman, J. E. ..... Canadian Petrofina Limited
Oliver, George ..... Province of Saskatchewan
Paquin, Rosario ..... Canada Steamship Lines Limited
Peters, P. W. ..... Saskatchewan Federated Co-operatives Limited
Price, F. A. ..... F. A. Price Coal Company
Robinson, H. I. ..... Canadian Transport Tariff Bureau
Robinson, P. R. ..... Canadian Food Processors Assoc.
Smith, V. ..... McColl-Frontenac Oil Company Ltd.
Stechishin, V. M. ..... Manitoba Transportation Commission
Thomson, I. J. ..... International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
Tremblay, Lucien ..... International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
Wallace, R. ..... Canadian Transport Tariff Bureau
Wallace, W. A. ..... Canadian Transport Tariff Bureau
Westlake, R. E. ..... Stokely-Van Camp of Canada Ltd.