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As of November 21, 2024

## Issue Spotlight: Railways

Rail companies have recently made changes to their approach to their financial obligations to landowners that abut or cross railway lands. They are attempting to transfer those costs onto these property owners – often farmers – through two different means:

### **Drainage Costs**

Over the past few years, federally regulated railway companies have advised municipalities across Ontario that they will no longer bear any costs for drainage infrastructure under the Ontario *Drainage Act*.

### **Safety Upgrade Costs**

As a result of Transport Canada's new safety standards for federally regulated railway crossings, railway companies have placed significant financial burdens on farmers for the cost of some upgrades to private crossings farmers need to access their farmland.

Transport Canada's *Grade Crossings Regulations* require all federally regulated railway crossings to meet new safety requirements by November 28, 2024. These upgrades are estimated to cost between \$600,000 and \$2 million per crossing, with annual maintenance costs of nearly \$10,000.

Although these regulations do not explicitly state who is responsible for bearing the financial burden associated with the newly mandated safety upgrades, railways in some cases have insisted that the farmer must pay.

### **Why it matters:**

Railway companies have long borne the cost of railway infrastructure and crossings. Farms, which have been accustomed to those terms, are being given new contracts that place those financial burdens on the farm. Farmers who cannot afford these added costs may face crossing closures, cutting off access to some of their farmland. The cost of mandated upgrades could render portions of farmland inaccessible, threatening livelihoods and agricultural output.

Ontario's *Drainage Act* is an important piece of legislation for farmers. If these railways refuse to meet their drainage-related assessments, it will amount to millions of dollars in costs becoming the responsibility of property owners, with the majority of those costs becoming the responsibility of farmers. Additionally, if the federally regulated railways believe that this provincial legislation does not apply to them, they may also refuse to permit work on their lands as allowed under the Act. As a result, farmers may be denied efficient and effective drainage which is necessary to safeguard crop productivity.

Businesses depend on agreements that underpin their work to have stable terms and conditions, as this enables their ability to plan work and grow their enterprise. It is important to remember that farms are businesses too, and likewise depend on stable working arrangements to plan farm operations in all four seasons. Suddenly forcing new terms and contracts on businesses, farms or otherwise, can fundamentally destabilize a business—farm or otherwise.

These shifts in cost responsibility places an immense and unexpected burden on farmers, further straining mental health and financial security. In some instances, it will render this land unfarmable.

### **Who is affected:**

To our knowledge there are approximately 30 municipalities within Ontario that are facing similar challenges with having federally regulated railways no longer covering their costs of drainage infrastructure under the Ontario *Drainage Act*.

All farmers with private railway crossing will be impacted by safety upgrade costs.

### **OFA positions – what you need to know:**

OFA firmly believes all railways should honor their existing obligations regarding private railway crossings and drainage. We believe it is unacceptable for railways to unilaterally revise the terms of existing arrangements to the detriment of farmers.

OFA would also like to see changes made to the *Canada Transportation Act* that would embed within legislation that drainage laws of the province's must be adhered to by the railways. This provision did exist within the Railway Act which was repealed in 1996.

### **Actions taken by OFA and timeline of events:**

- **October 23, 2023** – OFA sent [a letter to Minister of Transportation Canada](#) regarding existing private railway crossings.
- **February 27, 2024** – OFA submitted a resolution to CFA's Annual General meeting requesting that they lobby Transport Canada to advise the Federal Railway company that they should not require a new agreement from landowners.
- **August 6, 2024** – OFA sent [a letter to CN Rail](#) regarding the upcoming requirements for upgrades to existing private railway crossings.
- **August 13, 2024** – OFA Board heard a presentation from the Municipality of Chatham-Kent Lawyer regarding their drainage dispute with CP Rail.
- **August 13, 2024** – OFA Board passed the following motion:

*THAT the Ontario Federation of Agriculture pursue with due diligence intervener status at the Ontario Superior Court of Justice – Court of the Drainage Referee in the case of Chatham Kent vs Canadian Pacific Railroad (apportionment of the municipal; drainage costs).*

*THAT the Ontario Federation of Agriculture raise the profile of the apportionment of municipal drainage costs and the opposition by railways to pay their assessed share with both staff and elected at the Canadian Federation of Agriculture, and*

*FURTHER BE IT RESOLVED that OFA submit a resolution to CFA at the appropriate time to amend the Transportation Act and the portion of the previous Railway Act that required railways to abide by provincial drainage legislation.*

- **September 6, 2024** – OFA has engaged with CFA on rail crossings. CFA has sent a letter to the Minister of Transportation and the Minister of Agriculture on the issue.
- **October 15, 2024** – [OFA ViewPoint](#) on Farmers in urgent need of action: 'Unacceptable' for railways to download costs onto farmers, rural landowners

- **October 2024** – OFA submitted a resolution the CFA Board of Directors regarding the need for amendments to the Canada Transportation Act and the Railway Act. The CFA Board supported OFA’s request that CFA advocate for needed legislative amendments.
- **October 15, 2024** – OFA Board of Directors directed staff to proceed with hiring legal counsel to apply for intervener status in this case.
- **October 21, 2024** – OFA staff met with Transit Canada, CFA, l’Union des producteurs agricoles (Quebec), Agricultural Produce Association of Saskatchewan, and Keystone Agricultural Produce (Manitoba) to discuss the last round of Rail Safety Improvements Program grants and whether it would receive new funding in the next budget.
- **October 21, 2024** – OFA staff met with CN Railway to discuss the new Grade Crossing Regulations and the Rail Safety Improvement Program.
- **November 1, 2024** – OFA submitted our Memorandum of Appearance to the Superior Court of Justice – Court of the Drainage Referee requesting intervenor status to the court case.
- **November 20, 2024** – OFA facilitated a member-to-MP meeting on railway crossings hosted by the Eastern Ontario federations

**Next Steps:** OFA continues to engage with our members, local Federations, municipalities, and government departments on this important issue.