The 2014-2015 Canada Transportation Act Review: Once More Unto the Breach, Dear Friends

by

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For my subtext today, I have chosen the words that were put by Shakespeare into the mouth of King Henry V on the eve of the Battle of Harfleur during the Hundred Year's War between England and France. Those of us in the Canadian transportation policy "wars" have not made it to 100 years yet but we are two-thirds of the way there in the timeline for the series of federal transportation policy reviews that have been held since the 1950s. Just as King Henry exhorted his troops with the words: "The game's afoot. Follow your spirit, and upon this charge cry 'God for Harry, England and Saint George,'" I will exhort the new CTAR with the words: "Cry God for Lisa Raitt, Canada and Better Transportation Policies."

I wish to thank the Conference Board of Canada and Vijay Gill for giving me the opportunity to offer some comments on the new Canada Transportation Act Review (CTAR) that was appointed on June 25, 2014, by the Government of Canada and which is under the distinguished direction of Hon. David Emerson, PC. As the Chair of the last CTAR Panel, I will begin by comparing the world we faced in 2000-2001 with the one confronting Emerson, his staff and his Advisors in 2014-2015. I will then compare the mandates that have been given to Emerson with those that I and my Panel were given in 2000 by our political masters.

I will conclude by giving Emerson and his team some gratuitous, but friendly, advice on the task that lies ahead for him and them between now and Christmas Eve (!), 2015, the date by which Emerson must deliver his "gift of the Magi" to the Minister of Transport. It is a magnificent tribute to our Parliament over the years that transportation policy has been required, by statute, to have been reviewed regularly by "arms-length" advisers. Many other policy areas --- federally and provincially --- would do well to copy this rich history and successful policy process. Health care? Education? Dealing with Canada's Arctic Region? Whatever?

Even though only 14 years have passed between the time of my appointment and that of Emerson's, the world --- and Canada --- have changed dramatically in that short space of time. And, in analyzing what has happened in those years, we must always remember Mark Twain's famous aphorism: "History doesn't repeat itself, but it does rhyme.” In 2000-2001, the tech bubble was bursting. And worldwide sovereign debt levels were not yet headed for the stratosphere. Back then, unfortunately, and less than two months after we submitted our CTAR report, 9/11 struck, and effectively derailed any serious discussion of our report for some time.

As we all know, the Great Recession hit in 2008 and much of the world has not yet recovered fully from it --- particularly the European Union (EU) which is currently looking into the abyss of deflation, the economic pit in which Japan has been trapped for about 20 years. Fortunately, Canada avoided the worst depredations of the Great Recession --- thanks to its strong banking system, the restructuring of our federal economic world in the mid-1990s, the federal surpluses that had been built up prior to the crash and to the massive stimulus injected into the Canadian economy in 2009-10.

Today, in 2014, the world is moving faster than ever. Seldom has the world moved so quickly. And, as I have been fond of saying in recent years, the future is a foreign country, one where things will be done considerably differently than they are today. To get an idea of how fast the world is going, you must read Eric Brynjolfsson and Andrew McAfee's brilliant book, *The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies*, which was published earlier this year. This book tells us how quantum computer-driven digital technologies will be able to take over and perform many, many routine tasks that today are performed by humans. When I drove here yesterday in a taxi from downtown Toronto, I asked the driver how uber had affected his life. He told me that the value of “taxi medallions” had dropped in value from $325,000 to less than half that number. He also told me he had to work 13 hours per day, rather than 10, to keep his head above water economically. How disruptive a technology is that? And uber is only the beginning.

The paper on automated vehicles that you will hear this afternoon --- one that I am proud to have played a small part in producing --- will give you just another example of how disruptive these new technologies will be. And it is only one of many that are coming towards us. “Professions of all kinds --- from lawyers to truck drivers --- will be forever upended. Companies will be forced to transform or die. Recent economic indicators reflect this shift: fewer people are working, and wages are falling even as productivity and profits soar.” (*ibid.*, flyleaf) Canada is the exception in productivity growth. Our productivity numbers are stuck in neutral. It will be interesting to see how the new CTAR grapples with some of the issues raised by this book.

Let me now turn to the mandate that I was given in 2000, compared to the one given to Emerson and his CTAR 2014-5. The most interesting fact is that both of us were/and are given one over-riding issue on which we were/and are required to report to the government in six short months. In our case, CTAR 2000-1 was told it must

> "...consider proposals for enhancing competition in the railway sector, including enhanced running rights, regional railways and other access concepts...and [to] submit an interim report on access issues to the Minister of Transport by December 31, 2000."

There was considerable pressure then from Prairie MPs on Transport Minister David Collenette to force the railways to give "open access" of their lines to shippers, particularly of agricultural products, in western Canada. We answered this question in Chapter 4 of "Vision and Balance" in exquisite detail and came down on the side of continuing to allow railways to require payment of full economic fees by shippers for track usage, fees that would maintain tracks in a proper way, and not to give shippers "open access." Today, the two big railways in Canada pay about $3 billion a year --- of shareholders' money, not money from the public purse! --- to keep their tracks and equipment up to scratch. Some critics suggest that even that investment is not adequate. I think we made the right decision in 2001, even though it was controversial in some quarters.

I have two insane, outside-the-box ideas to throw out today. Here is the first one: I want to ask why our two major railways have not taken advantage of current rules for investments in Canada and turned their rights-of-way --- which potentially are income-producing parcels of real estate --- into real estate investment trusts (REITs). That transformation would allow the massive annual capital costs of the railways to be borne by someone other than shareholders and would free up billions in capital for other purposes, such as acquiring other part of the supply chain. And new REITS could be created each and every year.

The new CTAR has been handed a similar political hot potato and has been given the following instruction from its political masters:

> "Given the urgency created by the recent backlog in grain deliveries from the 2013-14 crop year, grain transportation will be given priority consideration. The Review will consider the provisions of the Act that are relevant to the

> transportation of grain by rail, some of which could apply more broadly to the rail-based supply chain for all commodities, taking into account the broader goal of a commercially based, market-driven, multi-modal transportation system that delivers the best possible service in support of economic growth and prosperity."

The Review must report on this mandate by December 31, 2014. I trust the new reviewers --- either Chairman or his Advisors or both --- will do what we did and take this mandate as an opportunity to use this short-term requirement as a springboard into the broader and more complex issues surrounding the logjam in grain movements of recent times. I can assure Emerson that whatever he reports on this subject will not be universally accepted by the many audiences that are waiting to hear from him.

There is no question that, in 2000-1, my CTAR was faced with the subject of how to improve the fortunes of Canada's railways which were not as productive as they should have been. The jury was still out then on whether the changes to the CTA in 1996 were going to improve things. Giving the railways greater freedom to abandon unprofitable lines was supposed to improve productivity, as it eventually did. That, plus the ability of our two major railways to increase rates to shippers beyond the rate of inflation, has allowed even a once poorly-managed CP to "harvest" these changes and to become a stock market star. Emerson and his team must dig deeply into the sensitive issues of (a) the current investment levels of our main railways and (b) the service levels currently being delivered by these railways and to opine on these issues. There will be howls of anguish if the new CTAR does this but Emerson should remember that the oligopoly position of our railways has always been "on the table" for all transportation reviews going back to McPherson's.

While speaking about oligopolies, the position of Canada's railways should be contrasted with the monopolies that were given to Canada's airports in the commercialization of airports 20 years ago. If the railways can be accused by some of under investing and charging more than they should, our airports can arguably be said to have over invested and made their customers pay for this over investment. Emerson must examine these issues fairly and objectively. Should this examination lead to more regulatory control in either case? Maybe. Maybe not. Should our airports be privatized, a move that my CTAR Panel always thought was inevitable, given the way the world was then trending --- and certainly had trended ever since then. Whose decisions should be paramount in driving the efficiency and the productivity of our railways and our airports

--- the customer's or the operators of the transportation infrastructure involved? It's the Canadian transportation question that never goes away.

The remaining six issues the CTAR of 2000-1 we were asked to consider included broad brush ones like “the overall effectiveness of the current legislative and regulatory framework in sustaining the high levels of capital expenditures required to enhance productivity and promote innovation” --- the issues that I was just talking about --- to a very narrow one, namely, considering whether the CTA should be able to set “maximum” as opposed to “actual” interswitching rates. The recent broadening of the interswitching limits from 30 kilometres to a much larger limit should be reviewed by Emerson and his team. I personally think the government may have acted too precipitously when it extended the limit recently and thus gave American rail operators an advantage they hitherto had not had.

The CTAR of 2014-15, in contrast, has been given ten specific issues by the government to consider. They are more private-sector-oriented than our specific issues were. The third issue, for example, is one that spotlights “...the improved alignment of transportation policies and regulations and/or the use of innovative financing mechanisms.” This specific issue will, I believe, allow the current Review to consider possibilities well beyond those included in the current infrastructure Action Plan of the federal government. The recent creation, for example, by China of the new *Asian Infrastructure Investment Bank*, capitalized initially with US$50 billion, and ultimately to be capitalized with US$100 billion, and its “Silk Road Project,” should be wake-up calls for all of the economically-advanced countries of the world. Are these projects “good things” or not?

Many countries, like the USA and Australia, think they are not. I wonder whether their creation will finally kick start the long overdue debate in this country about whether iBanks --- publicly-financed ones and privately-financed ones or mixed public and private ones --- should be created in Canada to meet the heavy demands for infrastructure money that governments alone will be either unable or unwilling to provide in future? Infrastructure banks of various kinds are being created all over the world, not just in Asia. Emerson and his team must, I believe, look at these trends and decide whether any of them apply to Canada.

There have been some excellent monographs written recently --- two of them by Jack Mintz at the University of Calgary's School of Public Policy --- on the subject of road and infrastructure pricing and why "...the absence of proper pricing leads to an over utilization of public infrastructure...[and a system where] individuals have little or no incentive to moderate their use of public infrastructure or services." CTAR 2000-1 made the same point in Chapter 10 --- "Paying For Roads" --- and suggested a way out of the pricing maze. Whether CTAR 2014-5 will have the audacity to tackle this issue --- one that constitutionally lies outside the ambit of the federal government --- remains to be seen. Certainly, the terms of reference that Emerson & Co. have been given will allow the subject to be addressed. And the coming of the automated vehicle will have a national impact, not unlike the one the railways had in the 19^{th} century. So that fact alone may open the door for the 2014-5 review to examine this subject area.

Let me give you the benefit of my recent years of experience on the front lines of trying to get people to focus on many of the dilemmas facing all those in the transportation policy pit. In 2012, I wrote a comprehensive White Paper on reforming Canada's transportation policies in the 21^{st} century. This paper came out of an excellent conference that was held in Calgary in 2011, one that was co-sponsored by the Van Horne Institute and the University of Calgary's School of Public Policy. I then led a series of roundtables in six Canadian cities where the White Paper was the discussion document. Subsequently, I produced a summary report of those roundtables. A wide spectrum of people in every city I visited talked about the pricing problem in ***economic*** terms. But most did not talk about the *real* issue, which, in my opinion, is ***political*** economy --- with emphasis on the political part of that phrase.

Most of those who attended our roundtables knew that continued reliance on unpredictable and "lumpy" government assistance *alone* for funding infrastructure projects was not an option any more. More of the "tools" available in the so-called "toolbox of options" had to be considered. Vancouver's TransLink, in 2011, enumerated no fewer than 30 "tools," including various kinds of bonds and infrastructure banks that could be used. In its famous report of 2013, MetroLinx in Toronto listed seven principal "tools" that it claimed could be used to cure Toronto's neglect of its transportation infrastructure for 30 years.

The key question for me has always been: ***how** do you get the people to pay the infrastructure piper?* How do you get people to pay ***directly*** for "goods" that, hitherto, they have not had to pay for in the past, except ***indirectly**?* Some of the possible arguments for public acceptance of new charges that were advanced at the roundtables included: saving commuting time or time generally; easing congestion; providing better infrastructure assets; depoliticizing infrastructure decision-making; or saving the planet from climate change. One of the best reasons that was not much mentioned at the roundtables was contained in Jack Mintz's and Philip Bazel's 2013 paper, *Urban Growth and Infrastructure: Paying Not Just Paving,* at page three:

> "The contrast between urban infrastructure problems and other infrastructure issues in Canada is quite striking. Communication, power, commercial rail and air transportation infrastructure seem adequately provided in Canada. Prices generally cover costs, a necessity for private ownership as in the case of commercial rail and communications, but also in the case of non-profit supply, such as local airport authorities." [and the CATSA security charges I put in place in 2002 when creating that new Crown Corporation.]

Here is my second insane idea for today. Like Alice in Wonderland, I am thinking one impossible idea every day. The most radical extension of Mintz's approach would be to privatize of all the main roads and highways of Canada and to sell them to an infrastructure investment company like Macquarie or to a consortium of Canada's large insurance companies and/or pension funds. The roads could then be priced the same way as rail has been priced since CN was privatized --- on a variable, dynamic model that would allow the new road-owning company to pay for the upkeep of the road system in the same way as CN and CP keep their track systems in good nick. As I suggested earlier, imagine if CN was still a Crown Corporation, and looking for its share of this upkeep from the public purse rather than from shareholders!

One of the great opportunities for convincing the public that it should pay for roads, or more for transit, will come with the arrival of the automated vehicle (the AV) which we will hear more about later today. AVs --- plus the use of Big Data analytics and quantum computing --- will give the managers of our transport systems of all kinds the most sophisticated "tools" available for making these systems far better than they are today. And people might finally be convinced that they should pay a price of some sort for this new excellence. Our politicians might even have the imagination to couch this new system in terms of a "national dream", similar to the one that created the CPR --- and Canada.

Something new and original will certainly be needed at a time when public approval of governments and politicians is at an all-time low. The middle class is dying a slow and agonizing death in most of the developed world. Most incomes are stagnant. Deference to authority died a long time ago. Our demographics are challenging. And any suggestion that salaried people should pay more taxes will not fly easily. More than 50 per cent of Canadians live paycheque to paycheque: it will take an heroic effort to convince them they should be paying a road toll or the full cost of transit at a time when only a small percentage of citizens in advanced economies believe their governments spend money "efficiently." I trust CTAR 2014-5 will take up this sensitive subject and say something about it.

Many participants at our 2013 roundtables suggested that all that was needed was more or better "leadership" or "political will" from our political and bureaucratic "masters." Well, let me remind you of one of the greatest acts of political leadership in the last 25 years in Canada, namely, the imposition on Canadians of a seven per cent GST by my old law school classmate and debating partner, Rt. Hon. Martin Brian Mulroney. That courageous act was one of the major factors in saving Canada from going off the fiscal cliff in the 1990s. (We are still profiting from that initiative today.) But that GST did much to destroy the Progressive Conservative Party of Canada --- the party that created Canada in 1867 --- a party which, in case you haven't noticed, no longer exists at the federal level. You may bet you last loonie that every sentient politician in Canada today either actively remembers that fact or has it lodged somewhere in his or her reptilian brain. So, despite some polls that claim that a slim majority of voters may now be prepared to pay for road-related infrastructure through tolling, most politicians will tread *very, very* carefully before buying into this pricing policy --- and risk losing their jobs.

The fourth specific 2014-5 mandate --- the one on "technological innovation" --- should allow some very forward thinking by the Review on subjects like the coming of automated vehicles; the uses (or abuses) of meta data or Big Data; the impact of quantum computing; the arrival of 3D printing and its transformative effect on manufacturing; the coming electrification of most vehicles and the decline of the use of oil (not natural gas) in transportation. And perhaps even the arrival in 15 years or so of useable fusion power. The fourth mandate should also open the door to asking the very difficult questions we asked, and tried to answer, not only about who pays for transportation infrastructure but ***how*** they pay for it, the perennial ghost at the infrastructure "banquet." Not considering this will be tantamount "to performing Hamlet without the Prince."

One of the broad-brush mandates given to CTAR 2014-5 is the one that asks the Chairman and his Advisers to examine the

> "...major global and national trends relevant to transportation, projecting freight capacity needs across the system, examining whether existing or planned capacity and performance improvements will be responsive to these needs and periodic demands for surge capacity, and advising on the possible steps to help ensure that the national transportation system has the capacity and nimbleness to support economically activity across all sectors over the medium-and-long-term."

Now, that is one tall order but it is one that will allow the new Review considerable leeway in making recommendations for the future. Will the explosive growth of the movement of petroleum products by rail continue as the public turns more and more away from the building of pipelines? [What a strange turn of events that is!] Will the new Review use this mandate as an opportunity to review the potential impact of the new European and Trans-Pacific trade treaties might have on Canada? I think they should seize this opportunity. And then there are the perennial barriers to interprovincial trade that we have yet to conquer in Canada, some of them due to transportation problems.

A less ambitious mandate is the one that asks the Review to focus on "...safety and well-being concerns related to rail transportation (including the movement of dangerous goods) through communities..." Will the Review be tempted to look at the thousands of unsignalled level rail crossings in Canada and dare to suggest how they might be made less dangerous? That review is desperately needed but it may be a bridge too far in 2014-5.

On the mandate relating to transportation in the North, I trust the Review will look at the excellent work of Prof. Barry Prentice of the University of Manitoba on the potential use of blimps and dirigibles for northern transportation. Will Emerson and some of his Advisors visit the North, as we as did --- the first transportation review ever do this? I trust they will. In a recent *Globe and Mail* interview, David Emerson said, "I worry about the North" and then spoke movingly about the way we are developing the North today, in contrast to other ways in which we might proceed. He worried too in this interview about the overarching issue of how "...regulatory licence being replaced by the amorphous 'social licence'." This is something that crosscuts much of what the new Review will have on its plate and should be pursued.

Then, there is the perennial problem of what to do with VIA and the millions in federal subsidies that VIA still gets. I have been told privately by VIA executives that they would love to be commercialized or privatized. Turning VIA over to a new not-for-profit authority made up of representatives of the communities from Quebec City to Windsor that rely heavily on VIA would be a start. Let them, not Ottawa, figure out how to make the service economic. It worked for Canada's airports and ports; why not VIA?

Speaking of the aviation sector, we all know how much airline passenger traffic bleeds from Canada to the US every year. The last figure I heard was five million passengers per annum. As Peter Wallis of the Van Horne Institute said: that is the equivalent of having one middle-sized Canadian airport going missing. One of the reasons for that bleeding is the costs associated with Canadian commercialized airports: their AIFs; their landing fees; their fuel costs; and the massive rents they pay to the federal government. (For what?) As I said earlier, CTAR 2000-1 was deeply concerned about the monopolies that had been created at our airports by the federal government and wondered whether privatization of major airports might now finally take place. The current discounted cash value of the nine major airports in Canada is said to be in the neighbourhood of $15 billion. Why not sell these first-class properties and use the money to pay down some of Canada's debt? That is what is happening in much of the world. Why not here?

On the "technological innovation" mandate that has been given to CTAR 2014-5, consideration should be given by the Review to the paper on AVs that will be given this afternoon. If the paper's predictions are even close to being correct, no new infrastructure project --- like a new bridge or highway or transit system of any kind --- should be planned or built without an "AV impact audit" of some kind to determine whether what is being planned or being built will be appropriate in the coming Age of AVs. Having watched the explosive growth of environmental audits over the past decade or two, I trust any process that is set up to provide these AV impact audits will not be as expensive or as maddeningly time-consuming as many environmental audits have become.

I would now like to conclude by making a few comments about procedure or process. According to *The Western Producer's* November 2014 issue, the CTAR 2014-5 "...is expected to complete its preliminary round of consultations within the next few weeks." Those of us who try to keep a watching brief on what is happening know that Emerson and his outstanding group of Advisors have been hard at work on these consultations. But who they are consulting and what they are being told remains a mystery. A visit to the CTAR 2014-5 website does not give us any answers to this question. Will we be told in due course? I trust we will because one of the strengths of the CTAR 2000-1 consultations was their openness and transparency. Subject to some constraints because of commercial confidentiality, we published every submission that was made to us in 2000-1, and revealed who made that submission. We also posted all the research that we commissioned as soon as it came into our hands. That open process was so successful that Hon. Bob Rae, one of the 2000-1 Panel, copied it --- soon after our report was released --- in his successful Royal Commission on post-secondary education in Ontario.

One of the mysteries of the new process is the exact role of Emerson's "Advisors." There is no question that those who were appointed are outstanding figures in their sectors of the transportation community of Canada. But, after the current consultation process is complete, what will their role be? Will they publish papers or reports on the results of those consultations? What will Emerson's role be? Will they meet regularly, as my Panel did, throughout the entire process and be equals in the production of the interim and final reports of CTAR 2014-5? I trust they will be but we simply do not know the answer at this stage to how the process has been working so far, or will be working in future. One editorial comment I must make is that the Advisors, despite their obvious and outstanding credentials, are mostly from industry, unlike our Panel of 2000-1 which was more diverse. And they are not as geographically diverse as our Panel was.

We do not know at this stage what the budget for CTAR 2014-5 will be. Our budget was $6 million. In today's dollars, that would mean CTAR 2014-5 should have about $10 million to use for its efforts. We still do not know whether there will be an extensive research budget for the new CTAR. I can tell Emerson and his Advisors that the research we commissioned in 2000-1 was extremely valuable and was a cornerstone for the excellence of "Vision and Balance."

I applaud the fact that the new Review is "arms-length" from government --- and congratulate my fellow Nova Scotian, Hon. Lisa Raitt, for having given Emerson and his team the freedom to interpret its mandate in any way they see fit and proper. We certainly conducted our Review in a much different way than the previous Rivard review had done, and were happy that we did it our way. All I will say is that I trust Emerson will have the nerve to "colour outside the lines" on a few issues in the Brave New World of transportation policy, and to do some very necessary lateral thinking. Given Emerson's history and the interview with the *Globe* that I mentioned earlier, I think he will.

As I said at the beginning, the world is moving at warp speed these days. Focusing only on short-term issues like grain or petroleum movements by rail will be interesting but these issues will be overtaken by bigger picture ones very soon, particularly if the world falls back into widespread recession or European deflation in 2015, as many predict will happen, or if China's growth engine stalls and its massive debt overhang causes its economy to falter in any way. The "target" for the new Review will be changing and moving faster than ours did. There are many good institutions and outside advisers in Canada whom the new Review could retain to help them in their huge task. I trust they will have the resources and the inclination to reach out to these people and institutions. By the way, having several topnotch transportation lawyers on our staff was an important advantage.

I will reveal one secret to Emerson and his colleagues: the year my Panel spent doing what we did was the most exciting policy process of our lifetimes and one which we all still remember fondly. (I should note that the vice chair of our review, Jean Patenaude, who did much to make our effort successful, is here with us today. Thank you, Jean, for your wise counsel.) As a lifelong "policy wonk." I wish them the same wonderful experience Jean and I had 14 years ago.

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