

take it to have been used by Lord Wright. . . . In [the *Japanese Canadians* and *Wartime Leasehold*] cases the 'emergency' was occasioned by war and the aftermath of war, but I see nothing to exclude the application of the principles there enunciated from a situation created by highly exceptional economic conditions prevailing in times of peace. In my opinion such conditions exist where there can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the provinces and thus presenting an emergency which can only be effectively dealt with by Parliament in the exercise of the powers . . . 'to make laws for the peace order and good government of Canada.' The authority of Parliament in this regard is, in my opinion, limited to dealing with critical conditions and the necessity to which they give rise and must perforce be confined to legislation of a temporary character. I do not consider that the validity of the Act rests upon the constitutional doctrine exemplified in earlier decisions of the Privy Council . . . and generally known as the 'national dimension' or 'national concern' doctrine. It is not difficult to envisage many different circumstances which could give rise to national concern, but at least since the *Japanese Canadians* case, I take it to be established that unless such concern is made manifest by circumstances amounting to a national emergency, Parliament is not endowed under the cloak of the 'peace, order and good government' clause with the authority to legislate in relation to matters reserved to the provinces. . . . The source of the federal power in relation to the Anti-Inflation Act must, in my opinion, be found in the 'peace, order and good government' clause, and the aura of federal authority to which that clause relates can in my view only be extended so as to invade the provincial area when the legislation is directed to coping with a genuine emergency in the sense to which I have made reference."<sup>13</sup>

And what God (or the ghost of Sir John A. Macdonald) said, one's own politics will determine.

—DR. ALEXANDER SMITH, Q.C.\*\*

13. *Reference Re Anti-Inflation Act*, (1976), 68 D.L.R. (3d) 452 at 506-507 and 508.

\*\* Professor Emeritus of Law, University of Victoria.

## SOVEREIGNTY AND ECOLOGY

"There are strange things done in the midnight sun  
By the men who toil for gold;"

Robert Service

If Canadians consider Canadian sovereignty desirable, its continuance is threatened by the problems in the transportation of northern gas and oil.

"When out of the night, which was fifty below,  
and into the din and the glare,  
There stumbled a miner fresh from the creeks,  
dog-dirty, and loaded for bear."

Robert Service

While lecturing in the greater Los Angeles area a decade ago, the

writer stated that he felt that it was sad that two countries with similar ethnic and religious backgrounds and common cultural ties could not be fused into one country.

"For modes of faith let graceless zealots fight;  
His can't be wrong whose life is in the right."

Pope, Essay on Man

The American audiences applauded encouragingly. The writer then added that he had been speaking to our Chief of State and that he had said that he too felt the same, but that he was so busy that he could not take on the administration of fifty more provinces.

"The lion's paw is all the law."

Lowell, Biglow Papers

The capital cost for a rail system for moving oil and natural gas is such that Canadians can raise the monies required without seriously affecting the value of the Canadian dollar.

A 50% equity in the pipeline would require greater sums of the dollar markets. This would have a bad effect on the Canadian dollar.

"The Arctic trails have their secret tales  
That would make your blood run cold;"

Robert Service

Imagine a railway floating on top of permafrost!

"Who is so faint, that dare not be so bold  
To touch the fire, the weather being cold?"

Shakespeare, Venus and Adonis

In 1945, as a student, I rode the trembling rails of the Hudson Bay Railroad. It was laid on permafrost.

"The spider's touch, how exquisitely fine!  
Feels at each thread, and lives along the line."

Pope, Essay on Man

We have the technology. We have the environmental impact experience.

Migrating animals are willing to cross railway lines, and can do so without difficulty. Mind you, there is a certain amount of mortality. Purebred cows and bulls, for example, are often killed even in the civilized areas.

"Nature teaches beasts to know their friends."

Shakespeare, Coriolanus

Four years ago I was with a party of Canadian contractors and engineers in the City of Samarkland in the U.S.S.R. This group of men had just come in from a tour to familiarize themselves with construction in sub zero temperatures in the areas of permafrost.

The builder I was speaking to was from Winnipeg. He told me that they had gone expecting to learn fantastic new techniques developed by the Soviet scientists. He said that the Soviets were at approximately the stage the builders were in 1932 in Winnipeg. He said Canada leads the world in Arctic technology.

*Contribution to Canadian Prosperity*  
(the narrow nationalistic view)

"The more goods a man has, the more he thinks he needs."

Charles Wagner, *The Simple Life*

The building, the owning and the operating of the Arctic railroad system will have Canadians in control of the system that moves their energy resources to the market. It will require the employment of railway car factory workers, factory builders.

"A sensible man,  
He stays to his home an' looks arter his folks;  
He draws his furrer ez straight ez he can,  
An' into nobody's tater-patch pokes."

Lowell, *Biglow Papers*

There will be construction of a city for a southern terminal of the railroad. It will bring into the North the consumer goods to make northern living more desirable and cheaper.

"Know, sense, like charity, begins at home."

Pope, *Umbra*

As early as 1973 figures were released showing that the cost of delivering natural gas by rail in the solid form is a third of the cost of transmitting it in a vapour pipeline.

"Back of the bar, in a solo game, sat Dangerous  
Dan McGrew,  
And watching his luck was his light-o'-love,  
the lady that's known as Lou."

Robert Service

The operation of an oil and gas rail system would inject \$400,000,000 per year into the Canadian economy.

The feasibility study re the Arctic railroad across the Mackenzie Delta and down the valley was done by a committee on guided ground transport at Queen's University, Kingston, Ontario.

Floating a railroad on permafrost uses the same principle as laying temporary railroads on ice. Floating bridges are used in time of war.

"Necessity, the mother of invention."

George Farquhar, *The Twin Rivals*

A few years ago, I followed this principle by laying a piece of plastic over a mucky edge of a boggy lake. I weighted down the plastic with stones at the four corners, and a three inch layer of sand and gravel.

"Learn of the little nautilus to sail,  
Spread the thin oar, and catch the driving gale."

Pope, *Essay on Man*

Voila! A new sandy beach. For years its has taken off loading boats from trucks and campers.

"A load would sink a navy."

Shakespeare, *King Henry VIII*

The beautiful thing about railroads is that they are reliable. The kinks have all been knocked out over the last century. The revolutionary techniques and technology involved in Arctic pipelining leaves everyone

up in the air. Problems are still to come. Decades of anxiety and concern face the residents of the North.

"I have no debt but the debt of Nature;  
and I want but patience of her,  
and I will pay her every farthing I owe her."

Sterne, *Tristram Shandy*

The railroad is built from the front dropping the float at the end of the line onto the permafrost. With pipelines, however, scarring, is inescapable.

"O, magic sleep! O comfortable bird,  
That broodest o'er the troubled sea of the mind  
Till it is hushed and smooth."

Keats, *Endymion*

Even though the Arctic railroad would be the most costly type of railroad to construct, as we know from the construction of the Hudson Bay Railroad, the maximum cost is only about 40% of the cost of a 48" oil pipeline.

"The strongest plume in wisdom's pinion  
Is the memory of past folly."

S. T. Coleridge, *To an Unfortunate Woman*

The annual operating costs have been estimated as \$58,000,000 for wages for 4,600 permanent employees. \$327,000,000 is estimated for maintenance; \$200,000,000 for interest charges; total, \$400,000,000. Debt charges alone on a 48" pipeline are \$400,000,000 for interest.

Canadians should be greatly concerned with the fact that the railway system would have a tremendous economic impact on the economy of their nation.

"They are slaves who dare not be  
In the right with two or three."

Lowell, *Stanzas on Freedom*

Many Canadians and, of course, many Americans believe in the desirability of joining the two countries. The continued linkage of the two countries' delivery systems, which do not require massive employment of Canadians, certainly encourages a centralization of a Canadian-American economic unit.

"Now a promise made is a debt unpaid, and the  
trail  
has its own stern code.  
In the days to come, though my lips were dumb,  
in my heart how I cursed that load."

Robert Service

Even if you do believe in economic federation, with or without probable political federation following, it is a shame to damage the terrain of the Canadian North by pipelines when a tried and true railroad system is available.

"It's fine in here, but I greatly fear you'll  
let in the cold and storm—  
Since I left Plumtree, down in Tennessee,  
it's the first time I've been warm."

Robert Service

—R. F. MacIsaac\*

\* LL.B. (Sask.) of the firm MacIsaac, Clark, Sinclair, Nanaimo, B.C.