Milestones in Canadian Transportation Policy- Water and Highway - Part II

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I. Introduction

Water transportation has always played an important role in Canada's internal and external trade from the early colonial days. It is much older than highway transportation dating back to the 1600s and so is its policy. Roads played no part in the imagination of 19th century Canada nor did they offer the early settlers freedom from the tyranny of nature. It is therefore not surprising that there was no clear discernible road policy before 1850.

Part II deals with policy in water transportation and highway transportation. It first provides an overview of policy in water transportation and then examines the milestones in water transportation. This is followed by an overview of policy in highway transportation and its milestones. The final section of this part reviews the future of transportation policy. There is also a companion paper which reviews rail and air transportation policy in Part I.

II. Overview of Canadian Water Transportation Policy

In brief, Canadian water transportation policy is a history of: laissez-faire; protection, financing and subsidization; government operation, ownership and privatization; expanded protection; commercialization; and a market oriented philosophy.

1600-1848: *Laissez-faire*

Water transportation was free of government regulations and control in the early colonial days in British North America. Coasting trade was open to all Commonwealth ships and shipbuilding as a commercial enterprise dates back to 1732 when a shipyard was established in Quebec on the banks of the St. Charles River. In England too, free trade policy replaced the mercantilist policy leading to a repeal of the Navigation Acts of 1381 in 1848.

1849-1917: *Protection, Financing and subsidization*

The first piece of Canadian legislation restricted coasting trade to British ships continuing the protection afforded under British law. By 1875, Canadian shipbuilding reached a peak when nearly 500 ships were built in Canada. The arrival of iron and steel ships saw a decline of the Canadian shipbuilding industry

* *The views expressed here are those of the authors and are not purported to be those of the Commissioner nor of the Competition Bureau nor of Industry Canada.*

and the Government established a number of repair and building facilities in a number of ports. In addition, a tripartite subsidy was provided by the Canadian Government, the British Government and the City of Halifax.[20]

1918-1944: *Government Ownership, Operation and Sale*
The government's shipbuilding programme of 1918 led to its ownership of ships which were needed for the carriage of war supplies. This later led to the Canadian Government Merchant Marine operating ships. The operation of ships led to losses and these ships were eventually disposed of by 1936. The arrival of the Second World War once again led to a similar pattern, the government placed orders for ships which ultimately resulted in ownership. By the end of the War, it had 258 dry-cargo vessels and 20 tankers. It again disposed of them following the recommendation of the Merchant Shipping Policy Committee in 1943. The government continued financing and subsidizing shipbuilding.[21] It also continued its policy of protecting coasting trade.[22]

1945-1968: *Continued Protection*
In 1947, the Canadian Maritime Commission was set up and continued the policy of protecting the ship building industry. Protection continued by: imposing a 25% duty on importation of non-Commonwealth built ships; channeling the escrow funds under the replacement plan to Canadian ships; and providing advantageous terms under the *Vessel Construction Assistance Act* (such as increased depreciation and recapture of depreciation). In 1949, the government concluded that Canada was not justified in maintaining a Canadian flag deep sea fleet via subsidies or preferential tax treatment for shipowners and operators, a policy which has not changed to date. However, the government continued to favour reserving the coasting trade to British ships vis a vis foreign competition by not acting on the recommendation of the 1957 Royal Commission.

1969-1993: *Expanded Protection*
This period 1969-93 witnessed increased protection to the industry resulting in further reduction of competition following the recommendation of the Darling Report. Ocean shipping conferences were given an exemption for the first time from the *Competition Act*. Further, pilotage services were organized under four pilotage authorities which were given a statutory monopoly to provide services. In addition, the coasting trade was restricted for the first time to Canadian ships. Marine activities in the coasting trade and the area to which the coasting trade law applied was also expanded. The combination of these three events based on the recommendations of various Commissions served to reduce or limit competition.

1994-2006: *Commercialization (Divestiture/Market-Orientation)*

During this period, in contrast to the earlier policy, the government adopted a different approach to government owned infrastructure. Transport Minister Douglas Young "set out the Liberal government's vision of transportation ... to commercialize and bring Canadian transportation into the 21st century." He indicated that much of Canada's marine system is overbuilt and overly dependent on government subsidization and that it must be responsive to the needs of users. He laid down the objectives of a national marine policy. It reflected the principle of commercialization, which includes divesting ports and services based on the concept of user pay and elimination of unnecessary or outdated regulation .

In 2001, Industry Canada announced a new shipbuilding and industrial marine policy designed to be market oriented and fair. Competitive provisions were introduced in SCEA and there was mounting pressure to end the exemption to shipping conference from the *Competition Act*.

III. Milestones of Canadian Water Transportation Policy

1600-1848 Waterways was the most important form of transportation in the 1600s, it is not surprising that the government's role in this sector first began with financing the 'Voyage of the Nonsuch' and the construction of canals. In 1763, the Treaty of Paris allowed all Commonwealth ships to participate in Canadian coasting trade whether registered in Canada or elsewhere in the Commonwealth. But it was not until 1849, that coasting trade was restricted to British ships[23]. This restriction had its origin in *An Act to Amend the Laws in force for the Encouragement of British Shipping and Navigation, 1849*, a British law.

1849-1917: In 1870, the first piece of Canadian legislation on water transportation, *An Act Respecting the Coasting Trade of Canada, 1870* was adopted. It restricted coasting trade to British ships, brought about by the repeal of the law in the United Kingdom in 1869 and to its possessions in 1870 which applied to all overseas colonies restricting coasting trade.[24] In 1902, *An Act Respecting the Coasting Trade of Canada 1902*, limited coasting trade to British ships and required licences for foreign built British ships.

The Canada Shipping Act 1906 consolidated previous separate Acts on shipping including the Act on Coasting Trade as Part XVI. However, its status was uncertain owing to the possible conflict with the UK Merchant Shipping Acts of 1894. No more developments on coasting trade occurred till 1931.

1918-1944: In 1918, the Canadian government initiated a shipbuilding programme. The ships were intended for the carriage of war supplies. To operate the ships on completion, the Canadian Government Merchant Marine was incorporated on Dec. 30, 1918. Due to subsequent losses, it recommended gradual disposal of vessels

which started in 1923 and was completed in 1936. With the outbreak of World War II, the Government placed orders for ships and owned 258 at the end of the war.

In 1923, the *Inland Water Freight Rates Act* was enacted following the Report of the Royal Commission on Lake Grain Rates. It provided for regulation of bulk cargoes It authorized the fixing of maximum rates and provided that grain carriers should fix and publish a tariff of tolls on the carriage of grain from Fort William or Port Arthur to ports either in Canada or in the United States. A year later, the Act was amended to remove the publishing requirement except that copies of every contract be filed with the Board of Grain Commissioners. The power to retain maximum rates was retained whenever the Board was of the opinion that any rate was unreasonable, excessive, or unjustly discriminatory.

The lack of uniformity on shipping law in the British Dominions led to 'The British Merchant Shipping Agreement' in 1931. It established a uniform basis for registration of ships in all of the Commonwealth, a common status of British ships including equality of treatment, among other things such as the power over coasting trade, a custom tariff, etc. In that year, the Statute of Westminister completed the legal autonomy authorizing Parliament to repeal any UK legislation applicable to Canada, including equality of treatment of British ships.

These developments led to the enactment by Parliament of the *Canada Shipping Act 1934*. It came into force in 1936 and provided for the British Merchant Shipping Agreement of 1931(BMSA) which continued, in Part XIII, the operation of the previous law relating to coasting trade in Canada. The Act also provided for clearance papers for ships, inspection of seaworthiness, health, safety, crew, etc.

In 1936, the *Carriage of Goods by Water Act* (COGWA) was passed adopting an international regime of liability for the carriage of goods on the basis of the 1924 international convention known as the Hague rules. According to these rules, claims were based on a per package limit.

A decade later, the *Transport Act* of 1937 gave the Board of Transport Commissioners (BTC) authority over inland water transport of general cargo and passengers by licensing ships operating between ports on the St. Lawrence River, the Great Lakes and the interconnecting rivers. The purpose of the Act was to restrict admission to the industry unless conditions of public convenience and necessity were satisfied. However, waivers could be issued by the Governor-in-Council. Tariffs for inland water transport were subject to filing and approval by the Board. Further, tariffs charged had to be in accordance with those filed and detailed provisions existed to ensure that they were fair, reasonable and non-discriminatory.

In 1943, the Government appointed a Merchant Shipping Policy Committee to recommend a policy for Canada's merchant shipping for the post war years. The Committee recommended that since shipbuilding is commercial, the ships should be owned and operated by private companies. The Government accepted the recommendation and sold most of the vessels under a deferred payment plan but required Canadian registry ('Park formula').

1945-1968: In 1947, the *Canada Maritime Commission Act* was established "to consider and recommend to the Minister from time to time such policies and measures as it considers necessary for the operation, maintenance, manning and development of a merchant marine and a shipbuilding and ship repairing industry commensurate with Canadian maritime needs." Maritime matters also included administering subsidies. Twenty years later their functions were taken over by the Canadian Transport Commission.

A year later, the Government adopted the 'Replacement Plan' which permitted replacement by sale of ships in the above plan to foreign buyers with continued requirement of Canadian registry for new purchased ships. Funds from their sale were placed in an escrow fund. Restrictions in the plan led to subsequent changes. In 1949, the Government approved a one year programme of operating subsidies under a Transfer Plan (transfer from a Canadian registry to a UK one).

This approach of assistance continued and the *Canadian Vessel Construction Assistance Act* was adopted. It provides a preferred treatment with respect to depreciation and recapture of depreciation where a ship has been subsequently sold since January 1, 1949. Owners of a vessel constructed and registered in Canada may claim a depreciation of 33.3% on its original cost for tax purposes whereas the maximum allowance for other vessels was 15% on a diminishing balance.

The *Canada Shipping Act* was again amended in 1952. Part XIII provides for - cabotage with regard to goods, passengers and towing ships other than a British ship. Waivers to non-British ships were provided for but the requirement that reciprocal permission be provided to Canadian ships was removed. It provided for waivers to 'foreign built British ship' on the payment of a tariff of 25%.

In 1957, the Royal Commission (Spence) on Coastal Shipping recommended rejection of the proposal to restrict the coasting trade to vessels built and registered in Canada. It was of the opinion that the gains to Canadian shipbuilders were not enough to outweigh the disadvantages to shippers from the reduction of competition. This implied a continuation of the reservation of the coasting trade under the existing Act to vessels of British ownership and not Canadian vessels.

1969-1993: Concern of participation by Commonwealth ships in transporting grain from Thunder Bay to Halifax led to an inquiry in 1969. W. J. Darling made 15 recommendations regarding coasting trade. For example, the coasting trade should be reserved to Canadian flag carriers which meant withdrawal from the BMSA; the activities relating to marine should be broadened to include dredging, salvage, offshore drilling, etc.; the law should apply to the Canadian Continental shelf; the policy should allow waivers to be issued by shipping policy agents where Canadian ships are unavailable, insufficient or inadequate etc.[25] This represented a radical departure from the then existing policy.

In 1970, the first *Shipping Conferences Exemption Act* (SCEA) was passed. The Act limits the application of competition policy by exempting ocean shipping conference agreements from certain provisions of the then *Combines Investigation Act*, subject to certain prohibitions i.e. predatory practices - using fighting ships, refusing to transport goods for a shipper for use of a non-conference vessel, and limiting/preventing the use of port facilities for a non-conference carrier.

In 1973, the *Pilotage Act* provided for the creation of four pilotage authorities and gave them with a monopoly in the provision of pilotage services. It gave the CTC jurisdiction over pilotage tariffs and provided for appropriations by Parliament to cover losses.

From 1973 to 1977, attempts by Jean Marchand and Minister Otto Lang to make changes to the coasting law, through Bill C-41 and Bill C-61, failed. No further attempts were made till the Minister of Transport, Don Mazankowski introduced his white paper in 1985. He proposed to amend the *Canada Shipping Act* by restricting the coasting trade to Canadian ships, extending the acts jurisdiction to 200 nautical miles offshore and covering all marine activities except fishing. It was not until 1992 that these changes (which were recommended earlier by W. J. Darling) were introduced in Part X of the *Coasting Trade Act* (1992) as the *Coasting Trade Act* (1990) had made minimal changes. This protectionism extended past policy.

The 1987 *SCEA amendments* contained important provisions to promote competition i.e., it restricted interconference agreements and restricted loyalty contracts; it provided for conference service contracts and independent action; it did not provide the exemption when there was predatory pricing and when the agreements covered multimodal rates.

In 1993, COGWA was revised to modernize Canada's regime of shipowners' liability for loss or damage to cargo. The issue was whether Canada should adopt

the Hague/Visby Rules or the Hamburg Rules.[26] In the absence of consensus on what to adopt, COGWA implemented a staged approach to both regimes.

1994-2006: In 1994, Transport Minister, Douglas Young introduced a policy of commercialization (Marine Atlantic ferry service) and decentralization of government operations (divestiture of ports). Federal licencing and tariff regulation of marine resupply services in the North were to be eliminated. The National Marine Policy and its objectives were unveiled in December 1995.[27] The objectives were: to provide affordable, effective and safe services; to encourage fair competition; to shift the burden to user pay; to reduce infrastructure and service levels based on user needs; and to continue government's commitment to sustainability.

The policy was to make it easier for ports and other marine services and facilities to operate according to business principles. It included: dissolution of the Canada Ports Corporation (CPC); creation of not-for-profit Canada Port Authorities (CPA); divestiture of regional and local ports; management of the St. Lawrence Seaway (SLS) by user interests; and commercialization of ferry services and the modernization of marine pilotage.

In September 1996, a new *Carriage of Passengers by Water Act* was proposed to establish a comprehensive regime for the loss of life or personal injury of passengers carried by water in Canada. It is part of the *Marine Liability Act* (passed in January 2001) which combines the existing and new marine liability regulations (COPWA and COGWA) into a single logical framework for claims related to: personal injuries, fatalities, pollution and property damage.

The *Canada Transportation Act 1996* eliminated licensing and tariff regulation of marine resupply services in the North and extended the Final Offer Arbitration provision to Northern marine resupply rates.

The *Canada Marine Act* which received Royal Assent on June 11, 1998, incorporated the marine policy of 1995. The Act defines three categories of ports and provides them with the tools they needed: to operate commercially and efficiently; to streamline the management regime for the new CPA and other regional and local ports currently administered by Transport Canada; and to dissolve the CPC, thereby reducing transaction times and overhead costs for major ports. It also established a new framework for the management of the SLS allowing for commercialization of its operations and incorporates amendments to the *Pilotage Act*.

The *Pilotage Act* was amended in 1998 providing for: the appointment of members

of the pilotage authority; a faster setting of tariffs; an end to appropriations by Parliament to cover losses except in emergencies; a provision for borrowing of money fixed by the Governor-in-Council; a dispute resolution mechanism; and a review of pilotage issues by the Minister of Transport within one year of coming into force of the Act.

SCEA was amended in 2001 with measures to enhance competition and efficiency (i.e., a reduction in the notice period before independent action could be taken, a requirement to provide individual service contracts and a removal of tariff filing).

In 2001, Industry Canada announced a new shipbuilding and industrial marine policy that attempts to balance the interests of all parties. "...the result is a future-oriented policy providing new opportunity to the industry. With this policy, we are raising the shipbuilding and industrial marine industry to a new level within government. It is realistic, it is market-oriented, and it is fair." (p. iv) The new policy framework is grouped into five categories: 1) capturing domestic opportunities; 2) looking globally, 3) innovating as key to competitiveness, 4) financing and 5) strengthening partnerships.

In sum, Canada inherited much of its policy to coasting trade from England. Subsidization and financing can largely be attributed to changes in the fortune of the shipbuilding industry. This together with the wartime effort led to the operation of the merchant marine by the government and later to its sale. Increased protection to Canadian ships largely resulted from increased competition due to the opening of the Panama Canal and the need to protect offshore oil exploration. Its commercialization of infrastructure together with its user pay approach to services follow its policy adopted in other modes.

IV. Overview of Canadian Highway Transportation Policy

In brief, Canadian transportation highway policy is a history of: laissez-faire; mandatory labour / local control; provincial regulation and control; provincial tax, user pay and road construction; federal grants and cost sharing; federal regulation and increased federal grants; federal and provincial deregulation and cooperation.

1700-1800: *Laissez-faire*

During the early colonial days there was no discernible road policy. Instances of road building were sporadic largely related to the delivery of mail by horseback.

1800-1900: *Mandatory labour / Local control*

The employment of statutory labour to build the road system suggests the prevailing policy of 'mandatory labour'. Responsibility for road construction rested largely with local governments, except for minor digressions on key routes involving

provincial governments.

1901-1918: *Provincial Regulation and Control*
This period witnessed the beginning of various motor associations and the development of a 'car culture'. The policy for construction devolved to provincial governments from local governments and the provinces of Ontario and Quebec adopted statutes for the registration of vehicles. The fees from registration helped finance road construction and began what amounts to a user pay policy.

1919-1930: *Provincial tax, User Pay and Road Construction*
The federal government passed the first piece of legislation in 1919 which set funds for cost sharing. Roads, unlike railways, seemed to play no part in its thoughts of nation building. Nevertheless, the 1920s was revolutionary for the construction of highways largely spearheaded by provincial governments. They began to collect a fuel tax which led to a user-tax policy providing badly needed funds. This led to a ten fold increase in expenditures on road construction by the end of the decade.

1931-1948: *Federal Grants and Cost Sharing*
The policy of providing federal grants increased to link all the provinces which resulted in the Trans-Canada Highway. Yet the principles underlying federal government involvement in roads were vague. They became involved because

1949-1967: *Federal regulation and Increased Federal Grants*
The 1950s saw the beginning of active regulation of extra-provincial highway transportation by the federal government. It simultaneously witnessed increased cost sharing through grants. The Conservative government of John Diefenbaker began the 'Roads to Resources' program, committing the federal government to a cost sharing arrangement with the provinces.

1967-2006: *Federal and provincial deregulation*
In 1984, the federal government in cooperation with provincial governments proceeded towards the establishment of a uniform and scaled-down regulatory framework for the trucking industry which culminated in a Memorandum of Understanding in 1985. By the mid 1990s, the federal-provincial Agreement on Internal Trade provided for deregulation of intra-provincial trucking. In the early 2000s, extra-provincial trucking was deregulated and transborder trucking including trucking ownership was open to Mexican, US and Canadian carriers.

III. Milestones of Canadian Highway Transportation Policy
1700-1800: Instances of Government involvement in road construction can be traced to 1734 when Jean-Eustache Lanoullier de Boisclerc built the first road between Québec, Trois-Rivières and Montréal. The requirement for postal service

provided a major impetus for the construction of roads. In 1763, Benjamin Franklin was successful in opening a road connection between New York (via Lake Champlain), Montreal, and Quebec to join the packet service from Falmouth to New York. In 1791, the government extended this road to Kingston. This extension, called the Lake Shore Road, followed the north shore of Lake Ontario to Ancaster where it connected with the road to Niagara.

The first real roadbuilder, however, was Governor Simcoe who introduced a system of road-user charges during the first parliament of Upper Canada in 1792. In 1793, construction began on Dundas Street which ran from Dundas to London and then to Toronto. In 1805, an act was passed establishing the first turnpike road in Canada, implying sanctioning of a user-pay policy.

1800-1900: Before 1850 it was difficult to discern any clear stages in road policy or development.[28] "...in the colonial era...roads were treated as a local matter. ... local governments were responsible for roads .... and the general practice [to support the road system] was to employ statutory labour..." [29] Though the governments of New France and the British colonies designated certain key routes and used colonial funds to construct and improve them, roads remained basically the responsibility of local governments.

1901-1918: It was not until the 1900s that highway transportation received attention. The primary force behind this was the new technology provided by the car and the beginning of what some historians call the 'car culture'. In 1901, Ontario passed the *Highway Improvements Act* and began motor vehicle licencing in 1903. Its Government established the Department of Highways in 1913 and provided funds to counties for road work. By 1917, it began assuming sole responsibility for building and maintaining important roads. Similarly, in Quebec, Acts in 1907, 1911 and 1912 regularized the principle of a provincial presence in both the funding and construction of roads.[30] This type of responsibility for all provincial governments increased during this period as local governments were unable to finance such projects.

In 1914, the Ontario Public Roads and Highways Commission recognized and considered it fair to establish licence fees in excess of mere costs of administration. It stated "Taxation of motors is often suggested. Your Commissioners recognize the justice of the suggestion to this extent, that they recognize the automobile as a form of wealth which is proper for taxation, and agree that it is fair to appropriate the amount raised for road improvement." [31] As a consequence, the principle of licensing for revenue was adopted in 1915.

1919-1930: Before 1919, the federal government played a minor role in highways.

In 1919, it passed the *Canada Highways Act*, the first piece of federal legislation, and set aside $20 million for cost sharing with the provinces. This set an important precedent. It led to the provinces seeking greater federal involvement henceforth but also reflected an attempt by the federal government to extend its policy role going beyond its jurisdiction.

The provinces by now began collecting licence fees from all vehicles. In Ontario, the Highway Improvement Fund was established by legislation of the Drury government in 1920. He stated "the tax on motor vehicles was regarded definitely at the inception of the policy as being a fund from which roads could be built and maintained, and our first programme was based on the estimated expenses that were to be taken care of by the then revenue with a twenty-year depreciation."[32] This eventually led to a user policy with the implementation of taxes on fuel. Alberta and Manitoba were the first provinces to implement a fuel tax in 1923 and the Province of Ontario passed the *Gasoline Tax Act* in 1925. By the late 1920s, every province followed, beginning a policy of tax support for the highway system based on users.

By the early 1920s, transport began to be regulated by all the Provinces. Each of the provinces passed their own highway or motor carrier acts which provided them with extensive control over all economic facets of regulation of highway transport. The provincial regulatory involvement was, to a certain extent, reflective of competition with and from the railways, but it was substantially expanded during the Great Depression.

1931-1948: In 1931, the policy of providing federal grants increased as there was no road linking all the provinces. The Dominion made grants for completing the Trans-Canada Highway. In 1948, it agreed to spend $150 million on the project and the first Federal-Provincial Conference on the Trans-Canada Highway was held which resulted in the passage of the *Trans Canada Highway Act*. The highway was completed in 1962 (except in Newfoundland) which cost the Dominion $400 million.

The 1938 Ontario Royal Commission of Transportation concurred with the principle of licence fees enunciated by the Commission of 1914. On desirable features of a motor revenue policy it stated "...it believes that it would be prudent to limit provincial road expenditures to what can be met by the revenue available from road users and to limit taxes payable by them to the requirements of the provincial government for road purposes. While in accordance with this view the Commission recommends an essentially pay-as-you-go policy as desirable, it recognizes the soundness, in specific instances, of borrowing to permit the completion of major improvements the cost of which will within a brief period be

liquidated by wholly new traffic created by improvement."[33]

1949-1967: In 1954, the Supreme Court gave responsibility for extra-provincial highway transport to the federal government though it was generally believed to be so. The 1954 *Motor Vehicle Transport Act* provided licencing of extra-provincial bus undertakings and extra-provincial operations of extra-provincial truck undertakings to the federal government. This gave the federal government the power to control entry into the industry. Intra-provincial operations by extra-provincial truck undertakings was also under the jurisdiction of the provinces.

In 1958, the Government began the 'Roads to Resources' program. The fiscal arrangements under this program were the same as with the original Trans-Canada proposal: a 50 percent cost-sharing arrangement with the provinces. This project was open-ended, that is, it did not focus on a specific route as had the Trans-Canada project. Till 1968, the program provided $75 million dollars in provincial road-building schemes. This program was renewed in 1966.

By the 1960s, entry/exit control of for-hire and intercity busing was practised by most provinces together with rate filing for all carriers. However, there was regulation of trucking rates only by British Columbia, Saskatchewan and Manitoba; and Quebec required approval of changes of rates by truckers.[34]

1967-2006: Since the 1970s, the federal government's contribution to provincial highway construction has been through cost-sharing arrangements of fixed duration with individual provinces. They rose to about 55million in 1979-80, fell dramatically to about 10 million in 1981-2 and increased to about 300 million in 1978-1999. Thereafter they declined.

On September 28, 1984, the Minister of Transport indicated that his government in cooperation with provincial governments should "proceed towards the establishment of a uniform and scaled-down regulatory framework for the trucking industry." Shortly thereafter, on February 27, 1985, the Council of Transportation of Ministers signed a Memorandum of Understanding: proposing changes related to entry, eliminating rates, exempting commodities from economic regulation and streamlining the application process. Subsequently, the *Motor Vehicle Transport Act, 1987* (i.e., Bill C-127) introduced measures such as: 1) Relaxing extra-provincial trucking regulation by easing entry; 2) Discontinuing rate regulation; and 3) Requiring restrictions on licences to expire.

In 1987, to establish criteria for defining a National Highway System, the Federal/Provincial/Territorial Council of Ministers Responsible for Transportation and Highway Safety commissioned a multi-year National Highway Policy Study.

As a result, the National Highway System was first defined and endorsed in 1988. In the mid 1990s, the federal-provincial internal trade negotiations led to the Agreement on Internal Trade. According to the Agreement, all provinces agreed to deregulate intra-provincial trucking and the federal government agreed to repeal the MVTA (III) through the *Agreement on Internal Trade Implementation Act*.

The *Motor Vehicle Transport Act* amendments (i.e., Bill C-77) were introduced by the Minister of Transport in the House of Commons on March 25, 1999. The amendments sought, over a two-year period to deregulate extra provincial and international bus services, while leaving the provinces and territories the discretion as to whether to continue to regulate intra-provincial bus service during the transition period. However, with regard to intra-provincial trucking "On August 26, 1999, the Governor in Council approved an order establishing January 1, 2000, as the date for repeal of Part III of the MVTA. As of this date, trucking is no longer subject to economic controls, such as economic entry controls and tariff regulations in any part of Canada. With regard to busing "The Minister of Transport did not deregulate the bus industry due to lack of consensus. Therefore, on March 3, 2000, the Minister of Transport re-introduced amendments only to promote safety.

The NAFTA, provided for graduated access by certain dates and access to 'all' Mexican states by US and Canadian carriers and provided for access to Canada and the US by Mexican carriers in 2000. It also provided for ownership and investment in Mexican trucking companies providing international service up to 51 percent by the year 2001 and 100% by the year 2004 resulting in new market opportunities.

In sum, during the early days of confederation the principles underlying federal government involvement in roads were vague. Federal government involvement came about because there was a hue and cry for help from the provinces for money. Roads seemed to play no part in the national imagination of 19th century Canada. It was only after 1957, that federal contributions to road expenditures crossed $50 million. Beginning in 1984, the federal government began a policy of greater co-operation with the provinces in various projects: deregulating the trucking industry, setting up uniform standards, defining a national highway system, etc.

IV. Future of Transportation Policy

After engaging in extensive consultation with stakeholders together with a review of the *Canada Transportation Act* by a panel of distinguished Canadians in 2001, the Minister of Transport presented Canadians with a vision of the future in his document *StraightAhead* in 2003. This vision of a sustainable transportation system for Canada is guided by the following principles:

- highest practicable safety and security of life and property;
- efficient movement of people and goods based on competitive markets and

targeted interventions;
- respect for the environmental legacy of future generations of Canadians;
- user pricing that better reflects the full costs of transportation activity and infrastructure decisions that meet user needs;
- reasonable access to transportation by Canada's remote regions;
- accessibility to transportation for persons with disabilities;
- co-ordinated and harmonized actions across boundaries and modes;
- partnerships and collaboration among governments and the private sector for an integrated, coherent transportation policy framework.

In brief "... transportation policy must provide a framework that addresses the three elements of a sustainable transportation system-social, economic and environmental - giving carriers and infrastructure providers the opportunity to adapt, innovate, compete, and serve shippers and travelers in a way that takes into account each of these elements." This vision will guide future federal policies and programs.

Based on these views Bill C-11 (*An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts*), introduced in the House of Commons on May 4, 2006, provides a declaration of transportation policy in section 5 as follows:

> "It is declared that a competitive, economic and efficient transportation system that is safe and secure, respects the environment and makes uses of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. ..."

These objectives are most likely to be achieved by competition and market forces, regulation and strategic intervention, accessibility and partnerships for an integrated transportation system. Some scholars question whether this statement captures the vision.

In sum, from the above one may infer certain broad policies that the government will pursue to serve users and to ensure the well being of Canadians: a market-based system with minimum government intervention, standards to ensure safety and security, and a sustainable system.

V. Concluding Remarks

Throughout much of Canada's history, until 1967, there was no legislated transportation policy as it was subsumed under national policy. As stated in the MacPherson Report "Historically, the transportation system in Canada was used so extensively as an instrument for the pursuit of broad national policy objectives that the character of the system as a system tended to become a matter of secondary concern." As a result, the question of how the transportation system was functioning as an economic enterprise may have been inadvertently neglected. This

has changed, the emphasis now is on a competitive, economic and efficient system to serve users and to benefit Canadians. An important realization was that transportation policy cannot remain static and must adapt to new challenges and currents of change together with the fact that it will be conditioned by certain fundamental tenets.

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5. Gratwick, J., *The Evolution of Canadian Transportation Policy*, Research conducted for the Canada Transportation Act Review Panel, March 2001.
6. Vision and Balance, *Canada Transportation Act Review*, June 2001.

Endnotes

[20] The Report of the Royal Commission on Coasting Trade, December 1957, p. 142.
[21] From 1880 to 1957, it spent $50 million. This took various forms such as: placing government orders at Canadian shipyards, providing advantageous terms to shipyards for acquiring government shipyard facilities; and requiring vessels needed by government departments to be built in Canada. [22] The *Canada Shipping Act of 1934* provided for the BMSA which continued protection to British ships.
[23] The status of a 'British ship' was acquired throughout this early period by registration under the Merchant Shipping Acts of the United Kingdom. Ships owned by British subjects having their principal place of business in the Crown's possessions were eligible for registration under those Acts. Under the Canada Shipping Act, a ship has the status of a British ship if two requirements are met: first as to persons who may own interests in it, and second as to registration.
[24] A chronological list of statutes, both United Kingdom and Canadian, affecting the coasting trade is set out in Appendix VII of the Spence Report.
[25] Hanson, Trevor R., The Effect of the Darling Report on Canadian Coastal Trade Legislation, 39th CTRF Conference, CTRF Proceedings 2004, pp. 627-641.
[26] The Hamburg Rules involve substantial changes on the basis of liability, burden of proof and procedures for claims. Under these rules carriers are held responsible for the loss or damage to goods while in their charge unless they can prove that all reasonable measures were taken to avoid such loss or damage. Carrier liability is extended to reflect different categories of cargo carried, new technology and loading methods, etc.
[27] NATIONAL MARINE POLICY, Transport Canada, December 1995. In October 1994, the Parliamentary Sub-Committee issued its report on the St. Lawrence Seaway. This was followed SCOT's Report on 'A National Marine Strategy in May 1995 and the *Marine Transport Policy Workshop*s.
[28] D.R. Owram, ICONS and Albatrosses: Passenger Transportation as Policy and Symbol in Canada, *Directions, The Final Report of the Royal Commission on National Passenger Transportation*, Volume 3, 1992, p. 12.
[29] Id. p. 13.
[30] Id. p. 62.
[31] *Report* of the Public Roads and Highways Commission, 1914, p. 24.
[32] Cited in the Report of the Royal Commission of Transportation of Ontario, 1938, p. 86.
[33] Id. p. 103.
[34]. See Currie, A. W., *Canadian Transportation Economics*, 1967, p. 453 and p. 460.
[35]. Transport Canada Annual Report, 1996, p. 75.