

# Railways and Pipelines – the Constitution Hasn't Changed

March 17, 2016 – for The Globe and Mail

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If we started today, there's a good chance Canada would never get off the ground.

Our history is unique: Just like south of the border, we started with great wide expanses. Different paths gave us the United Kingdom's parliamentary system, but then, given our vast geography, we integrated it with a unique version of a de-centralized, federation – a unique solution to the challenges of creating, and then governing, a unique country.

By and large, it has worked pretty well.

Roy MacGregor, that superb observer and reporter on all things Canadian, compared Canada to a bumblebee. By all rights the creature, given its outsized body and tiny wings, shouldn't be able to fly -- but it does. Canada is big, and spread out, and in the early years the idea of all of the parts being one country seemed, if not impossible, awfully unlikely.

But it flew.

It did so because people of courage were willing to compromise and invest – both politically and financially – for the greater good. They created our Constitution, which unites us politically, and built the railways that transported goods, products and people from one part of the country to other parts of the country, often to go on to global markets. The original four provinces in fact made the completion of the Intercolonial Railway by the federal government a condition – *a requirement* – of signing the deal. Grain, wood, fish, minerals, livestock – without the ability to transport the fruits of our natural resources across the country, we wouldn't be the successful country we are today.

That understanding of Canadian history and of the Constitution (or the political courage needed to uphold it) seems to be evaporating. We are forgetting not just how the Constitution works, but a fundamental ingredient of Canada's success: the need, sometimes, for compromise on local or special interests for the greater national good. Rather than building our nation, we are in the process of, dangerously, dividing it – and in doing so, losing altitude and hitting ground.

Imagine trying to build a railway today – it wouldn't stand a chance. If municipal mayors feel that they can prevent a pipeline being built because it is “too risky”, imagine what they would do, now, about a railway. Imagine if politicians in Ontario refused to allow track to be laid crossing Ontario, because transporting grain from the prairies to Montreal or St. John for export was of “no benefit” to Ontario.

What about the Trans-Canada Highway? Imagine if the building of that national link – or any road for that matter – were contingent on proving that it did not contribute to greenhouse gas emissions. Given that 20% of all of Canada's GHGs come from driving cars and trucks, it wouldn't stand a chance either.

The founding fathers drafted the Constitution the way they did because they understood the local pressures faced by politicians – and the temptation to succumb to them. Section 91 sets out all of the

federal Parliament's powers; Section 92 sets out all of the provincial powers -- but specifically reserves to the federal Parliament key jurisdiction over shipping lines, railways, canals, telegraphs and other works or undertakings (including, today, pipelines) that connect one province with any other province(s), or beyond. It also gives the federal Parliament the right to declare any work, even though "wholly situate within" a province, to be for the general advantage of Canada or of two or more provinces – and thus under federal jurisdiction. This 'declaratory power' has been invoked more than 400 times since 1867.

The system has worked well for Canada – but only because we have upheld it.

Despite declarations by some politicians, and headlines provided by various polls, municipal and provincial governments do not, under the Constitution, have the power to block pipelines. Of course they have the right to raise local concerns – and other provinces, as well as the federal government, need to listen, understand and yes, sometimes everyone needs to compromise. But no development is risk free. Whether it is a railway, a highway, or a pipeline, one must analyse and balance the costs and the benefits (including probabilities of any risk). Collectively, we need to ensure best practices in terms of safety and the environment, including prevention, mitigation and the like. But in the end, the federal government must decide.

The right things are being said. Both the Prime Minister and the Minister of Natural Resources have acknowledged the need to get Canada's oil to tidewater. But action is needed, and soon.