

# Canada needs a national discussion on marine tanker and pipeline risk

BY K. JOSEPH SPEARS

International trade is extremely important for Canada, and its future economic prosperity is based on both increasing and diversifying markets for its exports, including energy resources. Trade accounts for over two thirds of Canada's economy, and exports account for one third of GDP. Energy exports account for 25 per cent of Canada's total exports. Marine transportation is an essential enabler of increasing export opportunities to reach new markets in Asia. Canada is at a crossroads when it comes to increasing its energy exports because of problems related to environmental risks associated with the carriage of oil (and other products) via pipelines and marine tankers. The federal government and Canada's energy industry presently lacks the social license to move forward with export-enabling energy infrastructure projects.

As Canada faces the possibility of declining energy exports to the United States through land-based pipelines, export growth of energy products requires marine transportation to access new markets.

Tankers in Canadian waters are not new and can be traced back to first marine bulk tanker of petroleum products at the turn of the last century. Canada has developed a major continental pipeline system to move hydrocarbons across Canada and into the United States. This system includes Kinder Morgan's Trans Mountain pipeline which moves Alberta oil across eight mountain ranges to tidewater at Vancouver. The pipeline distribution system has been a major contributor to Canada's economic prosperity by allowing us to use the energy to develop the country's economy, and to create additional wealth by exporting product which would otherwise have remained locked in the earth.

Partly because of constrained pipeline capacities in the United States, and the lack of alternative export markets for its oil, Canada is currently suffering from a glut of oil, which has reduced prices its industry receives to levels well below the posted price for West Texas Intermediate (WTI), resulting in lost revenues of some \$25 billion per year, as estimated by a recent CIBC study. Projected over the next decade, Canada is expected to lose \$15 billion a year going forward until it can get its oil to places that are willing to pay world prices for it. This is a substantial amount of money for a nation of Canada's size to leave on the table. While not the only potential solution, pipelines from Alberta to B.C.'s West Coast moving energy products to load aboard tankers bound for Asian-Pacific markets would be among the most logical and economical solutions to capture the money presently left on the table, not



caption

Photo: Kinder Morgan

## Kinder Morgan's Trans Mountain pipeline under construction.

to mention the increased GDP created by these incremental exports.

Given the requirement for West Coast tidewater access to reach new Asian markets for crude oil, this issue has risen to the top of public opinion with vocal opposition expressed to all proposed tanker traffic in connection with both the Northern Gateway project and expansion of the Trans Mountain pipeline. The "dialogue" has focused almost exclusively on environmental risks associated with expected increased tanker traffic. Some have advocated a complete tanker ban on the West Coast. What has largely been missing from the discussions is a dialogue about the related economic issues.

Most of Canada's oil is imported by marine tanker into the Eastern half of the country. Each year, there are approximately 12,000 tanker movements in Canadian waters with the majority of these along the East Coast, and during these past 30 years, no tanker spills have occurred in these or any other Canadian waters.

The record with respect to pipeline safety has been less than stellar in recent years as the frequency of spill incidents appears to have increased. This has led to increased public concern about the safety and regulation of land based pipelines. Many of

the continent's pipelines are well over 30 years old. The recent Exxon pipeline failure in Arkansas has seen the release of significant volumes of oil into a suburban area. Early this month there was a failure of a Chevron pipeline in Utah. In 2008 there was a failure of Kinder Morgan's Trans Mountain pipeline caused by excavation work in Burnaby which led to an oil spill into the local community and Burrard Inlet. In 2010, a pipeline owned by Enbridge spilled almost a million gallons of heavy crude oil originating from Canada into a creek flowing into the Kalamazoo River, a tributary of Lake Michigan.

An alternative to the transportation of hydrocarbons via pipeline in North America is transportation by rail. That too is not without risk as we have seen in recent derailments. A major incident occurred on the Cheakamus River just South of Whistler, B.C., when a 2005 derailment resulted in the discharge of caustic soda from nine railcars which wiped out fish stocks. A major incident had occurred earlier that same year by a derailment at Wabamum Lake, Alberta, which saw the release of 700,000 gallons of heavy oil into this large lake. These incidents, and numerous others, show that oil transportation is inherently risky. Although large spills occur infrequently, small spills occur on a daily basis in North America.

At present, Western Canada is caught in a grinding polarized debate about increasing West Coast tanker traffic to carry energy exports to overseas markets. Presently, the government of Canada and the energy industry do not have the social license to approve or construct pipelines to move energy exports by ship off the British Columbia coast. This debate is both an environmental and emotional one, with very little dialogue between the interested parties, the government of Canada and the provinces. This has to and must change.

On February 23, 2012, Jim Prentice, former conservative Minister of the Environment and presently Executive Vice-President and Vice-Chairman of CIBC gave a presentation to the Vancouver Board of Trade and stated with respect to risk and reward concerning marine transportation of energy exports:

“Ottawa has sole jurisdiction over our territorial waters. So it must take the lead in developing a management regime will take into account the rewards as well as the environmental risk of increased West Coast tanker traffic. Legislation will be required. So too will contingency plans for unforeseen eventualities.”

In an article entitled “Playing Catch-up: Canada in the Tough World of Global Trade”, published in the August 2012 issue of *Policy Options* magazine, Mr. Prentice wrote:

“In sum, Canada is a nation that is dependent on trade, and our future prosperity is linked to the diversification of our trading base into high growth emerging economies, particularly in Asia. Our ability to embrace global business opportunities is critical to our future prosperity.”

Canada’s oil pollution response capability was subject to a September 2010 report entitled *Oils Spills* by the Sustainable Development Commissioner of the Office of the Auditor General of Canada. This report called into question the government’s ability to respond to an oil spill. It seems the Government of Canada has listened, and has begun to show leadership on the issue of tanker safety. Given the concern about the safety and risks posed by pipelines in the context of a total transportation system, leadership is also required on the overland side of oil distribution in Canada.

On March 18, 2013, Ministers Denis Lebel and Joe Oliver announced that the government was taking steps to ensure that



Photo: Joe Spears/HBMG

Gordon Houston (left), former President and CEO of Vancouver Fraser Port Authority, with Andrew Saxton (right), Parliamentary Secretary to the President of the Treasury Board and for Western Economic Development.

Canada has a “World-class tanker safety system.” Earlier this year, British Columbia premier Christie Clark had said that one of B.C.’s conditions for supporting pipeline development in the province required a “world-class oil spill response plan” to be in place. Lebel and Oliver echoed these words in their announcement. These initiatives are part of the new *Safeguarding Canada’s Seas and Skies Act* introduced in Parliament earlier that day. The Ministers made it clear in the press conference that the government of Canada is committed to protecting both the safety of Canadians and the environment. No development will proceed unless rigorous environmental protection measures are in place.

The government’s announced initiatives build on a long history of regulation of shipping and marine pollution prevention and response. Jim Prentice was right, the government of Canada has to take the lead on this issue. There is an unfortunate perception that the present regime with respect to oil pollution response capability (which is only one element of Canada’s approach to maritime shipping risk management) is not up to world standards, whatever “world-class” actually means.

The most significant element of the government’s announcement to create world-class response regime is the creation of a Tanker Safety Expert Panel which will carry out a comprehensive examination of oil pollution issues across Canada with its first report due by the fall of 2013. Waters in the Arctic are subject to a report by the fall of 2014 along with a review of shipments of Hazardous Noxious Substances (HNS) and Liquefied Natural Gas (LNG).

The Panel is being chaired by Gordon Houston, former President and CEO of Vancouver Fraser Port Authority. Capt. Houston is a master mariner, and was involved in all aspects of pollution countermeasures. Other members include Richard Gaudreau, a maritime lawyer from Quebec City practicing since 1969 with a great deal of experience in maritime legal matters, and Dr. Michel Sinclair, who is former Director of the Bedford Institute of Oceanography, who holds a PhD in oceanography. The panel will be supported by Secretariat operating on a full-time basis with Transport Canada under the direction of an Executive Director. A rigorous timetable has been set to focus on the following elements:

ACOE  
LINE  
COPENHAGEN



**PROJECT/HEAVYLIFT**  
TYPE VESSELS WITH MONTHLY SAILINGS  
FROM U.S. GULF AND ST. LAWRENCE  
TO FAR EAST, S. AMERICA, MED., RED SEA, P.G.

NORTH AMERICAN GENERAL AGENTS  
**SEA PROJECTS ALLIANCE INC.**



TEL.: (514) 848-0448  
FAX: (514) 848-0552  
rates@seaprojects.com

**1. Current capacity.** Is the current regulated spill response capacity of 10,000 tonnes consistent with world-class standards?

**2. Model.** How effective is a system's structure, including private public funding, for the range placement of oil spill response assets?

**3. Coverage.** Is there a need to extend the current system to other pollutants and create a new cost-effective preparedness and response system in the North?

The Panel has a strong composition and collective knowledge of the complex nature of these marine pollution issues. The Panel has been given a mandate by the government of Canada to take a comprehensive view of the existing regime. The Panel is independent and has detailed terms of reference which will examine all aspects of oil pollution prevention response. As well, there will be stakeholder engagement within industry to provide an evidence based report in a timely fashion.

One major concern is the existing liability and compensation limits for marine oil pollution. As we have seen with major recent spills such as the Deep Horizon oil rig in the Gulf of Mexico, the costs of cleanup and compensation can exceed existing limits to liability by a wide margin. In those instances, the taxpayer may then be required to foot the cleanup costs that are in excess of liability limits and not covered by insurance. One study estimates cleanup costs of a major oil spill on British Columbia North Coast to be in excess of \$9 billion. Under the existing regime, approximately \$1.3 billion is available for ship-source oil pollution coverage in Canada. The Panel has been asked to examine this issue.

Another important issue for the Panel to examine is how tanker safety fits into a world-class practices engineering approach to risk management that would consider all aspects of energy transportation infrastructure projects examining the design, construction, and operation of pipelines, terminals and tankers. One viewpoint holds that projects will be under-engineered because limitations to liability effectively provide operators with an economic incentive to under-engineer their systems. Under-engineered transportation systems inevitably lead to a higher frequency of incidents, and a higher frequency of incidents raises the risk of a major incident. The Panel must ensure that risks are mini-

mized, that an appropriate capability is in place to respond to marine incidents, and that taxpayers are not held responsible for cleanup costs or compensation.

It is the responsibility of the Panel to engage all of the stakeholders in a fruitful discussion examining risk and reward that will lead to compromises that provides government and the energy industry with the necessary social licence to embark on the energy transportation projects that are so vital to Canada's future prosperity. If we insist on closing our minds to new resource development, foreign investment into Canada will be limited, and we may never be able to regain our solid once-held international trade position. We are all kidding ourselves if we believe that such developments will not come back to bite us. We must, we simply must find acceptable compromise.

The issues around proposed tanker traffic are emotionally and political charged, and are not going away anytime soon. The Panel has important hard work ahead, and Gordon Houston's leadership on this panel will ensure that there is a full and frank debate on this important issue. Canada will need to work constantly to maintain its high standards and I am confident this Panel will not be afraid to ask the hard questions and make recommendations that will strengthen Canada's safety standards and minimize the probabilities of marine spills. While the Panel's mandate does not currently include the same independent review of pipeline operational safety, it is hoped that the federal government will correct that shortcoming in an expedient fashion so that the rewards and risks of the total transportation system, from oil company tank farm to international waters can be independently assessed and appropriate solutions found. If Canada's is to prosper in the Pacific century, it must have access to global markets for all its exports including energy commodities. We do not have the luxury of not reaching consensus on this issue which is of vital interest to our economy.

.....  
*Joe Spears is Maritime counsel at Straith Litigation Chambers and a principal at the Horseshoe Bay Marine Group and has been involved in pollution and shipping issues for the last 30 years. He has researched marine shipping risks for the government of Canada, including HNS, and can be reached at kjs@oceanlawcanada.ca.*