

---

January 2004

**Discussion following the Remarks of Mr. Nobrega and Mr. Phillips  
Proceedings of the Canada-United States Law Institute  
Conference on Multiple Actors in Canada-U.S. Relations: Border  
Infrastructure: Getting to Yes on Bridges, Tunnels, Roads and Rail:  
Custo**

Discussion

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

---

**Recommended Citation**

Discussion, *Discussion following the Remarks of Mr. Nobrega and Mr. Phillips Proceedings of the Canada-United States Law Institute Conference on Multiple Actors in Canada-U.S. Relations: Border Infrastructure: Getting to Yes on Bridges, Tunnels, Roads and Rail: Custo*, 30 Can.-U.S. L.J. 109 (2004)  
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol30/iss/22>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## DISCUSSION FOLLOWING THE REMARKS OF MR. NOBREGA AND MR. PHILLIPS

MR. KING: I have a question. What role can the press play in getting to yes in this set up? In other words, what I wanted to find out is what role could the press play in getting to yes? Have you seen times when the press played an important role in educating the public to the importance to this?

MR. PHILLIPS: In my experience, Henry, the press picks it up when there is a fight or argument going on or something explosive so that will sell papers more so than reporting on needs to be. They can hurt it, but I think - it is been set back - the Richmond landfill legal case which somebody here may be more familiar than I am. Now, you can't scope out. Originally, they planned to designate one or two of these five options. Those are them, get rid of the rest. Now, they can't scope down to one or two anymore. It is getting longer rather than shorter.

MR. NOBREGA: Our observation in Detroit/Windsor is that press has a split personality.

MR. KING: Has what?

MR. NOBREGA: A split personality. The editorials have supported obviously the immediacy of the resolution, but the other reporters, one or many, oppose this project or other projects. So the editorials are very supportive of a solution. Other reporters are not.

MR. PHILLIPS: Not to mention a paper, the most recent article that I am aware of in the Detroit papers was a big story, there is a big fight between Buffalo and Detroit and whoever gets their bridge first, the Peace Bridge or the Windsor/Detroit crossing is going to make a big difference. That's absolutely false. But that's what the press likes to write about, so I don't know.

MR. KING: I am sorry it doesn't play more of a role constructively.

MS. IRISH: Maureen Irish from the University of Windsor. I, perhaps, will not identify where I pay my municipal taxes. Just in the interest of making sure that the conference here has complete information, could Mr. Nobrega or Mr. Phillips just mention what the alternative proposals to the DRTP are right now? There are some others under consideration.

MR. PHILLIPS: I'd be glad to. Again, I might also tell you that I always talk about myself being too big to run and too smart to lie. Most of the players but one in this Windsor/Detroit area including the governments are members of mine, so I get an insight from all side.

There are five options that they have identified. One is the twinning of the Ambassador Bridge as it stands. There is another bridge to the left, I guess that - I can't ever remember southeast, west - whatever, called the Mich/Can Bridge Project, which is being put together. There is the DRTP

Jobs Tunnel Project that Michael has outlined. There is talk of a down river bridge even beyond the Mich/Can Proposal. And then the study has identified off to the right of the map - again, I don't know the direction, help me out - where there is a corridor potential which there is no crossing proposal for that potential and probably the least likely of the five.

Now, originally, the bi-national plan had intended to bring these five proposals down to probably two. I am not so sure it will be one in the end. It may be more than one. Whatever event, it is going to bring it down. This Richmond landfill decision has made scooping a little bit different than it was.

So I am not so sure you're going to get any clear direction in the near future as to which of them is favored or not, but it is a difficult, complex situation I know.

MR. NOBREGA: Can I address the issue. There is a difference between an option, there is a difference between a promise and there is a difference between a promise and a project. A project requires land. A project requires money. A project requires consensus of the community.

I think outside of probably the two options at the table, which are twinning of the bridge and DRTP, there are no other projects. Everything is a promise, a promise to deliver. You think of putting together 300 acres of land between two cities and two countries, you can imagine the length of time it takes to do that, and the dollars required. I think, as I said, there's three parts of the project.

First of all, you have to have land, and you have to have the finances and you have to have the political buy in or the consensus of the community. Right now, two projects have land and finances, but not the consensus of the community. I think we have to be flexible in our projects as to what we do and make sure we respect the sensitivities of the communities.

MR. PHILLIPS: If I was a betting man, I would just comment that one of the things I hope the people of Windsor and Detroit are doing is you ought to be taking a look at the land transfers that are occurring along the border line.

You have to be very surprised who owns what lands when this thing all shakes out. This is a big chess game, a counter move, move, it is very important. So as Michael said in his case, I heard him say you have 93 percent of the land, I hope you get the other 7 percent as quick as possible. For the others, you have - so, it is real, this is a serious situation. Because you have to keep in mind, what I worry about is that the best alternative and best opportunity for U.S.-Canada in trade is in fact a decision that's made not who has got the loudest voice or the biggest club here. And you forget about the fact that the people that need to be served are, in fact, the customer using the bridge, never mind the rest of it. It is the driver and the companies and the truck companies who you have to be concerned about it. They don't like to be idled either.

Frankly, under the EPA in the United States, an idling truck discharges five times the environmental discharge that a running truck does. Everyone wants to solve this problem. There is a lot of personality. I always go back to personalities and situations. I hope the press and others, the citizens there are taking a real look at what's really going on. You have to weigh in some-time. Don't wait for the study to come out and say this one or that one, the people have to take an honest look and see what you think is best and what's the way to do it.

MR. CARMODY: Chios Carmody from the University of Western Ontario.

We've heard quite a bit in our newspapers back in southwestern Ontario about a new high speed catamaran service that's going to be implemented between Rochester and Toronto in a few weeks. Apparently, the catamaran arrived in New York Harbor and had a big gash in it. We'll see if actually -

MR. PHILLIPS: Not only a gash, it was quite a gash, they also put two four inch pilings - they had the actual piling wood stuck in it. I think - I don't know whether they're going - they have the big "to do" on April 30th, Dennis Miller is coming up and others. I don't know whether it is on time, the boat is being repaired in New York. It was a transiting crew that misread one of the ports there. But repairs are going to be made. Of course, the company had no responsibility until it was delivered and went through the Coast Guard check. It is a well thought out approach. I have to see how it is in the end.

But, again, you talk about assets, here's a new crossing, a whole new set up, and I worry about the current freeze that's on the USCBP and border patrol. They're not hiring anybody new. The question is are you going to have diversion of inspectors that are going to have to cover the ferry crossing now that would have otherwise been on assignment at airports or land bridges in the New York district? We don't know the outcome of that.

These are the kinds of things you have to watch. Every time there is an action, there is a reaction in the border. You have to be careful.

Everybody is excited about the thing. It is quite a hullabaloo. It is quite a boat.

MR. CARMODY: We'd like to see a similar connection between Cleveland or Port Burwell or Stanley, places that would make my trip here to Cleveland much easier.

MR. PHILLIPS: You may or may not be aware, that particular boat is like two or three years lay back to get the boat. They had it on order. That particular vessel is what the military needed. So the military wanted to step in and take that boat and put their money down, and State of New York actually advanced 8 million dollars a year in advance. So they can put money down to make sure they're queued in line and the vessel was held. That's a perfect example of a private sector/state government partnership that was

repaid back. It wasn't a giveaway; it was a cash flow advance. It was very positive, wouldn't have happened without it.

A CONFERENCE PARTICIPANT: I would like to make an observation about Mr. Phillips perimeter project. In the course of this presentation, he very forthrightly pointed out uses of the existing border between Canada and the United States, at least from a Canadian perspective. For example, the people at the border, customs and immigration enforce very different laws on guns.

Secondly, he mentioned the tracking and stopping by customs and immigration officials on both sides of the border, people fleeing criminal, civil legal activities and people who tried to flee their obligations with respect to children. And then, of course, there are the very different standards on immigration, both with respect to visitors, tourist, families, immigrants and refugees. If there was no border patrol, at least on the Canadian side, how would these requirements be met as between Canada and the United States?

MR. PHILLIPS: I don't think there is any thought in Canada that I know of doing away with the border. The commitment that I understand from John Manley and from, certainly, Tom Ridge, personally, and all the way down the line, Bonner and Kay Hutchinson and Tom Ridge and the President of the United States are committed to deliver a more facilitated, low risk process to enter the United States, enter Canada, on the Canadian side then ever occurred before September 10<sup>th</sup>. That commitment, this idea of security versus trade is a *passé* argument. What they're saying is the high risk and unknown we're going to hold up and it may be a heck of a long time.

On the other side, 90 percent of the trucks and about 98 percent of people, if they join FAST or ACI that's coming in Canada or they join NEXUS, you're going to go through the border in seconds. That's their commitment. I believe within 12 or 14 months, to answer your question, they're the ACE coming on screen, it is not going to be Spring of 2005, not October, when automated truck manifests comes. No more paper, nothing will enter the United States that's not been put in the EDI computer customs one hour before arrival. They will not enter the United States. This is not a question of turning trucks around. This is the new rules under the 2002 Trade Act. For the first time the United States has the authority to refuse entry. They're going to go with this truck manifest.

I think that we never perceived that the Canadian or the U.S. would disappear, but the cross designation could occur. I've given you a live example. There's a big argument, how do you protect the infrastructure? They worry about they don't inspect the trucks from Canada, they go all the way to the U.S., they can blow up the bridge. We have to get the Americans over, we've got to get the Canadians over. That's a very difficult solution. You and I worked on it. It is a tough one.

Here's one, cross designation. The 33rd point on the Smart Border Plan is an agreement between the United States and Canada that weapons of mass destruction found at a border crossing are equally serious whether it is Canada or the United States and they will be dealt with equally if any are found. Once that agreement occurred as a 33rd point, the United States could install the radiation detectors on the Canadian side. Our CNP officer would monitor those detectors. The U.S. would monitor detectors on the U.S. side going out of the country and it would allow without any big deal, we've have cross designation and we have radiation detectors on all bridges and tunnels between the U.S. and Canada in Ontario and Michigan.

That's the kind of approach I hope they're working on. Herb Gray is very active, I must acknowledge. John Manley got a lot of publicity after the Smart Border came. But Herb Gray worked on these issues a long time before that and a lot of the foundation Herb was personally involved in making sure it was there and you should be acknowledged for it, Herb.

MR. COCKSEGE: With the permission of the Chair, could I ask what we used to call and still call in Parliament, the supplementary question of Mr. Nobrega.

I am sure you're aware, I am not sure this has been brought up in a way that is relevant to legal scholars here, the immensely complicated legal questions involved in any project, whether it is yours or any of the other four raised by Professor Irish.

For example, at the present time, there are at least four separate requirements for environmental reviews. The two federal, the Ontario, and at the state and at least two municipal and maybe more.

And, unless, as you point out, there is a separate agreement between the governments on working all this out, which will be intensely complicated, whatever the project is, it will be stalled. And I further wanted to add another complication, and I am not taking a position on any project, I can't because under the International Joint Commission responsibility attributed by the Boundary Waters Treaty, if any project affects the level or flows of the waters of the Detroit River, there has to be an application to the Commission for approval. But, that should also be taken into account; and I wanted to end on this thought, that exclude the jurisdiction of the International Joint Commission and the way this is going when this comes up, I am not sure that I or any of the existing Commissioners will be in their positions, unless one way to exclude the jurisdiction is a separate, bi-national agreement which is what happened when Columbia was developed.

So, for the point of view of the legal scholars here, the complications created by exiting laws, federal, provincial, state and municipal really would give the trade lawyers here and legal scholars here a lifetime of ruminative activity.

MR. PHILLIPS: Equal time for the consultant.

MR. DELVECCHIO: Thank for that, that's a key point issue in a lot of this. Just before I wrap up, I would like to go back to that lady's point about there being a number of competing proposals.

This forum is not meant to represent or promote any particular option, but to give people in one instance what is being proposed, some of the complexities being associated with that in the context of the broader issues being played out.

But, as Jim has said, there are four other proposals that are actively being considered through this bi-national process. It is a well-established process. There is some frustration with the pace with which it is proceeding. As the Rt. Honorable Herb Gray said, a lot of that reflects the fact there's environmental considerations, which make an extremely complex process.

And, so, while we may all agree we need to work to invest infrastructure to expedite process, the way I had this, it is less than clear to promote certainly to me, so, but, again, with all these legal minds in the audience, perhaps, by the end of the period, we can come up with some suggestions that might help us advance our interest here.

With that I would like to thank the two speakers for being here today and presenting and thank you, Henry, for sponsoring this particular part of the program.

(Session concluded)