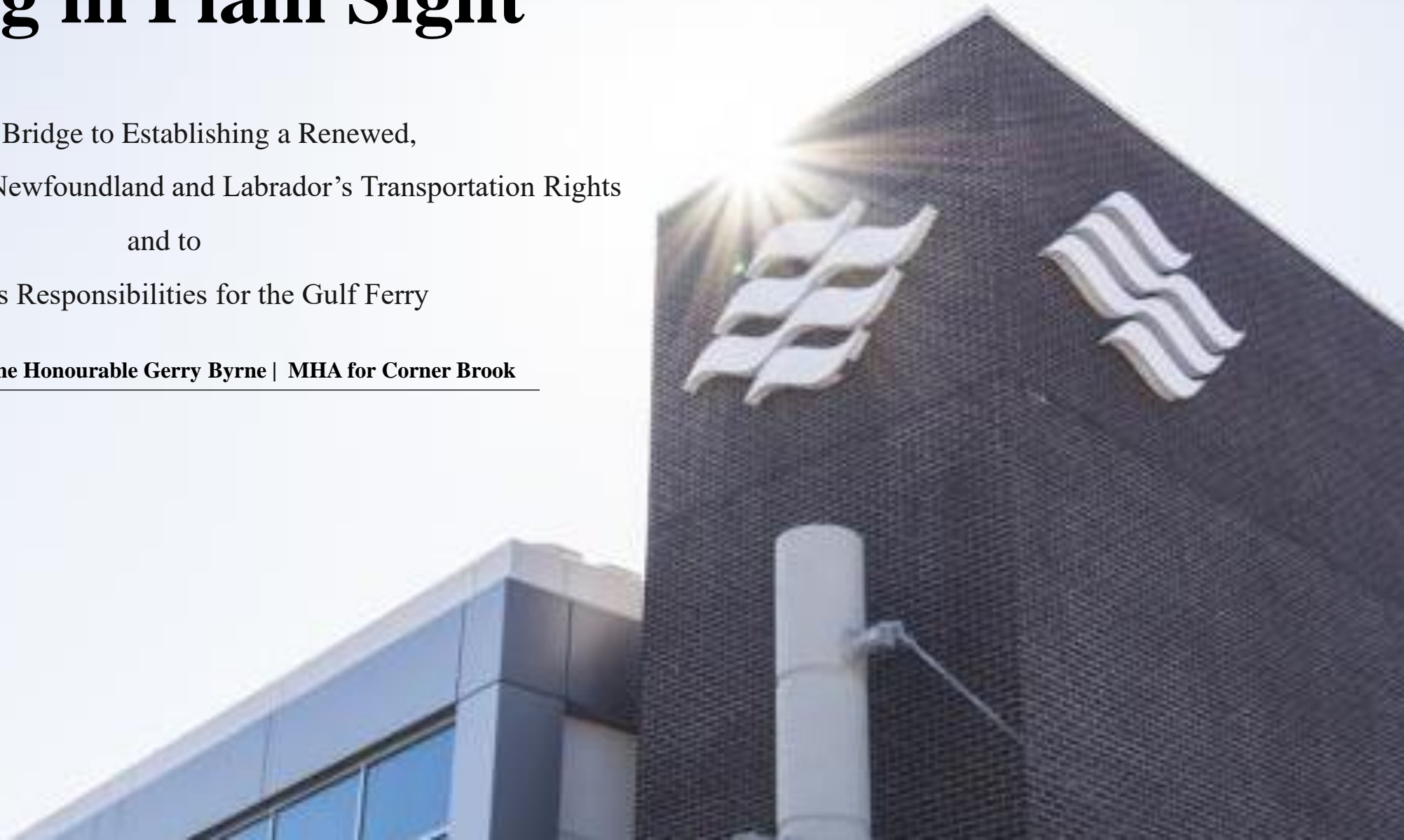


# Hiding in Plain Sight

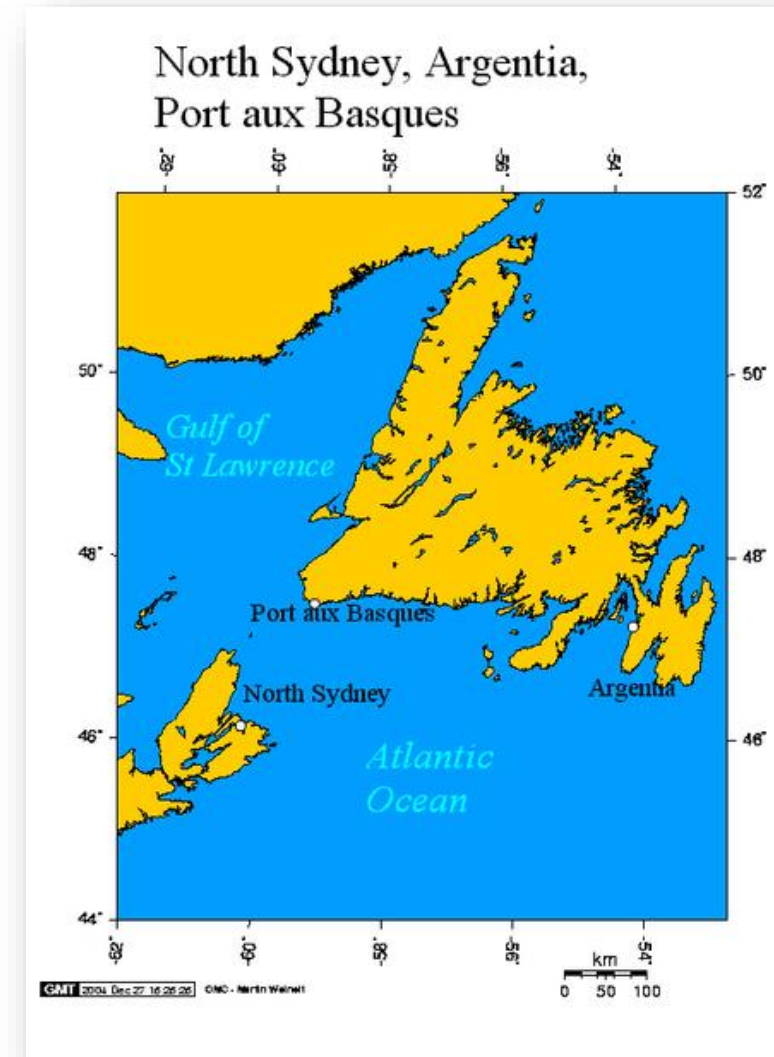
A New Bridge to Establishing a Renewed,  
Constitutional Basis to Newfoundland and Labrador's Transportation Rights  
and to  
Canada's Responsibilities for the Gulf Ferry

A Presentation by the Honourable Gerry Byrne | MHA for Corner Brook



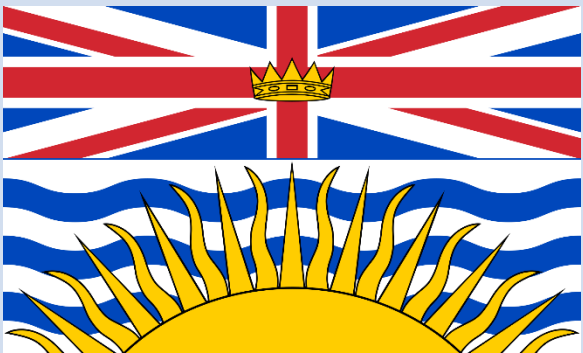
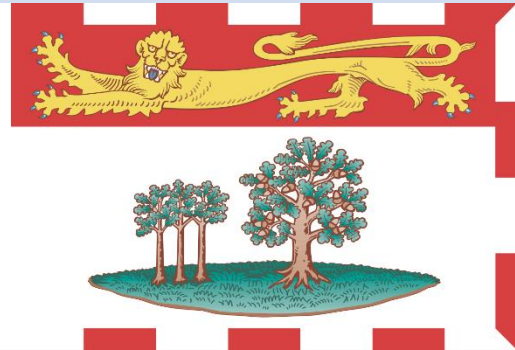
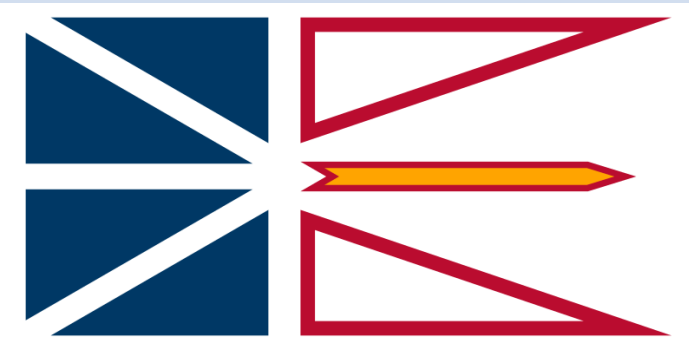
# This presentation will:

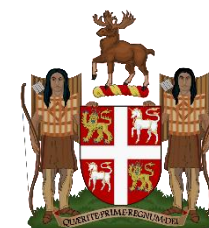
- Briefly examine Canada's ongoing constitutional commitments for marine transportation to the provinces.
- Examine previous judicial and scholarly thinking related to Canada's treatment of Newfoundland and Labrador's constitutional right.
- Present a factual and what I believe is a constitutionally-valid interpretation of the Canadian constitution so as to deliver for Newfoundland and Labrador a 21<sup>st</sup> century marine transportation gateway with Canada.



# Constitutional Commitments for Marine Ferry Services

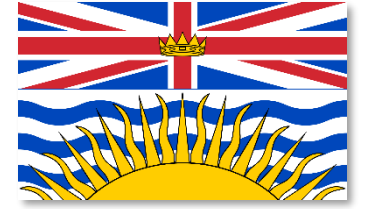
Three Canadian provinces negotiated ongoing, constitutional commitments for marine ferry services:

| British Columbia  | Prince Edward Island  | Newfoundland (and Labrador)   |
|---|---|---|
|  |  |  |



# British Columbia Terms of Union

*(Order of Her Majesty in Council admitting British Columbia into the Union) May 16, 1871*

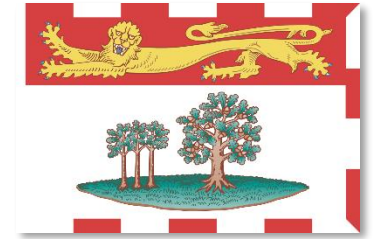


**Clause 4.** The Dominion will provide an efficient mail service, fortnightly, by steam communication between Victoria and San Francisco, and twice a week between Victoria and Olympia; the vessels to be adapted for the conveyance of freight and passengers;



# Prince Edward Island Terms of Union

*(Order of Her Majesty in Council admitting Prince Edward Island into the Union) June 26, 1873*

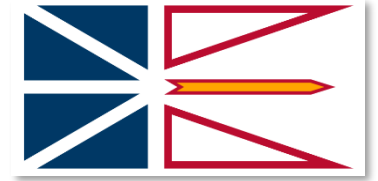


Efficient Steam Service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion;

That a fixed crossing joining the Island to the mainland may be substituted for the steam service referred to in this Schedule (The 1996 Amendment);



# Newfoundland (and Labrador's) Terms of Union



## Negotiating the Text of Today's "Term 32"

During the course of the National Convention and through the work of its negotiating sub-committees, from 1946 to 1948, the wording of the draft Terms of Union, including the final version of the Gulf Ferry commitment, evolved in a very deliberate and consequential way in terms of the law.

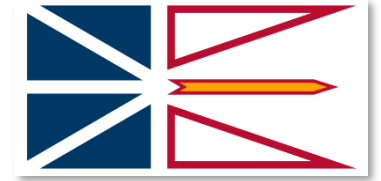
These are important details in any judicial interpretation.





# Newfoundland (and Labrador's) Terms of Union

*September 23, 1947*



## 12. TRANSPORTATION

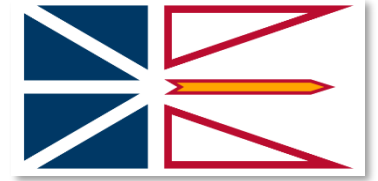
The Government of Canada, either directly or through an appropriate Government agency, will maintain steamship services between North Sydney and Port aux Basques in accordance with the traffic offering, and on completion of a motor highway between Corner Brook and Port aux Basques will make provision for a suitable service for the carriage of motor vehicles between North Sydney and Port aux Basques.

13. Railway services and railway rates over the Newfoundland Railway will be subject to regulation by the Board of Transport Commissioners of Canada similarly to railway services and rates elsewhere in Canada. For the purpose of rate regulation through traffic moving between North Sydney and Port aux Basques shall be treated as all-rail traffic. The province of Newfoundland shall also be deemed to be within the Maritime region of Canada, and any legislation of the Parliament of Canada, such as the Maritime Freight Rates Act, 1927, and amendments, providing for special rates on freight within, into or out of the Maritime region shall, so far as appropriate, be deemed to apply to Newfoundland.



# Newfoundland (and Labrador's) Terms of Union

*October 28, 1947*

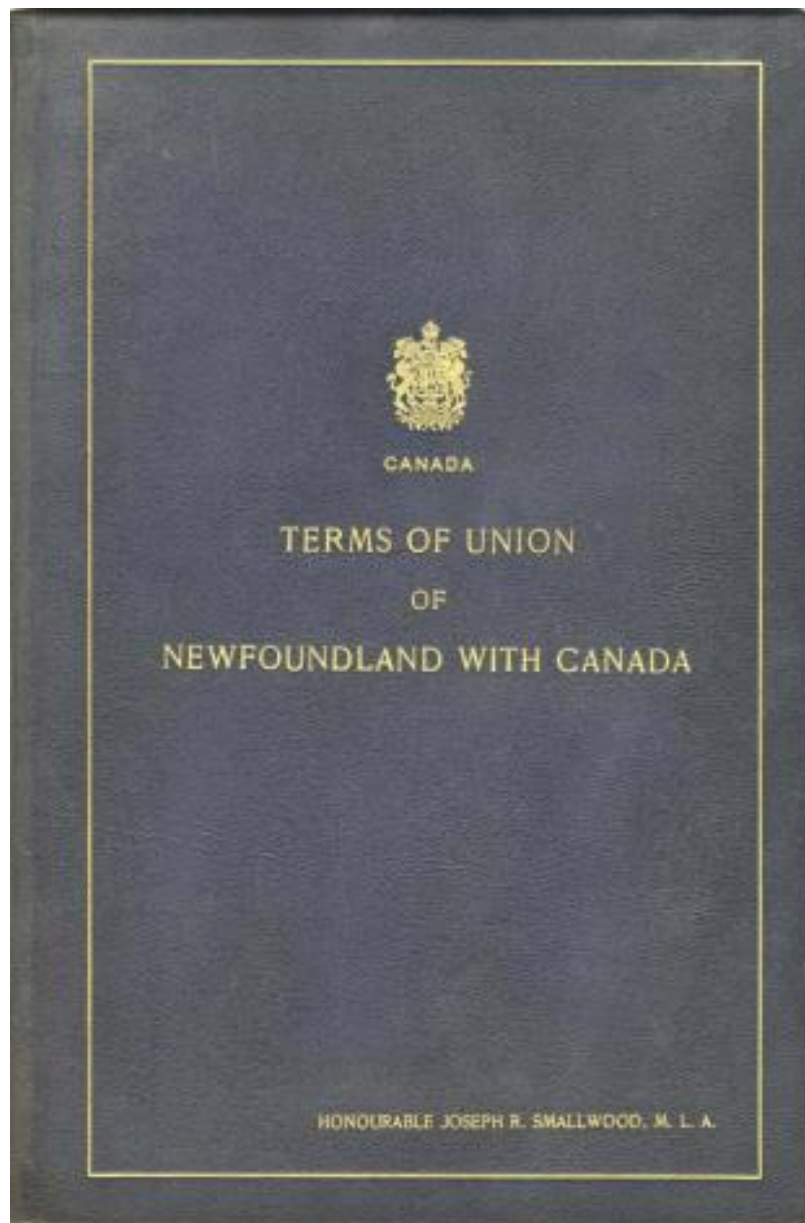


## Clause 16

1. Canada will maintain in accordance with the traffic offering a steamship service between North Sydney and Port aux Basques, which, on completion of a motor highway between Corner Brook and Port aux Basques, will include suitable provision for the carriage of motor vehicles.
2. Railway services and railway rates over the Newfoundland Railway will be subject to regulation by the Board of Transport Commissioners of Canada as are railway services and rates elsewhere in Canada.
3. For the purpose of rate regulation:
  - Through-traffic moving between North Sydney and Port aux Basques will be treated as all-rail traffic;
  - The Island of Newfoundland will be deemed to be within the Maritime region of Canada and any legislation of the Parliament of Canada (such as the Maritime Freight Rates Act, 1927, and amendments) providing for special rates on freight traffic moving within, into or out of, the Maritime region will, so far as appropriate, be made applicable to Newfoundland.







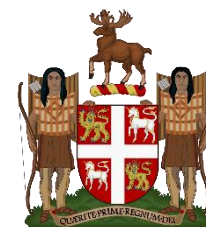
and will as from the date of Union relieve the Province of Newfoundland of the public costs incurred in respect of each service taken over, namely,

- (a) the Newfoundland Railway, including steamship and other marine services;
- (b) the Newfoundland Hotel, if requested by the Government of the Province of Newfoundland within six months from the date of Union;
- (c) postal and publicly-owned telecommunication services;
- (d) civil aviation, including Gander Airport;
- (e) customs and excise;
- (f) defence;
- (g) protection and encouragement of fisheries and operation of bait services;
- (h) geographical, topographical, geodetic, and hydrographic surveys;
- (i) lighthouses, fog alarms, buoys, beacons, and other public works and services in aid of navigation and shipping;
- (j) marine hospitals, quarantine, and the care of ship-wrecked crews;
- (k) the public radio broadcasting system; and
- (l) other public services similar in kind to those provided at the date of Union for the people of Canada generally.

32. (1) Canada will maintain in accordance with the traffic offering a freight and passenger steamship service between North Sydney and Port aux Basques, which, on completion of a motor highway between Corner Brook and Port aux Basques, will include suitable provision for the carriage of motor vehicles.

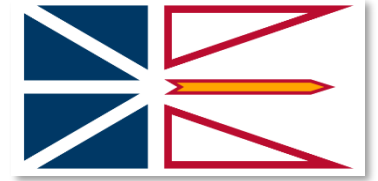
(2) For the purpose of railway rate regulation the Island of Newfoundland will be included in the Maritime region of Canada, and through-traffic moving between North Sydney and Port aux Basques will be treated as all-rail traffic.

(3) All legislation of the Parliament of Canada providing for special rates on traffic moving within, into, or out of, the Maritime region will, as far as appropriate, be made applicable to the Island of Newfoundland.



# Newfoundland (and Labrador's) Final Draft of Terms of Union

*December 11, 1948*



## Term 32

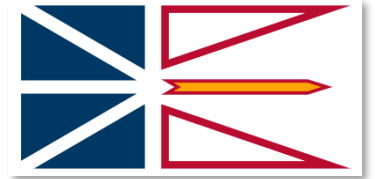
32 (1) Canada will maintain in accordance with the traffic offering a freight and passenger steamship service between North Sydney and Port aux Basques, which, on completion of a motor highway between Corner Brook and Port aux Basques, will include suitable provision for the carriage of motor vehicles.

(2) For the purpose of railway rate regulation the Island of Newfoundland will be included in the Maritime region of Canada, and through-traffic moving between North Sydney and Port aux Basques will be treated as all-rail traffic.

(3) All legislation of the Parliament of Canada providing for special rates on traffic moving within, into, or out of, the Maritime region will, as far as appropriate, be made applicable to the Island of Newfoundland.



# A Matter of Judicial Interpretation: The Words As Written

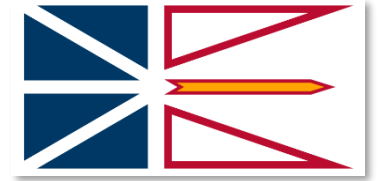


The final version of Term 32, in it's words and on it's face, purposefully contemplates an intersection of highway and marine traffic with any legislation applying to maritime highway or marine traffic in The Maritimes, applying to our ferry service.

All clauses within the Terms of Union must be read as a whole. By separating rail traffic in Term 32 (2), from any traffic referred to in Term 32 (3), coupled with a specific reference to motor vehicle traffic in Term 32 (1), results in an interpretation that the drafters specifically intended special rates for motor vehicle traffic in the Maritimes apply to the gulf ferry.



# Newfoundland (and Labrador's) Terms of Union



Public policy makers and academic scholars have all folded into a common reading of the Constitution; that Term 32 (2) and (3) are without any current effect without railway rate legislation.

With the repeal of all statutory “Freight Rate Legislation”, all examinations of Term 32 of our Terms of Union to date have been structured and centred around operative and rate legislation and regulations of railways.

Many scholars have suggested when Canadian maritime railway rate legislation was repealed all benefits of Term 32 (2) and (3) became “anachronistic.”





# The Wrong Approach

Here is why this approach has been wrong.

1. Railway Rate regulation remains in effect related to Service Levels under the Canada Transportation Act and the Canadian Transportation Agency;
2. The Parliament of Canada approved legislation in 1993 “providing for special rates on traffic moving within, into, or out of, the Maritime region”.

**It's called the *Northumberland Strait Crossing Act***





CANADA

CONSOLIDATION

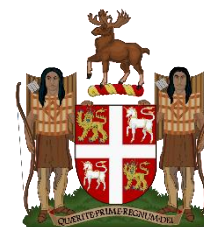
CODIFICATION

## Northumberland Strait Crossing Act

## Loi sur l'ouvrage de franchissement du détroit de Northumberland

S.C. 1993, c. 43

L.C. 1993, ch. 43





# Northumberland Strait Crossing Act

*S.C. 1993, c.43*

*Assented to 1993-06-23*



## Agreements

### Authority to enter into agreements

**4 (1)** The Minister may, on behalf of Her Majesty in right of Canada, enter into one or more agreements in respect of the crossing.

### Contents of agreements

**(2)** The agreements entered into under this section may include:

**(a)** provisions respecting the design, maintenance, financing, development, construction and operation of the crossing;

**(b)** provisions respecting the payment of the annual subsidy referred to in section 7;

**(c)** undertakings in relation to industrial and employment benefits;

**(d)** provisions respecting the tolls, fees or other charges that may be imposed in respect of the crossing; and

**(e)** such other terms and conditions as the Minister considers desirable



# Northumberland Strait Crossing Act

*S.C. 1993, c.43*

*Assented to 1993-06-23*



## Annual Subsidy

### Appropriation

**7 (1)** Subject to subsection (2), there shall be paid out of the Consolidated Revenue Fund, for the purpose of paying an annual subsidy in respect of the crossing, and the operation thereof in accordance with an agreement, in each of the thirty-five fiscal years beginning with the fiscal year determined for that purpose in accordance with the agreement, on the dates set out in the agreement, an amount not exceeding an aggregate sum of forty-two million in 1992 dollars, adjusted, in accordance with the agreement, using the consumer price index.

### Number of fiscal years

**(2)** Where the date fixed by the agreement referred to in subsection (1) as the date on which the first payment on account of the annual subsidy is to be made falls in a month other than April in a fiscal year, there shall be paid out of the Consolidated Revenue Fund, for the purpose referred to in that subsection, in each of the **thirty-six fiscal years** beginning with the fiscal year determined for that purpose in accordance with the agreement, on the dates set out in the agreement, an amount not exceeding

**(a)** in respect of both the first fiscal year and the thirty-sixth fiscal year, an aggregate sum of forty-two million, and

**(b)** in respect of each of the remaining fiscal years, an aggregate sum of forty-two million,

in 1992 dollars, adjusted, in accordance with the agreement, using the consumer price index.



# Northumberland Strait Crossing Act

*S.C. 1993, c.43*

*Assented to 1993-06-23*



## Tolls

**9** The Minister of Transport may, with the approval of the Governor in Council, make regulations prescribing, or prescribing the manner of calculating, the tolls, fees or other charges in respect of the use of the crossing that may be imposed on or after the lease of land and other property referred to in section 6 terminates in accordance with the terms and conditions of the lease.

## Coming into Force

**10** This Act shall come into force on a day to be fixed by order of the Governor in Council.

[Note: Act in force September 2, 1993, *see* SI/93-185.]



# A Summary of Key Points to The Northumberland Strait Crossing Act



## Statutory authority to make an Agreement

- (a) provisions respecting the payment of the annual subsidy;
- (b) provisions respecting the tolls, fees or other charges that may be imposed in respect of the crossing;

## Subsidy

An annual subsidy in respect of the crossing, in each of the thirty-five fiscal years beginning in 1992, an amount of forty-two million in 1992 dollars, adjusted, in accordance with the agreement, using the consumer price index.

## Rates/Tolls

The Minister Federal Minister of Transport may, make regulations prescribing the manner of calculating, the tolls, fees or other charges in respect of the use of the crossing.



# The Impact to Newfoundland and Labrador's Gulf Ferry

- 1992 Gulf ferry Rates become the baseline for all fares from 1997 onward.
- Rates can not go up on an annual basis more than  $\frac{3}{4}$  of the rate of inflation.
- The Canadian Transportation Agency can determine if ferry operations are adequate and, if not, order necessary improvements.





# Quantifying the Impact



Ferry rates will see an immediate reduction of approximately 50 per cent of their current rates.





# Marine Atlantic Ferry Rates

| Travel Classification | Rate                    |
|-----------------------|-------------------------|
| Passengers            | FREE                    |
| Passenger Vehicles    | \$50 one way not \$100  |
| Commercial Trucks     | \$150 one way NOT \$385 |
| Tour Buses            | \$140 one way not \$325 |



# Other Takeaways

1. 1237 jobs created immediately in Newfoundland and Labrador.
2. \$147 million increase to provincial GDP.
3. Increased exports of \$100 million per year
4. Substantial increase in tourism opportunities.
5. Consumer spending capacity increased by \$100 million per year

*Source: Across the Cabot Strait: The Impact of a Rise in Ferry Service Fees on Newfoundland and Labrador's Economy – Conference Board of Canada March 2020*

