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Ottawa K1A 0N5,
September 6, 1972

Miss J. Loranger, Secretary
Interdepartmental Committee on
International Bridges
Department of External Affairs
406 Postal Station B
59 Sparks Street
Ottawa

Dear Miss Loranger:

I am attaching a copy of a paper which I have prepared on the subject of international bridges. I must stress that this is not an official document and is not intended to express a departmental attitude but is merely an attempt to set down on paper the various problems afflicting international bridges and ways in which these problems could be solved. It could perhaps serve as the basis for discussion in the Interdepartmental Committee when we attempt to establish a common position for our next meeting with the representatives of the Province of Ontario.

I should perhaps mention that the paper was partly intended to explain the situation to officials having no prior knowledge of the subject and it therefore contains a number of statements of the obvious. I should also point out that no attempt has been made to research the background material in depth and it is possible that there are some inaccuracies. However, I would hope that this would not affect the usefulness of the document for discussion purposes.

Yours truly,

Original signed by
Originale signee par
A. D. McKENZIE

A.D. McKenzie, Chief
Bridge and Tunnel Division
Highway Branch
Canadian Surface Transportation
Administration

Enc.

DSH

# INTERNATIONAL BRIDGES

The picture presented by international bridges between Canada and the U.S.A. is extremely confused, since there are considerable variations in the regimes of the various bridges. This situation is well-known and has been well-documented, but it is worth restating that the principal cause was the apparent unwillingness of Canadian Governments over the years to assert their constitutional authority in the international bridge field. In general, reliance was placed on ad hoc arrangements based on expediency, and almost any arrangement appears to have been acceptable, provided that an international bridge could be constructed at no cost to Canada.

While three Provinces have an involvement in international bridge matters, the significant difficulties have arisen in relation to bridges between Ontario and the U.S.A. Over a considerable period, the Province of Ontario was reluctant to acknowledge federal jurisdiction in the international bridge field and on several occasions, acted without reference to the Federal Government in matters relating to the construction and operation of international bridges. Although the Federal Government does not appear to have made much effort to exert its authority on such occasions, Ontario changed its position and has now reconciled itself to the fact that international bridges are a matter falling within federal jurisdiction. Nevertheless, problems from earlier Ontario actions still persist as can be seen in the case of the three Niagara River bridges which are not covered by Federal legislation, but merely operate under an Ontario business licence.

The Federal and Ontario Governments have both been reluctant to become financially involved in international bridge construction or operation, mainly because of the cost of the large structures necessitated by geography, and the pattern generally favoured was for a private group to be authorized by the

Federal Government to finance and construct a bridge and to recover its investment by levying tolls. In most cases, a Canadian bridge entity was created in the initial stage and although this was frequently little more than a legal device, the Canadian Government was in a position to supervise operations in Canada. However, the legislation authorizing bridge construction usually gave the U.S. bridge entity the right to absorb its Canadian counterpart, and when this took place, Canadian control over bridge activities became almost non-existent. Nevertheless, there was usually a provision that at some point in time, the Canadian part of the bridge would revert to Canada. The main problems have arisen in connection with the nature of the present operating authority and with the terms of reversion.

Only minor difficulties have been encountered in connection with international bridges in New Brunswick and Quebec since the bridges between these two provinces and the U.S.A. are fairly small spans, and, for the most part, of purely local interest. In view of the small size of these bridges, the relatively low-cost of construction and maintenance and the fact that light traffic flows are generally insufficient to justify the collection of tolls, it is probable that direct Government involvement is the only practical method of dealing with them, and the types of problems which have affected Ontario bridges are unlikely to arise. Indeed, the only potential problems appear to stem from the fact that in some cases, bridges were built without proper approval being obtained from the Federal Government, or from the failure to establish formal agreements between the provinces and the States of Maine and Vermont on the sharing of maintenance costs. Gentleman's agreements have for the present overcome these potential problems, but they have not been eliminated.

It might be argued that the problems of international bridges in Ontario have been exaggerated since they do not appear to interfere with the service being provided by the bridges, in

most cases at no direct cost to Canada. However, this argument ignores the fact that whether or not the so-called problems have material effects, they are offensive to current concepts of Canadian sovereignty and therefore require solutions. This was clearly the view of the Federal Cabinet when on January 26, 1962, it approved guidelines for Canadian international bridges (see Appendix I). These were confirmed in a Cabinet decision of 1963 concerning the Blue Water Bridge. There is little doubt that the consistent application of the guidelines would prevent a repetition of most of the difficulties experienced in the past, particularly in those cases where reversion is involved, but it should be noted that they provide very little guidance in certain important aspects. It should also be mentioned that the guidelines may have a stifling effect on enterprise in the international bridge field, to the extent that they eliminate private activity without clearly accepting public responsibility.

The guidelines refer specifically to new bridges but by extension, this has been taken to include any existing bridge over which the Canadian Government acquires effective control. For example, when the Blue Water Bridge reverted to Canada, the guidelines were brought into play and formed the basis for the establishment of the Blue Water Bridge Authority. Unfortunately, there has been no opportunity to test the effectiveness of the guidelines in relation to a new bridge, since the only bridge in this category has been the Pigeon River Bridge, built and maintained by the Government of Ontario on a toll-free basis. It may be argued, particularly if one believes that the difficulties of the past have been exaggerated, that the guidelines were a mistake and should be eliminated so that the initiative in the international bridge field could be left to private bodies which have, in general, performed satisfactorily as far as the provision of service is concerned. There are undoubtedly defects in the guidelines, particularly to the extent that responsibility for taking the initiative in bridge matters has been blurred, but it

would seem that the principles expressed in the guidelines reflect current Canadian attitudes on matters such as sovereignty and foreign ownership, and therefore the need is to do something positive with the guidelines rather than to drop them.

While the guidelines might prevent a repetition of problems, they have by their very nature, no practical value as far as the correction of existing problems is concerned and these problems will persist, perhaps in increasingly aggravated form, until some effort is made to solve them. Since it is unlikely that many new international bridges will be built in the near future, the philosophy implicit in the guidelines cannot be made effective until the problem areas are cleared up. Appendix II lists the major outstanding problems and examines possible solutions. Some merely require Canada to make a firm decision on a certain course of action, while others require legislation. Other problems arose from differences between Canadian and U.S. policies, but are only significant when bridges are operated entirely by U.S. bodies. An example of this would be the reluctance of a U.S. bridge authority, operating a complete bridge, to pay municipal taxes in Canada when it is not required to do so in the U.S.A.

Appendix III contains an analysis of the guidelines, indicating weaknesses and suggesting areas where they could be improved. It should perhaps be mentioned at this point that while the guidelines were approved by Cabinet, they were never generally published and as a result, the various bridge authorities and the three interested provincial governments have been largely unaware of Federal Government thinking on international bridge matters. Any revision of the guidelines to reflect changes in the social and political climate with regard to national sovereignty, foreign ownership and citizen participation should presumably be adequately publicized to ensure that all interested parties are made aware of the future which the Canadian Government sees for international bridges.

Since legislative authority for international bridge matters is vested in the Federal Government under section 92(10) of the British North America Act, it would theoretically be possible for that Government to take action on its own to solve existing problems, and to establish arrangements for the construction, operation and maintenance of international bridges in future. The 1962 guidelines were, of course, a step in this direction. Despite constitutional supremacy, it is however questionable whether the international bridge field can be effectively occupied without the close cooperation of the provinces concerned, and this is particularly true in Ontario where the major bridges are located and where the main difficulties have arisen. Obviously, the location of an international bridge is closely related to the provincial highway network, and its effectiveness is equally dependent on the activities of the Provincial Government. It would therefore seem to be impractical for the Federal Government to act on its own with regard to international bridge problems.

The importance which the Province of Ontario attaches to international bridges as extensions of its highway network was made clear recently when a direct approach was made to the Federal Government to discuss a proposal for the better handling of international bridges, based on provincial participation. In essence, the Ontario proposal is that those international bridges now under the direct control of either the Federal Government or the Province should be transferred to a public authority set up jointly by the Federal and Provincial Governments. Any bridge subsequently reverting to Canada would be assigned to the Authority, which would also be responsible for the construction and operation of new international bridges (or more properly the Canadian part of such bridges). In addition, the Authority would regulate the operation of the Canadian half of all other bridges between Ontario and the U.S.A. until such time as they could be brought under direct management following reversion. The Ontario

presentation suggested that the proposed arrangement would help to solve the various problems which already exist in relation to international bridges, but this is questionable. The proposed Authority might provide an effective arrangement for future management, but since most of the Ontario international bridges do not revert under present arrangements until the last decade of this century at the earliest, the opportunities for direct control are limited, and the effectiveness of the proposed Authority would depend on the regulatory powers allowed to it by the Federal Government and on the extent to which the latter would be prepared to revise existing legislation relating to individual bridges.

Since the problems of international bridges have been with us for some considerable time without noticeably affecting the provision of services, the question might be raised as to whether there is any element of urgency in the matter of finding a possible solution. Of course, some degree of urgency has been created by the fact that the Government of Ontario has raised the issue, and a firm reaction to their proposal cannot be unduly delayed. However, regardless of the provincial initiative, there are other reasons for suggesting that unless it is prepared to abandon any significant interest in international bridge matters, the Federal Government needs to take positive action on a general scale fairly soon. Controversial matters now coming before the Interdepartmental Committee on International Bridges have revealed the weakness of attempting to control private bridge activity on the basis of unpublished guidelines, and the difficulty of taking a firm stand against bridge authorities which have already involved themselves in expensive developments in contravention of the guidelines. As a minimum, the Federal Government should clearly occupy this legislative field and place itself in a position to enforce compliance with its policy. The need for prompt action is emphasized by the fact that within the next few years there could be several major developments and

if the Federal Government fails to assert itself, existing problems could be compounded, and the possibility of ever solving them might become remote. The Thousand Islands Bridge is due to revert in 1976, but already efforts are being made to postpone this. There has been mention of possible bridges at Kingston and Amherstburg, and so far there has been little federal involvement. There are plans to twin the Blue Water Bridge, without any indication that the Federal Government will be consulted. In all these cases, there is a danger that the issue will be thrust before the Federal Government at the last moment, and that expediency will determine the outcome rather than a clearly defined policy. Furthermore, the fact that the Federal role has been consistently downgraded, has led Government departments to act independently with prejudicial effects on policy as a whole. For example, it appears that the Department of National Revenue (Customs and Excise) has been advising the Thousand Islands Bridge Authority about their accommodation needs at the same time that the Interdepartmental Committee was resisting efforts by the Bridge Authority to obtain authorization for a bond issue for the purpose of, among other things, improving customs facilities.

In attempting to evaluate the Ontario proposal in terms of declared Federal policy, it is assumed that the Federal Government has no intention of reversing the general trend towards public ownership of international bridges, and this is clearly the line which the Government of Ontario favours. It could, of course, be argued that international transportation services are frequently provided by private organizations, but in the case of international bridges, these are fixed structures in a quasi-monopolistic position with no alternative use other than as scrap metal and incapable of adjusting to any significant degree to economic pressures and changes in demand. Moreover, international bridges exert a considerable permanent influence on the provincial highway network and traffic patterns, and are therefore so closely tied to the

public interest that public ownership seems desirable. These considerations presumably lay behind the 1962 guidelines, and would also apply if the question of public ownership were to be reconsidered. It should be pointed out that the Ontario proposal may be of little value if the Federal Government holds firm to guideline (b) which envisages a joint authority for each bridge with equal representation from both sides of the border, since such an arrangement would prevent a federal/provincial body from exerting any effective control. However, as indicated in Appendix III, the concept of international joint authorities may not be practical, and if this point is accepted, the Ontario proposal is not automatically ruled out.

On the assumption that the Federal Government will not reverse its stand and encourage the construction and operation of international bridges by private bodies, there are essentially two courses open to it as far as management arrangements for bridges under direct Canadian control are concerned:

1) the Canadian half of each bridge could operate as a separate entity with its own bridge authority operating under federal legislation. This would leave the way open to the establishment of a joint authority with the U.S.A. and would not prevent participation by provincial nominees in the authority.
2) the Canadian half of all the bridges could be administered by one overall authority and this is basically the Ontario proposal. The practicality of this course depends to some degree on the time required to bring a sufficiently large number of bridges under the Authority. Initially, only three bridges (Seaway International, Blue Water, Pigeon River) could be transferred to an overall public authority, and the number would only be increased in the near future by the addition of new bridges or twin spans and the reversion of the Thousand Islands Bridge in 1976. Under present arrangements, other bridges would not revert to the Authority until, in most cases, the year 2000. This tends to weaken some of

the arguments which can be used in favour of an overall authority but the difficulties could be eliminated by some form of accelerated reversion process which would ensure that all international bridges could be assigned to the Authority within a relatively small space of time.

These two basic courses can now be examined in greater detail:

1) The operation of bridges as separate entities is, to a large extent, the present arrangement and could remain so if each bridge reverting to Canada were to be set up as an independent public body along the lines of the Blue Water Bridge Authority. Such an arrangement would satisfy the guidelines as they are now written, and would not impede the establishment of joint authorities with the U.S.A. although the chances of establishing such authorities appear to be somewhat remote. The management structure under such an arrangement would tend to be simple and direct, and the governing body could include local representatives as is now the common practice to ensure that local interests are protected. This arrangement would reflect the uniqueness of each bridge, and would also ensure that each bridge would be considered separately when the question of economic viability was being examined.
On the basis of experience, it can be clearly seen that the operation of bridges as separate entities is entirely feasible, and the question must therefore be whether or not there are clear advantages to be gained from placing the bridges under some form of group management. It can be argued that despite the uniqueness of individual bridges, they have many features in common and all form an integral part of the provincial, national and international highway networks, and therefore should not be managed by a group with limited perspectives. Obviously, local interests cannot be ignored and some form of local representation is desirable but decisions must be taken in the general interest. Separate bridge

authorities may well be subjected to undue local political pressures which would thwart the achievement of goals of general interest. Government control over bridges in such circumstances would tend to be dispersed and ineffective. If one pursues the individual bridge course, this forces concentration on the economic viability of each bridge, but it is arguable that this should not be a sole criterion, and indeed, in the present social and political climate, it is questionable whether decisions can be made on a purely economic basis. If social considerations are to play a role, then government must be prepared to accept uneconomic bridges and subsidize them, unless, of course, some means can be found to transfer funds from profitable to unprofitable bridges.

The greatest weakness of the individual bridge authority arrangement relates not, however, to the operation and maintenance aspects, but rather to construction. Prior to the guidelines, a private body merely presented a proposal to Government, and signified its willingness to accept the inherent risks. Under the guidelines, however, a bridge may only be constructed on the Canadian side by a public authority but presumably, such an authority could only be set up after all the ground work had been done. The initiative for deciding that a bridge should be built and for appointing an authority would rest with the government and at the present time, neither level of government appears to want to become involved in this process, the federal government because it sees the province as being in the best position to assess need, and the provincial government because it believes that the initiative should rest with the level of government enjoying legislative authority. Since no new toll structures have been built since the guidelines came into effect, there is considerable doubt as to how the initiative can properly be taken in conformity with the principles expressed in the

guidelines. It is perhaps significant that in relation to a proposed bridge at Kingston, the initiative seems to have remained with a private group, presumably of U.S. citizens, and it is difficult to see how this could easily be converted into a public authority in accordance with the guidelines.

A further argument against individual bridge authorities is that the Province of Ontario is opposed to such arrangements. Of course, if the Federal Government wishes to handle international bridges on the basis of its exclusive jurisdiction, then Ontario objections to this arrangement could be ignored. However, as mentioned earlier, there are sound reasons for cooperation between the two levels of government in international bridge matters, and therefore some weight should be given to the Ontario view.

2) The second alternative is the establishment of an overall bridge authority.

It seems reasonable to assume, as mentioned earlier, that social as well as economic factors must be considered in relation to international bridges, and therefore all bridges cannot be expected to be economically viable. Since government is unlikely to want to provide subsidies in the case of uneconomic bridges, the simplest way of supporting them would appear to be to transfer funds from profitable bridge operations, and such cross-subsidization can be most easily achieved through the mechanism of an overall bridge authority with a central treasury operation, provided of course, that sufficient profitable bridges are under the control of the Authority. Such cross-subsidization can, of course, be criticized on the grounds that it can encourage careless planning or inefficient operation in individual cases, but this can be overcome by ensuring that the accounts of individual bridges are prepared separately and that detailed operation reports are submitted to an agency of government with supervisory

powers. If the advantage of an overall authority is to be achieved as far as financing is concerned, it is necessary that the bridges should collectively be economically viable, even if some individual bridges are not.

An overall bridge authority appears to satisfy all the guidelines with the exception of (b) and as indicated in Appendix III, this guideline may be of limited importance in its present terms. The existence of an overall authority would, of course, permit efficiencies of scale, particularly in regard to the development of specialized skills and centralized planning and operating capability. Moreover, since management would be centralized, there would be a clear focus of responsibility which would simplify the maintenance of a more direct relationship with the provincial and federal governments than is possible with individual bridges. An added advantage would be that an overall authority would not be subject to purely local pressures. On the debit side, because of the nature of bridge operations and the location of the various bridges, there would be no real economies of scale and little to be gained from centralized purchasing, and there would probably be increased costs arising from an additional level of management. Another problem which could arise in the management of an operation of this nature would be over-centralization with the overall authority attempting to solve problems on a uniform basis without adequate knowledge of purely local conditions and needs. The problem of management at a distance has been observed on the U.S. side of the Blue Water Bridge where the senior local person appears to be at the foreman level and all decisions are made in the State capital.

Some form of overall authority is obviously more acceptable to the Government of Ontario than separate bridge arrangements, since this is what their proposal advocates. As pointed out earlier, at the present time an overall authority could only

acquire direct control of three bridges, and the most profitable bridges would remain outside its grasp for many years. In these circumstances, a cost-benefit analysis is needed, to determine whether the costs of an authority directly controlling three or four bridges and regulating others would be justified in relation to benefits, but the deciding factors for or against an overall authority would probably be political. Of course, the Government could favour an overall authority in principle but postpone its creation until a specified number of bridges guaranteeing a profitable operation had come under government ownership, but the effect of this might be to thrust the arrangement so far into the future that it would have no practical meaning. The advantages of an overall authority would inevitably be considerably enhanced by any action which would increase the number of bridges available for assignment to the Authority, and the possibility of action to achieve this will be considered later.

Assuming for the moment that sufficient bridges could be operated by the Authority to justify its existence, it is evident that there are merits in both the overall authority and separate bridge authorities, but in general, the weight of evidence appears to favour some form of overall authority since such a body would meet provincial demands, ensure centralized expertise and facilitate financing and planning. However, many problems are encountered at the individual bridge level and need to be handled in cooperation with the appropriate U.S. bridge authority, and an overall authority would be too far removed from the action to make prompt decisions. It would therefore seem desirable that the overall authority should only concern itself with general principles and with those functions which can reasonably be centralized. The day-to-day operation of each bridge should be delegated to an individual bridge management whenever possible so that problems can be handled on the basis of local knowledge and

experience, subject, of course, to the approval of the Authority.

Whether the Government favours the operation of international bridges separately or as a group, it is clear that under present arrangements, the majority of bridges will not come under public ownership for many years. However, if the guidelines or an improved version of them are considered to represent an acceptable policy, then it is clearly desirable that some way should be found to apply them to all bridges before reversion. If there is no intention to set up an overall authority, then any regulation of non-government bridges would have to be handled by a government department under appropriate legislation. If on the other hand, an overall authority is favoured, the government could delegate to this body the regulatory powers over bridges outside the direct control of the government. There could be a problem in attempting to apply such regulations to the Canadian half of bridges operated entirely by a U.S. authority, particularly with regard to toll levels, and it is possible that effective regulatory control could only be achieved by requiring the re-creation of a Canadian bridge entity in each case.

The need to establish regulatory controls over non-government bridges would, of course, be obviated if steps were taken to accelerate the reversion process and bring all bridges quickly under public ownership. Reversion to public ownership is a principle in most of the legislation governing international bridges, but there is no uniformity in the various reversionary arrangements. Only one bridge (Blue Water) has so far reverted to Canada, since the possible reversion of several others was delayed as a result of approved changes in the financing arrangements. The Thousand Islands Bridge is due to revert in 1976, although this could be delayed if current moves by the bridge authority are not checked. With the exception of the Ambassador Bridge, which is a private entity with no reversionary provisions and, of course, the government-owned bridges, the remaining international bridges are not scheduled to revert to Canada until the

last decade of this century at the earliest.

The guidelines covering international bridges state that a bridge "shall be constructed and operated by an authority that is genuinely public in its character". While there are indications that at the time the guidelines were established, this was not necessarily intended to mean a purely government entity, in the light of changes in the political and social climate, it would seem that this interpretation of the guideline is more realistic, particularly when one considers that the public interest is paramount and that a monopoly service is being provided. Except in the case of new international bridges, which should be built by a public authority in accordance with the guidelines, public authorities can only be set up to take direct control over other bridges on reversion. Since the Government favours the public authority idea, it seems clear that in future, reversion should not be delayed and that international bridges should revert at the earliest possible date.

The Ontario proposal envisages an overall public authority and as pointed out earlier, the effectiveness of such a body would be in direct proportion to the number of bridges, and particularly of profitable bridges which could be placed under its control. If an authority were to be set up at the present time, it is questionable whether it would be a viable entity, since of the three government bridges, only the Blue Water Bridge could be described as a profitable enterprise. This situation would be somewhat improved following the reversion of the Thousand Islands Bridge in 1976, but a firm stand is going to be required if this reversion is to take place on time. The Federal Government might have to be prepared to accept the need to subsidize a largely regulatory authority in the early years unless some satisfactory method could be found to bring additional profitable bridges under its direct control as soon as possible. This would require some form of accelerated reversionary process, and the extent to which this is legally feasible is a

matter for legal officers.

In several cases, the reversionary principle was established in Federal legislation authorizing construction and operation, and therefore any change in the process would require further legislation. It has been suggested that since international agreements preceded the original legislation, the terms cannot be changed unilaterally, but of course, there is no legal impediment to legislation being amended by Parliament as it thinks fit. Whether it is morally right to make such changes is another matter, but it should be pointed out that the U.S.A. has already made legislative changes concerning international bridges without consulting Canada, and it is therefore difficult to see why Canada should not do the same, particularly if the changes do not interfere with the efficient operation of the bridge and do not deprive individuals of guaranteed rights without proper redress. With regard to the three bridges in the Niagara Falls area, there is no Canadian legislation, and therefore no clear basis for reversion, the reversionary principle having been established in these cases by Resolutions of the Congress of the United States. Since it is, in any case, desirable that these bridges should have some legal basis for operating in Canada other than the Ontario business licence they now possess, the legislation needed for these bridges should include a reversionary clause. The legislation authorizing the Sault Ste. Marie and Prescott/Ogdensburg bridges contains, in addition to the requirement that all bonds be retired, a clause to the effect that all stocks should also be redeemed. The terms under which the stocks are to be redeemed had to be approved by the Governor in Council and if they are likely to impede the reversionary process, it would presumably be possible to reverse the approval and insist on suitable terms. The Ambassador Bridge is a special case and there is no possibility of reversion under existing legislation. However, current negociations concerning a change of ownership could allow insertion

of a reversionary clause into new arrangements, although this would have to be done on the basis of buying out the shareholders.

It would seem that with the possible exception of the Ambassador Bridge, the reversionary principle based on the retirement of outstanding bond issues, could be made to apply to all international bridges in Ontario. If it is considered desirable to accelerate the reversion process, there is no apparent reason why legislation should not be introduced, which would enable the Canadian Government to pay off the bondholders as soon as possible, thus enabling reversion to take place. In most cases, bond issues relate to the entire bridge, and there might be problems in determining the proportion relating to the Canadian part of the bridge. This would obviously be subject to negotiation but the reversion should be clearly tied to the redemption of the percentage of the total oustanding bond issue covering the Canadian portion of the bridge.

The principal objection to accelerated reversion along these lines would probably be that this amounted to expropriation. However, the bondholders are not owners of the various bridge properties and their future income from the bonds is clearly defined. Consequently, there would be no question of anyone being deprived of an ownership interest or having an indeterminate income stream cut off, and therefore there could be no valid charge of expropriation. In paying off the bondholders, steps should presumably be taken to ensure that they receive the full amount to which they would have been entitled over the normal life of the bond issue, thus avoiding any complaints of deprivation. In the two cases where retirement of stock is a prerequisite for reversion, the possibility of retiring the stock was clearly contemplated and since on this basis the stockholders cannot have a permanent interest, retirement of the stock could not give rise to a charge of expropriation. Any attempt to acquire the assets of the Canadian half

of the Ambassador Bridge under the present arrangements would, of course, be a form of expropriation.

The Federal Government could provide the funds to retire the oustanding bonds and the proposed overall bridge authority would then be in a position to issue its own bonds to repay the Government. There would, therefore, be very little direct cost to Canada. Tolls would be set at a level which would enable the bridge authority to retire the bond issue over a suitable period.

There would presumably be strong protests from the U.S. side if an accelerated reversion process were to be implemented, since there are indications that a number of people in the U.S.A. benefit financially from the international bridges, even when they are only paid on an expense account basis. However, despite any change in the reversionary process, the U.S. part of each bridge would obviously remain in their hands to be operated in whatever way may be acceptable to the U.S. authorities.

As mentioned earlier, cross-subsidization would permit the consideration of social need as well as economic viability when bridge proposals were being examined. To achieve this, some form of overall authority would be required to overcome the basic financial problems and to remove the necessity of direct government subsidies. If, however, the Federal Government did not favour cross-subsidization, then the advantages of an overall authority would be considerably diminished. Once the likelihood of an overall authority recedes, however, the need for accelerated reversion tends to disappear, and perhaps both the interests of the Federal and Provincial Governments could best be satisfied by regulation, provided some adequate mechanism was also established for starting new bridges.

The degree of involvement of the Province of Ontario is, of course, a basic issue. Certainly international bridges cannot be considered in isolation since they provide linkage

between the Provincial and State Highway Networks, and there is therefore a clear Ontario interest in terms of provincial transportation. On the other hand, they also form linkage with the National Highway Network and it is noteworthy that in legislation covering certain international bridges, the national interest has been stressed by a declaration that the undertaking is for the general advantage of Canada. Moreover, one cannot overlook the fact that legislative authority in international bridge matters is vested in the Federal Government. The Ontario Government appears to have somewhat mixed motives for wishing to involve itself in international bridge matters. Initially, there is the practical reason that it would like to have some input, particularly at the planning stage, into the making of decisions which may have considerable effects on provincial highways and traffic patterns. In many ways, the provincial government is in the best position to identify bridge needs. Pressures for new construction are more likely to be felt at the provincial level and State Governments would, in most cases, address themselves initially to the Ontario Government if they wished to discuss the possibility of bridge construction. A more material consideration from Ontario's point of view is that by active participation in international bridge control, it would be able to influence decisions on the basis of need without having to fund such construction from provincial highway funds as was the case with the Pigeon River Bridge.

It might be suggested that in view of the direct interest of the Provincial Government, there is nothing to stop that government setting up an authority which would evaluate bridge needs and, under federal legislation, issue bonds and construct and operate bridges. However, the Ontario Government appears determined to avoid running into expense in an area of federal legislative responsibility. It is equally clear that because of the national interest involved in international bridges and because its constitutional authority in the field requires it

to provide legislation, the Federal Government would have to maintain an active interest in international bridges. It would therefore seem that both levels of government must have some input. If individual bridge authorities were to be favoured by the Federal Government, the participation of Ontario nominees would seem to be the best way of achieving provincial involvement, but the province is already represented on a number of the existing authorities and obviously finds this inadequate. Certainly, in terms of the planning process, membership, in existing authorities would be of little value to the province.

Since, as indicated earlier, the balance of evidence appears to favour an overall authority, the question is then centered on the best method of achieving provincial involvement while maintaining Federal supremacy in the international bridge field. The solution proposed by the Government of Ontario is a joint Federal/Provincial authority operating independently except in those cases where economic viability would be open to question and social need would be the prime consideration. From the Federal point of view, however, the proposed authority has little to commend it in its present form. The national interest inherent in international bridge matters and the foreign policy implications of bridge activities suggest that the Federal Government should maintain an active role in the international bridge field, and the ability to do this would be diminished if a quasi-independent authority were to be set up. In those areas where the Ontario proposal would restrict the independence of the authority, namely non-economically viable projects, there could be problems of control, since the authority would be responsible to two governments and the usual problems of trying to serve two masters would appear. It is also open to question whether the degree of independence envisaged by Ontario is politically desirable. Decisions which are logical in economic and technical terms may not be acceptable in political or social terms, and therefore almost any decision of the authority ought

to be subject to government control. Since the constitutional authority for international bridges is vested in the federal government, it is clearly desirable that this level of government should control, or at least be answerable for the activities of the authority, and this responsibility could not be easily exercised over a joint authority. Moreover, the creation of any joint federal/provincial body is likely to be complicated by constitutional issues, and any solution which would avoid this seems desirable.

A pertinent question is whether the ends sought by Ontario require the creation of a joint authority. In effect, everything sought by Ontario could be achieved through a purely Federal authority, with an appropriate mechanism for introducing provincial participation. This could be done quite simply by establishing the principle that a significant percentage of the members of the authority should be nominated by the provincial government so that the provincial point of view would be adequately expressed. The members of the authority could be appointed by the Governor in Council so that the federal nature of the body would remain unimpaired. Considerable powers could then be delegated to the authority since there would be no question of the federal powers being relinquished to the province. International agreements could be handled, or at least monitored by the Department of External Affairs and political responsibility for major decisions would remain with the Federal Government at all times.

It is difficult to see what objections Ontario could have to such an arrangement, since it would ensure provincial input into international bridge matters and facilitate cooperation with provincial planners. Above all, it would create what is now lacking, namely a body capable of initiating action in the international bridge field and of conducting the financial affairs of international bridges without any charges falling on either level of government.

Appendices II and III contain an analysis of existing problems and of the guidelines, and suggest certain courses of action, which could be incorporated in legislation setting up new arrangements for international bridges. Since the principles of the 1962 guidelines would seem to reflect an approach to sovereignty and ownership which would be acceptable today, any legislation should be based on the general principles of the guidelines, which would, of course, then disappear. The Federal Statute would establish a public authority, the members of which would be appointed by the Governor in Council and with all its activities subject to the approval of that body. Any international bridges now under Federal or Provincial control would be transferred to the authority, and all future reversions would be to the authority, thus cancelling all previous agreements concerning reversion. Any planning and new construction would be handled by the authority which would have the power to issue bonds to finance the work, subject to the approval of the Governor in Council, and the Canadian half of all new international bridges would be operated and maintained by the authority. The Authority would operate and maintain all bridges reverting to it. The statute would also set up an executive apparatus for the day to day running of the bridges, and would require, where appropriate, the creation of individual bridge managements responsible to the authority, with adequate delegation of power to deal with local problems and to cooperate closely with the bridge managements on the U.S. side. It should however be clearly stated that the authority or its agents may only cooperate with U.S. bodies in purely bridge activities and must not become involved in other matters on the U.S. side (or on the Canadian side). In the legal context, the authority would be purely federal, but outside the legislation, an agreement could be made with the Province of Ontario that the Lieutenant Governor in Council would nominate a percentage of the board, to be formally appointed by the Governor in Council. The authority

should be given powers to negotiate with U.S. agencies in relation to all aspects of international bridges, subject, of course, to the approval of the Governor in Council which would mean that External Affairs could play an active role.

The Authority would be given clearly defined regulatory powers over those bridges which have not yet reverted to Canada. The responsibilities of such private bridge authorities should be clearly laid down, and where necessary, the re-creation of a Canadian entity should be mandatory so that there will be real control over bridge activities. (The item would not be necessary if the Government were to institute a process of accelerated reversion).

Subject to the approval of the Governor in Council, the authority would be authorized to set tolls at a level which would cover costs, amortization and bond interest, and possibly establish reserves. The authority would be required to apply tolls to achieve the ends considered most desirable for both Canada and Ontario and this, of course, would require the authority to consult both levels of Government about possible changes. Even before bridges revert to Canada, the authority should have the power to lay down the level of tolls to be collected on the Canadian half of all bridges. Of course, if tolls are to be used as positive instruments, the Canadian Transport Commission would no longer be able to act as a regulatory restraint and its powers over international bridge tolls would have to be eliminated. To some extent, the authority would be somewhat restricted as far as levying tolls was concerned since there would have to be some degree of harmony with the U.S. side, and cooperative arrangements would be necessary to avoid two tolls being levied.

The guidelines recommended a clearly defined policy on municipal taxes and this should be incorporated in the legislation. The extent to which communities actually benefit from being located at one end of an international bridge is open

to question and it is possible to find arguments which would suggest that from social and economic points of view, such bridges are disadvantages to the local community. However, whether there is a net advantage or disadvantage, there is no doubt that most of the bridge communities have benefited financially and have probably come to depend on the bridge for a percentage of their revenues. In these circumstances, there seems to be little reason why the legislation should not instruct the authority to pay taxes, grants in lieu or some other form of grant to all municipalities having a bridge within their jurisdiction.

Since the authority would be operating on a quasi-commercial basis, there seems to be no reason why it should not continue the practice of providing those facilities required by Canada Customs and Immigration at bridge expense . The friction which now exists between private operators and these Government departments with regard to the provision of such services would presumably disappear but the legislation should define the authority's responsibilities in this regard.

The foregoing paragraphs should produce an authority capable of handling bridge matters on a quasi-independent basis, and meeting both the needs of the Federal and Provincial Governments.

The establishment of an authority and the implementation of legislation along the foregoing lines would inevitably have a direct effect on the role of the Interdepartmental Committee on International Bridges, since most of the problems which now come before the ICIB would be handled directly by the authority. The Committee might perhaps operate as a consultative group when the approval of the Governor in Council is being sought on any matter but the effectiveness of such a group representing widely differing interests is questionable and it might be preferable if responsibility passed to one Department, which would obviously discuss specific issues with other interested departments.

August 23, 1972

APPENDIX I

## CANADIAN INTERNATIONAL BRIDGE GUIDELINES

Where legislation for new international bridges having a public function is concerned, whether the basic act of incorporation be in Canada or the United States, a condition of Canada's approval shall be that the proposed legislation is substantially in accord with the following principles:

(a) the bridge shall be constructed and operated by an authority that is genuinely public in its character;

(b) the bridge shall be governed by a joint authority with equal representation of members to be appointed by the appropriate Governments on either side;

(c) when applicable, bonds issued to finance the construction of a bridge must be issued and be payable in Canada as well as in the United States;

(d) the borrowing powers granted to a bridge authority must be subject to the approval of the Governor in Council;

(e) the position of a bridge authority in relation to provincial and municipal taxes must be clearly defined;

(f) where appropriate, provisions governing regulation of the toll structure for the use of the bridge, before and after the indebtedness of the bridge authority has been retired, shall be clearly stated;

(g) arrangements must be made for appropriate sharing in the construction of the bridge, the use of materials and the employment of labour; and

(h) the provisions of the Navigable Waters Protection Act shall apply in all cases."

Approved by Cabinet January 26, 1962.

APPENDIX II

Problems of International Bridges

The following problems have been identified in relation to international bridges between Ontario and the U.S.A.:

1. Lack of any legislative authority for construction, operation and maintenance of the Canadian half of the bridge. This situation arose mainly because at the time, the Province of Ontario was unwilling to recognize Federal authority in the field and the Federal Government did not press the issue. The three bridges in the Niagara Falls area form this category with minor variations. The construction of the Lewiston-Queenston Bridge was authorized by Federal legislation but no authority was given for operation and maintenance. In the case of the Rainbow Bridge, there was no Federal legislation authorizing either construction or operation. The sale of the Whirlpool Bridge by the former owner was authorized, but there was no legislative authority for the present owner to acquire or operate the bridge. In all three cases, however, the Ontario Government issued a licence under the Extra Provincial Corporations Act allowing the bridge authority to do business in Canada. One effect of the lack of legislative authority is that the eventual reversion of the three bridges cannot be considered definite, and problems could develop around this issue. The only indication that there is a Canadian reversionary interest is contained in a Joint Resolution of the U.S. Congress, and this can hardly be considered a satisfactory basis. It should perhaps be mentioned that the reversionary provisions would only take effect in 2000. The absence of Canadian legislation also brings into question the right of the Bridge Commission to levy tolls on unauthorized structures. Furthermore, the fact that there is no real contact between the Federal Government and the Bridge Commission means that the constitutional authority is largely ignored.

The obvious solution would appear to be to pass federal legislation giving legal recognition to the bridges, authorizing their operation and maintenance, and establishing the basis for reversion to Canada. Separate acts would not be required if blanket international bridge legislation were to be introduced.

It seems to be felt in some quarters that Canadian legislation must parallel U.S. legislation on the grounds that it follows from an international agreement, and attempts to introduce retroactive legislation were apparently turned back in 1959 on the basis that there were defects in the U.S. legislation. It should, however, be pointed out that any agreements relating to these bridges were between Ontario and the State of New York, and the Canadian Government is not bound by them. There appears to be no good reason why Canada should not pass legislation in this case.

2. Disappearance of the Canadian Company initially concerned with the construction and operation of a bridge and the assumption of control of the complete operation by U.S. interests.

Examples of this are the Thousand Islands, Sault Ste Marie and Peace Bridges where all powers have been assigned to the U.S. company. In the case of the Prescott-Ogdensburg Bridge, there is no record of an official assignment but all references to a Canadian Company have disappeared and the U.S. bridge authority runs the whole operation, apparently on the basis of a de facto transfer. In the case of the three bridges which have no legislative basis, there is no corporate structure in Canada and the entire bridges are operated by a purely U.S. entity. The Ambassador Bridge and the Detroit/Windsor Tunnel are examples of Canadian corporate entities which continue to exist but as wholly owned subsidiaries, they do not play any significant management role.

In all cases where power over the entire structure is vested in a U.S. body, Canada has virtually no control over what takes place on the Canadian half of the bridge. In effect, this problem would only be solved by the re-creation of a Canadian bridge entity, and since the amalgamation of the Canadian and U.S. companies was in most cases authorized by legislation, this could only be reversed by legislation. Where there is a reversionary clause, control over the Canadian half of the bridge will ultimately be returned to Canada and the problem would thus be solved. However, in most cases this is many years away, and the only alternative to amending legislation would appear to be some form of accelerated reversion.

3. Merger of the U.S. bridge authority with some other body having purely U.S. interests and possible use of bridge revenues for non-bridge purposes.

Examples of this are the Thousand Islands, Prescott-Ogdensburg and Peace Bridges, where the bridge authorities have become associated or merged with larger authorities controlling airport and harbour facilities. This problem is mainly significant in relation to the payment of income tax on revenue earned in Canada, since it becomes extremely difficult to identify the revenue in that category when the accounting is handled exclusively on the U.S. side. Obviously, the U.S. Government has an absolute right to permit such joint operations with regard to the U.S. half of each bridge but the mere existence of such joint operations must preclude any sort of bi-national authority as originally envisaged in the guidelines.

4. Uncertainty about terms of reversion.

Except in the case of the Ambassador Bridge, and bridges already under government ownership, the reversionary principle applies to all Ontario international bridges in one form or another, and reversion is usually scheduled to take

place when all oustanding bonds have been retired. On several occasions, the bridge operators have been allowed to make additional bond issues, either to bolster a weak financial position, or to carry out repairs or improvements, and the effect of this has been to postpone reversion. In the case of the Thousand Islands Bridge, the Bridge has undertaken certain improvements and is using these as a lever to issue additional bonds and thus postpone reversion. However, the 1962 guidelines indicate government preference for public authorities to run bridges, and it is presumably desirable that this situation should be reached as soon as possible. On that basis, there should be no postponement of reversion, and no action which could lead to postponement. Clearly, as income-producing bodies, the bridges have other sources of funding besides bond issues, and they should be required to use these in relation to work on the Canadian half of their bridge rather than make bond issues which postpone reversion.

In the case of the Rainbow, Whirlpool and Lewiston/Queenston bridges, there is no Canadian legislation and no provision for reversion, but presumably legislative action could be taken to correct this.

In general, reversionary clauses require the Governor in Council to designate the body to which the reversionary interest shall be assigned, although on occasion the legislation itself indicates the assignee. Problems can arise in these cases when the designated party declines to accept the assignment. The refusal of Ontario to accept the reversion of the Blue Water Bridge was solved when Canada accepted it, but the same situation could arise in connection with the Thousand Islands Bridge where the legislation specifies that the Canadian half of the bridge will revert to Ontario. The province has however already indicated that it is not interested. It is therefore desirable that all

reversionary clauses be brought into line in such a way that potential difficulties are eliminated, and this could be achieved by ensuring that all acts are worded so that the bridges revert to Canada. The Federal Government is then in a position to establish bridge authorities along the lines of the Blue Water Bridge Authority in accordance with the 1962 guidelines, or perhaps to create an overall authority as sought by Ontario.

Legislation covering the Prescott/Ogdensburg and Sault Ste Marie Bridges contains a clause to the effect that reversion is dependent not only on the retirement of bonds but also on the redemption of stock. Since such redemption is not a normal procedure, it must be assumed that some process exists whereby the stock could be retired.

At the present time, the probable reversion dates of the bridges and one tunnel are as follows: Thousand Islands Bridge 1976; Detroit/Windsor Tunnel 1990; Peace Bridge 1992; Lewiston/Queenston, Whirlpool, Rainbow, Prescott, Beaudette and Sault Ste Marie Bridges 2000. The Ambassador Bridge is, of course, wholly owned by a private corporation and there is at the present time no provision for reversion.

5. <u>Lack of clear indication of responsibility in the event of traffic declines and reduced bridge revenues</u>.

In the case of the Seaway International Bridge, it appears that the net income is insufficient to pay debt interest, but since the bridge is wholly owned by the Federal Government, it can be directly subsidized. On several occasions, there has been a falling off in traffic volume across the Prescott/Ogdensburg Bridge, with apparent inability to amortize outstanding bonds, and the same situation could arise with the Rainy River/Beaudette Bridge. Several bridges have needed refinancing in the past and Canada always

appears to have adopted whatever course would avoid any acceptance of federal responsibility in the international bridge field. However, the problem of insufficient revenue might increase in the future if anti-pollution measures lead to increases in public transportation and reductions in private automobile traffic since a major part of international bridge revenue is derived from private automobiles. In these circumstances, there is a need for a clear statement of responsibility and of the extent to which the Federal Government is prepared to provide financial support for bridges which are no longer economically viable. This responsibility might perhaps be effectively shouldered by an overall authority with powers to use funds from profitable bridge operations to offset unprofitable ones.

6. Lack of clear policy concerning local taxation of bridges. The present situation with regard to the payment of local taxes is extremely confused. In some cases, taxes are paid by the bridge authority, in other cases, payments are made in lieu of taxes by either the Federal Government or the Provincial Government. It would, however, seem logical that where a bridge is a revenue-producing entity and occupies an area which would otherwise produce tax revenue for the local community, it should make some form of contribution to the municipal coffers. The form which this contribution should take would be a matter for further study, but it seems desirable that there should be consistency in the approach. This might be at variance with U.S. policy in general, but problems only arise when the entire bridge is run by a U.S. bridge entity. There is, however, no reason why Canada should not require payments to be made according to some appropriate formula.

7. Difficulty of maintaining C.T.C. jurisdiction over tolls. If tolls are collected at the U.S. end of a bridge and particularly if there is no Canadian company against which

pressure can be exerted, the theoretical jurisdiction of the C.T.C. over tolls may be meaningless, since it can be argued that the tolls are only charged for the U.S. half of the bridge. An example of this is the Sault Ste Marie Bridge where in 1968 the return toll was increased from $1.80 to $3.00, and Canada could not block the increase since all powers had been assigned to the U.S. company and tolls were collected on the U.S. side. This problem will presumably persist until the Canadian half of each bridge reverts to Canada and regulatory controls can be applied.

8. Problems involving Customs and Immigration facilities.

In the case of most toll structures, the bridge operator is required to provide the Canadian Customs and Immigration authorities with suitable facilities and to maintain these in good condition. It appears, however, that in some cases, the bridge authorities are not cooperative, and the standard of maintenance is low with consequent friction between bridge staff and federal officials. The problem is exacerbated by the fact that on the U.S. side, the U.S. government provides its own facilities. Of course, where the Canadian half of the bridge is operated by a body which is clearly under Canadian jurisdiction, this problem can be quickly eliminated. At the present time, however, when few bridges are in this category, the only clear solution would be to formalize the standards by establishing regulations and this would, of course, require bridge legislation creating clear Federal Government control over international bridge activities in Canada. Alternatively, the Government should assume responsibility for providing its own facilities.

9. Right to charge tolls after retirement of bonds and subsequent reversion.

This problem has arisen in cases where a commitment was given to the U.S.A. by the Province of Ontario that no tolls

would be charged following reversion. The prime example is the Blue Water Bridge in which case Ontario declined to accept reversion, which was then accepted by Canada. Federal transportation policy favours tolls and the Federal government was not a party to the Ontario agreement, and consequently tolls were levied over U.S. protests. These events showed that the solution is for Canada to do whatever it considers desirable, since it cannot be bound by agreements to which it is not a party. The possibility of the problem being repeated in future may have receded as a result of changes in the U.S. Federal highway policy.

10. Problems of a minor nature.

Many of the problems encountered over the years have been of an administrative nature and are best solved by joint action of Canadian and U.S. authorities. These problems are probably lessened by the existence of a single bridge authority, and may therefore be expected to increase as bridges revert to Canada. Such problems would relate to the setting of speed limits, bridge signs and roadway marking, traffic control and the handling of accidents, and police jurisdiction in general. Other problems have occured at single bridge locations, and are basically the concern of other federal departments. An example of this would be the matter of Indian rights at the Seaway International Bridge, where some friction has arisen because of differences between Indian policy in Canada and the U.S.A.

APPENDIX III

Examination of the 1962 Cabinet Guidelines

The guidelines governing international bridges, approved by Cabinet on January 26, 1962, were drawn up with specific problems in mind and were designed to prevent a repetition of these problems. However, while the establishment of guidelines represented an attempt to bring some order into a chaotic situation, the guidelines themselves were somewhat sketchy and could not be described as a clearly defined policy, and the time may now have come when they should either be revised or abandoned. In this appendix, each guideline is critically examined and its appropriateness measured in terms of current political and social attitudes, and in relation to Ontario's proposal for an overall bridge authority directly operating some bridges and regulating the activities of others.

a) The bridge shall be constructed and operated by an authority that is genuinely public in its character.

This guideline does not preclude ownership and operation of a bridge by the Federal or Provincial Governments or by a municipality, and indeed this is the norm along the New Brunswick and Quebec borders with the U.S.A. However, the larger scale of bridge requirements along the Ontario border has made government reluctant to involve itself financially, and the Government of Ontario appears to regard its involvement in the Pigeon River Bridge as an aberration.

The wording of the guideline is something less than explicit, since no definition is offered of the phrase "an authority that is genuinely public in its character". It would seem that when the guidelines were being drawn up, the general feeling was that any form of government entity was undesirable and that the ideal would be some form of independent non-profit-making body, and indeed the

introductory sentence to the guidelines seems to imply that a U.S. corporate body would be acceptable. It should, however, be pointed out that the idea of a non-government agency was developed before questions of national sovereignty, foreign ownership and citizen participation in decisions on major projects had assumed their current prominence, and presumably a U.S. corporation would no longer be considered to be a "public authority" to run the Canadian part of a bridge in the public interest. There are other valid reasons for believing that the type of authority originally envisaged would no longer be acceptable, and that some form of government agency is required. Perhaps the most significant reason is to be found in the very nature of international bridges, as integral parts of the publicly owned highway network. Decisions concerning the location, construction and operation of bridges are closely tied in with general highway decisions, and since social need must be considered as well as economic viability, more direct public control seems desirable. Admittedly, international transportation services are more usually provided by private enterprise, but international bridges may be considered exceptional because of the fact that their public service aspect is paramount.

The need for some form of government agency rather than a private body also reflects changes in the political climate. Since the guidelines were enunciated, we have moved into a situation where almost every major public structure is the object of violent opposition from interested groups, and government is required to accept responsibility for and justify decisions which would formerly have been considered its undisputed prerogative. In these circumstances, it seems desirable that government should retain control over decisions concerning international bridges, so that it will be in a position to answer for its actions.

Theoretically, there is no reason why any level of government should not set up a public authority to construct or operate a bridge, but this would have to be done under federal legislation, and it seems that this may be an inhibiting factor.

Any amendment of this guideline should centre on a more precise definition of a public authority, and there should also be some clear indication that such an authority can only acquire its powers under Federal legislation.

b) <u>The bridge shall be governed by a joint authority with equal representation of members to be appointed by the appropriate governments on either side</u>.

A bridge is clearly a unit, and in the case of an international bridge it is desirable that although two jurisdictions are involved, the two halves should be handled uniformly to the greatest possible extent. The guideline is an attempt to simplify this by establishing a single authority, but it is probably overly idealistic. The U.S.A. has not given any indication of interest in the idea of joint authorities and up to the present time there has been no case of a joint authority being created. Indeed, in three cases, there have been developments which make any form of joint international authority unlikely. The bodies running the Prescott/Ogdensburg, Thousand Islands and Peace Bridges have merged with larger authorities running airports, harbours and other facilities, and therefore a joint bridge authority is out of the question.

At first sight, it might appear that the governing bodies of the four bridges across the Niagara River satisfy the requirements of this guideline, since in each case the governing body has equal representation from both sides of the border. However, these bridges are owned by the U.S. bridge authority, and executive power is in American hands, so that equal representation on the board does not seem very significant.

While there are certain aspects of bridge operation which require uniform handling on both sides, there are also areas where interests differ sharply, and it is difficult to see how any sort of joint authority could reconcile the differences. This would be particularly true when the bridge is being used as an instrument of economic policy, and differences between the two jurisdictions should properly be settled at the foreign policy level.

The greatest objection to a joint international authority would, however, seem to be that it would not be subject to the Canadian Government (or for that matter, to the U.S. Government) and there could be problems in fitting its policy into the highway policy in each country. Moreover, government might find that it would be held accountable for actions of the authority, over which it had no control.

While these arguments suggest that a joint authority is neither desirable nor practical, there is no doubt that close cooperation is required between the Canadian and U.S. authorities. Such cooperation is clearly needed in establishing speed limits, controlling traffic, policing, surface marking, sign posting, maintenance, toll collection, and numerous other activities. This could be achieved by one management reporting to two national authorities or by two managements working in cooperation.

There is, of course, no reason why cooperative management should not cover a group of bridges such as the Niagara Falls Bridges or the St. Lawrence River Bridges if there are obvious advantages in such an arrangement.

c) <u>When applicable, bonds issued to finance the construction of a bridge must be issued and be payable in Canada as well as in the United States</u>.

It is difficult to see what this guideline was intended to achieve. Certainly, it can have no significant effect in

terms of control of a bridge, since the bondholders have no ownership interest. It may be desirable that Canadian ventures be supported by Canadians on purely nationalist grounds, but in terms of financial realism, a bridge authority should be able to seek its bonded funding wherever market conditions are most favourable. The same would be true of an overall authority along the lines proposed by Ontario.

The qualifying words "when applicable" considerably weaken this guideline, since there is no clear indication what they are intended to mean, or who determines when the guideline is applicable.

As far as the actual funding of international bridges is concerned, it would seem that unless government is prepared to make a direct investment, the most practical means of funding is the issuing of bonds, since this ensures that control remains vested in the authority, and perhaps this guideline should be reworded to make this form of funding obligatory in the case of public authorities.

In the past, bond issues have been tied to the reversionary process, and consequently the issuing of additional bonds at a later date has resulted in the postponement of reversion. This situation would not arise in future, since the creation of public authorities eliminates any need for reversion.

d) <u>The borrowing powers granted to a bridge authority must be subject to the approval of the Governor in Council</u>.

This guideline was obviously intended to provide a federal instrument of control over future international bridge operations, but it is possible that there could be a conflict between guidelines b) and d). A joint international authority could not be totally responsible to both national governments, nor could either government have the ability to approve borrowing powers in the other country. In the

case of a purely Canadian authority running the Canadian half of a bridge, the guideline is completely relevant, since ultimate responsibility must rest with the Government, even if certain powers were delegated to an overall authority of some sort.

A problem could arise from the fact that while the approval of the Governor in Council is required, the Federal Government has not yet developed a capability for evaluating borrowing plans except in purely financial terms, and it is questionable whether the Interdepartmental Committee is a proper instrument to undertake such a task. Of course, borrowing plans cannot be considered in isolation, and this guideline presumably intends that all relevant non-financial factors would be considered. It would, however, be preferable if the guideline were expanded to say that all major decisions would be subject to the approval of the Governor in Council or, at least, of a Minister.

e) The position of a bridge authority in relation to provincial and municipal taxes must be clearly defined.

The question of taxes has been at the root of a number of disputes since there has been no consistent approach on the Canadian side while on the U.S. side, bridges are generally exempt.

Where there is a clearly defined Canadian bridge entity, this does not present a problem. For example, the Blue Water Bridge Authority operates independently of the U.S. half of the bridge and pays local taxes. However, where a bridge is entirely owned and operated by a U.S. entity, there is strong resistence to payment of taxes in Canada when the bridge is exempt in the U.S.A.

It is clearly desirable that the responsibilities of a bridge authority should be defined, but the guideline does not suggest what policy should be adopted in this

regard. Indeed, it does not even indicate whether there ought to be any degree of consistency in the treatment of the various bridges.

Generally speaking, if a bridge is not operated as a toll facility, it is difficult to see why it should be taxed when the road system, of which it forms a part, is not. However, in the case of Ontario international bridges, the only toll-free structure is the Pigeon River Bridge. Tolls are levied on all other bridges, and therefore, as revenue-producing structures, it is difficult to see why they should not pay some form of tax to the local community. Whether such local communities benefit or suffer from the presence of a bridge is open to question, but there is no doubt that some of them have come to depend on their local bridge for a proportion of their income and it could be politically embarrassing to attempt to change the situation at this point. It also seems desirable that all communities adjacent to bridges should be treated in a consistent fashion and consequently, it would be preferable if all bridge authorities were required to pay local taxes. Obviously, if either level of government directly owns and operates a bridge, only a grant in lieu of taxes can be paid. In the case of a public authority, however, taxes could be paid on a normal basis.

f) Where appropriate, provisions governing regulation of the toll structure for the use of the bridge before and after the indebtedness of the bridge authority has been retired shall be clearly stated.

This guideline was probably aimed at a specific problem, namely the conflict between the U.S. policy of toll-free bridges on reversion and the Canadian policy of imposing tolls. The prime example is the Blue Water Bridge where the Government of Ontario had the reversionary interest and made an agreement with the U.S.A. that no tolls would

be levied on the Canadian side after reversion. However, the province subsequently refused to accept reversion, mainly because the bridge would have become a charge on the provincial treasury, and the Federal Government was forced to step in and accept the reversion. The National Transportation Act clearly states the principle of user charges, and therefore the Government of Canada is unlikely to enter into an agreement to waive tolls on a bridge following reversion. Furthermore, there is no reason why Canada should be bound by unauthorized agreements made by a province in an area of federal jurisdiction.

The guideline is somewhat confusing with its reference to "regulation of the toll structure" and should perhaps be reworded, since the authority of the Canadian Transport Commission in this area is clearly defined. This leads to the question of whether or not international bridge tolls are a proper matter for the C.T.C. to regulate. Certainly, the regulatory control which the C.T.C. exercises over bridge tolls is not particularly stringent, since it normally only acts in the case of complaints concerning the toll structure and it would seem that these are fairly rare. It may however be desirable that toll levels should be controlled in order to achieve policy objectives, and this cannot be done if the bridges are allowed to set their own rates, subject in most cases to rubber stamp approval by the C.T.C. At the present time, a bridge can make changes in its toll structure to attract traffic, and this could place an undue burden on the highway system. In such cases, it would seem that there should be something more positive than the type of regulation which the C.T.C. is authorized to undertake, and some other agency should be given the power to adjust rates up or down, in order to direct traffic where economically and socially desirable. This would mean that bridge rates were being controlled in the public

interest by a government agency, and the C.T.C. regulatory function would be eliminated. This control over rates would perhaps be best achieved by an overall authority along the lines proposed by Ontario.

g) Arrangements must be made for appropriate sharing in the construction of the bridge, the use of materials and the employment of labour.

In general, this is a laudable principle, but is often difficult to apply and the use of "appropriate" as a qualifying word is, of course, a tacit recognition of the fact that in certain circumstances suitable labour and material might not be available. The effectiveness of this guideline would obviously depend on direct negotiation to ensure maximum Canadian participation. A Canadian public authority would, of course, be in a good position to enforce this guideline.

h) The provisions of the Navigable Waters Protection Act shall apply in all cases.

No comment is required on this guideline, since the Act has general application, and this reference was presumably included to emphasize the federal role in international bridge matters.