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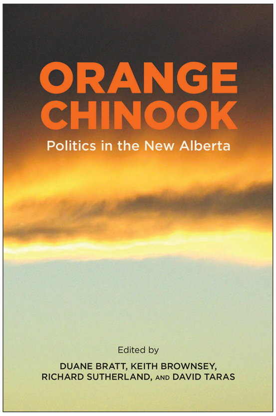

ORANGE CHINOOK: Politics in the New Alberta

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ISBN 978-1-77385-026-9

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Notley: The Accidental Pipeline Advocate

Deborah Yedlin

The oil and natural gas pipelines that keep societies moving and economies growing around the world are the midwives of the energy sector, the bridge between the site of production and the end-user, whether commercial enterprises or individuals.

Pipeline infrastructure has been an important component of Canada's economic engine, supporting the development of the country's oil and natural gas bounty. More than 825,000 kilometres of pipelines criss-cross this country, their regulation overseen by the National Energy Board since 1959; if one laid all the pipe in North America end to end, it would circle the globe twenty times.

So why is it that pipelines are under siege today, when their development more than fifty years ago went largely unnoticed and uncontested?

One could say it's a question Canada's oil patch has been wrestling with ever since 1977, when the Berger Inquiry into the Mackenzie Valley pipeline—which was to carry natural gas and, later, oil from the Artic south into Alberta—declared a ten-year moratorium on the project, effectively killing the project. While that pipeline was ultimately revived in 2006, the economics behind it changed dramatically due to the steep and sustained drop in natural gas prices, and it remains a symbol of failure in the context of pipeline approvals in Canada.

Since 1977, there have been dramatic changes in the North American energy landscape stemming from the development and implementation of new technologies. This has transformed the United States from the most important customer for Canadian oil and gas production, to a competitor for both commodities. This means Canada must aggressively seek new markets overseas in order to realize the full value of what is produced and ensure that its natural resource endowment, symbolized by the 170 billion barrels of oil contained in the oil sands of Northern Alberta, are developed, not left stranded.

The changes in the economics of energy development have coincided with a rise in environmental activism, opposition from First Nations peoples, and increased fragmentation of the media, which has enabled many perspectives on the issue to gain exposure—even as the information put forward is inaccurate. Layer on the need to gain political capital at both the provincial and federal levels, and the pipeline quagmire at times appears intractable.

The pipeline infrastructure of old was meant to serve all Canadians, bringing oil into Canada from the US Northeast or natural gas into urban centres in Alberta. The true catalyst for Canada's pipeline network was the discovery of the Leduc #1 well by Imperial Oil in 1947. By 1950, the Interprovincial Pipeline, or IPL, had built a line running from Edmonton to Superior, Wisconsin, which later expanded to Sarnia, Ontario. By 1953, the system was shipping oil from Edmonton to Vancouver. Back then, the building of a pipeline was a straightforward exercise, as was its purpose: it delivered a needed product to end-users.

Prior to the establishment of Canada's National Energy Board—constituted in 1959 as a quasi-judicial body with a mandate to regulate provincial and interprovincial pipelines in an attempt to take the politics out of pipeline regulation—the responsibility for each pipeline fell to the respective provinces. If the project crossed provincial boundaries, the Federal Transport Commission was involved alongside the provinces in question. This is essentially how the initial leg of the Trans Mountain pipeline was built in 1953. It's worth noting that before Trans Mountain was built, British Columbia received most of its oil via tanker from California. Trans Mountain was deemed to be in the public interest and, ironically, the fears over the project centred on the prospect of oil being exported to the United States instead of being used to supply the Vancouver-based refineries for the benefit of British Columbians.

The best example of the differing views on the need for pipeline infrastructure and the establishment of depoliticized regulatory oversight was the fight to approve TransCanada's mainline project, which required a debate in Parliament in 1956 spearheaded by the trade and commerce minister at the time, C. D. Howe.

Howe's position—and that of the ruling Liberal government—was that it was in the best interests of the country that the pipeline be built entirely in Canada, where it would carry natural gas from the West to the East. The debate lasted almost a month, and the resulting bill—which also included the approval of a loan for a portion of the construction—was passed in June 1956. The pipeline was in service by 1958.

Canada's pipeline infrastructure continued to grow through the decades, providing important support for continued investment in the oil and gas resource bounty of Alberta, Saskatchewan, and British Columbia. Whether it was the TransCanada, IPL (now Enbridge), Trans Mountain (now Kinder Morgan), Pembina pipelines, and other, smaller carriers, there were few impediments to the building of pipelines until the demise of the Mackenzie Valley initiative in 1977.

Many in the oil patch view the failure of that project as an example of what happens when a regulatory process is not well defined. Especially telling were the opening words of Justice Berger's report: "We are now at our last frontier. It is a frontier that all of us have read about, but few of us have seen. Profound issues, touching our deepest concerns as a nation, await us there." Berger recommended the project be put on ice for ten years, during which long-standing First Nations land claims issues would be addressed and conservation areas that would protect sensitive areas would be established. But Berger's recommendations also included that no pipeline ever be built across the northern Yukon. If anything, then, Mackenzie Valley has come to be seen as the beginning of First Nations finding their collective voice through opposition to resource or infrastructure development.

The National Energy Board reopened hearings into the project in 2006, and in 2009 a joint review panel recommended the project proceed, upon the fulfillment of 176 conditions; it was then sent back to the National Energy Board, which in December 2010 granted its approval pending the consortium meeting a total of 264 conditions. Though the pipeline received federal approval in 2011, it remains on hold indefinitely. In this way, the project symbolizes a lost opportunity for Canada and its energy sector as low natural gas prices and a surfeit of supply in the United States have rendered the project unfeasible.

The energy sector's poor track record in terms of gaining approvals for projects over the last forty years stems from the inescapable fact decisions are made in office towers far removed from the actual sites of operation. This has created a natural tension between those who own the rights to develop the resource and those who live on the lands and are impacted by such development, in both positive and negative terms.

Yet even with these challenges, and in spite of the eventual disappointment with respect to the Mackenzie Valley project, pipelines transporting oil, natural gas, and diluent have been built in recent decades. Many have managed to fly under the radar, so to speak, not capturing much attention or opposition. Examples of this include the Express and Alliance pipelines and Kinder Morgan's Anchor Loop Extension, which runs through Jasper National Park—a UNESCO World Heritage Site. Anchor Loop was completed in 2008 without a whiff of the opposition faced by the expansion of Trans Mountain.

So what has so fundamentally changed to alter the landscape for pipeline approval? Arguably, one has to go back to the start of opposition to oil sands development and the rise of the "off oil" environmental movement, which has since translated into pushback on pipeline development as environmental groups have realized they are unlikely to stop oil sands production.

Specifically, there are three important inflection points to examine. The first was the 2006 decision by the Alberta government—then headed by then premier Ralph Klein—to make its case regarding Canada's importance as a secure supplier of oil to the United States by displaying trucks used in the oil sands mining process on the Mall in Washington, DC. Needless to say, the plan backfired. While it might have been motivated by the best of intentions, the event turned the oil sands into the focal point for the off oil movement. The resulting visuals were easy to parlay into a narrative that stirred up sentiment against the oil industry. Indeed, it was not long after that a photo essay of oil sands mining operations appeared in *National Geographic*.

But things got worse in April 2008, when 1,600 ducks died after landing on a tailings pond at the Syncrude site near Fort McMurray. According to Jim Ellis, the deputy environment minister in the Alberta government at the time, this was a pivotal moment for the province; overnight the oil sands became a global issue—a target—for environmental groups.

The pace at which this negative publicity gained momentum caught the oil sands companies—and its industry association, the Canadian Association of Petroleum Producers—flat-footed. To them, the way to counter the increasingly negative light in which the industry was being viewed was to come back with a myriad of facts about the oil sands. The reasoning was that if people understood how crucial energy was to their daily lives, they would stop protesting. But it was too late: pipelines had become an emotional issue—and fighting back with facts and equations was not the way to win the battle.

And none of this was helped by the approach taken by the federal government under Stephen Harper.

While notionally from Calgary—he was elected in the riding of Calgary Glenmore in 2006—it seemed to many Harper went out of his way to ensure no one could accuse him of favouring the energy sector. Initially, his election was seen as positive for the sector, despite the fact he had no connections whatsoever to the C-suite of Canada's oil patch. That said, Harper did realize the centrality of oil and gas development to Canada's economy—the industry comprises 20 per cent of the GDP—and he was committed to growing that segment of the country's economy, stating during his first overseas speech as prime minister in July 2006 that Canada was an emerging energy superpower.

Getting there, however, was going to prove more complicated than Harper and his government ever expected.

Harper's decade in office coincided with a number of important developments in the global energy sector. By the time he took office, the "peak oil" narrative was well underway, which translated into the largest surge in investment in Canada's oil sands. Between 2006 and 2014, the amount invested in oil sands development totalled $365 billion. This was also the period when oil prices marched towards their record high of US$147.27 per barrel (reached in July 2008). Alongside all this was the rise of the elusive concept of social licence (an unfortunate term coined by a former mining executive); a rising tide of environmental activism funded by a number of American non-governmental organizations; and growing opposition to oil sands development by Canada's Indigenous peoples.

Making things more challenging was the fact that more than 90 per cent of Canada's oil production was going to one customer—the United States—which would unlock its own resource bounty through the use of technology by the time Harper's third term was underway.

Indeed, if opposition to oil sands development caught Canada's oil patch by surprise, so too did the increase in US oil and natural gas development that has taken place over the last decade. The US Energy Information Agency recently estimated US oil production will reach 10 million barrels a day in 2018, surpassing the old record of 9.6 million barrels a day set in 1970. This will represent a doubling of production from 2008. The same story has played out with natural gas, with production reaching record highs between 2011 and 2015, increasing 52 per cent since 2005.

These facts made projects such as the Keystone XL pipeline, proposed by TransCanada in 2008 to facilitate the transport of crude from the oil sands to its refining complex on the Gulf Coast, and Enbridge's Northern Gateway pipeline, which would take oil sands production to the West Coast and open up new markets for Canada's oil production in developing countries, extremely important. And gaining access to markets off the coast of British Columbia wasn't the only option.

In 2013, TransCanada released a plan to convert much of its existing natural gas mainline to ship 1.1 million barrels of oil a day to an existing deep water port in Saint John, New Brunswick. Dubbed Energy East, this $15.7 billion project would decrease the need for refineries in Eastern Canada to import 730,000 barrels of oil from other oil producing jurisdictions; it would also allow for the export of oil to countries such as India, which has a huge refining complex and an increasing demand for hydrocarbons.

As oil prices averaged US$93.17 per barrel in 2013, the Canadian Chamber of Commerce calculated the Canadian economy was losing $50 million (Canadian) per day because the oil produced in Western Canada was hostage to one market and not receiving the world—or Brent—price. Capturing that lost revenue, which would go a long way toward funding government budgets, was, and is, very important.

To avoid the failures of the Mackenzie Valley project, the Harper government introduced legislation in 2012 that placed a limit on the amount of time allotted for pipeline hearings. Among the criticisms that had been voiced by the oil patch was the seemingly open-ended time frame associated with project approval, which made committing capital to projects very difficult.

Working with industry, the federal government settled on an eighteen-month time frame, with the possibility of a six month extension. In addition, the National Energy Board would submit its recommendation to the federal cabinet, which would then have six months to make a final decision. The Harper government managed to streamline the process while at the same politicizing it. By the time Canadians went to the polls in October 2015, the National Energy Board's credibility had become an election issue.

But streamlining and setting time limits—while well intentioned—weren't going to be enough to get Northern Gateway off the drawing board and into the ground. And yet, unlike previous prime ministers, Harper held a very high disdain for First Ministers' conferences. While some might dismiss these events as political grandstanding, there is nonetheless some value to the prime minister convening meetings with the provincial and territorial leaders to work through challenging issues. Instead, Harper preferred individual meetings with the premiers, which if anything, pitted one province against another. The result was a lack of constructive dialogue with respect to potentially challenging issues like pipelines. For example, the conditions put forward in 2012 by BC premier Christy Clark outlining what her province required to allow the construction of a pipeline to the West Coast was distressingly outside the spirit of what it means to be part of this confederation called Canada, and a prime example of the consequences of Harper's hands-off approach.

Clark said her province would require the successful completion of the environmental review process; world-leading marine and land oil-spill prevention and response systems; the resolution of Aboriginal treaty rights and the opportunity for First Nations participation; and that BC receive its fair share of the economic and fiscal benefits of any subsequent project.

Characteristically, Harper stayed out of this fight, leaving it to then Alberta premier Alison Redford to take on Clark. It might have been more constructive for Harper to step up and say that what British Columbia had asked for fell largely under the purview of the federal government, and that a solution would therefore come through the involvement of the federal government, alongside British Columbia and Alberta. A similar scenario played out when Ontario and Quebec joined forces to jointly issue seven conditions that would have to be met for Energy East to go move forward.

In 2015, with the country stuck in a war of words, two game-changing events happened. In May of that year Albertans elected an NDP government led by Rachel Notley, turfing the ruling Progressive Conservative party after more than forty years in office. The change in government was soon followed by the establishment of a Climate Leadership Panel, which was charged with making recommendations to the government with respect to implementing a new carbon pricing regime. Alberta had been the first jurisdiction in North America to establish a carbon price under Premier Redford (the Specified Gas Emitters Regulation, or SGER), but it was not high enough for the province to get any credit for it, much less to change consumer or corporate behaviour, or to provide support for proposed pipelines.

The end game for Notley was to put in place a substantive, broad-based carbon pricing scheme that could help the province gain approval for pipeline projects in both Canada and the United States.

The Climate Leadership Panel was tabled prior to the Paris Climate Change Conference (held in November 2015), and it recommended setting a carbon tax at an initial rate of $20 per ton, with an escalation feature. In addition, it called for the establishment of an emissions cap in the oil sands, which was seen as another way for Alberta to demonstrate its environmental stewardship and in so doing bolster support for—and gain approval of—proposed pipeline projects.

The second game-changing event was the election of a Liberal federal government under Justin Trudeau in October 2015. Trudeau was on the record supporting Kinder Morgan's Trans Mountain expansion project and TransCanada's Keystone XL project, but he solidly opposed Enbridge's Northern Gateway project.

Like Notley, the new prime minister didn't waste any time laying out a platform illustrating the fact that energy development and environmental stewardship need not be seen as mutually exclusive. To that end, his government set about putting in place a $1.5 billion marine spill response plan, setting a price on carbon to be adopted by provinces lacking a carbon pricing scheme, and carrying on with the Harper government's commitment to phase out coal-fired power by 2030.

With these chess pieces in place, in late November 2016 Trudeau announced his government's approval of Kinder Morgan's Trans Mountain expansion, as well as the replacement and expansion of Enbridge's Line 3 pipeline running from Hardisty, Alberta, to Superior, Wisconsin, but Northern Gateway was officially denied approval. The end of that project had already been telegraphed in June 2016, when the Federal Court of Appeal overturned the Harper government's approval of Northern Gateway on the grounds that the government did not carry out its duty to consult.

The fact that an NDP government in Alberta and a Liberal government in Ottawa were able to move the pipeline agenda forward when former Conservative governments in both jurisdictions did not make any meaningful progress speaks to the importance and efficacy of the collaborative approach undertaken by Trudeau.

In his book *Triple Crown: Winning Canada's Energy Future* (published posthumously in early 2017), former Alberta premier and federal cabinet minister Jim Prentice argued provincial rivalries hold the country back, and that it was important not to let such rivalries compromise the important infrastructure that ties this country together—pipelines included.

In December 2016, when Prime Minister Trudeau's cabinet approved Kinder Morgan's Trans Mountain pipeline expansion, Clark's conditions appeared to have been met—but not until Kinder Morgan also agreed to pay the government $1 billion over twenty years. That money will be put toward a new BC Clean Communities Program, which will fund small local environmental projects, the creation of recycling programs, and the establishment of new parks. But there is another way of looking at this $1 billion windfall: as a paid ransom.

If Harper's lack of constructive involvement—Prentice called it "clumsy support"—can be said to have been one of the barriers to progress on the pipeline file, another of the key developments that affected the pace of pipeline development during the decade of federal Conservative rule was the rise of coordinated opposition to energy development by environmental groups and First Nations. One could argue each was using the other to further their own agenda, but there was no denying that this resulted in the pipelines being stuck in the middle.

There was also some evidence, primarily surfaced by Vancouver-based journalist Vivian Krause, that some of the pipeline opposition was being funded by US organizations such as the San Francisco-based Tides Foundation, which Krause alleges has paid out US$35 million to more than a hundred anti-pipeline groups, and which also created the Tar Sands Campaign with money from the Rockefeller Brothers Fund.

Two companies in particular—Enbridge and TransCanada—have taken it on the chin in terms of fending off opposition to proposed developments. By 2010, TransCanada had successfully built what it called "base Keystone," which extended from Hardisty, Alberta, to Steele City, Nebraska, and in 2008 it sanctioned the development of an additional leg that would seamlessly connect crude from Alberta—and the North Dakota Bakken—to its Gulf Coast refining complex. The fact base Keystone had not encountered any opposition was reason enough to believe the XL portion would be given similar treatment.

The sanctioning of the project coincided with the election of US president Barack Obama, who, in his inauguration speech, was very clear that his was going to be an administration that was committed to the environment.

In his book *Dysfunction: Canada after Keystone XL*, retired TransCanada executive Dennis McConaghy makes the point that the project became the target of the environmental movement when it realized that stopping oil sands production was unrealistic. But he also points to the Harper government's failure to move in the direction of instituting a carbon price, despite the failure of the Waxman-Markey legislation, which would have resulted in carbon pricing south of the border and likely resulted in Keystone XL being approved.

Canada's—and TransCanada's—case was not helped by Harper's comment in New York in 2011 that approving Keystone XL was a "no brainer." And so, on 6 November 2015, Obama officially turned down the project, despite the fact his own State Department had issued several reports stating that the pipeline would not exacerbate greenhouse gas emissions nor cause more of the oil sands to be developed. Instead, Obama acquiesced to the hyperbolic protests of the environmental movement and the exhortations from Hollywood and other celebrity types—none of which had shown themselves to be encumbered by the facts, much less to display a willingness to decrease the size of their respective carbon footprints.

The disconnect became laughable when Leonardo de Caprio—who had filmed part of *The Revenant* in the Alberta foothills—said he had witnessed climate change firsthand, referring to the dramatic change in temperatures brought on by the Chinook winds. What de Caprio didn't share with his followers was that he had rented a house outside of Calgary from an oil patch executive and he was flying on a private jet between Calgary and Los Angeles every weekend.

While Keystone XL has since been revived under the current US administration, Northern Gateway is no longer an option.

The challenge of gaining approval for new projects has meant both TransCanada and Enbridge chose to make game-changing acquisitions in the United States, with TransCanada buying Columbia Pipelines and Enbridge buying Spectra Energy. Buying pipe that's already in the ground is far less complicated than trying to build something new.

If Keystone was an example of the politicization of a project based on fuzzy objectives for how the United States intended to manage its greenhouse gas emissions, Northern Gateway was an illustration of the consequences of the well-intentioned but ill-defined requirement of government's—both provincial and federal—duty to consult. This stems from section 35 of the Constitution Act, 1982, which outlines the Crown's duty to consult with, and accommodate, Aboriginal groups in situations where projects authorized by government regulators may infringe on their Aboriginal or treaty rights.

But while this is laid out in the Constitution, what has transpired over the years is much different. The oil and gas industry sees itself as having "carried the bag for the Crown" on the duty-to-consult file. In real terms, this has translated into dollars exchanged in return for approval and access to Aboriginal lands, either for resource development or laying down a pipe. This was made clear in a ruling handed down by the Federal Court of Appeal in June 2016, which overturned the permit granted by the previous Conservative government and gave Enbridge the green light to proceed with its Northern Gateway project—pending the company meeting the 209 conditions stipulated by the National Energy Board.

The Court of Appeal's decision was a damning indictment of the Harper government's virtual abdication of its duty to consult with Aboriginal and First Nations groups with respect to the Northern Gateway project. In the words of the decision, "Canada offered only a brief, hurried and inadequate opportunity . . . to exchange and discuss information and to dialogue. . . . It would have taken Canada little time and little organizational effort to engage in meaningful dialogue on these and other subjects of prime importance to Aboriginal Peoples. But this did not happen."

As pointed out in Prentice's book, if Canada is to gain access to offshore markets, an alignment of interests that includes Indigenous peoples, project proponents, and politicians is required: "Everyone's capital, whether financial or political, must be brought to the investment," wrote Prentice.

A new generation is taking the reins of leadership in many First Nations communities—in BC and elsewhere. This generation recognizes the important economic opportunities that come with responsible resource development. Their true involvement as partners, which goes beyond the more traditional impact benefit agreements, is the direction that needs to be taken. But in addition to being economic partners, as Prentice wrote in his book, it's equally important that companies and governments alike recognize that British Columbia's First Nations are self-governing and exist within the overall context of the Canadian confederation and their attachment to the environment on the Pacific coast; compromising that environment is not something they are prepared to do.

But while that may be true, it is also a reality that consensus for projects does not mean 100 per cent approval; the pareto principal in economics, which states that 80 per cent of the work is sufficient, also applies in this context. There are some First Nations communities that will never approve a project, regardless of what is offered.

The revisions to the National Energy Board announced in July 2017 seek to modernize the organization's governance structure, which will look very similar to that of the Alberta Energy Regulator. But the one thing this new structure will not do is depoliticize the approval process because the final say still rests with the federal cabinet of the day, despite what the National Energy Board determines.

While regulation, legislation, and so-called social licence continue to be important factors in the pipeline approval process, there is one more aspect that continues to impact the narrative on both energy and pipeline development. There is an adage in the oil patch that goes like this: ask an engineer a question and they will answer it with an equation.

Ever since opposition to oil sands and pipeline development gathered steam in the earlier part of this century, the tendency has been to answer opposition with facts: that energy is vital to economic growth and everyday living, that we all rely on it and that it has been an important factor in lifting billions of people around the world out of poverty. But even messages about the need to eliminate energy poverty around the world—including among First Nations communities in this country—don't resonate, not even across Canada.

In 2012, the University of Calgary's School of Public Policy completed an excellent three-part study of the state of energy literacy across the country. The conclusions of the report were simply, and distressingly, that many Canadians who ought to know how energy is produced, transported, and regulated, don't know much about the subject. In fact, many haven't a clue what happens when they flick a light switch.

This knowledge gap is exacerbated by the increasing fragmentation of the media. There was a time when everyone in the country started their discussions using information gleaned from sources such as national or local newspapers and local television or radio. In other words, we all started—more or less—from the same place. But the rise of social media, which has effectively dissolved the traditional media infrastructure, has meant that anyone looking to justify an idea or opinion—including those not based on fact—can do just that. Even worse, social media allows for comments to be continuously circulated.

More than a century ago Mark Twain said a lie gets halfway around the world before the truth can get its pants on. And that was long before the instant flow of information that characterizes our daily living became a reality.

The development, use, and transportation of energy has become an issue driven by emotion, not fact. It is nothing short of appalling that the children of Calgary energy executives attending post-secondary schools outside the province, and most especially in British Columbia, are not comfortable telling their friends what their parents do for a living. And yet, the comfort of all their lives is made possible through continuous consumption of energy, 24 hours of every day, 365 days a year.

And the challenges are not over. At the time of writing, legislation is pending that will replace the National Energy Board. More important are developments that took place in April and May 2018 regarding the Trans Mountain expansion and Kinder Morgan. Frustrated by the lack of progress, along with continued obfuscation and obstruction by the minority NDP government in British Columbia that was elected in May 2017 (and which remains propped up by the Green Party), Kinder Morgan delivered an ultimatum saying the provincial and federal governments had until 31 May to provide assurances the project would be allowed to proceed unimpeded, or it was going to walk.

There's an adage that says nothing focuses the attention like the prospect of a hanging in the morning. The Trans Mountain expansion was about to join the ranks of Mackenzie Valley, Northern Gateway, and Energy East without strong government action.

And indeed, the federal government, alongside the Alberta government, has sprung into action with the announcement on 29 May 2018 that the federal government would be buying the Canadian pipeline assets, including the Trans Mountain expansion, from Kinder Morgan for $4.5 billion. The Alberta government is coming to the table with $2 billion that will be used to cover the "eligible costs" associated with the construction of the expansion. The assets will sit in a Crown corporation, allowing the government to expeditiously deal with jurisdictional issues.

The end game entails the government selling the assets to the private sector—likely to a group of buyers that could include pension funds, private equity players, or other pipeline operators. Predictably, this decision has brought about an outcry from many sides: Why couldn't the Trans Mountain expansion be built even as it had received the requisite approvals? When is a permit not a permit? What kind of message does this send to the international investment community?

Ultimately, the federal government made its decision based on two major factors. One was the need for the project to open new markets, heightened by the ongoing challenges of renegotiating the North American Free Trade Agreement that served to underscore the need to expand to new markets. The other was the fact that if the project was to be pulled, the message sent to international investors would be worse than that sent by temporary government ownership. Extraordinary circumstances call for extraordinary measures. This was one of them.

That said, it wasn't to be clear sailing.

Despite 17 legal cases decided in favour of Trans Mountain, the 18th sided with the proponents.

On August 30th, the same day Kinder Morgan shareholders approved the sale of the pipeline to the federal government, the Federal Court of Appeal quashed the federal government's approval of the project on the grounds that the Crown had failed to carry out its duty to consult. It also said the National Energy Board had fallen short of its obligations in not considering the impact on marine mammal life from increased tanker traffic.

If this sounds familiar, it should. It is the same ruling—by the same court—that killed Northern Gateway. The only thing that is different is that the Liberals hold office, rather than the Conservatives. But the implications are enormous, beyond the immediate impact on energy investment and the jobs that are bound to be lost. It doesn't send a positive message that Canada is open for business when it comes to attracting investment.

The issue of consultation—and what it really means—remains undefined. No company will be willing to risk meaningful capital until this is clarified. When the Supreme Court ruled in 2004 that the government must accommodate "the collective aboriginal right in question," it left that open to interpretation.

In the case of Northern Gateway, the Federal Court of Appeal criticized the Crown for not appropriately carrying out its duty to consult. It made the same argument in the most recent case involving Trans Mountain—even as the government had extended the consultation period, with the Federal Court of Appeal stating there was a lack of meaningful dialogue in the final consultation phase.

This also means the federal climate plan—because Alberta stated its intention to withdraw as result of the ruling—is in peril. One of Prime Minister Trudeau's key messages, as he defended both the approval of Trans Mountain and the criticism of the climate plan that includes a carbon tax levied in provinces that have not set a price on carbon, is that Alberta is integral to the success of that plan. Here's why: Alberta has to be on board for Canada to meet its emissions targets. It doesn't get more complicated than that.

As University of Alberta professor Andrew Leach stated in an article published in *Maclean's* in February 2018, those targets cannot be achieved without Alberta. "This is a symbiotic relationship: federal climate policy backstops put a stronger foundation under the Alberta plan and, with the Alberta plan in place, there is a credible although still very challenging path for Canada to meet its 2030 target. Without Alberta's plan, that credible path disappears," wrote Leach.

The federal government will either appeal the ruling, or move to address the gaps highlighted in the judgement. As the owners of the Trans Mountain pipeline, Canadians will not be kind to a government that forked out $4.5 billion for an asset whose value is in question. Either way, it means another delay at a time when all three existing major pipelines are at or near capacity and the number of barrels being shipped by rail is at record highs.

Notley was unequivocal in her criticism of the federal government following the release of the judgement, saying the province had "done everything right" and despite that, had been let down.

What remains truly remarkable in all this—particularly from an Albertan's perspective—is the fact that Rachel Notley, elected as an NDP premier, has become the unlikely advocate for Alberta's energy development on the national stage. One could easily make the argument Alberta hasn't been as strongly represented since the days of former premier Peter Lougheed. As Lougheed knew, and Notley understands, Canada's energy future—and Alberta's economic prosperity—lies in its ability to access new markets beyond North America. The old infrastructure was developed during a time when the concern was one of energy scarcity, not energy abundance, on the continent.

It is Asia—which continues to develop, industrialize, and urbanize—that will dominate energy consumption over the next fifty years, at least. The continent a long way to self-sufficiency, when current production is about 8 million barrels a day and consumption is at 30 million barrels a day and growing.

The energy-hungry countries in the developing world are getting frustrated with Canada's inability to get out of its own way when it comes to developing pipelines to the West Coast to export oil production. They will—and they are—seeking other sources of supply. That means that Canada's window of opportunity—especially as OPEC members continue to expand their market share in Asia—is not going to stay open indefinitely. For the developing world, scarcity of supply is a daily issue, and those countries will source their barrels wherever they can.

Simply put: Canada's inability to move forward with the development infrastructure risks the country's economic future.