

# SOCIAL LICENCE TO REGULATE

## NOTES FOR ROWLAND HARRISON'S PANEL REMARKS

AT

CAMPUT, CALGARY, MONDAY, MAY 11, 2015

- **REJECT THE TERM SOCIAL “LICENCE”**
  - Implies right to veto
  - Operates beyond legislated processes
  - Potentially threatens rule of law
  - Focuses on local support vs. national, public interest
- **REGULATORS SHOULD BE SEEN AS GRANTING SOCIAL LICENCE**
  - Regulators’ role is to determine the “public interest” (whether as decision-makers or by way of a recommendation to other decision-makers)
  - The public interest, based on a balancing of competing societal interests, should be synonymous with “social licence”
- **REGULATORS MUST NEVERTHELESS EARN & MAINTAIN LEGITIMACY**
  - Legitimacy is fundamentally grounded in respect for the institution and acceptance of outcomes (even when an outcome is not the one desired by a particular interest)
  - Respect can only be earned and maintained where:
    - the regulator’s mandate provides a forum for addressing concerns; and
    - the process is seen to be independent and fair
- **DEEP & WIDESPREAD EROSION OF RESPECT FOR NEB**
  - Elizabeth May, as ED Sierra Club of Canada, letter to CEO of ExxonMobil, October 31, 2005, referring to the Mackenzie Gas Project: “The upcoming Joint Panel Review and National Energy Board hearings will provide **an opportunity for full, public discussion of these issues before independent arbiters who are not subject to political direction by elected officials.**”
  - Fast forward to October 2014
  - Marc Eliesen, former chair of Manitoba Hydro, Ontario Hydro and BC Hydro, in a letter to the National Energy Board dated October 13, 2014, withdrawing from further participation in the Board’s TMX Expansion hearings:  
“Canadians...cannot look to the Board’s conclusions as relevant as to whether or not this project deserves a social license. Continued involvement in the process endorses **this sham** and is not in the public interest.”
  - Two weeks ago, 7 Vancouver area mayors declaration of non-confidence, serious concerns about independence of NEB panel, call on fed. govt. to suspend process
  - Not exactly radicals opposed for ideological reasons

- **A PERFECT STORM**
  - Deep, fundamental concerns by wide segments of society, seen by many to go to the very future of the planet
  - No regulatory forum in which to address these concerns directly
  - Inevitable attempts to shoehorn into the only processes available
  - Insultingly dismissed by politicians as “foreign radicals”
    - Treated as subversives
    - CSIS briefing
  - “Politicization” of pipeline approvals by transferring NEB’s decision-making authority to Cabinet
  - Measures purporting to be aimed at improving “efficiency” of the process (time limits/participation rights) only served to foment further frustration
  - Internet/social media provide effective outlet for organizing deep-rooted opposition
  - Cuts to NEB budget endanger Canadians
- **ONE RESULT – EXPLOSION IN COURT CHALLENGES**
  - NEB posts tracking table March 23, 2015; necessary to update just 1 week later
  - 15 current legal challenges in Federal Court of Appeal and Supreme Court of Canada to Northern Gateway, TMX Expansion, TransCanada Energy East, Enbridge Line 9B
- **REGAINING PUBLIC TRUST AND LEGITIMACY**
  - No simple solution
  - Earning/losing respect
  - Push back against use of phrase “social licence”
    - especially by regulators themselves, while explicitly recognizing need to earn trust and legitimacy
  - Will require combined effort on the part of regulators, governments and legislators
  - Solution not found in addressing procedural concerns alone
  - Broader role for the regulatory process, providing a forum for addressing legitimate concerns
  - Recent changes have gone in the wrong direction
    - Narrow mandates/restrictions on participation counter-productive
  - Tall order
  - Alternative
    - Increasing cynicism and rejection of regulatory outcomes
    - More frequent resort to the courts
    - Escalating civil disobedience
  - Further erosion of respect for and acceptance of regulatory process
  - Short-term: Industry outreach, with little help from govt.
    - Rickford closed-door meeting

May 10, 2015