

“Social Licence” – Who Decides?

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“Social Licence” is a relatively new concept in our political and policy discourse, but one that has quickly gained stature and influence. It sounds good. It implies public support – and how can anyone object to that? On reflection, however, the concept of “social licence” deserves closer scrutiny, and some serious questions.

Major infrastructure projects have become lightning rods of division. Many people support them for economic reasons, including jobs and community prosperity; many others do not, due to environmental or aboriginal rights concerns.

Those who oppose, however, increasingly promote the concept of ‘social licence’ as something that (although undefined) must be ‘obtained’ by these projects before being ‘allowed’ to proceed.

Yet Northern Gateway, the proposed pipeline project from Alberta to the Pacific Coast received approval by the Joint Review Panel of the National Energy Board/Ministry of the Environment, after over 4 years of study and hearings, conditional on meeting 209 specific conditions. This was no “rubber stamp”. However, notwithstanding such approval, certain national politicians have said they would prevent the project from being built, citing ‘lack of social licence’. The regulatory process for TransCanada’s Energy East project, a proposed pipeline to carry oil to the

East Coast, has only just begun, but – again – some politicians are already saying “No”, claiming that it does not have the ‘necessary social licence’.

There is no question that legitimate environmental concerns need to be heard – and addressed – before large infrastructure projects be able to proceed. And despite some progress, settling aboriginal land claims and establishing mutual understanding and agreement for the future is taking far too long. But disregarding due process – the internationally respected systems that we in Canada have developed over many, many years as part of our legislative, regulatory and judicial system – is neither right, nor good, nor smart.

Virtually no decision of any import pleases everyone. Some decisions needed for the benefit of the larger good may still have certain negative consequences. Our regulatory tribunals need to take into consideration environmental effects, aboriginal rights and local and community preferences, but they must – and do – balance those with what is in the larger public interest. They make recommendations based on a review of scientific and technical information placed on the record during public hearings, not on the number of letters received or on other demonstrations of public opposition or support; recommendations based on the evidence provided, within the legal framework enacted by Parliament and applied by the courts.

The concept of ‘social licence’, however, suggests a form of ‘permission’ which, although extremely vague, supersedes this current, extensive, science-based regulatory process. Yet who has the authority to award this ‘social licence’? Where do those protesting these decisions get their authority? How can they claim to know better what’s ‘right’ than those who have undertaken years of work and analysis?

In Canada, people have the right to protest peacefully, without fear of being harmed. They have the right to lobby for changes in policy. They have the right to work for a change in government to one that they believe better respects their concerns, such as environmental sustainability and aboriginal rights. But do they have the right to ignore or usurp decisions that have been arrived at through our democratically elected and developed process?

No.

We elect our politicians, and although the results never please everyone, it's a pretty good system. And the politicians we elect pass laws – again, not to everyone's satisfaction, but that's the job that our system gives them. Those laws create the rules and regulations which in turn establish, over time (often over the course of multiple governments and different political parties) our regulatory bodies and processes that we rely on to analyze, review, deny or approve things like big infrastructure projects.

Those politicians who are now using the term "social licence" to question those decisions may have good intentions. They may just be angling for votes. Either way, however, they are undermining – indeed, subverting – the processes that have evolved over many years in the very system that gave them their job. To assume what, in effect, amounts to veto power over those we have asked to make these decisions, is more than just problematic – in some places it would be called dictatorial, or rule by fiat. Our system of due process may not be perfect – no democracy is, but it is better than any of the alternatives. It's how our system works, and it should be respected.