

Excerpt re “Social Licence” from the Report of the Newfoundland & Labrador Hydraulic Fracturing Review Panel entitled

**“Unconventional Opportunities & Challenges:
Results of the Public Review of the Implications of Hydraulic Fracturing Operations
in Western Newfoundland”**

Released May 31, 2016

12 COMMUNITY ENGAGEMENT: PUBLIC CONFIDENCE AND SOCIAL LICENCE TO OPERATE

There are objectives for community engagement proposed in relation to a potential unconventional oil and gas development in Western Newfoundland (Precht & Dempster, 2014b). These include ensuring that:

- *“stakeholders understand the potential scope of the activity as a result of early and comprehensive disclosure of development plans;*
- *stakeholders are provided with timely, clear, and fair opportunities for engagement;*
- *industry processes provide stakeholders with opportunities to effectively engage in meaningful interaction and two-way communication;*
- *engagement efforts demonstrate understanding by industry and the regulator of local community and stakeholder concerns and how to best address those concerns;*
- *communication with stakeholders extends beyond traditional notification procedures to building productive relationships; and*
- *stakeholders have opportunities to provide input and express concerns about how the activity may affect their community”.*

Increasingly for extractive industries, effective community engagement is critical to a new industry being established successfully and to its ongoing operations. There is a need for a shared understanding and a clear commitment from companies to incorporate community input and to respect community decisions with clear and public guidelines regarding consultation processes (Voss & Greenspan, 2012).

The Nova Scotia Independent Review Panel commented on the issue of community engagement:

“Public engagement regarding hydraulic fracturing must be substantial and should not be left to occur only between citizens and individual oil and gas proponents. If Nova Scotia was ever to permit hydraulic fracturing in the future, various publics must play significant roles in developing the regulatory process and so determining the rules and terms by which hydraulic fracturing can (and cannot) take place” (NSIRPHF, 2014).

As discussed in Appendix M, effective community engagement involves more than fulfilling engagement obligations that are prescribed by regulatory requirements. Best practice requires community engagement *“that goes beyond obligatory consultations and that instead aims to achieve and sustain a deeply rooted social licence”* (Lahey, 2016). Community engagement should achieve *“alignment with community values and identification and maximization of the benefits to the community that development can bring”* rather than merely having the *“objective of reducing impacts”*.

Although not explicitly mentioned in the Terms of Reference (NLDNR, 2014) for the Panel, throughout the consultation process the term “social licence” was frequently raised as a necessary condition for any development. References to social licence in the public submissions are mostly in the context of opponents to hydraulic fracturing stating that they believe that there is no social licence for hydraulic fracturing in Western Newfoundland. The issue of social licence is also discussed in a submission to the Panel by Shoal Point Energy (Shoal, 2015c).

The concept of a social licence was often undefined in the submissions to the Panel. Consequently, during the review process, the Panel sought clarification from individuals and groups that raised the issue of social licence in meetings or presentations to the Panel. Consistent with the diversity of perspectives in the literature, the feedback received by the Panel reinforced the lack of consensus with respect to the definition of social licence or the process by which a social licence could be gauged, achieved, or maintained. The feedback to the Panel is generally consistent with the conclusion by Quinn et al.:

“A social licence is an ambiguous concept. In our view, it stems from a long-term decline in the trust of government and industry to properly manage the technological and social risks for the public good” (Quinn, et al., 2015).

The importance of a social licence in respect of potential unconventional oil and gas development in Western Newfoundland is also highlighted in the December 14, 2015 mandate letter from the Premier of Newfoundland and Labrador to the Minister of Natural Resources (Ball, 2015), which stipulates:

“You will ensure that any future decisions regarding the hydraulic fracturing industry are based on scientific evidence, and most importantly, on a social licence from the Newfoundlanders and Labradorians who may be affected”.

This mandate introduces an interesting blend of science-based and perception-based decision-making. On matters of scientific fact, the mandate letter highlights the need for the Minister to ensure that there are effective educational processes in place so that people, who will decide whether to extend a social licence, have the opportunity to make their decisions in view of sound scientific evidence and other information relevant to the Western Newfoundland development context. This scientific evidence and information must be presented in a balanced manner and not become an effort to persuade people toward a particular position, for or against development. Public education

must advocate for the facts about unconventional oil and gas development set within the context of Western Newfoundland. The Panel recognizes that, regardless of the scientific evidence pertaining to an issue, perceptions will be influenced significantly by the trust that individuals have in their sources of information. Also, some people or organizations holding ideological views, either for or against development, may not be interested in science-based information that does not support their positions.

The Panel decided to include social licence within its scope of work given that the concept was raised in the public submissions, that aspects of the concept fall within the scope of best practices in community engagement (Lahey, 2016), and that social licence is now a requirement of Government as outlined in the Minister of Natural Resources mandate letter (Ball, 2015). Consideration must be given to the level of public support for the type and scale of a specific development project by a particular proponent, such as the illustrative project described in Section 9 of this report. In advance of gauging public support for a specific project, however, there is a need to consider whether there is sufficient public support for Government to proceed with the necessary pre-development investments. Also, there must be support for the activities required to develop a better understanding of both the risks associated with development in Western Newfoundland and the approaches to mitigating those risks.

The concept of a social licence is widely discussed in the literature as a critical issue facing natural resource industries. This is also known as community consent, and *“around the world, local communities are demanding a meaningful voice in determining whether and under what conditions large scale oil, natural gas, and mining projects take place”* (Voss & Greenspan, 2012).

As noted by Oxfam, a social licence is not a static concept but rather reflects a relationship *“based on partnership and mutual respect”* (Oxfam, 2010). Communities are viewed as *“stakeholders with basic rights and real interests in the outcomes of extraction-related decision-making”*.

As noted by Canada’s Public Policy Forum:

“A number of different terms have been used to refer to the growing impact of public opinion on development projects. From social license and social acceptance to community approval and public confidence, a range of terms is currently in use without commonly understood distinctions in meaning” (PPF, 2015).

As mentioned previously, it is essential to secure public confidence, in addition to regulatory approval, for resource development projects to proceed. Obtaining such public confidence, however, involves challenges that, if not overcome, can undermine economic growth and associated improvements in the quality of life for many Canadians. There are, however, no universally accepted principles for securing public confidence, and this *“presents significant risks for industry and government”* (PPF, 2015).

Social media and the internet have broadened the discussion around specific development projects beyond local governments, project proponents, and communities. There is immediate access to a tremendous volume of information. A Google internet search in May 2016 using the keyword “fracking” resulted in approximately 12 million hits with no differentiation based on the credibility of information sources nor on the relevance of the resulting websites and content to any particular context for unconventional oil and gas development.

In general, organizations and groups opposed to unconventional oil and gas development have been more effective than industry in using the internet and social media to promote their positions regarding unconventional oil and gas development (PPF, 2015). Furthermore, governments have not played an effective role in facilitating balanced public education on matters related to unconventional oil and gas development. This is a prerequisite to meaningful and informed discussions about the risks and benefits of such development. More generally, a decline in public trust of government and industry, coupled with a limited understanding by the public of the public health, environmental, socio-economic, scientific, technical, and regulatory issues pertaining to a development project, heightens the challenge of securing public confidence.

The lack of a social licence is among the most significant business risks facing the international mining and minerals industry (Ernst & Young, 2015). Meaningful engagement by project proponents, including transparent and respectful interaction with the public and communities affected by a development, is critical to obtaining a social licence. Furthermore, Ernst and Young (2015) stresses *“the crucial importance of ongoing, regular and in-depth communication and engagement that exceeds basic regulatory requirements and cannot be underestimated”*. In addition, *“engagement from the prefeasibility phase is essential as is integration into the entire planning process to ensure that all stakeholders are aware of all impacts”* (Ernst & Young, 2015).

As discussed by the Public Policy Forum, *“public support requires a combination of legitimacy, credibility, and trust”* (PPF, 2015). Key elements of strategies to build and maintain public confidence and support include building relationships based on transparency and respect, advancing mutual benefits, and aligning efforts.

Factors leading to the establishment of a social licence, also known as “social licence to operate” or SLO, have also been considered in the context of case studies of international mining projects (Prno, 2013). As noted by Prno (2013):

“A SLO was said to exist if broad community approval and acceptance had been issued for the mining project in question. However, it should be noted no formal licence or contract is ever actually granted by a community. Rather, a SLO is a largely intangible agreement that a mining project should proceed, secured through a process of ongoing negotiation with local stakeholders”.

Prno (2013) goes on to state:

“As a general rule of thumb, a SLO was considered ‘issued’ when at least a majority approval and acceptance of a project appeared to exist”.

Based on case studies of mining projects in Canada, USA, Peru, and Papua New Guinea, the key factors that underpin the establishment of a social licence include (Prno, 2013):

- context;
- relationships;
- sustainability;
- local benefits;
- public participation; and
- adaptability.

In terms of context, community-specific issues are most important (Prno, 2013). For example, *“What are the goals of the community and what forms of development do they aspire towards?”* Also, past experiences with proponents of development projects shape present perceptions of future developments.

Building and maintaining relationships are key to gaining a social licence, and companies must be *“a trustworthy, respectful, community-minded entity”* (Prno, 2013). It is also critical to develop relationships with the right people. The community at large must be engaged and not only politicians or those *“who are the most outspoken”*. Key community stakeholders must be identified and appropriate engagement strategies employed to develop positive relationships. The leadership and commitment from senior employees of the proponent are also important to gaining a social licence.

The case studies highlight the importance of sustainability to the communities involved in a prospective development. The communities' own view of what sustainable development means is more important than some external definition and it is *“only when a community feels their vision of social, economic, and environmental sustainability is being supported, or at the very least isn't being threatened, will they begin to contemplate issuance of a SLO”* (Prno, 2013).

With respect to local benefits provision and public participation, it is not merely a case of companies complying with “*formalized mechanisms to distribute benefits (e.g. legal and regulatory instruments, Impact and Benefits Agreements)*” (Prno, 2013). Regardless of formalized mechanisms to distribute benefits, perceptions of insufficient local benefits can lead to the erosion of a social licence. There is a need for “*public participation in decision-making, access to information, and access to justice*”, and the most effective form of engagement will depend on the particular groups that are involved.

Finally, recognizing that establishing and maintaining a social licence is a complicated process, adaptability is needed to be able to deal with complexity (Prno, 2013). The process must adapt to local context and to local sentiments toward a development project that evolve and change with circumstances. In some cases, the willingness of a community to maintain a social licence could be influenced by circumstances beyond the control of the proponent. Adaptive approaches to community engagement are important to the process of maintaining a social licence.

In its final report, the New Brunswick Commission on Hydraulic Fracturing stressed the importance of engagement with the community that is built on trust and mutual respect (NBCHF, 2016). In this report, the importance of the relationship between the affected communities and the government that has the authority to approve a development is highlighted. The New Brunswick Commission concluded:

“Conversations regarding hydraulic fracturing and shale gas must be community-focused because it is the communities located closest to proposed and existing developments that accept the most direct risk if Government decides to proceed. ... At its core is a recognition that the Government’s relationship with residents is built on trust and mutual respect” (NBCHF, 2016).

This sentiment is consistent with the conclusions of research supported by the Canadian Water Network that “*governments must discover better ways to bring different interests together to produce common shared-objectives that have general support*” (Quinn, et al., 2015).

Moffat & Zhang (2014) considered the concept of a social licence in the context of mining operations, but noted that the issues are applicable to other extractive industries, such as oil and gas. Trust between a community and a proponent is central to the notion of social licence and is a “*strong predictor of community acceptance of its [the proponent’s] operations*” (Moffat & Zhang, 2014).

Furthermore, Moffat & Zhang (2014) stated:

“The extent to which a mining company manages and mitigates operational impacts (e.g., impacts on social infrastructure) will affect trust in the company. In particular, the way companies engage with communities (i.e., the quantity and quality of contact) and treat community members (i.e., procedural fairness in this relationship) will shape community members’ trust in a mining company, and thus their acceptance of its mining operation”.

Frequent and meaningful interactions between operating companies and the communities most directly affected by a development project characterizes, in part, the trust relationship between the communities and the companies. A trust relationship is established when communities understand that they are being treated fairly by the companies in decisions related to a development.

As part of its mandate, the New Brunswick Commission on Hydraulic Fracturing (NBCHF, 2016) was asked by the Premier of New Brunswick to advise whether a social licence to proceed with hydraulic fracturing existed in New Brunswick. Early in its work, the Commission prepared a working definition of social licence to mean “*informed public consent*” with the following interpretation (McLaughlin, 2015):

- *“Informed – this reflects the need for an open and transparent process that provides everyone with access to timely scientific and technical information, delivered by trusted and objective sources, and that also has the ability to bring all parties together for a meaningful shared dialogue about the possible risks and benefits of a project;*
- *Public – reinforcing the central role of citizens in this process and the responsibility we each bear to participate – and the responsibility of government to create an environment that enables that participation; and*
- *Consent – reflecting the need to build trust in the public engagement and regulatory processes”.*

This working definition of social licence closely follows the principle of Free, Prior and Informed Consent (FPIC), as described by IPIECA, the global oil and gas industry association for environmental and social issues (IPIECA, 2016). The elements of FPIC are:

- *“Free – people are able to freely make decisions without coercion, intimidation or manipulation;*
- *Prior – sufficient time is allocated for people to be involved in the decision-making process before key project decisions are made and impacts occur;*
- *Informed – people are fully informed about the project and its potential impacts and benefits, and the various perspectives regarding the project (both positive and negative); and*
- *Consent – there are effective processes for affected Indigenous Peoples to approve or withhold their consent, consistent with their decision-making processes, and that their decisions are respected and upheld”.*

In a submission to the Panel, Mr. Wayne Hounsell presented a practical interpretation of social licence (Hounsell, 2015). This practical interpretation is also broadly consistent with the IPIECA's FPIC interpretation (IPIECA, 2016) and with the New Brunswick Commission's working definition (McLaughlin, 2015) of social licence.

The Panel understands the requirements proposed in Hounsell (2015) to mean that communities must have:

- clear and adequate knowledge, based on independent scientific research;
- an ability to make an informed decision based on all of the implications;
- an ability to communicate directly with government and industry in a meaningful discussion as to the values of the project; and
- an ability to say “yes” or “no” to a project.

In reference to the work of the Panel, Hounsell (2015) concludes that *“this public consultation is not an exercise in social licence”.*

The interpretation proposed by Hounsell (2015) further illustrates the need for increased knowledge by the public based on independent, science-based research; the need for open and meaningful communication among communities, government, and industry; and the requirement for communities affected to have public confidence in, and be supportive of, development. The interpretation, however, does not deal with issues related to maintaining the social licence once a development is underway.

A somewhat different view of social licence is included in a submission to the Panel by Shoal Point Energy (Shoal, 2015c), which suggests that the term social licence was originally associated with *“how to operate in international jurisdictions with a weak rule of law”*, while within Canada *“it is widely associated with consultation and accommodation of First Nations”*. The lack of consensus with respect to the definition of social licence and the lack of clarity with respect to how to gauge whether it has been achieved and maintained are also noted (Shoal, 2015c). Concerns are also expressed that the vagueness and lack of consent around the definition of social licence are used by opponents of projects to give them authority to claim that a “social licence has not been met”.

Mr. Brian Lee Crowley of the MacDonald-Laurier Institute also articulated similar concerns. In a recent interview with the CBC, he described the one-sided use of the social licence concept by “people who are opposed to development per se” (Crowley, 2015).

Crowley (2015) stated:

“There is nothing you can say, there’s no form of compensation, there’s no kind of negotiation you can engage with them on that will win their consent to the projects. They are simply using the idea of social licence to say, ‘Look, as long as I’m opposed to this project, you don’t have social licence’”.

Dr. Dwight Newman, Professor of Law and Canada Research Chair in Indigenous Rights in Constitutional and International Law at the University of Saskatchewan, cautioned:

“To put it bluntly, any overly enthusiastic embrace of social licence to operate in its mistakenly transformed senses is actually a rejection of the rule of law and a suggestion that Canada should become a less well-ordered society” (Newman, 2014).

Despite concerns about how the concept of social licence has been distorted, Crowley (2015) stated:

“You’ve got a perfectly legitimate sense in which social licence is used – and that’s the sense it’s a calm, cool, rational, risk, and reputation management by project proponents, governments, communities and so on, in which we seek, as a civilized society, to get the consent of communities to carry out large projects”.

It is under such conditions that the concept of social licence converges with best practices in community engagement which, as discussed in Appendix M, may be reflected in progressive regulations and oversight processes falling within, rather than outside of, democratic processes (Lahey, 2016). As discussed by Quinn et al. (2015), there is a need for “public spaces essential for democratic discourse about hydraulic fracturing”. Furthermore, Quinn et al. go on to state:

“Leaders must be motivated and government-societal structures must facilitate the creation of different kinds of public spaces and opportunities to exchange information across communities, policy sectors, and jurisdictions” (Quinn, et al., 2015).

With respect to the statement by Hounsell (2015) that “this public consultation is not an exercise in social licence”, the Panel is in full agreement that the public consultation sessions, and the review process followed by the Panel, more generally, is not the basis for granting a social licence. The Panel hopes, however, that the discussion in this report about the concept of social licence, along with the recommendations related to community engagement in Section 14.2.1, are useful to Government in formulating a mechanism to address the obligations with respect to social licence outlined in the Minister’s mandate letter (Ball, 2015).

The Panel also hopes that this report, including the documents in the appendices, serves as a foundation for building a repository of accurate and balanced public information about unconventional oil and gas development in the context of Western Newfoundland. In this respect, the work of the Panel may be helpful in raising the level of public knowledge in advance of Government determining, as stated in Ball (2015), whether there is “a social licence from the Newfoundlanders and Labradorians who may be affected” by a development.