Testimony Before the Senate Standing Committee on Energy, the Environment and Natural Resources

Ross McKitrick, Ph.D.
Professor of Economics,
University of Guelph
ross.mckitrick@uoguelph.ca

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Hearing Topic: Social License and the Duty to Consult

Remarks

I am a Professor of Economics at the University of Guelph where for more than 20 years I have researched and taught in the areas of environmental economics and policy analysis.

I would like to make three points on the subject of today's hearing, as it bears on your consideration of Bill C-69.

First, one of the government's aims with Bill C69 is to promote transparency and timeliness, but by expanding the scope of assessments to cover future compliance with vaguely-defined criteria, the effect will very likely be the opposite.

Canadian law governs resource and economic development in two ways: through the prior, upfront approvals stage, and through ongoing regulatory compliance. The project approval decision should be made on the assumption that, during its operating lifetime, the project manager will be subject to the laws and regulations then in force. It is neither feasible nor just to ask people to prove, years in advance, that they will not be out of compliance with a law.

For instance, we don't expect a firm applying for an operating permit to prove, decades in advance, that it will never fail a Canada Revenue Agency audit. We assume that tax law enforcement will be handled by the relevant agencies in the future as the occasions arise.

Even worse would be if such a requirement were stated in vague terms that imply burdens over and above those found in existing law.

Bill C-69 Section 22 requires a project assessment to take into account its impact on "sustainability" and "the intersection of sex and gender with other identity factors." These criteria are not defined, and in particular, there is no explanation of how they might differ from the requirement to comply with current laws or with new laws as they might arise in the future. They imply the existence of a secret set of requirements over and above what is written in Canadian law. Asking applicants to divine the nature of these hidden rules and prove their future compliance with them conflicts with the goals of timeliness and transparency, not to mention fairness.

Regarding gender analysis, for instance, the government gives the example of the potential effect on women in a community of an influx of male workers nearby. But there are already laws that govern peoples' conduct in communities. Assuming that these laws will be enforced, we are left to guess about what else this provision requires, or how an applicant could address it.

I am concerned that advocates of expanded impact assessment will use Bill C-69 to impose an ever-growing list of novel and secretive criteria for approvals, over and above what the existing law requires. The effect will be to create a process that is lengthy, arbitrary, unfair, and at odds with procedural transparency. For this reason I recommend that the approvals process return to its focus on environmental aspects that need to be addressed at the *a priori* stage, on the explicit assumption that ordinary law enforcement issues will be left for the operational stage.

Second, the proposed revisions to the approvals process are supposed to increase public confidence in the outcome, but they lack an essential ingredient for ensuring this.

The government has asserted that projects failed to proceed in the past because the public was not confident in the review process. I don't believe this diagnosis to be accurate. Project approvals were based on credible and valid assessment procedures that had been relied upon many times over the years. The problem is that not everyone is committed to playing by the same set of rules.

The government needs to signal confidence in its own procedures by requiring those parties who oppose approval decisions to nevertheless respect the process and let construction proceed. The revised rules seek to give standing to more people during the consultation stage. But in the current environment this simply invites increased intervention by more and more organizations who are known to be ideologically opposed to Canadian resource development and whose willingness to act outside the law has been demonstrated.

What is missing is a credible signal that the government will uphold the law and ensure that when applicants receive approval, construction can proceed unobstructed, and that unlawful tactics by protesters will be defeated through appropriate law enforcement actions. In other words, the government needs to commit to ensuring that the rules apply to everybody, equally.

In the absence of such resolve, we will have given an effective veto on future resource development to those most willing to shout the loudest and flout the rules. Far from increasing public confidence in the process, this will discredit it and penalize those who try to follow it in good faith.

Third, the legislation creates ambiguity about what sort of information may be considered dispositive in review panel decisions. Specifically, the government draws a distinction between Indigenous knowledge and scientific knowledge, and it requires both to be used and taken into account. But it leaves unanswered the question of what happens if the two contradict each other.

Numerous provisions require reviewers to take Indigenous knowledge into account. For instance, Section 97(2) says (emphasis added)

> When conducting an assessment referred to in section 92, 93 or 95, the Agency or committee, as the case may be, **must** take into account **any** scientific information **and** Indigenous knowledge provided with respect to the assessment.

As written this appears to oblige a review panel to give equal weight to both types of knowledge. By contrast, Section 6(3) of the Act says that

> The Government… must, in the administration of this Act, exercise their powers in a manner that adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy.

To resolve the potential discrepancy I suggest that provisions requiring the taking into account of Indigenous knowledge be made subordinate to Section 6(3).

Finally, with respect to the title of this hearing, let me remind the committee that there is no such thing as "Social License." There are laws, regulations, review processes, approvals, operating licenses and so forth. There is also public opinion, which ricochets between supporters and opponents on any issue, and the government needs to be proactive in defence of its regulatory processes and of the industries that work within them to advance Canadian prosperity. Waiting for the same activists who have declared their intractable opposition to Canadian resource development to issue a mythical Social License will condemn Canada to further decades of lost opportunities. What we need is for the Government of Canada to establish efficient, valid review processes and then ensure that those who play by the rules are not put at a tactical disadvantage by those who do not.

Thank you.