

Social Licence: Progress or Undermining Legal Process?

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Outline

- What is Social Licence (SLO)?
- What are its limitations?
- So what - what are the practical implications?
- Takeaways
- Discussion

An Increasingly Popular Term...

- Federal Liberal platform (2015):
 - Canadians must be able to trust that government will engage in appropriate regulatory oversight, including credible environmental assessments, and that it will respect the rights of those most affected, such as Indigenous communities. While governments grant permits for resource development, only communities can grant permission.

<https://www.liberal.ca/realchange/environmental-assessments//>

- ...although the government has since backtracked

An Increasingly Popular Term...

“Although the words “social license” are now common in pipeline conversations, the idea of social license is relatively new ... Social license may be a new idea, but it is one of the most important issues in the pipeline industry today. “Social license is about trust, respect, performance, improvement and humility and having those principles embedded in what you do,” said Ian Anderson, president of Kinder Morgan Canada during a panel discussion on social license at the International Pipeline Conference in Calgary. Companies have realized that in order to build new pipeline infrastructure, they must obtain a social license from the communities where they operate.”

– Canadian Energy Pipeline Association (October 2014)

Defining Social Licence

- Not defined in law
- No universally accepted definition

Example #1:

“A comprehensive and thoroughly documented process to have local stakeholders and other vested interests identify their values and beliefs as they participate in scoping the environmental impact assessment of the proposed project and in identifying alternative Plans of Operations for the project. Notice that this does not stipulate the community, stakeholders, and other groups approve of and support the project. Such universal acceptance is virtually impossible, and not required in any other aspect of our economic, social, or political lives.”

5 (2008, Shepard. *Gaining a social license to mine*)

Example Definitions

Example #2:

“At the level of an individual project the Social License is rooted in the beliefs, perceptions and opinions held by the local population and other stakeholders about the project. It is therefore granted by the community. It is also intangible, unless an effort is made to measure these beliefs, opinions and perceptions. Finally, it is dynamic and non-permanent because beliefs, opinions and perceptions are subject to change as new information is acquired. Hence the Social License has to be earned and then maintained.”

(2012, Boutilier et al. *What Is the Social License?*)

Example Definitions

Example #3:

“The term “social license,” or “social license to operate,” generally refers to a local community’s acceptance or approval of a project or a company’s ongoing presence. It is usually informal and intangible, and is granted by a community based on the opinions and views of stakeholders, including local populations, Aboriginal groups, and other interested parties.” (p.2) ... “It is distinct from regulatory licenses which can typically only be conferred by governments. Regulatory license comprise formal authorization related to specific conditions, and must be obtained before a regulated project or activity can proceed...social license in contrast, is informal and has no basis in law.” (p.3)

(2013, Yates and Horvath. *Social License to Operate: How to Get It and How to Keep It.*)

Characteristics of SLO

1. Stakeholders
2. Consensus
3. Dynamic
4. Process-Oriented
5. Intangible

Limitations

Who are stakeholders?

- Directly impacted? Indirectly impacted?
- Relevant expertise?
- Any geographical limit?
- Which stakeholders determine SLO has been obtained?
 - “In most cases, public acceptance of a project is relatively quiet since those who accept or even support a project usually do not get involved in the public debate. Even in the face of high profile protests, general public acceptance may still be high”
(BCBC Environment and Energy Bulletin, Vol 7, Issue 2, May 2015)

Limitations

What is sufficient consensus?

- Quebec Business Counsel on the Environment (CPEQ):
 - Obtaining 100% support not possible for most projects
 - Not possible to establish what degree of approval is required for sufficient SLO
 - Sufficiency determined on case-by-case basis
- Business Council of British Columbia
 - “...in most cases, the social support will be tacit and the critical level is never really defined. Moreover, the diversity in views within communities means that support will be mixed, at best. A legal licence has a clear outcome; SLO does not.”

(Environment and Energy Bulletin, May 2015)

Limitations

Implications for the rule of law

“...all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated... It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

(United Nations)

- Significant opportunity for misinformation
- Based on personal interests (inconsistent, unpredictable)
- No procedural safeguards
- No formal review or legal remedies

Practical Implications

Trans Mountain Pipeline

- “..Trudeau also cautioned critics – some of whom, including Green party leader Elizabeth May, have threatened to engage in civil disobedience – to keep their protests within the parameters of Canadian law ... ‘But we’re a country of rule of law. We’re a country where we have processes for consultations. We have regular elections. We have ways of protecting to make your feelings heard, and that is all par for the course and that will happen.’”

Calgary Herald, “Trudeau tells critics to keep pipeline protests within law”
(December 21, 2016)

Practical Implications

Strateco Resources

- Strateco suing Quebec government for \$190-million after decision to block its uranium project
- Strateco invested ~\$20-million/year from 2006 to 2012
- Quebec granted the company ~30 permits to start work at the site, including permission to build an airstrip
- Quebec refused to grant Strateco a certificate of authorization for advanced exploration because of a “lack of sufficient social acceptability”

Takeaways

1. Understand SLO and its implications (use with care)
2. Improve stakeholder engagement
 - a) Involve stakeholders early
 - b) Support stakeholders capacity to participate
 - c) Proactively understand public concerns (both in appearance and reality)
 - d) Communicate project risks - project economics (benefits) are not sufficient
3. Work to re-establish trust and confidence in formal review processes and other legal frameworks

Discussion

Thank you