

# Social Licence in British Columbia: Some Implications for Energy Development

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## Abstract

Crown land is unique to the Commonwealth and better represented in British Columbia than anywhere else in the Commonwealth (95% of the land base). Through tradition and common law, British Columbians have come to define Crown lands as publicly owned lands that belong to all residents and to expect governments to shepherd them for the benefit of all. Social licence to operate on this land requires approval from the local community and other stakeholders. The concept of Crown land makes every British Columbian a potential stakeholder and has led to more drama and noise around social licence than occurs elsewhere. The four main reasons for failure in past applications for social licence have been a lack of respect, assuming economics is a sufficient framework, appearing to bully, and hiding or obscuring information deemed relevant. Recent events in the province suggest the provincial and federal governments, and some companies, have learned little from past failures. Energy development faces particular challenges because location counts and impacts are both intrusive and extensive, but the errors described here are avoidable. W. Edwards Deming reputedly observed, “Learning is not compulsory... neither is survival.” Some companies have learned.

The topic is addressed under six headings: (1) Whose land is it?; (2) What the public has said; (3) Defining social licence; (4) Lessons from exploring social licence; (5) Lessons and energy development; and (6) What’s next?

**KEYWORDS:** British Columbia; Crown land; energy development; social licence

## Whose land is it?

**F**ew of us know what role the Queen of Canada plays in Canadian governance, or what exactly “Crown land” means. Many of us know that only 5% of British Columbia’s land base is privately owned. It is often less clear who owns the rest. It is the Queen in Right of Canada who does, as an entailed estate that passes with the monarchy and cannot be alienated from the monarchy. Nor can the monarch sell the land from under us.

This notion of Crown land is unique to the Commonwealth. Elsewhere, much more of the land is privately owned. In British Columbia, provincial Crown land makes up 94% of the land base (another 1% of the provincial land base is federal Crown land), which is significantly greater than Australia (23%), New Zealand (30%), or England (much less,



other than almost all of the foreshore and territorial sea bed). Comparable values for the larger provinces are Alberta (60%), Ontario (87%), and Quebec (92%).

The monarchies of Poland (with Lithuania), France, Hawaii, and the Austrian and Austro-Hungarian Empires also had Crown lands until they shed their monarchs. The Americans repudiated the feudal concept of Crown lands in the Revolutionary War. Until the reign of George III, revenues of Crown lands went to the monarch; under George, these revenues were surrendered to the Parliament of Great Britain. British Parliament determined that individuals and corporations could have land tenure but not absolute ownership. Governments throughout the Commonwealth retained the connection to the Crown and created various tenures to allow different uses of it or even its sale (rarely consulting the monarch). Through tradition or common law, British Columbians have come to define Crown lands as publicly owned lands that somehow belong to all residents and to accept that provincial and federal governments will shepherd her Majesty's lands for the benefit of all residents.

Like many, I watched the opening ceremonies of the 2012 Olympics and heard Sir Paul sing "The End" from the Beatles' *Abbey Road* album. I waited, but he stopped short of "Her majesty's a pretty nice girl, but she doesn't have a lot to say," perhaps because the lady was in the house. It struck me that residents of British Columbia have often felt that her Majesty had far too little to say about how her lands were used or managed, so spoke up on her behalf. That is how social licence and the public combine.

### What the public has said

Social licence is compatible with the principles of common law but runs into problems with civil law. British and Canadian common law is law that has evolved from decisions of English courts going back to the Norman conquest of 1066. These earlier decisions set "precedents" that are used in future cases of a similar nature. Precedent can be overruled by new statutes passed by the appropriate government. In Canada, law in all provinces but Quebec is based on common law. Civil law evolved from Roman law, based on a written "civil code." This was adopted in France after the French Revolution in 1789 and covered only matters of private law—that is, attributes of a person, relations between individuals, and property (including sales and leases). In Quebec, the Civil Code of Lower Canada was enacted in 1865, and refined in the 1980s and 1990s. Where civil law prevails (most countries and Quebec), only a civil authority can grant licence or formal permission to use the land. The role of a larger public in granting licence is unanticipated, unusual, and unwelcome.

It is not always welcome in British Columbia either, but common law prevails so it is anticipated and certainly not unusual. Although no one compiles statistics, British Columbia appears to have hosted more frequent drama, colour, and noise around social licence than anywhere else in the world. Within the Commonwealth, the states of Queensland and Tasmania (Australia) have hosted demonstrations and protests about the practice of forestry. These changed regional forest practices but came nowhere near the fervour demonstrated in British Columbia. Likewise, after more than a year of protest, the "Hands Off Our Forests" movement in England convinced the British government to abandon a proposed transfer of state-owned forests to the private sector, but the number of demonstrators never exceeded 3000. Public demonstrations concerning social licence in British Columbia include the following.

- September 1971: The Don't Make a Wave Committee of Vancouver sent a chartered ship to oppose United States testing of nuclear devices in Amchitka, Alaska.



- June 1982: 35 000 people joined the Walk for Peace across Burrard Street Bridge to voice concern about an escalating arms race; 65 000 people participated in 1983 and 100 000 in 1984.
- Winter 1985–1986: Logging trucks on Haida Gwaii were blocked by the Haida.
- Summer of 1993: 856 individuals protesting logging were arrested at Clayoquot Sound.
- Summer 1997: Nuxalk activists and their supporters blockaded a logging road on King Island under the banner “Protect the Great Bear Rainforest.”
- April 2006: Demonstrators blockaded construction on the Sea to Sky Highway at Eagleridge Bluffs to protest environmental destruction.
- March 2012: About 1000 demonstrators marched through downtown Vancouver to express opposition to Kinder Morgan’s planned expansion of the Trans-Mountain pipeline to Burnaby and the proposed Enbridge Northern Gateway pipeline to Kitimat.
- May 2012: Demonstrators, concerned about climate change, camped on the railroad tracks at White Rock to stop trains from the United States from delivering coal to Deltaport.

These eight are a small fraction of those I remember, but show that:

- British Columbians’ history of supporting or withholding social licence is long and diverse, and
- citizens have frequently attempted to deny social licence for specific uses of Crown lands.

The Sea to Sky Highway demonstration failed to stop construction, illustrating that some demonstrations attain no more than catharsis. The Walks for Peace also could be viewed as no more than catharsis, but that is misleading. In 1983, Vancouver Council declared the city a nuclear-free zone. Victoria also became a nuclear-weapons-free city. The latter caused problems, because Canada’s Pacific naval base (Esquimalt) is within city limits. The base is used frequently by the United States Navy ships (routinely armed with nuclear weapons) that must now dock outside city limits to avoid violating city bylaws.

I joined other Quakers on the Walks for Peace but observed the Haida’s blockades to stop logging of old growth from a distance. Downstream effects of those blockades were enormous, leading to profound changes in forest practices and protected areas, the *Forest Practices Code*, the Clayoquot Sound Scientific Panel, South Moresby National Park, and the Great Bear Rainforest. Shortly after the Haida blockades, the first two “Tripp reports” appeared, describing relations between logging, mass wasting, and salmon habitat on Haida Gwaii (Tripp & Poulin 1986a, 1986b). These reports revealed that the Haida had cause to be concerned and stimulated widespread response. Six years later, a follow-up report appeared (Tripp & Poulin 1992). Material in this report indicated that the forest industry and government were making little effort to improve, which inspired voluble concern among the public and action by the provincial government.

In 1992, after extensive consultation with the public (social licence again), the B.C. Forest Resources Commission recommended the establishment of a code of forest practices for British Columbia. The resultant *Forest Practices Code* included the *Forest Practices Code of British Columbia Act*, forest practices regulations, forest practices standards, and Forest Practices Code guidebooks. In July 1994, the Act was passed; in September, the Ministry of Forests Enforcement Branch was established. In April 1995, 18 regulations and the first 16 guidebooks were released, and agency training on the regulations began. Another 2 regulations and 17 guidebooks have been released since April 1995. Many of



these changes improved forest practices and increased public confidence that Crown lands were not being abused; less progress was made on better planning. In the meantime, Clayoquot Sound erupted.

Clayoquot had been simmering for years. Shortly after MacMillan Bloedel announced plans to begin logging on Meares Island in 1984, the Nuuchah-nulth and other supporters blockaded the road. To prevent logging operations from continuing, protesters declared the island a “Tribal Park.” MacMillan Bloedel attempted to override this with a court injunction, succeeding briefly. In 1985, the Ahousaht and Tla-o-qui-aht First Nations acquired their own injunction to halt logging on the island, at least until Nuuchah-nulth concerns had been addressed in the form of a treaty. Similar protests against “unrestricted logging” continued over much of Clayoquot Sound through the late 1980s.

The Social Credit government attempted to reach a mutually agreeable solution with the Tin Wis Coalition of 1988, the Clayoquot Sound Sustainable Development Task Force of 1989, and the Clayoquot Sound Sustainable Development Strategy Steering Committee of 1990. Each failed. In 1991, the new NDP government instructed the Commission on Resources and Environment to develop a comprehensive land use plan for Vancouver Island that excluded Clayoquot Sound. Members of the Commission could not reach agreement on areas to be protected and the government announced its own Clayoquot Land Use Decision in 1993. This plan permitted logging in about two-thirds of the old-growth forest and ushered in a new scale of civil disobedience over Crown land.

During the summer of 1993, over 10 000 people came to Clayoquot to indicate that activities there no longer had social licence. It was not only those opposed to the planned logging who protested. Many residents of Tofino and Ucluelet worked in the logging industry and believed the anti-logging protests threatened their livelihood and organized a counter-protest, the “Ucluelet Rendezvous ’93.” Loggers noted they did not want to eliminate forests, and that the forest industry was economically important for future generations. The opposition to logging led to widespread civil disobedience with the arrests of 850–900 people (I found no unequivocal tally). The solution to the turmoil was the Clayoquot Scientific Panel, which ultimately had a global influence on forestry.

In 1971, the Don’t Make a Wave Committee renamed the halibut seiner *Phyllis Cormack* as *Greenpeace* before it sailed to Amchitka to protest nuclear testing. They also changed the committee’s name to “Greenpeace.” A new group with a committed stake in defining social licence was born, growing from a small group meeting in the home of Vancouver Quakers to an international organization with offices in over 40 countries (some histories of Greenpeace actions note “bearing witness” but ignore the Quaker connection and early nurturing; e.g., Harter 2004).

With outcomes like these, it is likely that demonstrations withholding social licence will continue. The connections noted as beginning with Haida blockades in 1985 and the Tripp reports are simple. Neither the Haida nor the Nuuchah-nulth wanted to banish logging from Haida Gwaii or Clayoquot Sound. Both acknowledged that their people had depended on the land’s resources for centuries (Harkin 2000). They opposed the fact that companies were pursuing short-term profits by extracting resources as efficiently as possible with little apparent oversight from the provincial government. The Tripp reports convinced others that native concerns were not fanciful by seeming to document that over a period of 6 years the government had not acted on information and was either incapable or unconcerned about resource stewardship. Stated so simply, this summary conjures a strong sense of *déjà vu* when current conditions are considered (e.g., see “What’s next”).



## Defining social licence

Because it is a social, changeable phenomenon, there is no tidy definition of social licence. Published attempts at definition typically note that social licence exists when a project has ongoing acceptance or approval within the local community and other stakeholders. In the Commonwealth, social licence is granted when most of the public agree that what will be done to the monarch's land is acceptable. A key point is that this is much different from most of the world.

Among the extractive industries that affect local communities by using, taking, or polluting their water, land, and other resources, the term "social licence" has morphed into "social licence to operate." It refers to approval obtained from local communities in areas of operation as compared to legal licence obtained from governments. Where the community is sufficiently determined, social licence can be denied to government as well as to industry. This happens when enough of the community believes the government is not shepherding Crown lands as well as they should.

For any individual project, social licence is rooted in the beliefs, perceptions, and opinions held by the local population and other stakeholders affected by the project. In British Columbia, where history suggests many of the public believe Crown land is theirs to supervise, the stakeholders can be distributed over the entire province and the "affected" community is province-wide. The long history of successfully granting or withholding social licence (see examples above) ensures that the broader public continues to pay attention to use of "their" lands. Without effort to assess community beliefs, opinions, and perceptions, requirements for social licence remain intangible or a guess. Because beliefs, opinions, and perceptions are subject to change as new information is acquired, social licence is dynamic, not permanent. These qualities mean that social licence has to be earned and then maintained.

Social licence begins with *social legitimacy* (Figure 1), which is based on the formal and informal norms of the community—legal, social, and cultural. These norms are the "rules of the game," so aspirants to social licence must know and understand the norms of the community and be able to work with them. Failure to do so always risks rejection and may ensure it. Social licence is not granted if the proposed use of the land is not considered socially legitimate.

*Credibility* for a legitimate project is attained by consistently providing true and clear information and by complying with any and all commitments made to the community. Credibility usually is best established and maintained through formal agreements where rules, roles, and responsibilities of the company and community are negotiated, defined, and consolidated. Such a framework helps manage expectations and reduces the risk of losing credibility by being perceived as breaching promises made because relationships have not been properly defined.

*Trust*, or the willingness to be vulnerable to the actions of others, requires time and effort to create. Among the collaboration and shared experiences that can grow from trust is co-ownership, either legal or through commitment.

## Lessons from exploring social licence

The eight demonstrations noted above (some including court injunctions) were exercises in exploring social licence. There have been many more, and their history provides lessons on how, or how not, to acquire social licence.

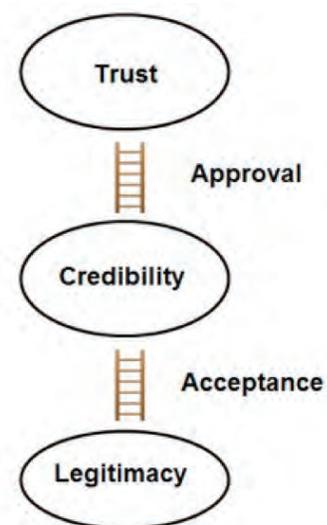


Figure 1. Steps in acquiring social licence (modified from On Common Ground Consultants Inc., & Robert Boutilier and Associates, 2012).



## Respect is critical

As individuals, we know how important respect is in personal relationships with others but sometimes have trouble remembering this when acting as members of a group. Respect applies to the values an individual or a group holds, even if we do not hold these values. A key issue in extractive use of British Columbia's resources is that extraction often occurs from land for which no treaty exists between the government of Canada (representing the Crown) and First Nations. Early in the Clayoquot Scientific Panel's efforts, I met with the Nuuchahnulth elders to see whether we could emphasize the better parts of our respective cultures during our meetings and in our writing. It worked—we treated each other as equals and learned from each other. A less tangible benefit of this was a richer, shared philosophy that inspired the overall approach. A concrete product was that culturally significant areas were identified by First Nations and sensitive values were safeguarded. Similar relations permitted successes on Haida Gwaii and within the Great Bear Rainforest. In each of these instances, common cause was found among the forest industry, environmentalists, and First Nations. Harter (2004) discussed routes to common cause between the forest industry and environmentalists.

Lack of respect most often appears as a presumption of gullibility, avoidance of cultural issues, or ignoring the “rules of the game.”

## It's not the economy, stupid

James Carville championed the phrase “it's the economy, stupid” for Clinton's election campaign. The phrase is less apt for those seeking social licence (but see the following point). Many individuals opposing social licence for a particular activity are inspired by concern for environmental or spiritual values; economic issues are secondary. Some applicants for social licence either do not know this or persist in acting as if they do not. Economic issues are far easier to decide, because these issues can be captured by numbers in ways environmental or spiritual issues cannot. Nevertheless, casting a complex issue as a simple issue of numbers fails for the following two reasons:

1. it communicates lack of respect for important underlying issues, and
2. it ignores the problem it is pretending to attempt to solve.

In the recent toing and froing about Enbridge's pipeline proposal, Premier Clark's statement that British Columbians wanted to negotiate a price for damaging the environment likely lost her support in all camps. Some did not want to pay the price, some wanted to pretend there would never be damage, and many thought bribery to allow damage was underhanded at best.

My selection of protests above focussed on social licence to operate. British Columbians also have demonstrated about economic issues such as wages. This is not social licence. Social licence to operate addresses actions proposed for, or occurring in, specific places and the potential consequences to that place. Of the examples given, the most diffuse is the Walk for Peace but even that addressed consequences of actions in places important to us. No examples given focussed on an economic question. There was no resolution to the most contentious and long-lasting arguments (Haida Gwaii, Clayoquot Sound, Great Bear Rainforest) until those negotiating significantly lowered the profile of economic issues so these issues became no more than equal among others.

Economic frameworks dominate when measureable elements are most relevant. Poorly measurable features can be as important to applicants for social licence as those granting social licence. Certainty, for example, is poorly measurable but important to in-



dustry and investors. A major benefit of the Clayoquot Panel was that principles and recommendations were incorporated into watershed plans. The plans guided site-level forest planning and specified limits to rate-of-cut for specific watersheds and drainages, in accordance with Panel recommendations, to ensure that watershed integrity was maintained. The increased certainty was perceived as a gain by local communities and industry but cannot be accurately incorporated as an economic measure.

### Thinking about the economy helps

Ignoring the economy is no better than assuming all concerns can be depicted as monetary values. Many communities, including First Nations, have clear interests in revenue and royalty sharing. A major issue is that the biosphere is not a subset of the economy; the economy depends wholly on the biosphere for its sustenance. The economy does not provide the oxygen we breathe (credit algae for much of this), the food we eat (credit plants for most of this), or the water we drink (filtered by soil that is living, not dead). Of the construction materials that shelter us, trees and other plants are renewable and have a much lower ecological footprint than other materials. Even the hydrocarbons that provide some of our clothing and much of the fuel that warms us are merely fossilized sunshine and once inhabited living organisms. A significant portion of the public knows this. Economic systems create nothing that we absolutely need, nor do they determine what we need. These systems do much, however, in determining how we share the things we need and in making this sharing explicit.

The largest contribution of the Clayoquot Scientific Panel was describing a very different approach to forestry that was transferred into watershed plans locally and variously adapted into forestry on five continents. The Panel was explicitly told to ignore economic considerations and this may have been its greatest failing. Ignoring sharing as it is guided by economics led to dissension among individual First Nations. Subsequent events on Haida Gwaii and in the Great Bear Rainforest learned from this omission. Sharing of resources in these areas was addressed more explicitly.

### Success is not attained by power

Whoever first said “perception is reality” got it right. It is unclear whether aspirants for social licence actually attempt to overpower opposition or merely appear to attempt to overpower opposition. The root cause is immaterial; if “bullying” is perceived, it invariably strengthens the will of the opposition. The perception of bullying does not require physical presence of truncheons. Activities that curtail the kind of information presented during negotiation, that limit the locations or timing of presentations, or who can fund or make presentations, can be perceived as bullying. This perception almost always has the same outcome—greater opposition and more individuals opposed. A particular issue of social licence may upset individuals, but the perception of bullying galvanizes them into action.

### Knowledge is good

The public pays for house inspectors and BCAA mechanics to assess potential purchases of houses and cars. Likewise, they want to know potential side effects of drugs or hazards with toys. Our daily life is full of decisions to acquire information before we act, so, most of us are wary and suspicious when it appears that information is being withheld about actions we are expected to endorse. When governments or corporations dribble out information or actively attempt to suppress information that stakeholders deem relevant, opposition is solidified on principle, regardless of the actual proposal.



## Lessons and energy development

Globally, the most common failure of extractive industries in acquiring social licence is rooted in their view of the process as a series of transactions (“making a deal”) when the community grants licence on the basis of the character and quality of the relationship (respect, the beginnings of trust; see On Common Ground Consultants Inc. & Robert Boutilier and Associates 2012). Social licence never begins as a legal deal, though it may become one. Most provincial forest companies have learned this lesson. Enbridge’s experience indicates that newcomers can repeat a common mistake. Other common errors about the nature of the relationship include the company confusing acceptance for approval, co-operation for trust, and technical credibility for social credibility (the relationship is social, thus the term “social licence”). The five generic lessons noted above apply to energy development.

### Begin with respect

The first step in acquiring social licence is legitimacy (Figure 1). Respect is necessary for legitimacy. Respect works best when it includes values individuals or communities hold (spiritual, environmental, economic), as well as the character of the individuals and their community. Individuals or groups cannot get to trust without respect. The behaviour of extractive industries has often shown far less respect than is needed to attain trust. This is particularly true for industries pursuing hydrocarbons and extracting ores. Conferences of these industries show a fine knack for creating acronyms, such as: LULU – Locally Unwanted Land Use; NIMBY – Not In My Back Yard; NOPE – Not On Planet Earth; BANANA – Build Absolutely Nothing Anywhere Near Anything.

These acronyms amuse some people at conferences but, because no one truly believes in NOPE or BANANA, they expose a critical failing—an apparently dismissive contemptuousness in the face of real social issues. It is telling that the acronyms, as ordered, follow their chronological appearance and a growing degree of sarcastic contempt. Too often, lack of respect is substituted for serious thinking—just why is the community opposed and is a compromise possible? This is not a new issue, but the consequences of treating social licence dismissively are accumulating and making social licence more difficult to acquire. The list is long and growing: wind farms in Ontario; electric transmission in Alberta, British Columbia, and Manitoba; gas- and coal-fired power plants in British Columbia and Ontario; and, most emphatically, for oil pipelines almost everywhere.

Respect is very difficult to inject later, so is critical at the outset of discussions. It would help aspirants for social licence to view concern for the environment as a form of reverence akin to religion, and certainly not as a flimsy notion that a few facts can disperse. Respect is then more likely to follow. Other stakeholders may or may not have a reverence for nature but, nonetheless, believe two things: that all humans’ most critical needs are met by healthy ecosystems (irrefutable), and that the ability of ecosystems to meet these needs is seriously declining (seemingly irrefutable). Ignoring these beliefs, which could well be truths, not only communicates lack of respect but commits further error by appearing to exclude relevant information from discussion.

An important issue around the trust that underlies social licence is that it is not a “one off,” like obtaining permission. It requires sustained effort and has to be nurtured.

### Ensure that economics is but one part

Even where unemployment is high, it is often unwise to emphasize the economy with the public. Most of Canada uses common law not civil law, so it is the broader public that grants social licence. In 2009, Canadian hydrocarbon industry associations sponsored the



Energy Framework Initiative (see <http://www.energyframework.ca/>). The initiative is structured around six “pillars.” Pillar 4 is entitled “A Complicated Tale: Developing Energy In Canada Is Not A Simple Matter.” It is about social licence. The discussion begins:

Social license in energy development is characterized by debate over the rights of three categories of stakeholders: Developers and investors are those who risk capital in projects, and expect a return or benefit from doing so. Locals are those who bear a disproportionately large share of the costs associated with development. Consumers are those who benefit from the product or service produced by the development (Plourde & Whittingham 2009:1).

(Author’s note: “Much debate revolves around where benefits accrue and costs truly lie, and what is in the best “public interest” in terms of environmental protection, energy security, and economic growth” [Plourde & Whittingham 2009:1].)

The economic framework of the development is readily understood by the industry but unhelpful on its own. Of the eight protests I noted above (“What the public said”), all have a moral or values base disconnected from economics. Attempting to cast relevant relations wholly within an economic framework not only is unduly restrictive but commits three of the five major errors: (1) communicates lack of respect; (2) fails to recognize that it is not simply the economy; and (3) omits information, thus appearing frightened of knowledge or full disclosure and trying to hide something. When it trumpets this message loudly in advertising, it commits the fourth of the five major errors, by appearing to bully. In short, it is a near-perfect recipe for failure. Energy development too often emphasizes near-term economic issues, in part because it believes it must—environmental impacts are a given and, unlike forestry, there is nothing renewable about the enterprise. Trouble arises when emphasis on economics appears to make environmental issues secondary.

### **Economic issues are real**

Sharing resources is desired, so economics is a vital part of a solution. The critical step is recognizing that economic systems have never created the air we breathe, potable water, or food, but merely determined who gets how much and who profits from the distribution. Failures of the extractive industries have not occurred through ignoring economics but of appearing to extend discussion of economics beyond topics economics can address effectively, or simply ignoring these topics. A frequent failure is to lead with economics, perhaps with the hope of acquiring government and union allies. Economics, or sharing, should not enter the discussion until after respect is established and listening is more likely. Discussing how the resources and profits are to be shared before respect, and ideally trust, are granted and acknowledged is usually fruitless.

### **Honesty succeeds more often than power**

Success follows from sharing power, with each side experiencing both gains and losses but each believing they gained more than they lost. This requires openness and honesty. When industry or governments appear to withhold information or present only selected portions of available information, communication is perceived as propaganda, not as sharing power. It sometimes appears that extractive industries and governments believe the public is meek, gullible, or easily frightened, and tailor communications to exploit these traits. Undoubtedly, a portion of the public has these traits, but there are reasons to expect this portion will diminish. Moreover, lack of transparency is not a helpful approach to sharing power, which forms the basis of granting social licence.



Information and education about energy and its extraction are useful only when it does not appear as propaganda. This seldom happens. Recent advertisements showing how important energy is in our lives and how the industry is learning to repair the land after bitumen has been extracted appear to contain no falsehoods, but they also fail to appear even-handed because of what they omit, and so emerge as propaganda. On the same televisions and in the same newspapers, the public has also seen the scale of the ugliness involved in bitumen extraction. The latest poll by Insignitrix Research found only 2% of Canadians do not believe in climate change (The Canadian Press 2012). There has been ample news coverage of carcinogens and other water pollution downstream from oil sands activities. First Nations in British Columbia are aware of conditions in Fort Chipewyan. A considerable portion of the public knows that a part of their taxes goes to subsidize the oil and gas industry.

To transform an apparent propaganda effort (seen as bullying) into an earnest attempt at education, industry would need to describe restoration efforts more explicitly in space and time and acknowledge that there is a period when the landscape is unhealthy for most living creatures. This is relatively easy. Explaining why increasing greenhouse gas production and global warming merits support, including subsidies, is more difficult. Initial industrial denial of water pollution in Alberta bought only time; it lost credibility. Another approach is needed. Subsidies are challenging. Some governments and their agencies communicate opposing messages almost in a single breath: the oil and gas industry is vital to our economy and needed for us to survive *versus* the oil and gas industry requires major subsidies to survive, **or** we cannot afford to mitigate warming *versus* we are not able to pay for the damage caused by warming. This is not industry's fault, but industry does need to clarify its position. Globally, Canadian taxpayers are small players in subsidies, apparently committing only about \$1.4 billion annually to subsidize the oil and gas industry (\$40 for every man, woman, and child in the country). The battle to have Canada's Auditor General investigate subsidies to the oil and gas industry is ongoing; Ecojustice (2012) provides a recent update.

The preceding discussion reveals why a closer association with the whole truth is more difficult than assuming the public is meek, gullible, and easily convinced. Failure to be more honest can appear to be bullying, by wielding the power of money to purchase large-scale advertisements, and often appears to omit or ignore information that the public wants addressed. The irony is that such issues may well appear in off-stage negotiations, but the public does not see this. Trust always comes faster with openness.

### Knowledge is helpful—use it

Too often, companies create the impression that there is something to hide, making uncommitted individuals wary. Their messages undermine future attempts at explanation by appearing more like propaganda than the sharing of knowledge and thus sabotage trust. Just as the British Columbia forest industry in the past often did not benefit from a close association with the provincial government, the oil and gas industry has not benefitted from a close association with the federal government.

Governments often appear to believe T.S. Eliot, who wrote: "Human kind cannot bear very much reality".<sup>1</sup> Governments worldwide work to protect voters from reality. The government of British Columbia has spent 10 years gradually decreasing the capability of Ministry staff once charged with monitoring the state of our resources, including forests, wildlife, and fish. British Columbians now have much less capacity to assess the state of Crown lands. The Canadian federal government also is a fervid believer in Eliot. It is eager



to protect Canadians from reality on all fronts but has committed special attention to issues of climate change, including minders, reminiscent of the Soviet Union, to control what researchers say.

Various federal initiatives (reducing field staff dealing with environmental issues, combining federal and provincial reviews, limiting the kinds of information acceptable, limiting the review period, etc. ) combine to give a clear impression of fending off information and bullying. Already made wary by orchestrated efforts to reduce information, portions of the public can become galvanized by the bullying and inspired to look after their lands. This is unfortunate for the applicants for social licence. For months, the federal government used its weight in ways that appeared to ignore respect for communities' values. When it realized the magnitude of its errors, the government retreated, leaving Enbridge at the pointy end of the stick, tarred by their apparent ally's actions.

### **It is hard extracting oil and gas**

Extraction of oil and gas faces problems that other industries do not, beginning with location. Like mining, location of the proposed extraction is constrained and specific. Forestry and construction of dams also are constrained by geology and topography but not to the same degree. Oil and gas have less space in which to make trade-offs. Moreover, energy infrastructure is often intrusive on the landscape and can extend for 1000s of kilometres. Dams and wind turbines also are intrusive and transmission corridors for turbines can extend 1000s of kilometres, but development of oil and gas carries additional burdens. For example, development and extraction are associated with a range of health risks in both perception and reality (Hill et al. 2009). Some installations appear incapable of controlling or effectively reducing emissions, despite being at the centre of intensifying issues of climate change at a time when 98% of Canadians believe in climate change.

There are other challenges. Political scientists recognize elite accommodation as a form of collaboration where elite groups in society reach accommodation despite lack of consensus at the societal level. Baier (2005) provided one view of how it has functioned in Canadian politics. The concept applies to the oil and gas industry through its apparent facility in working with big governments, the massive amounts of money involved, and the ability to extract subsidies despite this apparent wealth. Unfortunately for the industry, elite accommodation is becoming increasingly less functional. For a range of excellent reasons (consider the finance industry), almost all elites are becoming mistrusted, often profoundly. For those seeking quick and tidy negotiation of social licence, distrust of elites has grown at precisely the same time that an increasingly complex, mistrustful, and fractious society makes consensus on anything difficult. Co-operation between big government and big oil looks increasingly suspect.

Having been thrust to the pointy end of the stick by the federal government and apparent arrogance, companies such as Enbridge face all these challenges plus another. The Occupy movement is not well elucidated but contains seeds that bode poorly for the energy industry. Foremost, it deeply distrusts perceived elites, of which the oil and gas industry is one. Second, youthful members of the movement want a future, ideally not much worse than that of Mom's and Dad's. Portions are well aware of the threats that greenhouse gas emissions pose to their future. Many are equally aware that since Canada



agreed to the Kyoto Protocol in 1997, the federal government has spent more than \$2 in tax subsidies to the oil and gas industry for each \$1 spent on action to implement the accord. The oil and gas industry thus appears to be receiving tax dollars to damage their (youth's) future.

Youth, and their elders, are also coming to realize the notion that “continuous growth is necessary” has the same credence as perpetual motion. They know growing consumption—and thus use of energy—fuels our economy, but also that we cannot all continue spending money we don't have on things we don't need to impress those we don't know. Assuming disenchantment stems from lack of knowledge is wrong and potentially dangerous.

There is no doubt that energy companies can do far better than some have recently done in British Columbia. One simple example has been Shell Canada's teaming with the city of Dawson Creek to build an effluent treatment facility. Shell now uses recycled waste water in its fracking, rather than extracting water from the Kiskatinaw River. It is noteworthy, however, that the city initiated the approach by requesting proposals. Because of information omitted in past efforts, new efforts of the industry to inform are currently burdened by an aura of propaganda. It is unclear whether *mea culpa* and alternative proposals can reduce this burden. It is certain, however, that the Energy Framework Initiative's approach to capturing everything as a cost will exacerbate the problem. Putting a price on spiritual values endears the industry to few.

One route to better relations is to return to the past, as have “B” or “benefit corporations” in the United States. Charters of benefit corporations attempt to reclaim the original purpose for which corporations were chartered in America, when states chartered corporations to achieve a specific public purpose, such as building bridges or roads. Benefit corporations are required by law to create general benefit for society as well as for shareholders; they must create a positive impact on society and consider how their decisions affect their employees, the community, and the environment. They also must publicly report on their social and environmental performances using established third-party standards but have the advantage of avoiding the increasingly unpopular elite aura. As with the first benefit corporations, legitimacy of present ones stems from their specific charter, but they can earn profits while fulfilling it. Examples of benefit corporations in the United States include Alter Eco, Hives for Lives, Little Pickle Press, Sealaska, Dolphin Blue, and Freeworld Media. The actions of Shell Canada in Dawson Creek illustrate a contribution to the common good that characterizes benefit corporations.

### What's next?

Although “social licence to operate (or practice)” has a positive ring to it, neither governments nor corporations are eager to equate social licence with community consent. Despite British Columbia's deep and colourful history of protests addressing social licence, events suggest that more learning occurred among those protesting than those requesting social licence. Recently, both the provincial government and Enbridge have ignored lessons from exploring social licence, as noted above.

Lack of knowledge about social licence is obvious in the British Columbia government's recent response to its earlier decisions about “salvage logging” of beetle-killed trees in the province's Interior, decisions that led to the predicted near-term shortfall in wood supply. Government enjoyed the increased revenue from its decisions on altered practices and cut limits, but now does not want to bear the costs of those decisions. The report of the Special Committee on Timber Supply (2012) commits at least three of the major errors that undermine efforts at acquiring social licence; that is:



1. denying respect for community values represented by “set asides”;
2. ignoring that for many “it’s not the economy, stupid”; and
3. omitting relevant information as if it did not exist.

Although the committee is legally legitimate, it denied respect and omitted relevant data; it is stalled below acceptance in Figure 1. Enbridge is different.

You rarely find a perfect example in the real world. Enbridge is so near the perfect example of how not to acquire social licence, that it has led to conspiracy theories. The theory assumes that no company could err so consistently and magnificently without doing so deliberately, so their approach must be guided by American interests that want the bitumen delivered to Port Arthur, Texas, rather than to Asia. I am not convinced. Whenever the provincial government made a particularly spectacular mess of natural resource issues in the past, I warned my students not to assume a conspiracy when simple incompetence was enough. In this case, incompetence is a strong candidate, as evidenced by U.S. National Transportation Safety Board describing the company’s actions as akin to the “Keystone Cops.” It makes no difference whether it is a conspiracy or incompetence; the Enbridge example serves as an excellent illustration of key points in acquiring social licence. They are not yet legitimate (Figure 1).

As noted above (“Lessons and energy development”), Enbridge has made all the major errors that undermine application for social licence. Worse, it has done this with such apparent aplomb that its actions generate an aura of hubris or arrogance that will be difficult to shed. You build a reputation by the number and magnitude of accumulated mistakes. Apparent arrogance communicates lack of respect, which is likely the worst message to offer and greatly undermines subsequent efforts to inform.

The granting of social licence in the province appears headed for heated discussion that could rival past impasses. Part of the fuel is a general fearfulness about the future that has bubbled up most dramatically as the Occupy movement. More locally, the Special Committee on Timber Supply did more to obscure than inform an approach. Enbridge has presented the appearance of having never applied for social licence before and is further burdened by actions of the federal government that appeared as ham-fisted efforts to make things easier for the company. Kinder Morgan is not unscathed and will certainly itself be burdened by the actions of Enbridge. The provincial government appears fumbling in its search for direction, other than for the right price for risking damage to the environment. What I find particularly interesting is that this latter concept is among the most transparent statements offered by processes that all would benefit greatly from more thought and honesty.

## Conclusion

Many of the lessons learned in British Columbia were derived from concerns about forest practices, but the main reasons for failure (lack of respect, perceived bullying) appear general enough to be broadly applicable. These lessons certainly apply to mining and energy developments in British Columbia, where the oil and gas industry has been challenged from the outset, simply because it wasn’t in Kansas, or even Alberta, anymore. Much initial expertise was from Alberta, primarily engineers who made their living solving puzzles that did not directly involve people or social licence. There is no doubt that the amount of Crown land and lack of treaties in British Columbia provided challenges. In fairness, it is likely difficult to learn lessons from events you have not experienced personally. There is no evidence, however, that energy developers sought advice from the forest industry.



W. Edwards Deming did much to help industry in America and Japan improve their innovation and profit (e.g., Deming 1993). A primary message to industry was “Learning is not compulsory... neither is survival.” The lessons summarized here are incomplete but remain relevant to all extractive industries because they are products of human nature, not an environmental setting, although they are magnified on Crown land. They represent opportunities for learning. Equally, it is unwise to equate disenchantment with meekness, wise to remember that when individuals believe their future is threatened many act, and that when you are unemployed you have ample time to engage in opposition and disruptive actions. These three factors could combine to determine survival of individual projects and emphasize the importance of learning.

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## Note

1. Eliot, T.S. 1937. “Burnt Norton,” which appears as the first of “Four Quartets,” included in *Collected Poems 1909–1935*. Faber and Faber Ltd., London. These words also appear in *Eliot’s Murder in the Cathedral*, Part 2.

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