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#3
Aboriginal People and Environmental Stewardship

Getting the Big Picture:

How regional assessment can pave the way for more inclusive and effective environmental assessments

Bram Noble

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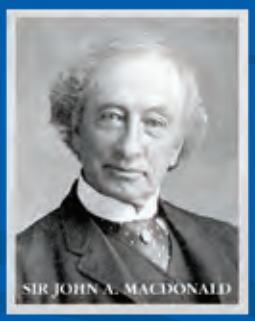

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Executive Summary

Indigenous communities across Canada are far from uniform in terms of their level of support for resource development, but the very centre of the issues facing all Aboriginal communities is a need to have a voice in discussing the cumulative environmental and social effects of development on traditional lands. To a large extent they are still not being heard.

This is one of the reasons for such widespread recent concern about the environmental assessment (EA) process. There have been numerous high profile projects that have drawn significant controversy, including recently Kinder Morgan's proposed Trans Mountain pipeline project, Enbridge's Line 3, and the proposed Site C dam on the Peace River in BC.

And for many Aboriginal communities, there are much larger issues of concern on the table when a mine site, hydroelectric facility, or pipeline is proposed, such as whether resource development is even appropriate for the region, how to handle the legacy effects of previous development, how cumulative effects to traditional lands and livelihoods will be managed, and whether they will retain the ability to determine their own economic futures.

As Fort Nelson Chief Liz Logan has argued, government is "basically refusing to look at the big picture of all the developments that are happening in all of our respective territories".

In June 2016, the federal Minister of Environment and Climate Change launched a national review of the Canadian EA process. The expert panel held numerous public forums with Indigenous peoples and much of the testimony involved issues well beyond the scope and control of a single project proponent, and beyond the scope of regulatory decisions taken at the project level, such as treaty rights, provisions under the United Nations *Declaration on the Rights of Indigenous Peoples,* capacity building, and the need for earlier engagement.

These concerns are understandable, but as this paper will demonstrate, the answer is not to ask the project EA process to do even more than it was intended to do. At least part of the answer is to create a separate process to address more strategic concerns, and to allow project EAs to be more efficient and effective in helping determine the merits of specific project proposals for a mine or pipeline.

Many areas of the country could benefit from regional strategic environmental assessment (RSEA). Regional assessment is about identifying and assessing the impacts associated with different land uses and types of development based on early and collaborative planning. It is based on the notion that sustainable land use and resource development requires a more strategic approach than what can be achieved under project-based EA systems. It is an opportunity to set the direction for resource development in an entire region, such as Ontario's Ring of Fire, the Western Arctic, or even areas that have seen considerable development to date, rather than reacting to manage the potential adverse impacts of individual projects.

In doing so, RSEA can address issues currently brought to the EA table that frustrate all parties involved. It would be an important precursor to meaningful and efficient project EA. If common regional issues are addressed upfront, we would see shortening timelines and fewer financial burdens associated with project-level reviews; the focus and intent of EA would be clearer and industry would not be expected to address broader planning issues that are not within the purview of their projects.

RSEA can address issues currently brought to the EA table that frustrate all parties involved.

For governments, RSEA has the potential to facilitate early government-to-government negotiations about resource development before major project decisions are on the table and significant economic opportunities at risk.

For all parties, RSEA is a potential means for "streamlining the project review process and establishing the context and direction for regional development strategies and environmental management frameworks" (WCEL and NWI 2016).

The challenges of implementing a system of RSEA are largely institutional in nature, which means that the solutions are as well. First, there is a need to better clarify the scope of project-based EA in terms of what it can, and cannot, reasonably accomplish. Second, there is a need to engage in government-to-government negotiations with First Nations for the purposes of setting out a framework for RSEA in their territories – independent of any triggers for project-specific resource development proposals. Third, there is a need to ensure that when RSEAs are done that something is done about them – that RSEAs inform, if not shape, the nature of project-specific EAs and development decisions. Fourth, RSEAs cannot be treated as one-off initiatives with no long-term commitment to review, revise, and reassess. Finally, a business case needs to be made for industry buy-in and financial support for RSEA.

Unloading the expectations currently placed on EA to solve strategic and policy-level problems is essential to a focused and efficient project-review process; and establishing RSEA as a separate framework is fundamental to credible EA and to the meaningful engagement of Aboriginal peoples in the natural resource economy.

Sommaire

Les collectivités autochtones sont loin de s'entendre entre elles pour ce qui est de l'appui à donner aux projets de mise en valeur des ressources, mais ce qui manque fondamentalement à ces dernières, c'est d'avoir voix au chapitre pour discuter des effets environnementaux et sociaux cumulatifs de l'exploitation sur leurs terres traditionnelles. Dans une large mesure, elles ne sont toujours pas écoutées.

C'est l'une des raisons pour lesquelles le processus d'évaluation environnementale (EE) préoccupe récemment tant d'intervenants. De nombreux projets à haut profil ont suscité une importante controverse, notamment le projet de pipeline Trans Mountain récemment proposé par Kinder Morgan, la ligne 3 d'Enbridge et le barrage au Site C sur la rivière de la Paix en ColombieBritannique.

Et pour de nombreuses collectivités autochtones, les sujets de préoccupation prennent une dimension très large lorsqu'il est question de site minier, de centrale hydroélectrique ou de pipeline. Elle renvoie à l'adéquation du projet de mise en valeur aux caractéristiques de la région, à la manière de gérer les séquelles des projets antérieurs, aux effets cumulatifs sur les occupations de subsistance et les terres traditionnelles et à la question de savoir si les collectivités autochtones pourront gagner un certain contrôle sur leur propre avenir économique.

Comme Liz Logan, chef de Fort Nelson, a soutenu, le gouvernement « refuse essentiellement de considérer tout le tableau et d'examiner tous les projets de mise en valeur actuels sur l'ensemble de nos territoires respectifs ».

En juin 2016, la ministre fédérale de l'Environnement et du Changement climatique a lancé un examen national du processus canadien d'évaluation environnementale. Le groupe d'experts mis en place par la ministre a mené de nombreuses consultations auprès des peuples autochtones, et la plupart des témoignages recueillis concernaient des questions qui dépassent largement la portée et la supervision d'un promoteur de projet unique ou les répercussions des décisions réglementaires prises au niveau d'un projet. On a cité, par exemple, les droits issus de traités, les dispositions de la *Déclaration des Nations Unies sur les droits des peuples autochtones*, le renforcement des capacités et la nécessité d'un engagement précoce.

Ces préoccupations sont compréhensibles, mais comme on le démontre dans cette étude, on ne peut pas y répondre en exigeant du processus d'évaluation environnementale qu'il règle des questions qui dépassent son mandat. Incidemment, on peut y répondre au moins en partie en créant un processus distinct visant à traiter des enjeux plus stratégiques, ce qui, du même coup, améliorerait l'efficience et l'efficacité des évaluations environnementales de façon à leur permettre d'établir le bien-fondé des propositions de projets spécifiques de mine ou de pipeline.

De nombreuses régions du pays pourraient bénéficier d'une « évaluation environnementale stratégique régionale » (EESR). L'évaluation régionale vise à déterminer et à évaluer, à l'aide d'une planification précoce et concertée, les impacts associés aux différentes utilisations des terres et aux mises en valeur des ressources de nature diverses. Elle s'appuie sur l'approche plus stratégique que commande la notion de durabilité à l'égard de l'utilisation des terres et de la mise en valeur des ressources et qui ne peut pas être promue au moyen de systèmes d'évaluation environnementale strictement axés sur les projets. Elle permet d'établir l'orientation de la mise en valeur des ressources dans toute une région, par exemple, celle du Cercle de feu de l'Ontario, de l'Arctique Ouest ou même de

zones qui ont connu un très fort développement jusqu'à présent, et non de réagir aux impacts négatifs potentiels des projets individuels.

Ce faisant, l'EESR peut résoudre certaines questions qui sont débattues en ce moment dans le cadre des EE et qui frustrent toutes les parties concernées. Ce serait une étape importante précurseure d'un processus d'EE sensé et efficient. Si les questions communes à une région étaient abordées dès le départ, on verrait les échéanciers raccourcir et le poids financier lié aux examens des projets diminuer; l'orientation et l'intention des évaluations environnementales seraient plus claires et l'industrie ne serait pas considérée comme portant la responsabilité des enjeux de planification plus larges qui ne relèvent pas de ses projets.

L'EESR peut résoudre certaines questions qui sont débattues en ce moment dans le cadre des EE et qui frustrent toutes les parties concernées.

Pour les gouvernements, l'EESR a le potentiel de faciliter leurs négociations bilatérales sur la mise en valeur des ressources avant que les décisions majeures concernant les projets importants ne soient en cours de discussion et que d'importantes possibilités économiques ne soient à risque.

Pour toutes les parties, l'EESR est un moyen pouvant servir à rationaliser le processus d'examen des projets et à déterminer le contexte et l'orientation des stratégies de développement régional et des cadres de gestion environnementale (WCEL et NWI 2016).

Les défis de la mise en œuvre d'un système d'EESR sont largement de nature institutionnelle, ce qui signifie que les solutions le sont également. Premièrement, il est nécessaire de mieux préciser la portée de l'EE d'un projet pour déterminer ce qu'elle permet raisonnablement et ne permet pas d'accomplir. Deuxièmement, les gouvernements doivent engager des négociations avec ceux des Premières Nations afin d'établir un cadre pour la tenue des EESR sur leurs territoires – indépendamment de tout projet spécifique de mise en valeur des ressources. Troisièmement, il faut veiller à ce que le travail accompli dans le cadre des EESR aboutisse à des résultats – donc que l'EESR éclaire, sinon façonne, la nature du projet assujetti à l'EE et les décisions relatives à sa mise en valeur. Quatrièmement, les EESR ne peuvent pas être considérées comme des initiatives ponctuelles exemptes d'un engagement à long terme d'examen, de révision et de réévaluation. Enfin, une analyse de rentabilisation doit être faite pour attirer l'industrie et obtenir un appui financier aux fins de l'EESR.

Afin que le processus d'examen des projets soit efficace et bien orienté, il est essentiel de lever les attentes actuelles à l'égard du rôle joué par l'évaluation environnementale relativement aux problèmes à résoudre sur le plan des stratégies et des politiques; en outre, il faut mettre sur pied des EESR dans un cadre distinct afin que l'évaluation environnementale soit crédible et que les peuples autochtones puissent participer pleinement à l'économie des ressources naturelles.


Ahousaht First Nation Village ©David Stanley

Introduction

Conflict, controversy, and uncertainty tend to be the new norm in Canada's natural resource sector. Recent decades have been characterized by a growing number of regulatory and legal challenges, often brought forth by Aboriginal communities, in response to major resource development proposals (Udofia, Noble, and Poelzer 2017; Land 2014). Many of these challenges have focused on single projects – such as Kinder Morgan's Trans Mountain pipeline, Enbridge's Northern Gateway project, BC Hydro's Site C hydroelectric dam, and TransCanada's Energy East pipeline – but the issues at hand have typically been much larger than any individual project undertaking.

It is not that Aboriginal communities are necessarily opposed to resource development, but they are often opposed to development when they are not meaningfully engaged or provided the opportunity to shape the nature, location, and pace of development on traditional lands. Voicing concerns about the Pacific Northwest liquefied natural gas project near Prince Rupert BC, for example, the Lax Kw'alaams First Nation note that they are "open to development . . . but not the way the project is currently constituted" (Thomas 2015). The federal government approved the proposed export terminal in 2016, but it remains internally divisive among the Lax Kw'alaams.

Indigenous communities across Canada are far from uniform in terms of their integration with the regional resource economy (Eyford 2013), but at the very centre of the issues facing all Aboriginal communities is an increasing concern about their voice in "determining the future of their regions – their ability and capacity to influence development decisions and control developments" that have the potential to affect their economic future and well-being (WCEL and NWI 2016).

The primary instrument in Canada for planning for and managing the impacts of resource development is environmental assessment. Environmental assessment (EA) is legislated federally and in each of Canada's provinces and territories. It is a critically important instrument to understanding the potential impacts that may arise from resource development and for ensuring that those impacts will be properly managed. The focus of EA is usually on the docket of regulatory and permitting processes associated with a single project proposal, such as a mine site, access road, or pipeline (WCEL and NWI 2016); not on the legacy effects of past activities, sector-wide land use and development, or shaping the nature and types of other future and ancillary development that may occur in a resource-rich region.

This process has come under some scrutiny due to high-profile conflicts over resources, with the federal government commissioning the recent report by the Expert Panel for the Review of Environmental Assessment Processes (2017) and proposals emerging to reform the National Energy Board.

Of particular concern is that the engagement of Aboriginal peoples in resource development decisions through the EA process is thus limited, at best, to influencing decisions about the design of specific, individual project proposals and to managing the potentially adverse impacts of the project at hand.

For many Aboriginal communities, there are much larger issues of concern on the table when a mine site, hydroelectric facility, or pipeline is proposed (Booth and Skelton 2011a) – such as whether resource development is even appropriate for the region, the legacy effects of previous development, how cumulative effects to traditional lands and livelihoods will be managed, and the ability to determine their own economic futures. Many of these issues are well beyond the scope and control of a single project proponent, and beyond the scope of regulatory decisions taken at the project level. Yet, these issues are increasingly brought to the EA table (Udofia, Noble, and Poelzer 2017) – which is quite understandable, since resource projects past, present, and future have had, are having, and could potentially have significant impacts on communities, culture, traditional lands, and livelihoods for generations to come.

At the very centre of the issues facing all Aboriginal communities is a concern about their voice in "determining the future of their regions".

In the absence of other, clearly articulated procedures for planning and assessing regional land use and resource development, project-based EA becomes the battleground for contrasting visions of development and for dealing with the potential effects of everything – whether associated with the project at hand or not (Hegmann and Yarranton 2011). Perhaps the most obvious example of this is the debates that emerged about Canada's global climate commitments, national energy security, and energy exports during EA processes for a single oil sands project or pipeline twinning.

In January 2016 the federal government introduced a new EA requirement to assess the direct and upstream greenhouse gas emissions linked to the project under review. For pipelines, these would be the emissions produced in the mining and processing of bitumen. The requirement drew criticism from some scholars and environmentalists, arguing that it did not go far enough and that EAs for major projects such as pipelines should also consider downstream emissions – the emissions generated when pipeline products are burned in factories, power plants, and vehicles – including emissions in countries potentially importing Canadian bitumen (Garbett 2016; Prystupa 2016). Although downstream emissions constitute the bulk of emissions associated with any bitumen source, and it is a critically important issue in terms of Canada's broader national and international climate policy commitments, it is not an issue that can be resolved in the context of a single project-focused EA; it deserves a much larger forum and a review process that is focused on Canada's energy sector, and larger national energy policy. The result of attempting to address these types of issues at the project EA stage is often conflict

and uncertainty, increased vulnerability to major project delays, and even lost economic and social development opportunities (Eyford 2013; Udofia, Noble, and Poelzer 2017; WCEL and NWI 2016).

This situation is of increasing concern to Aboriginal communities. Booth and Skelton (2011b, 390), for example, report concerns expressed by First Nations chief and council of the West Moberly First Nations and Halfway River First Nation who believe that "the death of a thousand cuts we are experiencing, are because oil and gas has their mandate, and their planning process, forestry has their mandate and planning process [and] all of these different planning processes, independently, working in their silos . . . separate from each other, with nobody overlooking the whole process, and definitely nobody managing the impacts of those interactions on Treaty Rights". First Nations often do not perceive the EA process as neutral, but rather as an instrument to facilitate development – with governments and proponents often entering the EA process with the assumption that the project will ultimately be approved (Booth and Skelton 2011b).

Aboriginal communities, as well as environmental interests and, in some instances, industry, are now demanding a more regional and strategic approach to natural resource planning as a means to grapple with bigger-picture issues beyond the scope of project-specific reviews; to build consensus around the long-term objectives of resource development; to establish a climate of certainty for investors; and to ensure greater trust in resource development decisions (WCEL 2009; Eyford 2013; Noble et al. 2013; Chetkiewicz and Lintner 2014; WCEL and NWI 2016).

Regional strategic environmental assessment (RSEA), also sometimes referred to as regional environmental assessment (REA), regional strategic assessment (RSA), or regional impact assessment (RIA), is about identifying and assessing the impacts associated with different land uses and development paths, such that a preferred path forward can be identified and appropriate regional land use management strategies established (Gunn and Noble 2009). Regional strategic environmental assessment is based on the notion that sustainable land use and resource development requires a more strategic approach than what can be achieved under project-based EA systems – an approach that is proactive in setting directions for resource development, rather than reacting to manage the potential adverse impacts of individual projects, and is focused on early and collaborative planning that can inform subsequent decisions about what types of land uses are acceptable, and under what conditions.

The project-based EA process alone does not adequately consider the breadth of potential issues associated with resource development.

This is the third paper in the Macdonald-Laurier Institute's *Aboriginal People and Environmental Stewardship* series. The first paper, "Protectors of the Land: Toward an EA process that works for Aboriginal communities and developers", (Noble and Udofia 2015) focused on the meaningful engagement of Aboriginal peoples in EA and needed process reforms. The second paper, "Learning to Listen: Snapshots of Aboriginal participation in environmental assessment" (Noble 2016), focused on learning from Aboriginal engagement processes and practices in EA that have worked. This final paper in the series looks beyond the project-focused EA process, and explores how Aboriginal peoples can more proactively shape resource development and region-wide resource sector planning through a separate system of regional strategic environmental assessment.

Undertaken away from the pressures of project-specific reviews and decision-making, such an integrated planning and assessment process could provide an opportunity to address the regional and strategic issues about resource development that matter most to Aboriginal peoples, provide much-needed focus to project EA, and fundamentally transform the place of Indigenous peoples in resource development.

Expectations about Environmental Assessment

Environmental assessment in Canada is legislated federally under the *Canadian Environmental Assessment Act, 2012*, and under the laws and regulations of each of the provinces and territories. Across Canada's North, EA is also part of several land claims agreements, including the *Inuvialuit Final Agreement*, *James Bay and Northern Quebec Agreement*, and the *Nunavut Land Claims Agreement*.

Fundamentally, EA is about identifying, predicting, evaluating, and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and project commitments made (IAIA and IEA 1999). EA is intended to manage the potentially adverse impacts caused by the project; to ensure a proponent's accountability and compliance with relevant laws and regulations; and to provide a meaningful process for public, including Aboriginal, participation in the project review process.

For many there is disillusionment and scepticism about the value of EA.

For many, however, there is disillusionment and scepticism about the value of EA. Richard Fuggle (2005), former president of the International Association for Impact Assessment, notes in a newsletter to the association that EA is often seen as the "magic bullet" for solving resource development challenges; too much is perhaps expected of EA and there may be too many different ideas about what project-based EA can accomplish (Cashmore 2004). For example, some view EA as a process designed to advance scientific knowledge about how ecosystems function, developing and testing hypotheses, and delivering values-free information for science-based decision-making about project proposals. Some view EA as an opportunity to prevent development from proceeding, and reject it as a rubber stamp when it is unsuccessful in doing so. Others even see EA as a venue for empowering local communities to make their own, independent decisions about resource development and to tackle broader resource policy issues. In practice, EA is about none of these; rather, EA functions primarily as an information provision tool that seeks to accommodate the participation of potentially affected interests to support more informed decisions about a proposed development (Noble 2015).

In Canada, for example, the requirements for EA vary from one jurisdiction to the next and even vary based on the type of project (such as a major energy pipeline vs. a small run-of-river hydroelectric facility) and the government authority responsible for the EA. Federally, for example, under the *Canadian Environmental Assessment Act, 2012*, EA is the responsibility of the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission, or the National Energy Board – depending on the project's designation. Typically, the project proponent is responsible for preparing a project application and submitting an environmental impact statement (EIS). The EIS provides an analysis of existing environmental and social conditions in the region in which the undertaking is proposed; predictions of the potential impacts of the undertaking; the identification of ways to mitigate potential adverse impacts and enhance positive ones; and a discussion of whether the impacts that remain after mitigation are likely to be significant based on regulatory standards, ecological limits, or social acceptability.

This information is often compiled by independent consultants or, in some cases, the government agency responsible for the EIS. An opportunity for public review or comment on the EIS exists in most jurisdictions. This information is then taken into consideration by decision-makers, namely federal, provincial, or territorial governments, and a decision is made to approve the proposed undertaking, reject it, or approve it subject to certain conditions being met.

Participation in EA, particularly engaging Indigenous peoples at the early stages of project design, is recognized internationally as a fundamental good-practice principle (IAIA and IEA 2012). Meaningful Indigenous participation is also central to the United Nations *Declaration on the Rights of Indigenous Peoples*, which Canada's government has committed to implementing. Article 32, for example, indicates that states shall consult and cooperate in good faith with Indigenous peoples to "obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources."

A major challenge in the EA context, however, is not only that the nature and meaning of consultation and free and informed consent are persistently challenged regarding resource development proposals (Chrétien and Murphy 2009; *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)* 2010; Assembly of First Nations 2011; British Columbia Environmental Appeal Board 2015), but the issues being brought to the table by many Aboriginal communities are often beyond the scope of the EA process and much larger than the direct and immediate effects of the project at hand. Because there are few other venues, the EA process is left to grapple with issues and drivers of change that are "far larger than any one project" (Hegmann and Yarranton 2011, 486).

The Tyranny of Project-by-Project Decisions

The challenges to EA and project-by-project decisions are exacerbated in regions characterized by multiple industrial sectors, project proponents, and the potential for significant resource and economic development.

Despite the thousands of individual permits and approvals issued for developments, there has been no "big picture" analysis.

For example, in northern British Columbia, Aboriginal leaders have been extremely vocal about the cumulative impacts of development associated with the Prince Rupert gas transmission project, the Pacific Trail pipelines project, the Pacific Gas looping project, and the Site C hydroelectric project, to name a few. Although each of these projects is subject to EA under British Columbia's *Environmental Assessment Act*, the concerns often go beyond the impacts (and benefits) associated with any one project and speak to the nature and pace of development in the region, and frustrations about longer-term land use, resource planning, and Aboriginal title. Fort Nelson Chief Liz Logan has argued that government is "basically refusing to look at the big picture of all the developments that are happening in all of our respective territories" (Burgmann 2015).

Liquefied natural gas (LNG) developments and other large-scale projects induce a range of future expansion and ancillary developments, such as further resource exploration or the development of new infrastructure such as roads to meet the demands of a growing economy, each of which carry their

own impacts but are typically outside the scope of EA for the project being assessed. Based on a series of recent discussion forums held in communities across northern British Columbia, WCEL and NWI (2016) report that "more attention to future developments and a range of credible development scenarios is at the core of preparedness and the effective management of the pace and scale of development – both anticipated and unanticipated – and risk." However, they go on to point out that often these are considered "big picture issues that are beyond the scope of project-specific reviews, and yet vital to establishing a climate of investor certainty and public confidence in project-level decisions" (WCEL and NWI 2016). The 2015 report of the Auditor General of British Columbia similarly reports that notwithstanding the thousands of individual permits and approvals that have been issued for developments, there has been no "big picture" analysis (Office of the Auditor General of British Columbia 2015).

Concerns expressed by the Blueberry River First Nations about Spectra Energy's Westcoast Connector are another prime example of where issues are brought to the EA table that are larger in scope than the project at hand, but the failure to address them results in conflict and animosity about not only the project but also government's willingness to listen and the resource sector at large.

The Blueberry River First Nations are a signatory to Treaty 8, located approximately 80 kilometres (km) northwest of Fort St. John. The First Nations' 38,327 km^2 traditional territory contains 110,300 km of linear features (roads, transmission lines, seismic lines, pipelines), is 69 percent covered by active petroleum and natural gas "tenure agreements", contains 19,974 oil and gas wells, and has less than 14 percent intact forest landscape (Macdonald 2016).

In 2014, Spectra Energy (now Enbridge Inc.) submitted an EA certificate application to the province of British Columbia to construct the Westcoast Connector Gas Transmission Project – an approximately 850 km natural gas pipeline corridor from northeast British Columbia, traversing the traditional territory of the Blueberry River First Nations, and terminating at Ridley Island, near Prince Rupert. In a letter from Chief Marvin Yahey (2014) to British Columbia's Minister of the Environment, the First Nations demanded that the Minister decline to issue an EA certificate for the pipeline project. Frustrated about the legacy effects of development in the region, and the prospects of future LNG development, the Blueberry River First Nations wanted to see an EA that considered not only the effects of the project, but also the cumulative effects of the project to their treaty rights in combination with all other developments – including potentially induced developments and the upstream impacts of hydraulic fracturing and natural gas exploration, among others. The EA process was an avenue for the First Nations to express concerns about, and opposition to, the history of industrial development in their traditional territory, and the desire for more control of future resource planning and land use. This approach by Indigenous communities, however, is also frustrating to industry since they never know whether a proposed project will be singled out and protested because of the impacts of other, previous industrial proponents.

Of course, concerns about the scope and scale of EA and impacts to Aboriginal rights and title are not unique to British Columbia. There is also the current proposal by Enbridge to build a new 1600 km pipeline to replace the current Line 3 pipeline, which was built in 1968, linking Alberta oil sands with Wisconsin pipelines (Enbridge Pipelines Inc. 2014). The proposed project was met with mixed reactions from First Nations across Alberta, Saskatchewan, and Manitoba. In southern Manitoba, in particular, the project was viewed by First Nations along the pipeline route as an opportunity to speak out about projects for which they have not been adequately consulted, and an opportunity for the Assembly of Manitoba Chiefs to raise larger issues concerning Aboriginal title and consultation obligations over resource development. Caught up in the review of Enbridge's Line 3 project were concerns about other pipeline proposals on the table across Canada, including Energy East, Trans Mountain, and Northern Gateway, and well as oil sands expansion in general. In an open letter to Prime Minister

Trudeau, the Council of Canadians (2016) urged the Prime Minister to respect the concerns of Indigenous peoples affected by oil sands operations, arguing that "forcing a pipeline approval will be on a collision course with respect for the UN *Declaration on the Rights of Indigenous Peoples*."

Concerns about EA and the desire for greater control over the future of land use and resource development are also not unique to the hydrocarbon sector, either. Uranium mining, for example, has been ongoing in northwest Saskatchewan's Athabasca Basin, one of the world's richest uranium deposits (CNSC 2015), for more than 40 years (see map 1).

MAP 1: NORTHWEST REGION OF SASKATCHEWAN COMMUNITIES AND URANIUM DEVELOPMENT PROJECTS

Source: Historical GIS Lab, University of Saskatchewan, Steven Langlois and Keith Bigelow.

Production has occurred largely under two main licensees, Areva Resources and Cameco Corporation, but several additional, smaller exploration companies also hold properties in the area. A new discovery, approximately 120 km from the largely Dené municipality of La Loche, and the Clear Water River Dené First Nation, has the potential to lead to the development of one of the world's largest uranium mines.

The Clear Water River Dené First Nation has preferential consideration for legal consultation regarding resource developments compared to the local municipality of La Loche; however, both have "very broad and diverse expectations about what can be accomplished through EA . . . including the ability to influence provincial policies or development plans for entire regions or resource sectors" (Udofia, Noble, and Poelzer 2017). The Government of Saskatchewan's handbook for proponents on voluntary engagement with Aboriginal communities (Ministry of Government Relations 2013) advises proponents to engage early with those communities most likely affected by their project, but when uranium mining projects are proposed, including small-scale uranium exploration activities, the desire of the First Nation and the municipality is to engage in more strategic-level discussions about future mineral development in northwest Saskatchewan, including potential oil

sands development, economic benefits, and treaty rights – issues that are beyond the scope of EAs and permitting for uranium projects (Udofia, Noble, and Poelzer 2017).

In Manitoba's Nelson River sub-watershed, the culmination of concerns about the long history of hydroelectric development impacts to First Nations and Métis communities surfaced during recent public hearing processes for the proposed Keeyask generating station (CEC 2014) – notwithstanding the project being a joint venture between Manitoba Hydro and several Cree Nations. Although concerns were raised by First Nations about the impacts of the Keeyask project, including loss of habitat for traditional use purposes, they were often just as much about issues such as the legacy effects of hydroelectric development in northern Manitoba; the continued reliance on expensive diesel fuel for electricity generation in many First Nations communities, notwithstanding the abundance of hydroelectric resources; and how approval of the project would set the context for the future development of Manitoba's largest hydroelectric project – the Conawapa generating station (CEC 2014; Noble et al. 2016).

Recent experiences with resource development mega-projects across Canada clearly indicate that "failing to listen to the voices of First Nations and non-Indigenous residents who seek meaningful involvement in environmental decision-making that impacts their communities is a recipe for conflict and uncertainty, landing resource projects in the courts or leaving them stymied by protests" (WCEL and NWI 2016). However, participation in project-based EA can be ineffective and characterized by conflict and delay when attempting to address issues that are beyond the limited scope of project-focused, regulatory EA processes. Udofia, Noble, and Poelzer (2017) and Eyford (2013) report that industry is also concerned, and the desire for Aboriginal communities to address large scale, land use, and strategic planning issues are frustrating consultation efforts during the EA process.

Reimagining Environmental Assessment

As we have discussed, project-based EA is not equipped to deal with "bigger picture" issues, and it is certainly not intended as a forum for airing grievances about a specific resource industry or engaging in a broad-based debate on Aboriginal rights or resource policy – but there is often no other outlet when resource developments are proposed. The need for something more than EA, operating outside the constraints of project-based reviews, yet still informing EA processes and decisions, has gained considerable traction in recent years as resource projects are increasingly met with conflict, delay, and lost opportunity. Eyford (2013, 8) reports that Aboriginal groups, not-for-profit organizations, and industry are urging governments "to engage in land and marine use planning on a regional basis, to identify and manage the cumulative effects of industrialization, urbanization, and project development."

Consider the Site C Clean Energy Project, for example, a proposal submitted in 2011 by BC Hydro and Power Authority to construct a dam and hydroelectric generating station on the Peace River in northern British Columbia, near Fort St. John. This would be the third dam on the Peace River. The proposed development would provide up to 1100 megawatts of capacity and over 5000 gigawatt hours of energy each year to the province's electricity system. The project was subject to EA under both the British Columbia *Environmental Assessment Act* and the *Canadian Environmental Assessment Act*.

To avoid duplication and delays, a Joint Review Panel was appointed in 2013 to examine the proposed project and hold public hearings. The Joint Review Panel completed its work in 2014, and concluded that, notwithstanding high construction costs and uncertainty about energy demand, the Site C project would provide a long-term supply of energy, reduce the burden of greenhouse gases when compared to other energy alternatives, and provide local and regional economic benefits. The panel also concluded that the project's 83 km reservoir, and the flooding of approximately 5500 hectares of land, would likely cause significant adverse effects on hunting, trapping, and fishing in Treaty 8 territory and that those effects could not be mitigated – it was not in the scope of the panel's mandate, or the proponent's EA, to determine whether the project would violate treaty rights.

The project drew significant opposition from Treaty 8 First Nations, including criticism from the national chief of the Assembly of First Nations over permits being issued for the project's construction despite ongoing First Nations protests and a court battle waged by West Moberly and Prophet River First Nations challenging the project (Bellegarde 2016). Assembly of First Nations National Chief Bellegarde has argued that the practice of relying solely on engagement activities by project proponents to address First Nations' concerns about resource development, and the practice of "forcing First Nations to court because the regulatory system is not designed to consider our rights *before* decisions are made, has to end." Interestingly, the Joint Review Panel, in its final report, noted that many of the groups it had met with during public hearings, including First Nations, land owners, and local governments and business groups, were "not opposed to industrial development" per se (Joint Review Panel 2014, 307). Further, many of the concerns raised were not *only* about the Site C project, but also about the cumulative impacts of previous hydroelectric development on the Peace River, coupled with concerns about the impacts of forestry and mining, current and future LNG-driven hydrocarbon expansion in the region, and infringement on constitutionally-protected treaty rights.

There is a need for something more than EA, operating outside the constraints of project-based reviews, yet still informing EA processes and decisions.

Acknowledging the importance of these issues, many of which extended beyond the Joint Review Panel's mandate for the Site C project and, in some instances, beyond the scope of a single project-driven EA, the panel included in its recommendations for Site C that the province, and Canada, consider a more proactive and regional approach to land use planning and decision-making about resource development. The panel specifically notes: "Given rapid developments foreseen in northeast British Columbia, Ministers may wish to consider commissioning a regional baseline study and environmental assessment as a public good and a basis for planning and regulating all activities requiring review. Such a study would greatly assist future proponents in all sectors, notably oil and gas, forestry, mining and energy production" (Joint Review Panel 2014, 322).

In Ontario, the *Far North Act, 2010* similarly recognizes the need for the governments to work with First Nations through regional land-use planning, prior to resource development licensing; however, the chief of the Neskantaga First Nation reports that mining companies in the Ontario Ring of Fire have been issued exploration permits for drilling on traditional lands without consulting with the First Nation (Porter 2016). The Ring of Fire is an approximately 5000 km^2 mineral (nickel, copper, gold, zinc, chromite) resource-rich region in the James Bay Lowlands, approximately 540 km north of Thunder Bay, and is home to more than 30 remote Aboriginal communities. Although employment, infrastructure investment, and revenue sharing through mineral development could help build the economies of many struggling First Nation communities, there is concern that development could "come too rapidly and at too high a cost" (Porter 2016).

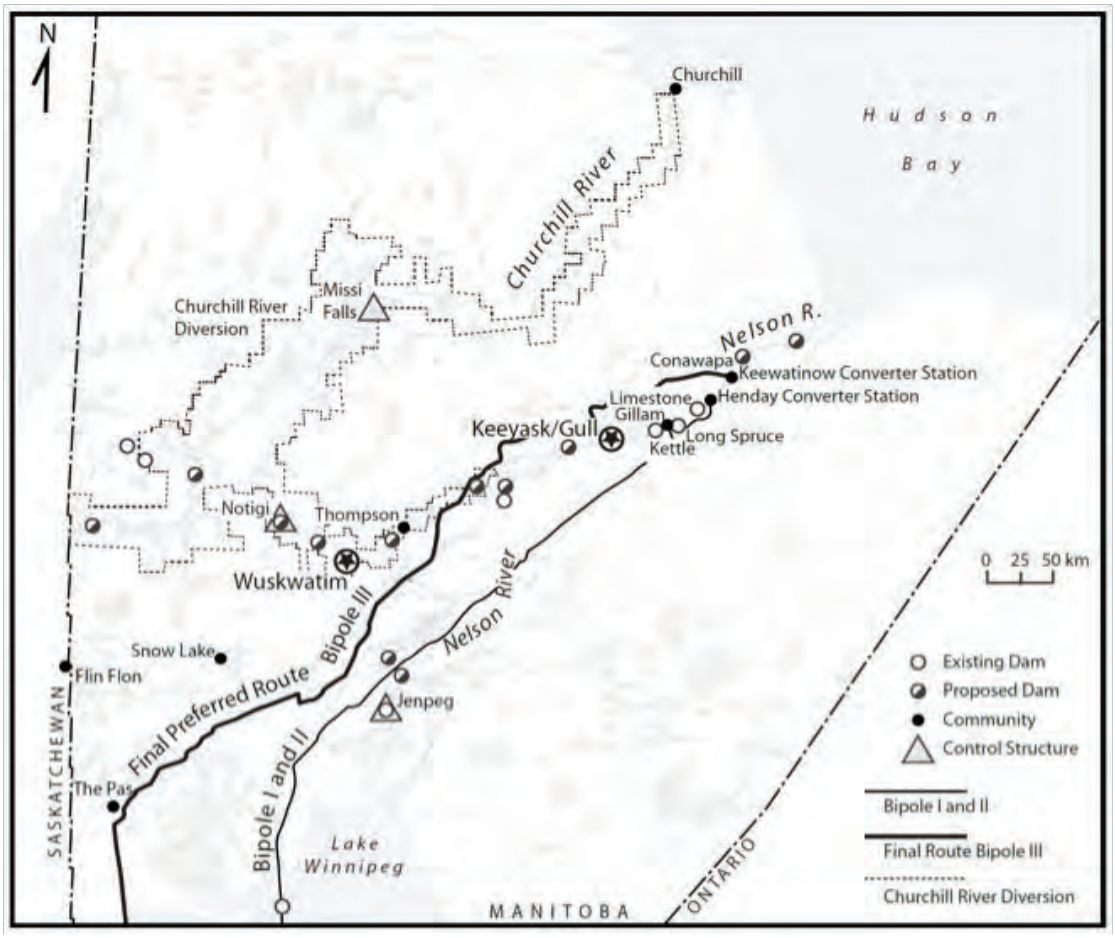
Chetkiewicz and Lintner (2014) report that "a growing chorus of voices have been calling on the government to adopt broader, more holistic planning approaches" for the northern regions of Ontario, including planning and assessment that includes "consideration of the appropriate landscape and temporal scales required for planning here". In 2013, the Environmental Commissioner of Ontario urged the province to "establish a strategic environmental review and permitting process for the Ring of Fire that expressly addresses cumulative impacts" (75). Chetkiewicz and Lintner (2014) argue that the Commissioner's recommendation echoes those previously made by the Far North Science Advisory Panel and the Far North Advisory Council, appointed by the province to provide advice on how to protect the Far North while addressing where and when industrial development might be appropriate before individual, project-specific decisions are made about mining operations. The response of Ecojustice Canada, in partnership with the Wildlife Conservation Society of Canada, has been an explicit call for a regional strategic environmental assessment for Ontario's far north to provide a coordinated and participatory approach to land use planning and industrial development.

Similar requests to reimagine EA have emerged from Canada's western Arctic and Manitoba. In Canada's hydrocarbon-rich Beaufort Sea, controversial relief well regulations, uncertainties about Arctic climate change, and concerns about long-term impacts to marine environments have generated considerable discussion on the need for a more regional and strategic approach to EA to better plan for the future of offshore development (WWF 2005; Doelle, Banks, and Porta 2012; Noble et al. 2013).

In 2004, the Inuvialuit Game Council wrote directly to the federal Minister of the Environment requesting a regional, strategically-focused assessment of the future of offshore oil and gas development in the Beaufort Sea – a request that was echoed in the Beaufort Sea Strategic Regional Plan of Action.[1] The federal government instead sponsored a four-year, $21.8 million research project, led by Aboriginal Affairs and Northern Development Canada, to collect data on specific issues related to offshore oil and gas development. And so, in 2016, the Inuvialuit Regional Corporation requested to the federal government that a regional, strategic assessment be conducted, arguing that "like programs before, it [the federally-sponsored study] was short-lived, lacked meaningful input of Inuit knowledge, and was unable to meet the standard of a true RSEA" to support the assessment of future energy development and potential cumulative effects (Thurton 2016).

In Manitoba, it was the Clean Environment Commission, an arm's length provincial government agency that conducts public hearings and investigations and provides advice to the Minister of Sustainable Development with respect to environmental issues and development licensing, that recommended a regional assessment of past and future development in the Nelson watershed (for an illustration of recent development, see map 2).

MAP 2: HYDRO DEVELOPMENT IN THE NELSON RIVER WATERSHED; THE WUSKWATIM, BIPOLE III FINAL ROUTE, AND KEEYASK PROJECTS



Sources: Base map and information adapted from manitobawildlands.org/maps, map201305_Proposed and Existing Hydrodams, and map BP3 Preferred Route Map.

The recommendation emerged from the Commission's review of Manitoba Hydro's proposed Bipole III transmission line project which included an approximately 1384 km, 500 kilovolt, transmission line to link a power generating complex on the Lower Nelson River with conversion and delivery systems in southern Manitoba.

Hydro-development commenced in northern Manitoba in the early 1960s, and the legacy effects on Aboriginal communities have been well documented – including disturbances to traditional hunting and fishing, land degradation, community relocation due to flooding, and a host of social health impacts. The Clean Environment Commission characterized hydroelectric development in the Nelson watershed as a program of energy development, of which the Bipole III was one project. In its review of the Bipole III project, the Commission (2013, 112) concludes that that it was "simply inconceivable – given the 50-plus-year history of Manitoba Hydro development in northern Manitoba, and given that at least 35 Manitoba Hydro projects have been constructed in the north in that time – that there are few, if any, cumulative effects." The Commission recommended, as a non-licensing requirement, that Manitoba Hydro, in collaboration with the province, conduct a regional assessment of the history of hydroelectric development in the Nelson River sub-watershed in order to better plan for future projects.

Chetkiewicz and Lintner (2014) capture best the need for something larger than project-based EA:

> The manner in which resource-development projects are planned and implemented today requires a planning framework different from what has been used for the last 30 years . . . First Nations and other affected communities are more organized, informed, and willing to act in civil and legal means to ensure their rights and voices are respected . . . We need a planning system that is able to grapple with these big-picture issues and build consensus around a common set of long term objectives.

Regional Strategic Environmental Assessment

The consultation of Aboriginal peoples about potential adverse impacts on asserted or established section 35 constitutional rights is required before federal decisions about natural resource development can be made. When dealing with EA processes, such consultation is triggered within the context of a single resource project proposal. However, Canadian courts have clarified that *strategic* and *high-level* government decisions can also engage the duty to consult (Eyford 2013). This is affirmed by Article 32 of the United Nations *Declaration on the Rights of Indigenous Peoples*, which speaks to the rights of Indigenous peoples "to determine and *develop priorities* and *strategies* for the development or use of their lands or territories and other resources" and suggests that Aboriginal peoples need to be engaged long before resource projects are on the table – addressing policies and priorities for regional resource planning.

In 2009, the Canadian Council of Ministers of the Environment (CCME) released *Regional Environmental Assessment in Canada: Principles and Guidance*. The guidance was developed, in part, to advance the principles of the current federal Cabinet Directive on the environmental assessment of policy, plan, and program proposals (Privy Council Office and the Canadian Environmental Assessment Agency 2010) beyond the context of Cabinet decisions. In doing so, the objective was to facilitate a regional scale EA framework for addressing strategic issues and concerns about resource development that could not be sufficiently addressed within the scope and scale of project-based assessment, and to facilitate participatory regional resource and land use planning and development (CCME 2009).

Regional strategic environmental assessment differs from project-based EA in several ways (see table 1), but "most importantly by establishing a widely supported roadmap for reaching a set of objectives that have First Nations, government, and other stakeholder support" (Chetkiewicz and Lintner 2014). RSEA is an inherently different approach to resource development planning and "a means to ensure that planning and assessment for a region support the most *desired* outcomes rather than the most likely ones." This is in sharp contrast to the current project-focused EA system operating across Canada, which offers "only a piecemeal approach . . . [and can] exacerbate social and environmental impacts in ways that could actually undermine efforts" to develop natural resource sectors (Chetkiewicz and Lintner 2014).

TABLE 1: KEY CHARACTERISTICS OF PROJECT ENVIRONMENTAL ASSESSMENT V. REGIONAL STRATEGIC ENVIRONMENTAL ASSESSMENT

	Project environmental assessment	Regional strategic environmental assessment
Proponent	Single company, operator, or government agency	Public-private partnership; government-to-government partnership; regional planning authority; Aboriginal government
Trigger	Proposal to undertake a resource development project	Cumulative change; need for regional development plan or review for resource development strategy
Alternatives	Proceed with the project, not proceed, or proceed under conditions	Future resource development and conservation scenarios; alternative trajectories for growth and ownership
Regional scope	Individual project and the stress and opportunities generated in the project's local to regional environment	Development regions and entire resource sectors
Temporal bounds	Project lifecycle	Past, present, and long-term futures of regional environments and economies
Sources and pathways of change	Individual, project actions	Interacting activities of multiple resource sectors, as well as higher-level policies and plans
Engagement	Consultation about a project and its potential impacts – information provision	Participatory or collaborative process to shape development futures - empowerment

Sources: Gunn and Noble 2009; CCME 2009.

RSEA involves more than simply expanding the spatial boundaries of the EA of a project to encompass a larger space; it is about understanding the social, economic, and ecological context of resource development initiatives and identifying viable options for development to reduce risk and help achieve sustainable development objectives (Gunn and Noble 2015). The CCME (2009) describes RSEA as a means of "creating images of the future state of development, natural change, and cumulative change in a region, asking 'what if' questions concerning alternative development options." Whereas EAs for mine sites or hydro facilities ask such questions as "What are the likely impacts of the project?" and "How can we mitigate them?", RSEA adopts a broader perspective and asks such questions as "What is the desired future state?", "What are the options and opportunities presented by resource development?", "What types of development are appropriate and where?", and "What conditions need to be met before project proposals are entertained?" RSEA is thus an important precursor to meaningful and efficient project EA, setting the context for development proposals and addressing bigger picture issues prior to those proposals being brought to the table.

The notion behind RSEA is that it's applied early enough to provide guidance, if not specific direction, for project-level decisions – including regulatory EA – and to ensure that Aboriginal communities and other stakeholders can help shape their economic futures, rather than simply respond to pre-determined projects by mitigating adverse impacts.

This does not mean that RSEA is not a valuable tool for those resource-rich regions of Canada where development has already occurred, such as Alberta's oil sands, the Mackenzie Valley, or northern British Columbia. In late 2015, for example, the British Columbia-First Nations LNG Stewardship Initiative launched a process to develop an RSEA framework for assessing the implications of resource development activities on environmental values linked to the Treaty 8 rights of the participating First Nations. In early 2016, the province ratified the RSEA agreement with the Doig River, Halfway River, Prophet

River, Saulteau, and West Moberly First Nations. Planning commenced for the RSEA design and work plan in late 2016 (British Columbia).

In Saskatchewan, the RSEA commissioned by the province for the Great Sand Hills - a 1900 km^2 natural gas, biodiversity, and cultural resource-rich region in the southwest part of the province—was also late in the day, and in response to decades of industrial development and land use conflict between the energy industry, cattle ranchers, rural municipalities, and First Nations. The nearly $3 million assessment, conducted by an independent panel between 2005 and 2007, explored alternative future land use and development scenarios for the Great Sand Hills; proposed multi-sector land use and zoning that integrated First Nations use opportunities; provided specific direction on how to extract natural gas resources in such a way that minimized disturbance and biodiversity risk; and identified governance reforms to better engage First Nations for sustainable land use management (GSH SAC 2007).

In an economic and political climate "where there is much that is uncertain about current and future development options and . . . outcomes," RSEA could provide an important means for engaging Aboriginal communities, governments, and industry in the preparation of "preferred regional development strategies and environmental management frameworks" (WCEL and NWI 2016, 38). For Aboriginal communities in resource-rich regions, RSEA is an opportunity for engagement that reaches far beyond the legal duty to consult about resource development projects; it provides a means for the Government of Canada to meet its commitments to the United Nations *Declaration on the Rights of Indigenous Peoples* by providing a venue whereby Aboriginal communities can "determine and *develop priorities* and *strategies* for the development or use of their lands or territories and other resources" (UNDRIP, Article 32).

In doing so, RSEA can address issues currently brought to the EA table that frustrate all parties involved – namely issues concerning resource title, the nature and pace of resource development, legacy effects, and treaty rights – issues that are important to resolve but that are beyond the scope of project-level decisions. It also shifts the focus of attention away from often-exhaustive project-by-project consultations, when many Aboriginal communities are already suffering from limited resources and capacity to meaningfully engage (MVEIRB 2008; Udofia, Noble, and Poelzer 2017), and instead promotes engagement in more meaningful discussions that help shape development trajectories. RSEA can "play an important role in addressing cumulative impacts on Indigenous communities and their ability to exercise their constitutionally-protected Aboriginal and treaty rights" (Expert Panel for the Review of Environmental Assessment Processes 2017, 76).

For project proponents, RSEA is an opportunity to narrow the scope of project EA.

For project proponents, RSEA is an opportunity to narrow the scope of project EA by addressing common regional issues upfront (Noble et al. 2013), thus shortening the timelines and financial burdens associated with project-level reviews and engagement (Expert Panel for the Review of Environmental Assessment Processes 2017); the focus and intent of EA would be clearer and industry would not be expected to address broader planning issues that are not within the purview of their projects.

This is currently the case in Norway's Barents Sea, for example, where a regional and strategic Integrated Management Plan provides an overall multi-sector planning context, which informs regional assessments in the oil and gas sector. The focus of project-level EAs can then focus on demonstrating compliance with established goals, objectives, and mitigation requirements, rather than reinventing the wheel for every single project proposal (Fidler and Noble 2012). This means less risk that industrial

development is delayed while negotiating a social licence, since the conditions for resource development are clearly articulated at the regional scale. Industries do not want to invest in projects where there is little to no chance of securing a regulatory or "social licence".

For governments, RSEA has the potential to facilitate early government-to-government negotiations about resource development before major project decisions are on the table and significant economic opportunities at risk. This can translate to improved regulatory decision-making by "providing regulators with a better understanding of the risks of issuing licenses . . . a better understanding of stakeholder perspectives, and thus more confidence in their decisions" (Noble et al. 2013).

For all parties, RSEA is a potential means for "streamlining the project review process and establishing the context and direction for regional development strategies and environmental management frameworks" (WCEL and NWI 2016). The result, per Chetkiewicz and Lintner (2014), "is a much lower chance of conflict and delay, which, in turn, means a lower economic and social risk for project proponents and their financial supporters." Reporting on the results of recent public meetings held across Canada on the federal EA, the Expert Panel for the Review of Environmental Assessment Processes (2017, 76–77) notes that "with near unanimity, participants said that regional IA is needed . . . that good regional assessments could resolve broader-scale issues . . . would help start conversations earlier" and would provide important context for future EA, including an opportunity to address "historic and cumulative impacts of Aboriginal rights and title" and thus help bring "increased efficiency and accuracy to the assessment of impacts to Aboriginal and treaty rights.

The Path Forward

As discussed above, there is a growing interest in Regional Strategic Environmental Assessment across Canada, though experience is limited and institutional support still relatively weak. Project-based EA remains the dominant mechanism for planning for resource development and for engaging Aboriginal peoples in decisions about their economic futures. However, there is significant potential for this to change and for RSEA to play a more substantial role in the Aboriginal resource economy.

In June 2016, the federal Minister of Environment and Climate Change launched a national review of the Canadian EA process. One of the objectives of the review was to "introduce new processes that are robust, incorporate science, protect the environment, respect the rights of Indigenous people, and support economic growth". (Minister of Environment and Climate Change 2016). A four-person, independent expert panel was appointed to lead the review. Between September and December 2016, the panel held numerous public forums with Indigenous peoples, stakeholders, and the public, and welcomed the submission of both oral and written statements. Many issues were raised by Aboriginal participants concerning the state of EA and needed reforms – often concerning such matters as treaty rights, provisions under the United Nations *Declaration on the Rights of Indigenous Peoples*, capacity building, and the need for earlier engagement.[2]

Most of the issues raised are not surprising, and represent enduring concerns of Aboriginal peoples regarding the Canadian EA process, even though many would more appropriately be addressed in different settings, beyond the constraints of single project decisions. Regional and strategic assessment is not explicitly within the scope of the expert panel's review mandate; however, the terms of reference for the expert panel do indicate that the panel is to "recognize the objectives of the United Nations *Declaration on the Rights of Indigenous Peoples*" and that the panel shall "reflect

the principles of the Declaration in its recommendations, as appropriate, especially with respect to the manner in which environmental assessment processes can be used to address potential impacts to potential or established Aboriginal and treaty rights."

The Expert Panel's report (2017) made several recommendations about regional assessment processes, including recommendations that the federal government strengthen its commitment to regional assessments, and that regional assessments focus on assessing alternative development scenarios for a region; consider the cumulative impacts under each alternative development scenario; identify the most sustainable alternative; and proceed to develop regional plans to implement that preferred scenario. The panel also recommended that regional assessment be required on federal lands or marine areas with the potential for cumulative impacts, and outside of federal lands and marine areas where there is a potential for, or existing, cumulative impacts on many federal interests.

Arguably, however, RSEA need not be constrained to federal lands or areas of federal interest per se; they can also be driven by the provinces and territories, commissioned by Ministerial authority under existing provincial or territorial EA acts and regulations, or initiated by Aboriginal governments under co-management agreements, and even developed in partnership with industry.

Of immediate priority in Canada for RSEA application might be regions subject to potential *future* development, where there currently exists a valuable planning window and an opportunity to chart a desirable development trajectory, such as in Canada's western Arctic (hydrocarbons, climate change), Ontario's Ring of Fire (minerals), and across the northern regions of the provinces and territories (renewable, off-grid energy systems). Unfortunately, there is often less pressure for governments to act and invest in such assessments when the challenges are not imminent and development is only a future prospect. But, areas subject to current and previous development pressures also pose valuable opportunities where RSEA can help inform, and improve, future development decisions and, importantly, understand how to mitigate for potential legacy effects to Aboriginal peoples – such as the impacts associated with mining, hydroelectricity, natural gas development, and forestry operations across most of Canada's provincial norths.

Few of the challenges, however, are due to the limitations of science, data, or assessment tools.

That said, there are several challenges to advancing a system of RSEA – not the least of which is the division of powers between the provinces and the federal government regarding land use planning, EA, and Aboriginal title. Few of the challenges, however, are due to the limitations of science, data, or assessment tools. Rather they are largely institutional in nature.

First, there is a need to better clarify the scope of project-based EA in terms of what it can, and cannot, reasonably accomplish. Increasing expectations are being placed on EA to deliver strategic-level results, which may be detracting from the basic need for EA to identify and find ways to manage the impacts associated with a single project undertaking. Such expectations include, for example, mounting pressures to reshape EA as "sustainability assessment" (Expert Panel for the Review of Environmental Assessment Processes 2017), adding ambitious expectations to an inherently project-focused tool. This is not to say that sustainability should not be a guiding principle of all impact assessments, but exploring whether resource development of a certain type or pace is sustainable in a region is a debate that is best situated to the strategic context – before project-specific proposals are on the table and EA reviews triggered.

Similarly, though assessing the impacts of a project to asserted or established Aboriginal or treaty rights, such as access to traditional lands or impacts on species or waterways of traditional and cultural significance, ought to be an essential part of project-specific reviews, broader considerations such as attempting to resolve outstanding Aboriginal treaty rights, or attempting to resolve conflicts about such rights, are certainly not within the means of a project-specific review. Commitment to the United Nations' *Declaration on the Rights of Indigenous Peoples* cannot be fully realized through project-specific review, at the time projects are tabled, particularly the principle of free, prior, and informed consent and especially honoring the principle that Aboriginal peoples determine and develop priorities and strategies for the development or use of their lands or territories. That said, whether the United Nations' declaration, and thus free, prior, and informed consent, have any real standing in Canada remains a highly contested and uncertain issue amongst government, industry, and Indigenous communities (Coates and Favel 2016).

Second, there is a need to engage in government-to-government negotiations with First Nations for the purposes of setting out a framework for RSEA in their territories – independent of any triggers for project-specific resource development proposals. This is not only essential because of Canadian constitutional recognition of existing Aboriginal title and rights, including governance rights, creates a legal imperative to fully engage First Nations in such initiatives (WCEL and NWI 2016), but because RSEA itself requires a degree of collaboration and commitment that is not usually present in project-based EA (Noble and Gunn 2016). A first step is for governments and First Nations to jointly agree on their respective roles and responsibilities in RSEA, which will help establish the process through which government, First Nations, industry, and other stakeholders can explore resource development futures and assess potential trade-offs between development, ecosystem protection, and First Nations rights and values (Chetkiewicz and Lintner 2014). There is some progress being made in this regard; for example, government-to-government agreements between the province of British Columbia and Treaty 8 First Nations, including joint strategic land and resource planning with Dog River, Prophet River, and West Moberly. The initiative is intended to, among other things, create a shared vision for strategic land and resource use; result in greater land use certainty and reduce land use conflict; and provide a foundation for planning consultation and efficiencies.

A business case needs to be made for industry buy-in and financial support for RSEA.

Third, there is a need to ensure that when RSEAs are done that something is done about them – that RSEAs inform, if not shape, the nature of project-specific EAs and development decisions. Canada has a long history of regional land use plans and regional studies that have had limited influence on "next-level" decisions (Fidler and Noble 2013; Noble 2015). The value of RSEA is significantly diminished if it is conducted as a stand-alone process, and does not influence future project-level actions. This tiered relationship between RSEA and EA requires strengthening EA acts and regulations, including the *Canadian Environmental Assessment Act, 2012*, to ensure that when projects are proposed in regions where an RSEA has been conducted, that the terms of reference and monitoring requirements of the EA are informed by, and in compliance with, the broader goals, values, and objectives as defined in the RSEA. The *Canadian Environmental Assessment Act, 2012*, section 4(1)(i), currently identifies regional studies as a means to support project-based EA and related decision-making, but stops short of requiring that regional or strategic-level studies or assessments provide explicit direction, if not set requirements, for the nature and scope of issues to be addressed in project assessment.

Fourth, RSEAs cannot be treated as one-off initiatives with no long-term commitment to review, revise, and reassess. Far too often in Canada, regional and collaborative initiatives to manage resources are no more than "short-term bursts of activity" with "short-lived organisational commitments" (Par-

kins 2011). The excitement is centred on bringing the various interests together, but there is simply no long-term, institutional commitment to deliver influential results (Lawe, Wells, and Mikisew Cree 2005). Regional initiatives, including RSEA, must be conceived as part of a larger process of the environmental governance of natural resources on traditional lands, and included within the halls of public decision-making. This requires long-term institutional commitment to not only undertake an initial assessment, but to follow through with a plan for implementation and then follow up to ensure that results are being achieved.

Finally, a business case needs to be made for industry buy-in and financial support for RSEA. Only recently has RSEA started to be explored by the private sector as a potential means of contributing to their environmental performance and as an opportunity to more easily obtain a social licence (Jay and Marshall 2005; Noble et al. 2013). There is some promise in this regard. For example, in its submission to the expert panel review of the federal environmental assessment process, ConocoPhillips (2016, 7) notes that although regional assessment may not be ready to become a formal part of EA legislation "under specific circumstances, regional assessment has strong potential to improve overall EA processes and decision-making by bridging the gap between federal environmental policy implementation and project-level EA [and] . . . a thoroughly planned and executed regional assessment can significantly improve indigenous participation".

Conclusion

Instead of taking an active role to help shape resource development and region-wide resource sector planning processes, Aboriginal communities typically find themselves reacting to individual project proposals in their traditional territories. Chetkiewicz and Lintner (2014) argue that "this is a state of affairs that is almost certain to lead to conflict and delay as First Nations demand to be heard about larger issues of cultural and ecological integrity, economic participation and rights rather than discuss potential benefits and impacts of individual projects." The problem is that there are few venues to address such larger issues and concerns, and EA is far from an effective process to do so.

Environmental assessment in Canada may be at a critical threshold. There is a growing dissatisfaction with EA. Arguably, EA has not failed Aboriginal peoples; rather, too often EA is looked to as the means to tackle issues and challenges that are well beyond the scope of what can be addressed at the project scale. Expanding EA requirements for resource development projects to tackle such broad issues as cultural and ecological integrity, treaty rights, sustainability, or whether the pursuit of certain types of natural resources is even appropriate, is not the solution. Doing so would only exacerbate current frustrations about EA processes and result in even more conflict and further delays in project decisions.

Unloading the expectations currently placed on EA to solve strategic and policy-level problems is essential to a focused and efficient project-review process; and establishing RSEA as a separate framework is fundamental to credible EA and to the meaningful engagement of Aboriginal peoples in the natural resource economy. This is not an easy task. The challenges and solutions are not about better science or more data, but about reshaping institutional arrangements and creating the motivation for governments and industries to discuss resource development futures long before projects are on the table. However, advancing a system of regional and strategic assessment that is undertaken away from the timelines, pressures, and conflicts presented by specific resource development projects could fundamentally transform the meaningfulness of EA and the place of Indigenous peoples in the resource economy.

About the Author

Bram Noble is a professor of environmental assessment at the University of Saskatchewan. He has published numerous articles on environmental assessment, including one of Canada's leading environmental assessment books, *Environmental Assessment – A Guide to Principles and Practice*, and has delivered several national and international invited lectures on best practices in environmental assessment. His work in the environmental assessment field is well known; he has been an expert witness for several environmental assessment hearing processes, and is actively engaged in environmental assessment practice. He co-authored the Canadian Council of Ministers of the Environment guidance on regional strategic environmental assessment, developed Ministerial guidance for environmental assessment decision-making under the Nunavut Land Claims Agreement, and was a consultant on the development of federal guidance for cumulative effects under the *Canadian Environmental Assessment Act* 2012. He also served as expert adviser to the Commissioner of Environment and Sustainable Development, to the Auditor General of British Columbia, and to numerous First Nations and provincial governments. He holds a PhD in geography from Memorial University.

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Endnotes

1 Available at bsstrpa.ca.

2 A registry of public submissions to the expert panel, including transcripts from public meetings, is available online at http://eareview-examenee.ca/.

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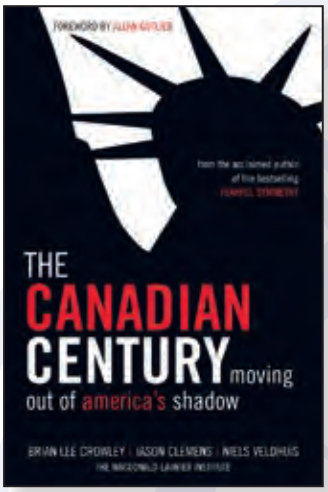

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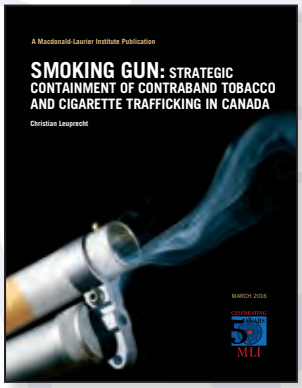

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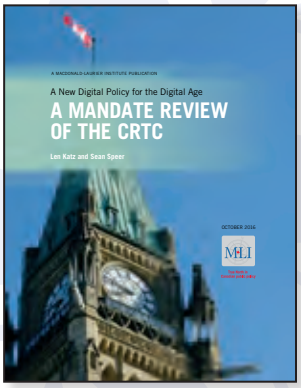

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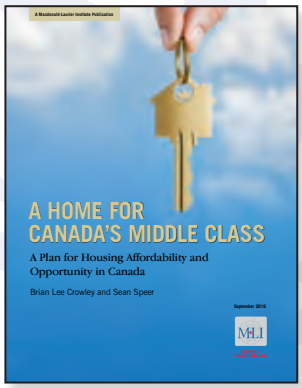

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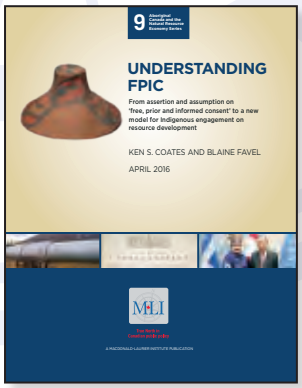

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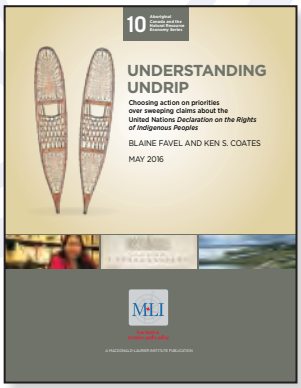

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