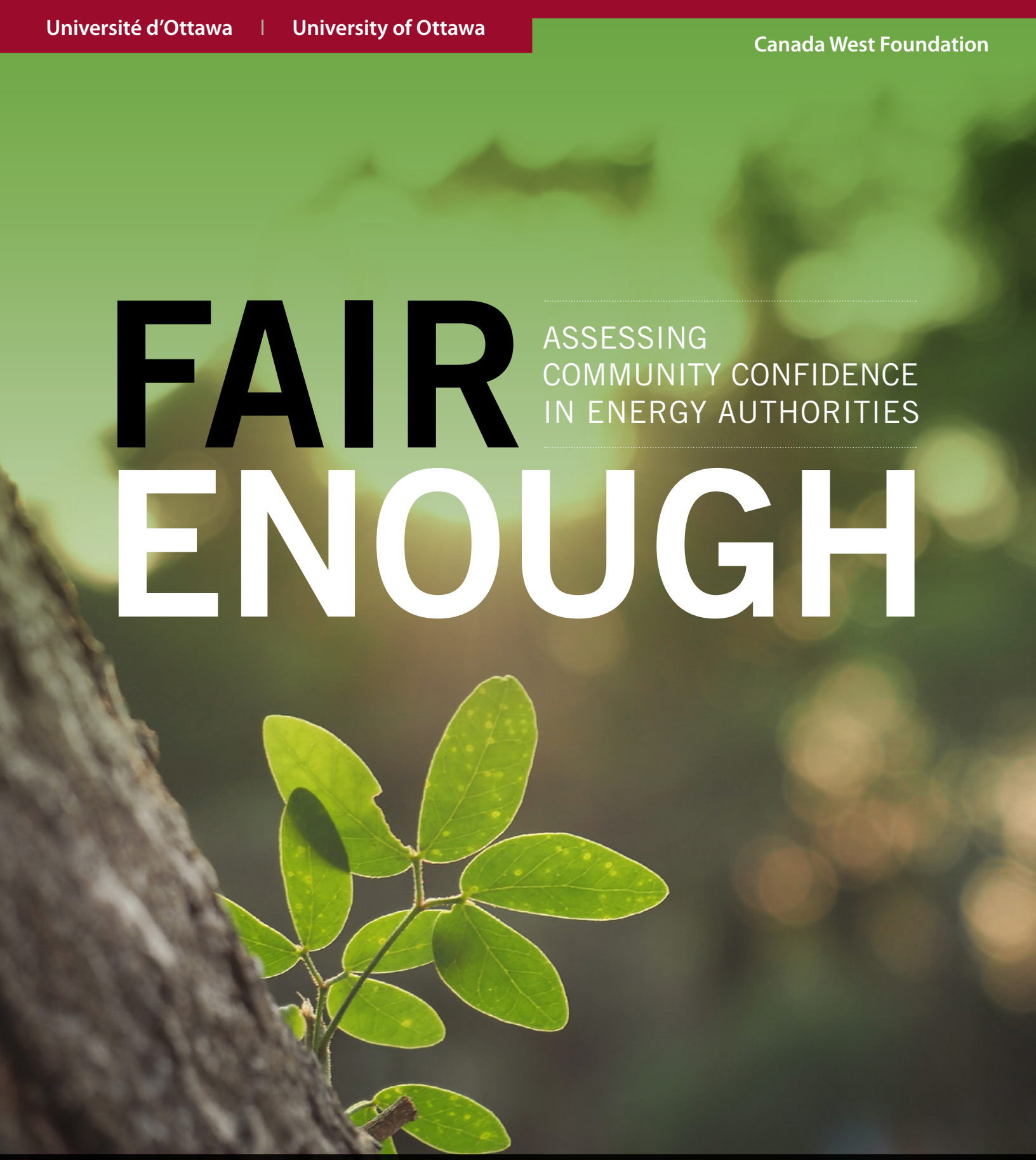
Université d'Ottawa | University of Ottawa

Canada West Foundation

# FAIR ENOUGH

## ASSESSING COMMUNITY CONFIDENCE IN ENERGY AUTHORITIES



INTERIM REPORT

MICHAEL CLELAND
WITH LAURA NOURALLAH & STEWART FAST

APRIL 2016

CANADAWEST FOUNDATION

uOttawa

**THIS REPORT** was prepared by Michael Cleland (Senior Fellow, University of Ottawa) for the University of Ottawa and the Canada West Foundation. Co-authors Laura Nourallah (Doctoral Candidate) and Stewart Fast (Senior Research Associate, University of Ottawa) made substantial contributions.

We would like to thank those who agreed to be interviewed for this study. Their insights and contributions were invaluable to preparing this report. We would also like to thank Professor Stephen Bird (Clarkson University) and Dr. Brenda Kenny (Adjunct Professor, University of Calgary and former President and CEO, Canadian Energy Pipeline Association) for serving as external reviewers. Their comments strengthened the text substantially. Finally, the preparation of this report was truly a team effort and, as such, we would like to acknowledge the contributions of the team – Shafak Sajid, Dan McFadyen, Louis Simard, Monica Gattinger, Trevor McLeod and Colleen Collins.

As is customary, any errors of fact or interpretation remain the sole responsibility of the authors.

## 2016 Centre for Natural Resources Policy Patrons

The Arthur J.E. Child Foundation

ATB Corporate Financial Services

Enbridge Inc.

Government of Alberta

Government of Saskatchewan, Crown Investments Corporation of Saskatchewan

Government of Saskatchewan, Ministry of the Economy

Imperial Oil Limited

Max Bell Foundation

N. Murray Edwards/Canadian Natural Resources Limited

Richardson Foundation

Ron Mannix/Coril Holdings Ltd.

## Positive Energy's financial supporters include:

Alberta Energy

BC Oil and Gas Commission

Canadian Association of Petroleum Producers

Canadian Electricity Association

Canadian Energy Pipeline Association

Canadian Gas Association

Cenovus

Encana

*Nanos Research is our official pollster and our national media partner is The Globe and Mail.*


ISBN 978-1-927488-27-0

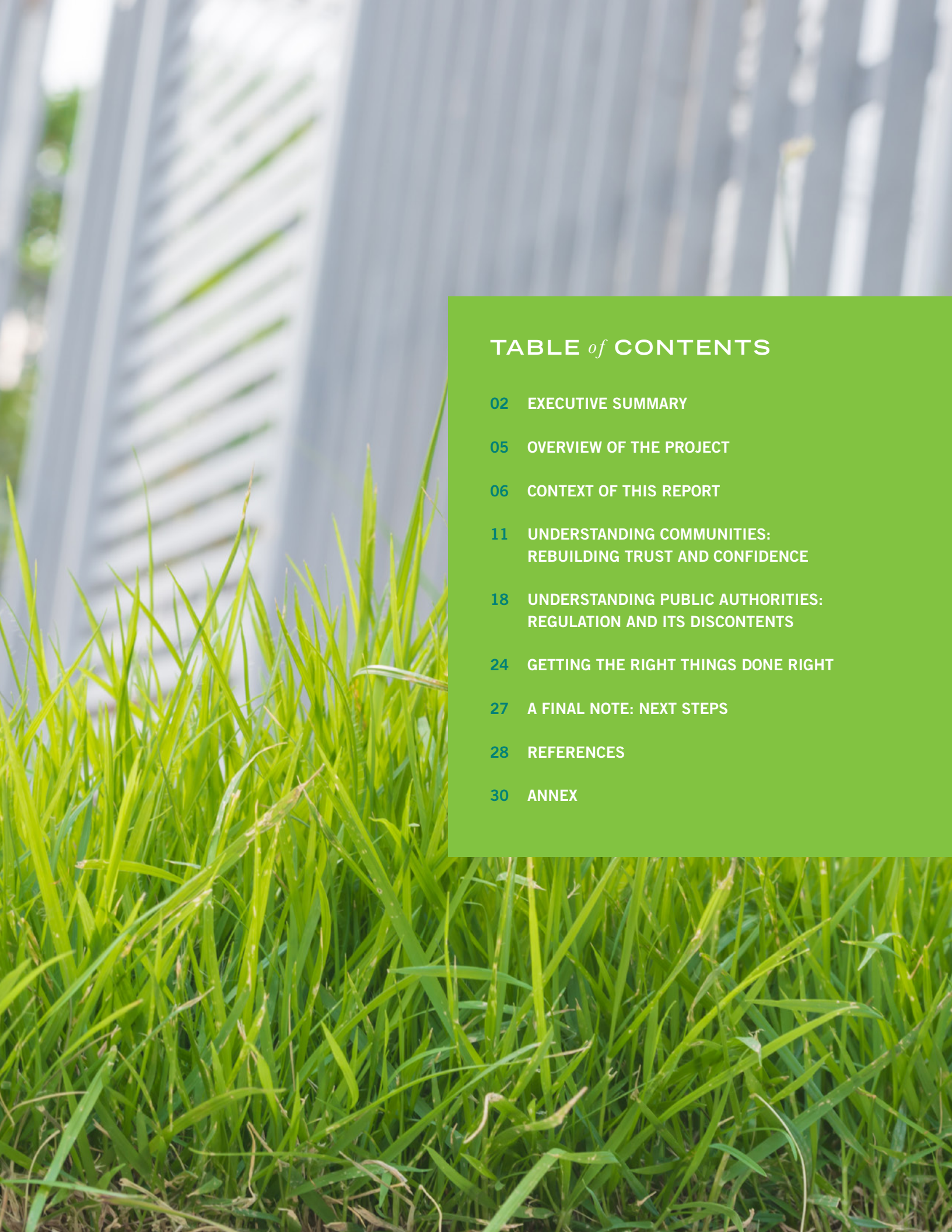


CANADAWEST FOUNDATION

CENTRE FOR NATURAL RESOURCES POLICY

uOttawa

POSITIVE ENERGY



# TABLE *of* CONTENTS

# EXECUTIVE SUMMARY

This interim report provides a framework to understand local communities' trust in public authorities.

Phase 1 of the project reflects a review of the academic literature and a set of interviews with senior leaders. Phase 2 – to come – involves a set of case studies of individual projects and communities which will be based on both qualitative and quantitative research at the local level.

## Understanding Communities

The foundational concept for the report concerns questions of fairness, both substantive and procedural, and how perceptions of fairness influence trust and confidence. In turn, an understanding of what may be perceived as fair rests on four notions which together provide us with a tentative model that is both explanatory and operationally useful. These notions are:

- Context – The facts surrounding both the project and the affected communities are at the root of any understanding or solution.
- Values, interests and attitudes within a given community establish the potential for negotiation and compromise.
- Information and capacity are necessary, if not sufficient conditions, for success.
- Engagement and participation are an essential condition for success.

## Understanding the Decision-making System

The senior leaders interviewed represented regulators, policy-makers, industry, ENGOs, and Indigenous perspectives. These individuals provided a diverse set of comments, but there was considerable consensus on basic points:

### 01

The decision-making system is far from "broken." Decisions are regularly made, many communities are satisfied and the public interest is often well-served. But the system comes up short with respect to all four notions cited above.

### 02

The problems most often start with unresolved policy issues and inadequate planning, both in substance and procedure. These issues, which often extend well beyond the regulatory framework and are outside of the mandate of regulators, include climate change, Indigenous communities' concerns beyond energy (e.g., reconciliation), regional planning and cumulative effects. Reforming the regulatory system is a necessary condition for success but, by itself, far from a sufficient one.

### 03

There is a lack of adequate forums for community engagement and a lack of adequate and accessible information, all well upstream of individual project applications and regulatory decisions, often involving regional level, multi-project and long-term considerations.

04

The policy/planning/regulatory system is not well-understood. In many jurisdictions, it is in need of substantial rebuilding to restore the different institutional actors to their appropriate places and to restore trust and confidence.

05

Regulatory systems themselves have been substantially modernized and reformed but still fall short in terms of public trust and confidence. Solutions will involve both further reforms and a much higher level of basic understanding on the part of the public and decision-makers of what makes regulatory systems work.

06

If they are to become effective and constructive contributors to decision processes, communities will need to invest in their own capacity to understand, engage and act in the public interest.

Policy-makers and regulators are well engaged in addressing the sorts of issues outlined in this report; many concrete solutions are at hand and being implemented. But much more can be done and what is done may prove much more effective and enduring if it is founded on solid understanding of communities themselves.

The six case studies that make up the next phase of this project will contribute to the development of enduring solutions.

# OVERVIEW *of the* PROJECT

Recent energy debates in Canada have more often than not centred on the term "social licence"[1] and the notion that conventional project approval processes do not necessarily ensure approval by society at large. Over the past few years, politicians, officials, business executives, academics, advocates and lobbyists have debated what this means: If conventional approval processes are not good enough, why is that so and what is good enough?

This project, of which this interim report is a part, seeks to bring two particular perspectives or dimensions to this debate.

The first concerns the role of public authorities. Much has been said about what project proponents need to do to earn "social licence." Less attention has been given to what public authorities need to do to ensure that such "licence" is granted and sustained in an orderly way consistent with the rule of law.

The second dimension concerns the role of local communities. The people in these communities live with many of the consequences – good and bad – flowing from energy projects. Much is said on their behalf by various commentators. What is heard less is the authentic voice of local communities themselves.

The core of this project, therefore, is a set of case studies of local communities. These studies aim to develop useful insights into what will ensure that decision processes have the confidence of local communities. They will also draw those local voices into the larger debate.

Certain basic concepts underlie our approach. What causes anyone to have trust and confidence in a decision process? Presumably, at the foundation is a belief that any outcome is fair or just. In turn, perceptions of what is fair or just are likely founded on a belief that costs will be avoided or at least mitigated, that unavoidable costs, as well as benefits, will be fairly apportioned and that risks will be appropriately managed – what we can call distributive justice. But, famously, justice must not only be done but must also be seen to be done. Process matters as much as outcome. In other words, distributive justice must be accompanied by procedural justice; the central value of fairness requires both.

These ideas provide the framework for the questions we plan to ask of local communities, as well as for the eventual insights and advice to policy-makers that emerge.

[1] Related terms are "public acceptance," "public confidence," "social acceptance" and "acceptabilité sociale." We are not advocating for the use of a particular term – indeed in some respects the implications of "social licence" have become dysfunctional; rather, we use the term here as a marker that has come into common use in the political lexicon.

# CONTEXT *of this* REPORT

This report is intended to capture the results of a preliminary enquiry in anticipation of the case studies. The work consists of two elements: a literature review and a set of interviews with senior leaders.[2]

Controversies surrounding the development of energy projects in Canada have in recent years become the stuff of legend. Although much still gets done with little public notice, it appears more and more that projects of many sorts are subject to acrimonious debate, delay, added cost and – at times – are stopped all together. Communities, meanwhile, are often internally divided and governments at all levels have found themselves publicly criticized for behaviours that are deemed illegitimate by one group or another.

This phenomenon has deep roots in Canada back to at least the 1970s[3], with both the James Bay Project and the Mackenzie Valley Pipeline. Those controversies were exceptions at the time, but recently such controversies have become common. With them have come a whole new vocabulary from acronyms such as NIMBY, NOPE and BANANA[4] and terms such as "social licence" and "public confidence." In parallel with these developments, project proponents have often adjusted their behaviour to make engagement and consultation central to their efforts and to develop mechanisms aimed at both mitigating project negatives and sharing the positives.

The policy research community has not been idle. A substantial literature has emerged in the past two decades exploring the roots of public opposition. This literature has dealt predominantly with the siting of renewable energy projects (notably windfarms), hazardous waste and, to some degree in the United States, with hydraulic fracturing. Studies of opposition to fossil fuel development are relatively scant. As well, a body of best practice has emerged for project proponents and for regulatory authorities, alongside a body of toolkits to give guidance to communities who become hosts to energy developments (COAREP, 2016; Graham, 2015; Finkel et al, 2015; European Commission, 2014). But the effort has been uneven, focused more heavily on some dimensions of the issue than others. In particular, fossil fuels in Canada have been neglected, and much of the literature focuses on project proponents' activities, not the role of regulators and other public authorities.

One can think of a four-cell space within which project decisions play out: public authorities occupy one cell, project proponents another and local communities and civil society or non-governmental organizations the other two.

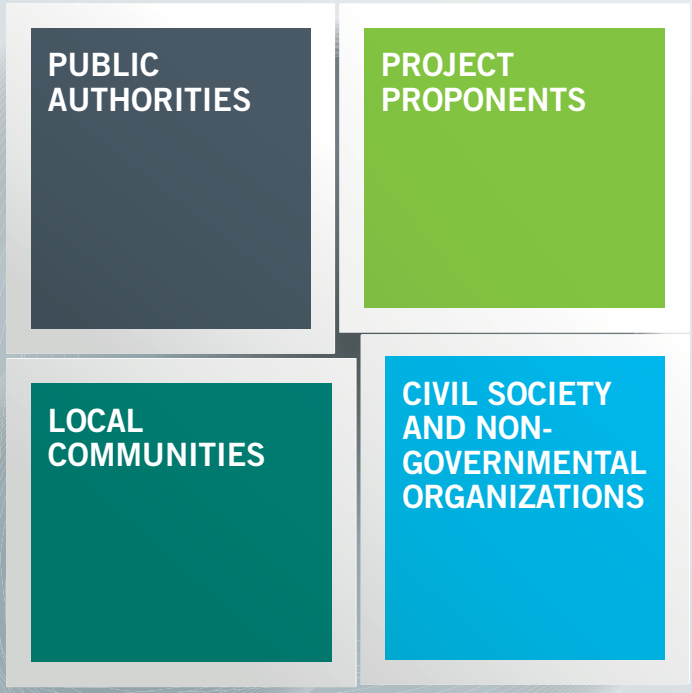
[2] For senior leader interviews see Annex.

[3] Hydro-Quebec's ambitious plans in the 1970s to build several massive dams on rivers flowing into James Bay led to opposition by local Cree communities and a widespread public controvery. The issue eventually led to a fundamentally different relationship including economic arrangements between Hydro Quebec and the local communities.

The Mackenzie Valley Pipeline became the subject of a commission of inquiry led by Mr. Justice Thomas Berger in the 1970s. It concluded that development in the Mackenzie Valley would have environmemental and social effects for which the local Dene communities were not prepared. Berger recommended a moratorium on development which stood for several years.

[4] NIMBY – Not In My Backyard, NOPE – Not On Planet Earth, BANANA – Build Absolutely Nothing Anywhere Near Anyone

**FIGURE 1:**
**THE FOUR-SIDED SPACE OF ENERGY PROJECT DECISIONS**




This report documents findings of the first phase of a research project that touches on the relationship between two of the cells in the space of energy project decisions: local communities and public authorities. The project aims to: develop a better understanding of the relationship between local communities[5] and public authorities in energy development; understand the extent to which there is a lack of trust and confidence in public authorities responsible for energy development; identify the reasons for this; and, develop ideas for restoring trust and confidence. Specifically, this report summarizes the findings of a review of academic and grey literature in this topic area, along with semi-structured interviews with 20 energy leaders representing business, policy, regulatory, ENGO and Indigenous perspectives from across the country and energy subsectors.

Two closely linked research questions will be explored in this research study:

- What are the factors that lead to greater satisfaction in local communities with the energy infrastructure siting process?
- What is the level of local community confidence in the actions of public authorities towards new energy infrastructure?

[5] By local communities we mean both Indigenous or First Nations as well as non-Indigenous communities. While the legal frameworks within which First Nations communities work is distinct, the needs and aspirations of individual Canadian citizens, Indigenous or not, may not be that dissimilar and in many cases the local communities affected by projects involve a mix of both Indigenous and non-Indigenous Canadians. Clearly, where issues specific to First Nations communities are at issue, we will be careful to draw the distinctions.

This research will probe these questions through the eyes of local communities' residents. Much of the current debate is taking place among various elites offering their interpretations of what local communities might be thinking. Although much of this is based on solid experience, it cannot claim to represent or accurately reflect local voices. The next phase of this project will involve a set of six case studies of different sorts of projects in a variety of communities across Canada. These are selected to represent a mix of energy sources (renewable, non-renewable), project type (linear or point), region of Canada (three in West, three in East), mix of approved/denied projects and mix of rural/urban/remote. These projects listed from West to East are:

- The Northern Gateway Pipeline project, which received regulatory approval in June 2014. The communities chosen for investigation are Kitimat, B.C., and the neighbouring Haisla Nation, which are at the proposed terminus of the pipeline.
- The Alberta North-South Transmission Reinforcement, also known as the Western Alberta Transmission Project. This is a linear electricity transmission project. It received regulatory approval in December 2012. Residents and landowners in and around the nearby towns of Eckville and Rimbey are the focus of interest.
- The Wuskwatim hydro-electric generating project, constructed in 2012 under partnership with the Nisichawayasihk Cree Nation and Manitoba Hydro. The communities of the Nisichawayasihk Cree Nation and the neighbouring town of Thompson, Man., will be investigated.
- Two urban natural gas power stations in the Greater Toronto Area. The specific communities for investigation are King Township and Oakville, Ont. The former is home to an approved facility built in 2012, the latter to a proposed station cancelled in 2010.
- A wind energy project in southern Québec, the projet de parc éolien de Saint-Valentin, which was denied approval in June 2011. The municipalities of Saint-Valentin and Saint-Paul-de-l'Île-aux-Noix will be investigated.
- Hydraulic fracturing gas extraction along the Moncton-Miramichi corridor in New Brunswick. There are at least five wells in operation with a provincial moratorium on further development. The communities targeted for investigation are those along the Moncton to Miramichi corridor (Riverview, Dieppe, Bouctouche, Rexton, Richibucto, Doaktown and Elsipogtog First Nation), N.B.

For each case study, we are undertaking a document and secondary source assessment, followed by face-to-face interviews with community leaders (local officials and elected representatives, civil society leaders, proponents and local businesses, regulators, local media, engaged citizens, landowners). Following interviews, we will undertake polling of the general public within the case study communities to assess the extent to which views put forward by community leaders, and by senior leaders, are held by the general population.

In preparation for the case study phase of the research, we have undertaken two lines of preliminary enquiry:[6]

- A review of recent academic literature on the dimensions of social acceptance for energy development (Nourallah, 2016).
- 20 interviews with senior leaders across Canada from the realms of government at the federal, provincial and municipal levels (policy and regulation), industry, ENGOs and Indigenous representatives, referred to throughout the report as our "interlocutors" (see Annex for complete list of participants).

As noted, this report is intended to capture the results of the preliminary enquiry. The challenge we face in doing this is to extract useful insights, especially as they might inform the community level research, but do so without prejudice. The main point, after all, is to hear authentic local voices with minimum "noise" from the elite conversation. Thus, much of what follows is intended principally as framing; any apparent conclusions as to the nature of the local community/public authority relationship are tentative, as are any insights respecting how that relationship can be improved.

We have organized the report around two sections focused respectively on communities and on the policy/regulatory system.

[6] In methodological terms, this report provides scoping and problem definition for the case study phase of the research. The themes identified from elite interviews will be used to inform and organize community-level interviews and to phrase survey questions for quantitative work. We are seeking to contrast and compare the views of elite actors, community leaders and the general public within communities facing new energy infrastructure.

# UNDERSTANDING COMMUNITIES

*Rebuilding Trust and Confidence*

As we move to the next phase of the research, it is important to establish robust frames of reference in which to situate what will otherwise be a mass of anecdotes. If we want to move beyond hand-wringing to get to the "so what," then we need to develop useful models to better understand current social values and expectations. This section, which is heavily based on our review of the literature (Nourallah, 2016), attempts to frame the elements of such models.

Our starting point, as the title of this section makes clear, are the notions of trust and confidence. Literature in the field is heavily dominated by these terms. That said, by themselves the concepts of trust and confidence give us at best a weak grasp of possible solutions. There is much evidence of their absence. High-level assessments of trust in western societies reveal trust to be at low ebb. Few institutions escape. Some non-governmental organizations and academia fare fairly well. Business and government both fare badly (Edelmen Trust Barometer 2016, Graves, 2013, Harshaw, 2012, Nevitte, 1996). Research by the Canada West Foundation (Sajid, 2014) and by the Canada West Foundation and partners (CROP, 2013) found a pervasive lack of trust in resource industries and especially energy companies. Many people do not trust institutions to "do the right thing," and may have little confidence that those institutions would be competent to do so.

In short, as organizing ideas, trust and confidence seem literally to beg the question. If we want to establish better decision processes affecting energy then we almost certainly need to restore trust and confidence – in the institutions. In the meantime, we lack trust and confidence in those whose behaviour is at the heart of trust and confidence.

As noted earlier, our approach rests on extensive academic work which suggests that trust and confidence in authorities or decision-makers arises from a belief that those authorities' decisions will be fair or just – in both substantive and procedural terms. Put another way, we can refer to "distributive justice" and "procedural justice" to capture the same ideas.[7]

[7] This model is tentative. Distributive justice is a broad concept that becomes murky when dealing with costs and/or benefits that are too broad to be apportioned to members of the community. An example would be when a project that is seen to be in the interests of the broad society clashes irredeemably with local values and interests. In other instances, a community itself may be split. In these situations, it may be that even high levels of trust and confidence in authorities will come up against the practical reality that a distribution of costs/benefits that would be perceived by all members of a local community as "fair" may well be impossible. In such cases, public authorities may have to resort to what might be termed "rough justice" – i.e., a decision that may be perceived to be unfair but has to be made in the larger societal interest. Even then, the need remains for high standards of procedural fairness combined with best efforts at a reasonable distribution of both benefits and costs.

When the literature looks behind the concepts of trust and confidence, four dimensions stand out. The first two correspond to distributive justice; the second two, to procedural justice. Together they may make up the elements of a model that is both explanatory and operationally relevant for public authorities seeking to build trust and confidence:

**TABLE 1: TRUST AND CONFIDENCE DIMENSIONS AND DISTRIBUTIVE AND PROCEDURAL JUSTICE**

| DIMENSIONS CONTRIBUTING TO TRUST AND CONFIDENCE | KEY CHARACTERISTICS | ...TEND TO CORRESPOND TO |
|---|---|---|
| **Context** | The nature of project impacts and how the unavoidable costs, as well as benefits, will be fairly apportioned. | Distributive justice |
| **Values, interests and attitudes** | Multiple and often contradictory. Perceptions of risks and benefits. Negotiable and non-negotiable aspects. | Distributive justice |
| **Information and capacity** | Public use of the information underlying the decision-making process. | Procedural justice |
| **Engagement and participation** | The opportunity for public to meaningfully participate in, and influence, decisions. | Procedural justice |

The interviews revealed a wide range of views on trust and confidence, insofar as it concerns regulatory institutions. Some viewed regulators as slow moving and out of touch with modern needs. Most saw regulator shortcomings with respect to engagement and communication. Others saw regulators, perhaps unfairly, as in the gun sights because they were often the public institutions closest to the public (see Annex as well as the next section for further details on interviews).

## Context

Context is the most complex of the four dimensions, and it includes elements that in turn beg the question. But it also includes elements that lend themselves to analysis and solution seeking.

Societal norms in 21st century western societies have been thoroughly debated. They include most notably the decline of deference (Fischer 1993, Nevitte 1996); the growing fragmentation of society into ever smaller geographic communities or into communities of interest (Putnam 2000); the "connectedness" of modern society which may to a degree offset fragmentation (Urry, 2000); and the emergence of the risk-intolerant society (Beck, 1992). As important as these notions are, they easily lead to counsel of despair, giving us labels for virtually every societal phenomenon without really explaining any of them, far less pointing to solutions. This backdrop is essential but of limited use by itself for those seeking to address the issue of public confidence in public energy authorities.

Almost equally limited in its usefulness for understanding or for solution seeking is the world of modern communications. Depending on one's point of view, modern communications can be seen as the very foundation of a robust new type of democracy or a harbinger of the death of coherently functioning society. Modern communications give us as much information as we could possibly want and far more than we can possibly use. They provide us information in real time and then more information still, far faster than we can process any of it. They give us multiple sources of information and no assurance whatsoever that any of them have any veracity and little help in reconciling conflicting information or possible conflicting implications of such information. They also allow each of us to become sources of information widely available in the public domain, regardless of whether we actually know anything. The interviews revealed an interesting range of views on how public authorities should manage communications in the modern era. Chasing the Twitter cycle was seen by at least one as unproductive. Many suggested very unmodern ideas, such as more emphasis on plain language explanations and much more emphasis on face-to-face communication.

Context starts to become more useful when we broach questions about the nature of the impactful thing or event and the nature of the community subject to that impact.

Impacts take different forms. They can be direct and present, such as intrusions on the landscape, the destruction of habitat or environmental emissions. They can take the form of possibilities (uncertainties may exist over both the nature and likelihood of impacts, not to mention unforeseen and "imponderable" impacts), and risks rather than direct and immediate effects. They can be positive (jobs, fiscal benefits, improvements in standards of living) or negative (social stresses, environmental effects, job losses). They can be distributed in different ways: symmetrically or asymmetrically, fairly or unfairly. They can occur over widely varying geography – from local to regional to global. And they can occur over time frames varying from immediate to several generations.

Affected communities can have many differing attributes and experiences. Some may be familiar with certain types of development and past experiences will shape attitudes (Simard, 2008), while for others it may be quite new. Some may have sophisticated social infrastructure or highly developed capacity for negotiating or making decisions. Communities may be essentially urban or rural with corresponding effects on attitudes to land, to tradition, to privacy, or to change (Fast and Mabee 2015, Walsh, Bird and Heintzelman, 2015).

The above is in some ways blindingly obvious. But these sorts of questions form the foundation for understanding how a community might respond to a proposed development and, in turn, how such a development can or cannot be made to align satisfactorily with the values, attitudes and interests of the community. This is where it gets more interesting still.

## Values and interests

Decisions about whether to allow energy infrastructure projects affect the interests of numerous individuals. Much of the literature posits that values and interests are at the core of someone's willingness to accept any decision (Elliot, 1988). Regulators are charged with the complex task of determining whether projects are in the collective public interest, which is understood to be constantly changing and based on diverse values: "*The public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that changes as society's values and preferences evolve over time."* (National Energy Board, 2010).

Values are powerful forces. They are at the heart of community cohesion and can define a given community. Values can be deeply held and based in culture and family, but they can evolve over time. They are often abstract. They affect perceptions of costs, benefits and risks and the balance one seeks among them (Axsen, 2014; De Groot, Steg and Poortinga, 2013). Values are the foundation upon which individual behaviour rests. Psychologists often refer to a values-attitude-behaviour hierarchy (Homer and Kahle, 1988) which suggests that an individual's values inform their attitudes and in turn their pursuit of specific interests. There is substantial literature examining how societal values change over time. For example, Dunlap et al (2000) argue that the rise of pro-environmental behaviour beginning in the 1970s required a fundamental change in values and in beliefs about nature, limits to growth and more. Further, these authors have shown that people align with four generally consistent worldviews/groups of values – hierarchical, individualistic, egalitarian or communitarian. Taking this one step further, Kahan et al (2012) have shown that individuals tend to assimilate information in a biased fashion, giving more credence to information and sources that conform with their values.

Interests can be considered to be values translated into practical reality. The economic security of my family may be a deeply held value; it may be in my interest to have a well-paying job. A healthy local ecosystem may be a cherished value; it is in my interest to have uncontaminated well water. On the other hand, values and interests don't always neatly coincide. It is in my interest, for example, to be forced to wear a seatbelt even if the coercion involved offends the value of individual freedom yet may align with other values such as conformity and security. And of course it is commonplace in experience with energy and resource development for interests such as jobs to be easily and commonly trumped by values, such as attachment to local ecology or traditions and vice versa. Overall, interests can be considered to be goals or desires that rational actors trade off to arrive at mutually beneficial arrangements.

A more critical – or relevant – distinction in all of this may be between something which is negotiable and something

which is not. Presumably a spiritual value such as a sacred place is not subject to negotiation. But a valued habitat may be, if impacts on it can be mitigated or if new or alternate habitat can be created, as is often done in dealing with disturbances from hydroelectric projects. Yet several of our interlocutors – some from environmental, some from business perspectives – noted that various interests sometimes "leveraged" other interests to move an agenda or that "issues get framed to disguise motives." Life is not always as it seems. Rational actors will also act strategically with hidden motives.

It seems clear that understanding any given community and its attitudes toward development requires a thorough exploration of values and interests, how they affect perceptions of costs, benefits and risks and how they affect the conditions for negotiation and trade-off. At the end of the day, questions surrounding distributive justice are answered in the realm of values and interests.

## Information and capacity

The literature provides extensive discussion of information and its availability as a key factor in shaping attitudes. There is rather less coverage of what we call here "capacity," which we can define as the ability to process that information into knowledge and to employ it effectively in shaping outcomes. Studies examining the notion of capacity emphasize policy-oriented learning and social learning as mechanisms through which individuals process information (Sabatier, 1987; Webler, Kastenholz, & Renn, 1995). There are different conceptions of how learning takes place. However, the research is moving towards studies that empirically assess the influence of information in changing individuals' perceptions that ultimately shape outcomes.

The world is filled with sources of information, and what constitutes useful versus not useful information is necessarily a fraught question. Information serves little purpose at all if the receptor is unable to make sense of it or if the receptor's cognitive biases force information contrary to those biases to be discounted out of hand. There is also recognition that opposition to energy developments is not due to residents having a lack of information (Haggett 2011, Wolskink 2007). That said, it seems clear that a necessary, if not sufficient, condition for successful project siting is widespread availability of trusted and comprehensible information (Cowx, 2013). In assessments of the role that information plays, research shows that people's confidence in information may be contingent on whether it supports their values (Carlisle et al., 2010). Again, however, we fall into a tautological circle. Without information, it is difficult to trust any given institution but what if that institution is a primary source of information as project proponents and public authorities often are?

In cases where public authorities are perceived to be acting out of concert with public interest, individuals may feel alienated from decision-makers. Alienation creates mistrust that is further facilitated by negative information in the media. This makes it all the more important that regulators and other public authorities provide information in an accessible manner that facilitates learning and allows community members to critically assess all sorts of information. And capacity must include capability to make effective use of information, which takes us to the next element found in the literature.

## Engagement and participation

If questions around distributive justice are largely answered in the realm of values and interests, questions around procedural justice are addressed in the realms of information and, especially, engagement and participation. Both the literature (e.g., Colton et al 2015) and our interlocutors were often eloquent on the subject of new modes of engagement and participation and on the responsibility of all public authorities to move in that direction. Strategic environmental assessments (earlier and at a higher level than any one project), deliberative processes in regional planning and even collective decision shaping or "co-creation" with respect to regulations themselves all emerge as viable possibilities.

One of our interlocutors noted with respect to the history of energy project development that it can take a decade or more to build trust and confidence. The literature points out that trust is an asymmetric asset; it takes a long time to build and it is easily lost. Trust is achieved by repeatedly having expectations fulfilled (Hardin 2005). Engagement, in other words, needs not only to create avenues for communities to shape substantive outcomes but also to adjust expectations to the point where they practically can be fulfilled. A big part of this is the importance of time and attention to long-term processes. The timing of when engagement and participation start is fundamental. So is follow-up and evidence and traceability of the effects of public participation in decision-making.

# UNDERSTANDING PUBLIC AUTHORITIES

*Regulation and its Discontents*

As noted earlier, we undertook a series of interviews with knowledgeable senior people who brought a wide range of perspectives. The Annex to this report provides a synthesis of what we heard in the interviews. In brief, here is what we heard:

- We have a problem and there is need for reform but the system is far from "broken." There is a growing sentiment among many segments of society, however, that there is a lack of confidence in public authorities.
- The problem starts with policy – the substance of policy, not just process.
- The policy substance covers a broad spectrum of issues. Climate change looms largest but a more diverse set of environmental issues led by concerns about water and generally regional in scope comes in not far behind.
- In a process sense, the overwhelming issue concerns the need for forums where issues can be debated and the fact that regulatory proceedings which are not suited to the task have become the forum of default. Resolving the issue is essentially the business of policy-makers.
- The role of regulators in their relationships with policy-makers – appropriately independent and yet inevitably part of the policy system – is a question that needs debate.
- The way regulators should function is a big question. They should be open, engaged, informal, working in partnership with others, effective real-time communicators and yet somehow judicial, objective and guardians of the integrity of regulatory processes. No one should underestimate the complexities in reconciling that set of requirements.
- Most broadly, communities need to be engaged early, often, and respectfully. Yet communities themselves, or at least individuals within them, have work to do to become informed and to act objectively, fairly and democratically.

The second and third points are important and not a surprise. One of the challenges in all of this lies in the fact that different people of good faith may have fundamentally different measures of success when it comes to energy projects. If an oil pipeline is not built, for many people that is a clear failure; the commodity will instead move by rail at greater economic cost and environmental risk and world consumers will continue to buy petroleum products. For other people, the avoidance of a pipeline means one more step toward decarbonization of the economy or the avoidance of any disruption of important habitat. If a power line is not built, those along the prospective right of way will be relieved of an unsightly intrusion on the landscape, effects on property values and of fears (regardless of whether they are scientifically justified) of health effects from electric and magnetic fields. On the other hand, the clean power sources that might have been served by that line are stranded and unavailable to reinforce a reliable low-greenhouse gas (GHG) power system.

The problem, in other words, is not simply a matter of getting things done quickly and economically. It is getting the right things done and not the wrong ones. It is getting the right things done right, meaning with due consideration of costs, benefits and risks and the balance of effects on different groups and individuals. And it is getting to a conclusion in a way that is procedurally fair. After that, it involves ensuring that construction and operation is carried

out as safely as possible and with minimal environmental effects. This set of requirements engages a complex set of decision processes and requirements. Some of these are reflections of policy and, therefore, necessarily political; others may be wholly technical and many more entail some mix of the two.

In years long past, the political parts of the process were held largely in the hands of a few political and business elites and the technical parts were in the hands of experts out of sight, out of mind. The long-standing notion of "elite accommodation" captures processes of this sort. The perceived legitimacy of such processes has been eroding for many years. Today, the requirements to address diverse societal expectiations of energy development require a basic rethink of this "policy-regulatory complex."

## The decision-making construct: authority, responsibility and accountability

One thing about which our interlocutors were more or less unanimous was that almost no one in the public understands the decision-making system when it comes to energy projects. Some thought it didn't matter; if people have confidence in the system they don't need to understand it. Most thought it does matter; some measure of understanding is an essential underpinning to confidence.

Quite conceivably, even many of the people engaged in what we can call the elite conversation really have little idea of the structure of the system we are dealing with. Here is an attempt to capture its most salient attributes:

We can start with the tangle of jurisdiction in a federal system where a clear division of responsibility on matters relating to the economy, the environment and social issues remains elusive. Federal, provincial and (increasingly) Indigenous governments all have constitutionally established authorities which affect energy developments. Some of those authorities are in turn delegated to territorial governments or to municipal authorities. Bringing any measure of coherence and efficiency to such a complex weave requires trade-offs and compromises. Sometimes it is better for one or more governments to stay their hand and leave others to do the necessary work, even at the cost of perceptions that one or another government is not doing its job. Sometimes a certain measure of duplication is unavoidable, if only for reasons of political accountability. More often than not, some form of active intergovernmental collaboration – conceivably making things even more incomprehensible to a layperson – is unavoidable.

Within a given jurisdiction, the most important distinction is between policy and regulation. But this distinction is blurred in most people's minds and deliberately blurred by some participants in many approval processes. One place where our interlocutors were pretty much of one mind is that policy processes have come up far short of public expectations and those failures have simply cascaded downward and landed squarely on regulatory processes.[8] The most important of these is with respect to climate change and GHG management. Close behind are the many unresolved questions with respect to Indigenous Canadians and the rights and responsibilities of First Nations in particular. Both of these sets of questions are enormous in their scope and complexity. One of them – climate – is inherently unresolvable because, as the recent Paris agreement makes clear, official aspirations at least for 2030 are misaligned with current physical, economic and political realities. Both climate and the longstanding unresolved issues with Indigenous Canadians will most likely continue to vex regulatory processes for many years to come.

Many, if not most, other issues are more tractable. A promising avenue of approach raised by several of our interlocutors is with respect to policy at a regional scale. Leaving aside the issue of GHG emissions, the great majority of issues – including local issues and those involving Indigenous Canadians – play out at a regional scale. They arise more often as a result of the cumulative impacts of multiple activities than to individual projects *per se*. Problem sets such as these characteristically are addressed through regional planning processes where the physical issues are bounded by the chosen definition of "region." What constitutes a "community" – call it those with a direct stake in the outcome – may also lend itself more readily to definition than when issues are debated at the national scale. These are policy processes and the choices are inherently political not technical. If they are unresolved or if there are no forums in which they can be debated, then the consequences typically wash up at the doorstep of regulators.

The independent regulatory system (see box "The Independent Regulatory System") tends to be the place where many of the recent controversies have played out and our interlocutors offered a consistent set of observations. Most compelling is the point that policy failure risks translating into regulatory failure, whether because issues remain unresolved in substance or, at least as important, where the lack of appropriate forums for discussion leaves the regulatory forum as the default option. Almost as important, Canadian governments have often acted in ways that have compromised the independence of regulators either in fact or perception, taking matters into political hands at a point in the process where the political questions should have been long resolved through policy and planning or where the questions are not political at all but technical.

[8] It is important to note that the boundaries between politics, policy and regulation are often fluid. While regulators are expected to decide based on the law and objective evidence, they often have wide discretion. Regulatory bodies are often intended to be part of the policy infrastructure as collectors and holders of data and sources of explicit policy advice to governments.

# The Independent Regulatory System

Regulators' duties take many forms. Broadly speaking, four essential types of regulation bear most heavily on energy projects.

1. Resource regulators oversee the orderly exploitation and management of (usually publicly owned) natural resources, such as hydrocarbons.
2. Economic regulators ensure that natural monopolies such as pipes and wires function in the public interest.
3. Environmental regulators ensure environmental protection through processes, ranging from large-scale environmental assessments to precisely targeted emission or spill management regulations.
4. Power system regulators oversee establishment and operation of power infrastructure and operations; power is a unique case due to the nature of a system requiring precise real-time balancing.

Regulatory bodies take many forms. Some are more independent than others. Departmental regulators are directly accountable through cabinet ministers to government and have limited independence from their political masters. They are bound, however, to act and decide as specified in their governing statutes and regulations; they are not intended to be political. The choices they make are technical in nature and they are accountable to the broader polity for adhering to the law. Different jurisdictions may place the same functions in either a departmental form or in an arm's length independent body. There is no right answer, except that the regulatory requirements and the degree of independence need to be clear, understood and adhered to.

Canada makes extensive use of the explicitly independent regulator model especially for natural monopoly regulation, somewhat less so for resource regulation, environmental regulation, and power system reliability management. Broadly speaking, all independent regulators have certain characteristics in common:

- appointed bodies with defined tenure for individual members
- experts in their defined fields
- make decisions under legally established procedures
- can be given policy direction through various mechanisms but not directly accountable to elected officials for individual decisions
- accountable to courts for procedure and adherence to jurisdiction, but not merits.

The above attributes are ideals. In practice, there is a wide range of different approaches in different circumstances and, more importantly, many inevitable flaws – both real and perceived – when practice meets ideal. Appointment processes may be flawed, lacking objectivity and transparency, and those appointed, however professional they may be, are human beings who bring their own biases with them. As with any institution, regulatory bodies are subject to a certain amount of inbreeding and to being "captured" by those they regulate. The tribunals themselves and their staff are "expert" (in contrast to courts or to decision-making bodies made up of elected members) but despite efforts to expand the range of expertise and experience, their expertise may be limited, sometimes excluding social or environmental backgrounds or corresponding staff capabilities. And, of course, in the matter of accountability to elected officials for individual decisions, this principle appears to be one that has been eroded of late in several jurisdictions. None of this is new; the shortcomings of regulatory systems is the subject of a broad literature (Levine and Forrence, 1990, Baldwin et al 2012) and over the years policy-makers have often sought to correct them. Regardless, perceptions of this sort inevitably colour the attitudes of outside observers and contribute to the problem of confidence. No suggestion is made here that these institutions are in some sense a model of perfection, only that they do represent a model that has deep roots in public administration theory and administrative law that has functioned for better more often than for worse over many decades.

## Time matters: the policy-regulatory cycle

Several interlocutors told us that very few observers understand that decision-making necessarily occurs in sequence over time, as information accumulates and as a project moves from concept to construction to operation. But the public – or some part of it – often expects at any one point in the cycle that all issues are to be resolved at that point and, by logical extension, that all the information needed for all decisions will be known and available.

It is worth recapping the cycle, mindful that these sorts of things are never entirely linear but involve numerous feedback loops. In an ideal world, the pre-regulatory cycle entails articulation of policy and a process of planning – high level, over a broad (regional scale) geography and multiple land uses, and over years or even decades. Planning processes done right involve extensive and active citizen engagement. These processes belong principally to the political actors, although there is growing evidence that regulators can and should play a supportive role. At the level of specific projects, pre-regulatory processes also encompass the activities of proponents who may engage with communities before they decide whether, and how, to present regulators with project proposals.

The regulatory process itself has several stages through which decisions and supporting processes and information become increasingly granular. Regulators address themselves to individual projects determining whether they are in the public interest (as defined depending on policy and the specific type of regulation), making a decision on approval, and applying terms and conditions that must be met before construction (some of which proponents may decide are too onerous to meet). The construction process is also subject to multiple regulatory requirements and extensive monitoring and enforcement. The decision to begin operations is then subject to regulatory approval and the regulator typically monitors operations and maintenance activities over the life of the project, intervening as needed to correct deficiencies. Further regulatory processes impinge on questions around refurbishment, repurposing, abandonment, decommissioning and replacement.

Understanding the policy/regulatory complex is probably beyond the capacity (or interest) of most people. But if citizens wish to be engaged and do so effectively, some measure of investment in understanding is unavoidable. Trust and confidence operate on a two-way street.

# GETTING THE RIGHT THINGS DONE RIGHT

All of this brings us back to questions of trust and confidence. It is not obvious that many in the public will invest the time and effort to fully understand the policy/regulatory system. The question, then, is whether a large enough part of the affected public has confidence in both the integrity and the competence of the relevant regulatory authorities and whether those authorities are making decisions based on broad policy directions that have themselves been subject to adequate debate and scrutiny.[9] That question in its turn takes one back to the community context. Do the planning framework and individual project decisions satisfy the inevitably complex and contradictory set of values, attitudes and interests embodied in a community? Do communities themselves have the capacity to articulate those values and interests in a coherent way? What exactly does lead to more community satisfaction with the siting process for any given energy project?

Based on the literature and the insights of our interlocutors, a few critical themes emerge. We frame them so they can be tested against what emerges from the community level case studies. They are organized notionally, from upstream in the realm of policy, to downstream in the realm of formal regulation. While they are consistent with the broad views of our interlocutors and our own practical experience, they are at most provisional and tentative and subject to being tested against the case studies to come. They are also to be further subjected to much deeper exploration, both of past experience and the practicalities of new approaches.

- Unresolved policy issues respecting climate and the roles and rights of Indigenous Canadians will dog the system for a long time to come. This is a reality with which reformers will have to work, along with even more intractable realities, such as the decline of deference, fragmentation, risk aversion and modern communications. Those large realities risk becoming paralyzing if their resolution is necessary before other reforms can be undertaken. More likely and more pragmatically, the two can work in parallel.
- Policy and planning matter, but we often are not very good at them and we may be getting worse in the face of broad societal conditions that militate against them. Policy is hard. It inevitably leaves someone on the wrong side of the answer to any given question of distributive justice – i.e., it creates winners and losers. It limits political choices and it risks creating expectations that can't be satisfied, all the more so in the face of a fragmented society or one with no tolerance for risk. It is hard to sustain in a world of instantaneous communications. Yet, against that we have to consider the increase in protracted conflicts and political contentiousness surrounding energy projects caused in part by the inadequacy of policy process and the lack of forums for debate where citizens can have a legitimate and regularly heard voice on salient issues.

[9] Throughout this report, we have focused exclusively on the actions of public authorities. It hardly needs saying that the actions of project proponents can have a vast impact on perceptions of fairness or reasonableness and in the real world the relationship between proponents and local communities, not to mention the activities of civil society have a large bearing on outcomes. But that is the subject matter of other research projects.

- Planning is harder still, especially in a market-based economic system where the vast majority of investment decisions are in private hands and where limitations on individual freedom run up against habit, culture and legal precedent. But there are examples of regional level planning that have produced successful outcomes (e.g., Great Bear Rainforest Agreement, 2016). Planning increasingly needs to be undertaken in deliberative forums apart from legislatures, although legislatures and cabinets have to make the final choices.
- Regulatory processes need to be seen as "legitimate" and not necessarily independent. Much regulation is undertaken through a departmental form (see page 21) but can also be fair, transparent and evidence-based.
- Where regulatory processes are formally independent, there is great peril in actions that appear to compromise that independence. Governments that fall short on policy may be tempted to step in later in the process with dire consequences for the perceived fairness of regulatory processes. Perceptions that some sort of political choice may intervene in a regulatory decision seem to make trust ever more elusive. Better understanding of when policy (and politics) ends and regulation begins would provide a good foundation for rebuilding trust and confidence.
- Regulators are independent in their decision processes but they are not independent of the broader system. Regulators have knowledge, experience and an understanding of what happens on the ground, which is essential to policy and planning deliberations. They need to engage in the public domain and build relationships outside formal hearing processes. This may be the most revolutionary part of any solution set that emerges; it is already advancing rapidly but is still a potential legal and political minefield.
- Regulators also have opportunities to be more creative in the more formal parts of their duties. Detailed regulation-making, up to the point of formal adoption, can be effectively delegated to stakeholders through processes known as "co-creation." Formal information sharing arrangements can be established with local entities, especially municipal or First Nations governments. The processes and results of ongoing monitoring during construction and operation can be made much more accessible and participative.
- Getting more formal still, procedure matters. Robust procedure is what keeps decisions in the hands of expert regulators and multiple sources of expertise from which they draw. This is where decisions belong, rather than in the courts. Recent controversies over procedure have been accompanied by much rhetoric and it is unclear how well some commentators understand the balancing needed to make procedure simultaneously open, fair, efficient and expeditious.

The frame in the Context section of this report suggests that trust and confidence rests on four essential factors:

- A robust appreciation – by all decision-shapers – of the context in which a proposed project may be situated.
- A clear appreciation of the values, attitudes and interests of a given community and practical mechanisms for allowing those values, attitudes and interests to be accounted for and accommodated.
- A solid base of readily available, trusted information and the capacity on the part of all participants to make effective use of that information.
- Effective, genuine forums for engagement and participation throughout the decision cycle.

The themes outlined above all go, one way or another, to reinforcing those four factors. In all cases, they are intended to tie one aspect or another of the public decision-making system to the conditions under which communities have trust and confidence in the system. Others may well emerge in our case studies. Some may prove more important or less. Some may prove more or less problematic to actually realize. None will "fix" the situation. Only Canadians in their communities acting consistently with their values and in their own interests and in good faith with other Canadians can do that.

# A FINAL NOTE

*Next Steps*

In addition to the case study work, it seems evident at this stage that a much deeper exploration is warranted of the many ways in which public authorities might take new approaches such as those outlined in the bullet points in the previous section. The case studies will help validate and provide nuance to possible avenues of reform. However, even at this stage it seems clear that there is need for further research, analysis and engagement.

# References


Axsen, J. (2014). Citizen acceptance of new fossil fuel infrastructure: Value theory and Canada's Northern Gateway Pipeline. *Energy Policy*, *75*, 255-265.

Baldwin R., Cave M., and Lodge M. (2012). *Understanding Regulation: Theory, concepts and practice*. Oxford. 2nd edition. 548 p

Beck, U. (1992). *Risk society: Towards a new modernity* (Vol. 17). New Delhi: Sage.

Carlisle, J. E., Feezell, J. T., Michaud, K. E., Smith, E. R., & Smith, L. (2010). The public's trust in scientific claims regarding offshore oil drilling. Public Understanding of Science, 19(5), 514-527.

COAREP, (2016). Communities Around Renewable Energy Projects. Western University. Study 1 Toolkits for Turbine Communities. http://coarep.uwo.ca/study1.php

Colton, J., Corscadden, K., Fast, S., Hall-Findlay, M., Gattinger, M., Gehman, J., Morgan, D., Sayers, J., Winter, J., Yatchew, A. Energy Projects, Public Acceptance and Regulatory Systems in Canada: A White Paper. Canadian Network for Energy Policy Research and Analysis. U Calgary. 98 p

Corbett, A. (2015, June). *A Systems Approach to Regulatory Excellence.* Paper prepared for the Penn Program on Regulation's Best-in-Class Regulator Initiative. https://www.law.upenn.edu/live/files/4713-corbett-ppr-bicregulatordiscussionpaper-062015pdf

Cowx, E. (2013). *CCRE Commentary: Overcoming Public Opposition to New Electricity Infrastructure Projects*. Council for Clean and Reliable Electricity. Retrieved from: http://www.thinkingpower.ca/PDFs/Commentary/CCRE%20Commentary%20-%20Overcoming%20Public%20Opposition%20to%20New%20Electricity%20Infrastructure%20-%20April%202013.pdf

CROP (2013). *Canada and its Natural Resources*. Commissioned by The Federal Idea, the Canada West Foundation, the Mowat Centre for Policy Innovation (University of Toronto) and the Atlantic Provinces Economic Council. 29 p

De Groot, J. I., Steg, L., & Poortinga, W. (2013). Values, perceived risks and benefits, and acceptability of nuclear energy. *Risk Analysis*, *33*(2), 307-317.

Edelmen Trust Barometer. (2016). Executive Summary. http://www.edelman.com/insights/intellectual-property/2016-edelman-trust-barometer/executive-summary/

Elliot, MPL (1988 Conflict resolution. In A.J. Catanese and J.C. Snyder (Eds.), Urban planning (2nd ed)

European Commission, (2014). Study regarding grid infrastructure development: European strategy for raising public acceptance. European Commission Tender No. ENER/B1/2013/371. RolandBerger Strategy Consultants. 290 p

Fast S, Mabee W. (2015) Trust-building and place-making: The influence of policy on host community responses to wind farms. Energy Policy (81) 27-37

Finkel, A., Walters, D. E., & Corbett, A. (2015). Planning for Excellence: Insights from an International Review of Regulators' Strategic Plans.*Available at SSRN 2624325*.

Fischer, F. (1993). Citizen participation and the democratization of policy expertise: from theoretical inquiry to practical cases. *Policy Science* 26(3):165–187

Gaines, S (2002). Reflexive law as a legal paradigm for sustainable development. Buffalo Environmental Law Journal. 10: pg 1-24

Graham, J.D., & Noe, P.R. (2015, June). *Beyond Process Excellence: Enhancing Societal Well-Being*. Paper prepared for the Penn Program on Regulation's Best-in-Class Regulator Initiative. https://www.law.upenn.edu/live/files/4716-graham-noe-ppr-bicregulatordiscussionpaper-06

Graves, F. (2013). *The Trust Deficit: What Does it Mean?*. Ekos Politics.Retrieved from: http://www.ekospolitics.com/wp-content/uploads/full_report_may_14_2013.pdf

Great Bear Rainforest Agreement. New Order for the Great Bear Rainforest. Strategic Land and Resource Planning Department. British Columbia https://www.for.gov.bc.ca/TASB/SLRP/GBR_LUO_2016.html

Haggett, C. (2011). Understanding public responses to offshore wind power. Energy Policy 39(2):503–510. doi:10.1016/j.enpol.2010.10.014

Hardin, R. (2005). Trust in T. Honderich (Ed.), Oxford Companion to Philosophy, Cambridge University Press, Cambridge (2005)

Harshaw, H.W. (2012). British Columbia Oil and Gas Resource Management Opinion Survey 2011: Final report. Vancouver, BC: University of British Columbia Faculty of Forestry.

Hess, D (1999). Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness. Journal of Corporate Law. 25 : pg 41-84

Homer P. and L. Kahle (1988) A structural equation test of the value-attitude-behavior hierarchy.Journal of Personality and Social Psychology, Vol 54(4), Apr 1988, 638-646

Levine, M and J. Forrence. (1990). Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis. Journal of Law, Economics, & Organization. 6. Special issue. 167-198

National Energy Board (2010). Pipeline Regulation in Canada: A Guide for Landowners and the Public. pg 1

Nevitte, N. (1996). *The decline of deference: Canadian value change in cross-national perspective* (Vol. 295). Peterborough: Broadview Press.

Nourallah, L. (2016). *Communities in Perspective: The Dimensions of Social Acceptance for Energy Development and the Role of Trust*. Collaboratory on Energy Research and Policy, University of Ottawa. Positive Energy Project. pg 40

Poirier Elliott, M.L. (1988). Conflict resolution. In A.J. Catanese and J.C. Snyder (Eds.), Urban planning (2nd ed) (p159-183). McGraw-Hill Book Company.

Putnam, R. D. (2001). *Bowling alone*. New York: Simon and Schuster.

Sabatier, P. A. (1987). Knowledge, policy-oriented learning, and policy change an advocacy coalition framework. *Science Communication*, *8*(4), 649-692

Sajid, S. (2015). *Restoring Trust The Road to Public Support for Resource Industries.* The Canada West Foundation: Centre for Natural Resources Policy. Retrieved from: http://cwf.ca/pdf-docs/publications/CWF Restoring Trust Report v2.pdf

Simard, L. (2008). Conducting Projects in Uncertain Times The Case of Electric Power Lines. *Public Works Management & Policy*, 12(4), 578-589.

Urry, J. (2000). Sociology beyond societies: Mobilities for the twenty-first century. Routledge. 273 p

Walsh, P. J., Bird, S., & Heintzelman, M. D. (2015). Understanding Local Regulation of Fracking: A Spatial Econometric Approach. *Agricultural and Resource Economics Review*, *44*(2), 138-163.

Webler, T., Kastenholz, H., & Renn, O. (1995). Public participation in impact assessment: a social learning perspective. *Environmental impact assessment review*, *15*(5), 443-463.

Wolsink, M. (2007). Wind power implementation: the nature of public attitudes: equity and fairness instead of 'backyard motives'. Renew Sustain Energy Rev 11(6):1188–1207. doi:10.1016/j.rser.2005.10.005

# Annex

*Interview Findings, Participants and Questionnaire*

## Expert views on the state of community confidence in public authorities

A central component of the preliminary research for this project was a set of interviews with senior leaders from across Canada. Twenty interviews, each lasting 45 to 60 minutes, were conducted in October and November 2015 with heads of regulatory agencies, senior policy officials, prominent members of the environmental community, Indigenous leaders and senior executives from oil and gas, pipeline and electric power companies. The complete list of participants is provided at the end of the Annex, along with the interview guide used. The interviews were confidential and were conducted by Michael Cleland, Dan McFadyen and Monica Gattinger. This Annex provides a synthesis of what we heard.

## Overview – do we have a problem?

Most, but not all, of our interlocutors were convinced that we have a serious problem in Canada that will take time and considerable effort to address.

One dissenting view held that, while there are some very real complaints with regulatory processes, there is nothing here that governments cannot readily fix. A more widely shared view was that despite all the public noise about some projects and processes, almost no one hears about the large number of approval processes that go well and result in projects being built in a timely fashion. A very widely held view, explicitly or implicitly expressed by most of our interlocutors, was that the system is not "broken." In many ways, it works well. As one put it, "Controversy is inevitable and a sign of a well-functioning system." The system has many positive attributes and it is widely respected around the world. We are not talking about root-and-branch reform.

We are, nonetheless, talking about significant reform and that starts with better understanding the societal context in which we are working. Governing processes (the term is used advisedly since, as discussed below, the issues are at least as much attributable to policy as to regulation) have not evolved in a way consistent with today's societal expectations. Interlocutors expressed this differently but the general theme was pervasive. As one put it, "At the core is a focus on decentralizing decision-making power." For another, it comes down fundamentally to changing values: "Economic issues no longer trump others, like health, loss of irreplaceable landscape or impacts on First Nations." To this thought, another added the important nuance that a wealthy society enjoys a certain luxury in this regard. A slightly more jaundiced and frequently expressed view was that the broad public interest is often swamped by narrow (local or single issue) interests. These interests, it was argued, are a consequence of a world where activists have disproportionate power generated in part by effective use of the 21st century communications environment.

Tolerance for risk, or its lack, was a common theme. As one put it: "Expectations are huge; nothing should go ahead without 110 per cent guarantee that there will be no problems."

The term "confidence" ran through the interviews. Somewhat contradicting the above suggestion that values have changed fundamentally, one person said: ". . . not sure that the concerns have changed but confidence has." Behind the

word "confidence" are several dimensions. One interlocutor was careful to distinguish questions of confidence and trust from "legitimacy," defined as belief in the competence and capacity of the regulator which, in his view, is intact. Not everyone agreed with that assessment; many saw the regulatory system falling short in several respects, which are expanded upon below. Energy regulators are far from alone in the matter of lost confidence. Virtually everyone agreed that governments more generally face the same attitudes. One person noted that this extends far beyond energy, encompassing genetically modified organisms, vaccines and many other complexities of modern life.

An important question that underpins all of this is the matter of trends. Have things changed? Which things? And how is it all evolving? One interlocutor made the point that large controversies over environmental impacts and effects on Indigenous peoples are not exactly new; the James Bay controversy dates to the 1970s. Another noted that he has seen no discernible change in local concerns over the past decade; another observed that conversations with "soccer parents" and other citizens revealed that most don't think about all of this and do not see a growing issue. Yet most of our interlocutors saw a world that has changed in fundamental ways over the past few decades. There was some divergence of views as to exactly what has changed – is it a shift in values or a loss of confidence in authority or both? Most interlocutors agreed the trend lines point to more protracted and controversial decision processes and to a growing need to restore public confidence in those processes.

## Unpacking the problem – dimensions

The issue of climate change and the growing contradiction between Canadian energy and greenhouse gas emission aspirations ran through many of the interviews. One caught it well: "People with a sense of urgency ran up against people with a sense of urgency." Saving the planet and seizing an international export opportunity are not always compatible objectives.

Climate change and fossil fuel development are important but there is much more to it. For one interlocutor, controversy is inescapable when linear projects of any sort cross traditional (First Nations) territory. Another noted that a similar degree of opposition arises with respect to environmental "positives," such as wind projects and transit. Others, however, noted that projects perceived as "social goods" more often generated public support.

Another theme that was frequently raised by participants concerned issues related to water. Virtually all of the interviews included references to water in multiple dimensions: water use for hydraulic fracturing, loss of aquatic habitat, effects of flooding, risks of spills, and contamination of ground water.

Throughout the interviews, water seemed in a sense to be a surrogate for a wide range of essentially local or regional effects. The notion of regional effects led in several interviews to questions about cumulative effects and the seeming inadequacy of systems to address such effects. There were also comments about the inadequacies of regional planning processes.

One interlocutor reminded us that it is not always about environmental issues. Effects of local inflation, labour shortages, social impacts and effects on traditional culture also matter.

Context matters. The nature of a project and the nature of its impact matter a great deal, but in the minds of most of our interlocutors the nature of the affected community could be just as important. Some noted how rural communities are often attracted by perceived local benefits while urban communities with more economic opportunities tend to discount such benefits. A few noted that familiarity with an industry has big and usually positive effects on attitudes.

## The actors and their relationships

The focus of this project, it will be recalled, is the relationship between local communities and public authorities. Public authorities in turn are composed of both policy-makers and regulators. This section reflects our interlocutors' views on the nature of each of the three parties, their respective roles and responsibilities and the dynamics of the different relationships.

There was consensus among our interlocutors that, to the extent there is a breakdown in the system, a good part of it can be laid substantially at the feet of policy-makers. There are several dimensions to this.

The biggest dimension is what one can call unresolved policy issues, the biggest of which is climate change. The deep and growing contradiction between different aspirations was a theme that cropped up in virtually every interview, as did the related point that this is a policy problem with no adequate forum for debate. The lack of such a forum, in turn, causes the debate to arise in regulatory processes for individual projects.

Other sorts of impacts – local, regional, related to water, habitat, land and air – also emerge on the policy-makers' to-do list. But the questions here are more diffused and multi-dimensional. In the minds of several of our interlocutors, the issues come back to process. As one put it: "Aboriginal communities feel they have been left outside. Proponents often don't understand the importance of community engagement." The question is the extent to which that engagement is the business of project proponents or public authorities. Most commented one way or the other that public authorities, including regulators, needed to significantly "up their game" with respect to engagement and relationship building (more on that below). One of our interlocutors was unequivocal: "Proponents were responsible for getting the community on side; (the public authorities) should have done that."

One dimension where the responsibility unavoidably lands on policy-makers was in the realm of regional scale issues and cumulative effects management. To the extent that these sorts of issues remain unresolved, they reflect failures of policy. To the extent that individual project applications and regulatory processes are the only forums where such issues can be addressed by the public, that too is a failure of policy. As one put it, "Regulators create the only arena where big issues can be debated and it's the wrong arena."

One area where our interlocutors were almost unanimous was that governments – many of them across Canada – have compromised the independence or perceived independence of regulators and in so doing have exacerbated the problem of confidence. Different dimensions of the question are caught in the following quotes, all of which refer in whole or in part to provincial governments:

- "What used to be truly independent agencies are now seen as part of government political mechanisms or are sidelined."
- "Regulators should be distanced from government. Regulators should have clear mandates. Governments need to start treating regulators like the courts."
- "The arms-length relationship between regulators and policy has been compromised and overridden."

One other comment is of note: "Policy-makers need to develop confidence in their regulators; too often, they lack confidence which leads to 'interference'."

Regulators are by no means free of responsibility for all of this, including, in the mind of one interlocutor, a failure to stand up and defend their independence. Many of our interlocutors, including some of those who are regulators, were highly critical of several aspects of the regulatory system. Regulators have been slow to respond to the changing conditions. As one put it, "Regulators have not kept up with changing conditions on the ground." Another said, "Back in the day – not that long ago – all you had to do was stay at home, be a good regulator and everything would be fine." Another said, "Regulators are out of step with reality.... They act in an old-fashioned way .... Meanwhile, business and customers are dealing with new technologies, more transparency and rapid exchange of information."

But if regulators have been slow to change that still leaves the question: change to what effect or in what direction?

The most common comments centred on regulators' failure to get out into the community, build relationships and take more of a lead role in the dialogue. "Regulators come in at the end of the process and this is not helping.....(they) have not been active in thinking how to reach out to communities and to help communities understand."

Language matters. "Regulators....need to be more effective at communicating...decisions are written in legal terminology." Some noted, however, that regulators are using plain language to explain decisions in public summaries and those seem to be widely used by the news media.

In any relationship, there is inevitably more than one side. In the minds of many of our interlocutors, local communities share some of the responsibility for failure. The most critical observation put it this way: "In the past, proponents and opponents based their interventions on fact. Today, opposition is not as grounded in fact. A lot more people involved won't allow for others to be heard." For another, the problem is one of accountability: "Opponents simply oppose without being held to account for alternatives or determining who is responsible for paying." Lack of basic understanding or literacy came in for comment in several instances, where local communities – or at least some individuals in them – are ill-informed on energy realities or on the nature of the regulatory process or the regulatory institutions. Such ignorance does not inhibit them from being vocal.

## Paths forward

By no means were the comments anywhere near as negative as some of the above might suggest. No one, as noted earlier, was calling for a complete overhaul of the system. Many comments suggested practical actions that governments and regulators could take or were taking to restore confidence in the system. Even so, they are mindful that many of these ideas are potentially controversial and some may run afoul of the need for regulators (and policy-makers) to protect procedural fairness.

The most important probably concerns the essential roles of regulators and their place in the broader governing system. As one put it, "Regulators are independent in their decisions but they are not independent of the broader system." In other words, while regulators cannot advocate for policy, they are nonetheless important sources of information and advice of which policy-makers should be taking advantage.

Inevitably, a lot of that information comes from the fact that regulators, as one put it, "are the only forum with a public process." They are on the front lines and they hear the public directly and often. Going back to an earlier noted criticism of regulators' failure to communicate and engage, questions remain as to how they do that without compromising the integrity of formal regulatory proceedings. There is also a question of when it is the regulators' role or that of the policy-makers to do the engaging. For one interlocutor, it is both: "Create as many interfaces as possible. Create pathways for the public to be heard. There is no substitute for face-to-face engagement." Another comment, more of a question really, was whether there is a role for another sort of body – neither regulator nor policy-maker but "an objective third party" – that can provide information and a forum for debate.

On the regulators, several ideas emerged from the interviews that centre on better engaging communities and making processes more transparent. These included memoranda of understanding with municipal governments to share information and to keep all interests informed; direct involvement of stakeholders in creating regulations; outcomes-based regulations; and, more open and accessible information not only leading to project approvals but also throughout the life cycle.

Finally, most interlocutors commented on the regulators' role in communications. One was cautious about trying to keep up with the Twitter world, stating that, "Regulators should not be distracted by social media." A somewhat contradictory view was that regulators need to get out in front of developing communications issues even where information is incomplete. "Regulators need to be seen as human," said one. Consistently, we heard that to be effective, communications needs to be primarily personal, face-to-face and direct.

## Conclusion

This is a compressed synthesis of almost 20 hours of interviews across a broad spectrum of people. While we encountered a diverse range of views, there was a considerable degree of consensus around certain basic points:

- We have a problem. Although the system is far from "broken," there is a growing lack of confidence in public authorities among many segments of society.
- The problem starts with policy and the substance of policy, not only process.
- The policy substance covers a broad spectrum of issues. Climate change looms largest but there is a more diverse set of environmental issues led by concerns about water. Issues of regional scope come in not far behind.
- In a process sense, the overwhelming issue concerns the need for forums where issues can be debated and the fact that regulatory proceedings which are not suited to the task have become the forum of default. Resolving the issue is essentially the business of policy-makers.
- The role of regulators in their relationships with policy-makers – appropriately independent and yet inevitably part of the policy system – is a question that needs debate.
- The way regulators should function is a big question. They should be open, engaged, informal, working in partnership with others, effective real-time communicators and yet somehow judicial, objective and guardians of the integrity of regulatory processes. No one should underestimate the complexities in reconciling this set of requirements.
- Most broadly, communities need to be engaged early, often and respectfully. Yet communities themselves, or at least individuals within them have work to do to become informed and to act objectively, fairly and democratically.

## Interview participants

The research team requested interviews with a total of 33 senior-level individuals in the following categories : regulators (6); policy (7); industry (9); ENGO (5); Indigenous (6). A total of 20 interviews were completed. Repeated efforts were made to reach or to find mutually convenient times with the remaining individuals. The individuals who participated are:

| NAME | TITLE | ORGANIZATION |
|---|---|---|
| **REGULATORS** | | |
| **Colin Andersen** | CEO | Ontario Power Authority |
| **Jim Ellis** | President and CEO | Alberta Energy Regulator |
| **Willie Grieve** | Chair | Alberta Utilities Commission |
| **Peter Gurnham** | Chair | Nova Scotia Utility and Review Board |
| **Paul Jeakins** | Commissioner and CEO | BC Oil and Gas Commission |
| **Peter Watson** | Chair and CEO | National Energy Board |
| **POLICY** | | |
| **Murray Coolican** | Deputy Minister | Nova Scotia Department of Energy |
| **Mike Harcourt** | Former Premier and Mayor | Government of B.C. and City of Vancouver |
| **Jay Khosla** | Assistant Deputy Minister, Energy Sector | Natural Resources Canada |
| **INDUSTRY** | | |
| **Patrick Cabana** | VP Regulatory Affairs | Gaz Metro |
| **David Collyer** | Director and Former President and CEO | Canexus and Canadian Association of Petroleum Producers |
| **Brenda Kenny** | Former President & CEO | Canadian Energy Pipeline Association |
| **Hal Kvisle** | Chair | ARC Resources |
| **Marie-José Nadeau** | Chair | World Energy Council |
| **Greg Reimer** | Executive Vice-President, Transmission, Distribution & Customer Service | BC Hydro |
| **Ed Wojczynski** | Former Division Manager – Portfolio Projects Management | Manitoba Hydro |
| **Pat Youzwa** | Former President and CEO | SaskPower |
| **ENGO** | | |
| **Kai Nagata** | Energy & Democracy Director | Dogwood Initiative |
| **Peter Robinson** | President and CEO | David Suzuki Foundation |
| **INDIGENOUS** | | |
| **JP Gladu** | President and CEO | Canadian Council for Aboriginal Business |

## Approach to recording and compiling the interviews

Each interview was recorded by hand by the interviewer and then immediately transcribed. Notes were then sent to the person interviewed to check accuracy and any amendments were duly incorporated.

The interview material was compiled through a four-step process:

- development of tentative organizing themes
- capture of comments from all interviewees organized under the themes
- subsequent modification and boiling down to the themes noted above, and
- development of a narrative consistent with the general run of interviewee comments along with insertion of apposite quotes.

The three interviewers reviewed the narrative with an ear to how well it captured the essence of what each heard in the course of the interviews that they conducted. Interviewees were given an opportunity to review the compiled results.

## Interview guide

### Q1

This study seeks a range of perspectives from different jurisdictions or regions, different energy sub-sectors and different decision-maker points of view (policy, regulator, NGO, corporate) to the issue of community confidence in energy regulation. Many people bring multiple perspectives to these issues. In general, how would you characterize the perspective that you bring to the issue?

### Q2

To what extent would you agree that:

- Canada has a serious and growing problem of lack of public support for all sorts of energy developments?
- And that problem arises in part due to declining public confidence in public authorities – mainly, but not only regulators?

In other words, in your view, do we have a problem, is it growing and does it arise at least in part from lack of public confidence in public authorities?

### Q3

This research is focused very deliberately at the local community level but acknowledges that there are societal or global level issues at play here as well. In general, to what extent do you think lack of support for energy development stems from issues that are essentially local in nature?

### Q4

Local concerns can cover a spectrum of issues, such as worries about health and safety, concerns about social and cultural impacts, concerns about the environment or a sense that benefits and costs are not fairly distributed. In your experience are there some concerns that are more common than others? If so, what are they? Do they vary in some systematic way from place to place? Or is each community unique? Have the concerns changed over time?

### Q5

Speaking of time, the phenomenon that we used to call NIMBY (not-in-my-backyard) has been around for a long time. Is the nature of opposition different today, compared to, say, 15 years ago? In what way? What do you perceive as the cause or causes that lie behind these changes?

### Q6

As mentioned, the focus of our research is questions of confidence in public authorities. In your experience, to what extent do concerns appear to stem from doubts about the project proponent or the project and to what extent, if at all, do you see concerns being raised about public authorities such as policy makers and regulators?

### Q7

Do citizens appear to understand the roles of various authorities in energy development? Which authorities have you seen subjected to questions of confidence?

### Q8

How are these concerns expressed? For example, is it about questions of fundamental direction (essentially policy), is it about perceptions of fairness, of the competence of the authorities to protect the public interest, of access to information or about ability to be heard? Or are public authorities just the visible target for expressions of discontent with underlying projects or policies?

### Q9

This research recognizes that it's not all gloom and doom – projects get built all the time and many communities seem satisfied. What, in your experience, marks the less controversial or more successful cases from the ones that have been most difficult? What particular projects come to mind over the last number of years as being the most controversial or the most successful?

### Q10

The next phase of our research will involve a deep dive into a select number of communities where siting controversies have (or have not) arisen (or are ongoing). What advice can you give as to how to approach local communities? What should the research be careful to avoid? What are the sorts of questions you would want to see answered when we set about this work?

*[At conclusion of interview, researcher thanks participant and asks if they have any questions about the research or would like to add anything further.]*

**THE CENTRE FOR NATURAL RESOURCES POLICY**
CHAMPIONS THE RESPONSIBLE DEVELOPMENT
OF WESTERN CANADIAN RESOURCES
TO SAFEGUARD CANADA'S PROSPERITY.

**THE UNIVERSITY OF OTTAWA'S POSITIVE ENERGY PROJECT**
USES THE CONVENING POWER OF THE UNIVERSITY
TO BRING TOGETHER ACADEMIC RESEARCHERS AND
DECISION-MAKERS TO DETERMINE HOW ENERGY RESOURCES
CAN BE DEVELOPED IN WAYS
THAT GARNER SOCIAL ACCEPTANCE.

CANADAWEST FOUNDATION
CENTRE FOR NATURAL RESOURCES POLICY
uOttawa
POSITIVE ENERGY