



Collaborative Consent

Considering a framework for
building nation-to-nation
relationships in environmental
assessment...

Key contextual drivers of change


- Federal commitment to building '**nation-to-nation**' relationships with Indigenous peoples
- UNDRIP 'free prior informed **consent**' requirement
- Federal commitment to address all TRC recommendations, including **implementing UNDRIP**
- SCC direction that goal of Crown relationship with Indigenous peoples is **reconciliation**
- **Tsilhqot'in** and **Daniels** decisions
- Massive **budget commitment** to addressing Indigenous peoples' needs

Proposal

- EA reform should build and sustain “beyond DTCA” relationships with Indigenous governments
- EA reform should address all drivers
 - It is an opportunity not a burden
- EA reform has both procedural and substantive elements

Collaborative Consent

A process of deliberative dialogue aimed at achieving each party's consent to a proposal

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- Process: ongoing, iterative
 - Deliberative: planned, focused, deep, meaningful, substantive
 - Dialogue: mutual, transparent, responsive, knowledge-based
 - Aimed: genuine intent, no guarantee, no veto
 - Each party: both/all 'sides' must agree
 - Proposal: unilateral or bilateral

Examples from the NWT

- Legislative development:
 - Co-drafting Wildlife Act, SARA
- Policy development:
 - Water Stewardship Strategy
- Revenue models:
 - Resource revenue sharing under Devolution Agreement
- Negotiations:
 - Thaidene Nene Collaborative Negotiations
 - Transboundary Water Agreement Negotiations and Implementation

Hallmarks

Build trust

Processes have cumulative pos. effect, path to reconciliation, working and outcome benefits, lose and gain 'control'

Own the process & outcome

Mutual solutions, co-build the decision, co-present the outcome, share the benefits

Multiple forums

Numerous opportunities, long-term commitments with current applications

Some Questions for EA Reform

- Application to key stages/steps of EA
 - What are these critical places?
 - Project description
 - Definitions
 - Goal of the EA itself
 - Guidelines
 - Use and weight of knowledge
 - Final decision-making
 - What tables/processes might need to be created to address the critical stages/steps?

Joint Environmental Assessments

There is precedent for harmonized joint panel reviews to be completed under negotiated agreements between public governments and Aboriginal peoples in Canada:

Land Claims context: Mackenzie Valley Impact Review Board;
Nunavut Impact Review Board

Memorandum of Understanding on Environmental Assessment of the
Proposed Voisey's Bay Mining Development (1997) between
Canada, Newfoundland and Labrador, Innu Nation and the
Labrador Inuit Association

Voisey's Bay EA MOU



- Established a single, harmonized process for assessing the Environmental Effects of the Voisey's Bay mine/mill project, including provision for comprehensive involvement by affected Aboriginal communities on government to government basis.

Voisey's Bay EA MOU

- Sections 40 to 42 of CEAA (1992) enabled the Minister of the Environment of Canada to enter into an agreement with other jurisdictions respecting the joint establishment of a review panel and the process by which the panel conducts an assessment of the environmental effects of a proposed undertaking.
- An independent 5-person panel was appointed to carry out scoping hearings, develop Environmental Impact Statement (EIS) guidelines for the proponent, and to review and to carry out public hearings on the EIS once complete.
- Panel members were appointed by Canada from among nominees put forward by each Party. In actual fact, the Panel members were selected by consensus of the Parties.

“Beyond CEAA” Requirements

- Inclusion of a comprehensive description of the Project that was being assessed in the MOU. Any changes to the Project required approval of all Four Parties.



“Beyond CEAA” Requirements

- “Environment” and “Environmental Effects” expanded to include consideration of spiritual aspects of the Environment of importance to indigenous peoples;



“Beyond CEAA” Requirements



- The relationship between the Project and land claims negotiations could be addressed by the Panel.

“Beyond CEAA” Requirements

The MOU required the Panel required to consider:

- the extent to which biological diversity would be affected by the Project,
- the application of the precautionary principle, and
- Traditional ecological knowledge, whether presented orally or in writing, was to be given ‘full consideration’ in accordance with Aboriginal perspectives.

“Beyond CEAA” Requirements

The Panel established guidelines which considered:

- the preservation of ecosystem integrity and maintenance of biological diversity;
- respect for the right of future generations to the sustainable use of renewable resources; and
- the attainment of durable and equitable social and economic benefits.

Process Innovations

- Scoping sessions to be held by Panel prior to releasing guidelines for the EIS;
- Requirements for translation of key documents into *Innu-aimun* and *Inuktitut* in both written and videotaped forms, and provisions for simultaneous translation of all Panel hearings;



Process Innovations

- Hearings required to be held in affected communities;
- Information centers staffed by information officers established in affected communities;
- Commitments to participant funding;

Timelines

- Timelines and process issues were negotiated between the Parties and included in the MOU.
- The entire hearing process – inclusive of EIS drafting by the proponent - was completed in two years (MOU concluded and Panel appointed in January 1997, Panel Report in October 1999)

Shared Decision-Making

- Requirements for the Panel to report to the Four Parties instead of simply to the Ministers of Environment. This was important because the Aboriginal parties wanted to ensure that the MOU reflected a government-to-government relationship.
- The Four Parties consulted each other on the Panel's recommendations before announcing their respective decisions.

Final thoughts...

- N2N implies “a seat at the table” of confederation
- Need N2N tables to address broader political, legal, and policy worlds that surround project/EA decision-making
- EA reform that addresses key drivers can improve sustainability outcomes



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