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# Commentary

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#8 IN A SERIES

## FROM A MANDATE FOR CHANGE TO A PLAN TO GOVERN

# Defending the National Interest in Energy Resource Development

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### INTRODUCTION

The new Liberal government formally took office in November with high expectations about how it would diverge from its predecessor on a range of key issues, including relations with First Nations, the environment, and federalism. The prime minister quickly moved to turn his campaign rhetoric into action by meeting with Aboriginal leaders, bringing a large delegation to the international climate change conference in Paris, and hosting the first full meeting with the premiers in more than five years. This new collaborative approach was lauded in many circles. Early signs suggested that it would bring an end to the acrimony that often plagued the previous government.

Such aspirations faced their first major challenge last month when more than 80 Quebec mayors – including Montreal mayor Denis Coderre – declared their opposition to Energy East, a proposed pipeline that would

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bring oil products from Western Canada to Eastern Canada for refining and export. This collective declaration precipitated a war-of-words among competing sides of the issue, a Parliamentary motion in the federal House of Commons, and a hurried visit by the prime minister to Montreal in an attempt to ease the tensions. The national debate about the construction of energy infrastructure such as pipelines remains alive and well.

Concurrently the federal government announced new pipeline regulations that will require regulators to consider the “upstream” greenhouse gas emissions that result from individual projects as part of their overall assessment, and directs companies to carry out greater Aboriginal consultations. These changes are being described as a “transitional step” that will apply to current projects under review such as Energy East while the government conducts a broader review of the regulatory process with respect to major energy projects (Slaughter 2016).

This new policy is, according to the minister of the environment, supposed to “rebuild Canadians’ trust in the environmental assessment process” (Tasker 2016). Her colleague, the minister of natural resources, went further by arguing that “there has to be public confidence in the regulatory process if we are going to sustain the movement of these [energy] resources to tidewater” (McHardie 2016).

The government is right to focus on building broad support in favour of resource development and the construction of energy infrastructure. The prime minister’s attempt to head off a divisive national debate about oil sands development in general and his support for the Energy East project in particular should be lauded. Similarly his natural resources minister’s comments about the “importance of the moment” with regards to exporting energy resources to new markets are a positive sign (Canadian Press 2016). The government’s overall objective appears to be the right one for the country.

There are risks, however, with the plan to get there. Imposing new regulatory and consultative requirements on projects already under review risks further delays with little tangible benefit. The natural resources minister has even acknowledged that new rules will produce more consultation but not likely a consensus. The risk, then, is real that these new requirements will fail to satisfy pipeline opponents and thus get us no closer to the goal of advancing Canada’s energy interests.

The Macdonald-Laurier Institute’s mission is to help to inform sound public policy at the federal level. Our goal in this essay series is to help the new government best achieve its top policy objectives.

This eighth essay in the series will help Canadians better understand the regulatory process for new energy projects and different considerations that are accounted for before a project can proceed. The intention is to inform policy thinking as the new government faces difficult questions about how to sensibly develop natural resources while keeping harmony in the federation.

We will then offer what we think the evidence establishes as the best policy options for a plan to advance important energy projects to “create jobs and spur investment,” as the Liberal Party’s (2015) platform rightly puts it.

## **ECONOMIC BENEFITS FROM RESOURCE DEVELOPMENT IN CANADA**

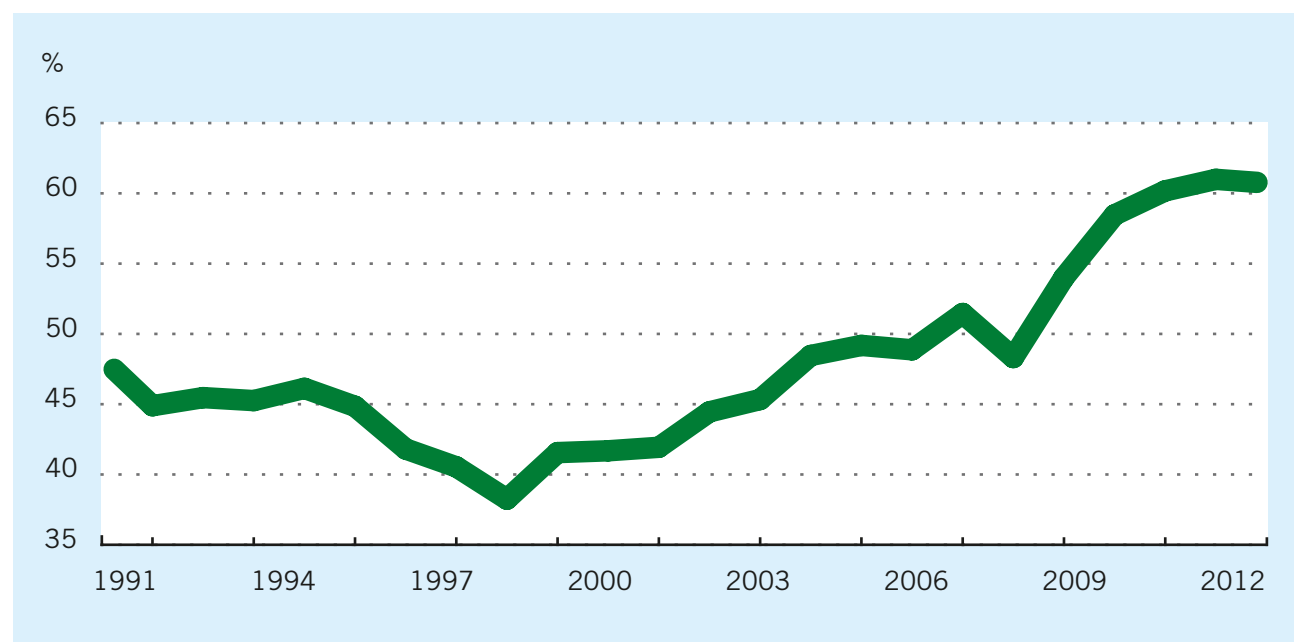
Canada is a resource-rich country. We are one of the world’s largest producers of oil and have one of its largest reserves. Our natural gas reserves are the equivalent of more than 100 years of current production levels. Our oil and gas reserves, including reserves of non-conventional resources such as oil sands and shale gas, put us among the leading producers and exporters globally (Natural Resources Canada et al. 2012). The

former prime minister has been criticized for calling us a “global energy superpower,” but the moniker is mostly justified.

And our relative energy strength is not limited to fossil fuels. Canada is also the world’s third-largest producer of hydroelectricity, and we have our own uranium deposits and nuclear power technology. The result is that more than three-quarters of our electricity already comes from non-carbon-emitting sources (Natural Resources Canada et al. 2012). We also have access to other renewable energy sources, including small hydroelectricity, wind, geothermal, and solar.

The natural resource sectors represent a major share of the national economy and Canadian jobs. Consider, for instance, that natural resource industries directly contributed \$260 billion, or 16.6 percent of GDP, in 2010 (Cross 2015). This translates into 14 percent of national employment and nearly two-thirds of overall investment and exports (see chart 1).

**Chart 1: Share of natural resources in business investment, 1991–2012**



Sources: Cross 2015, page 21, chart 3; data from Statistics Canada CANSIM Table 029-0005.

The economic benefits from natural resources are not limited to a particular region or province. All Canadian regions have a sizeable resource sector especially when one considers forestry, mining, and field agriculture. Ontario has the second largest agricultural industry in Canada (behind Saskatchewan), is the largest producer of metal ores (gold, copper, and nickel), and is the second largest producer of non-metallic mineral (its diamond industry trails only Saskatchewan’s potash in value). Quebec has the second largest forestry industry after British Columbia; the forest industry directly accounts for more than 20 percent of the income in 171 municipalities across Canada (Natural Resources Canada 2016). All regions have sizeable energy sectors after accounting for electric power.

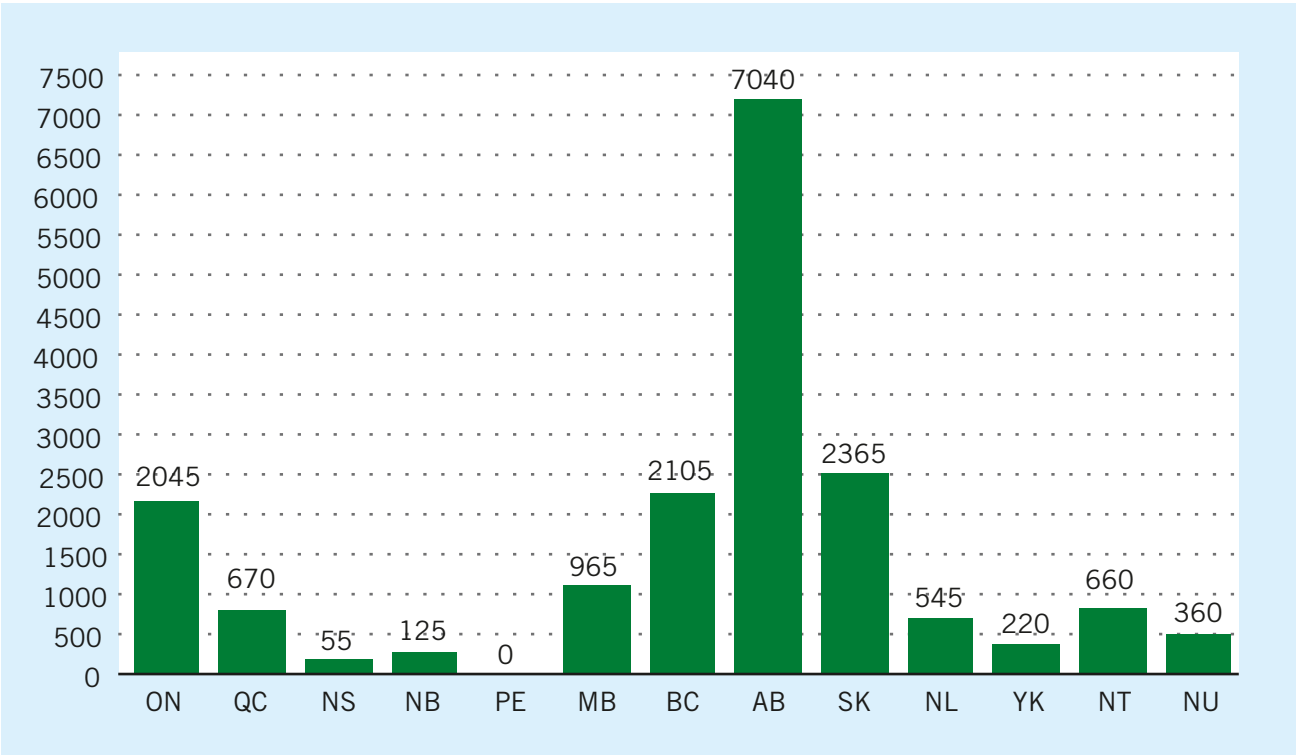
In fact, a study by Philip Cross published by MLI in 2013 found that resource development has contributed to a convergence of economic performance across the provinces rather than creating inequality, as is commonly

assumed. The frequent assertion that Canada was suffering from “Dutch disease” that impoverished Ontario and Quebec while enriching Alberta is a prominent example. Put simply, resource development provides direct and indirect economic benefits across the country.

Another major benefit is the potential for employment for Aboriginal peoples, whose lack of economic opportunity is well-documented. It has contributed to many of the social challenges that their communities are facing.

Resource development provides high-paying and stable employment in many remote parts of the country, including near First Nations reserves. It is hard to determine the full extent of Aboriginal employment in natural resources but the evidence does find growing Aboriginal engagement in the sector (Coates et al. 2015). Statistics Canada data show a significant number of Aboriginal workers involved in direct employment in the sector (see chart 2). Note these numbers do not include the significant engagement of Indigenous businesses and workers in the service and support industries.

**Chart 2: Number of Aboriginal workers in key natural resource sectors, 2011**



Sources: Coates et al. 2015, page 10, chart 1; data from Statistics Canada, 2013, *National Household Survey Aboriginal Population Profile, 2011*.

Direct and indirect employment only scratches the surface of the potential upside of resource development for Aboriginal communities. It is the centerpiece of Aboriginal business activity, investments by Aboriginal economic development corporations, and community efforts at developing economic self-sufficiency. There are now more than 300 impact and benefit or collaboration agreements between Aboriginal communities and mining companies alone (Newman 2014). These agreements (which are often confidential) provide the basis for community benefits for specific projects, including employment and training commitments and social spending. Arrangements can include joint venturing provisions or equity positions for Aboriginal communities, as well as partnering on environmental monitoring or impact assessment. These deals

are intended to produce a win-win solution for the community and the developer. A paper authored by Ken Coates and others (2015) highlights 10 case studies where companies have worked with Aboriginal communities to advance resource projects with significant benefits for the communities and their residents.

Natural resource industries are also a significant source of revenue for Canadian governments. The federal Department of Natural Resources (2016) reports that, on average, natural resource firms contributed about \$26 billion per year in revenue for all levels of governments over a five-year period between 2009 and 2013. This is the equivalent of approximately half of all spending on hospitals in Canada in 2013 (Government of Canada 2013). And, of course, it fails to account for the tax revenues derived from the employees, suppliers, and others with ancillary links to the sector.

As for the long-term economic prospects of resource development, there is little reason to believe that it will not remain a key source of growth and output. Notwithstanding the current drop in global energy prices, the long-term picture of worldwide demand for Canadian commodities is projected to be positive. A 2012 study conducted on behalf of federal and provincial energy ministers found that the global demand for our energy and mineral resources – particularly in Asia – is expected to continue over the next 25 years (Natural Resources Canada et al.). The International Energy Agency (2011) has indicated that fossil fuels will continue to be the dominant sources of energy for the foreseeable future. Projections show that fossil fuels will still account for well over 75 percent of the world's energy needs in the next 25 years – in fact, demand for oil is assumed to climb 18 percent over this period relative to current levels.

The recent downturn in global prices has caused the industries to pull back on their capital investment plans. But the federal Department of Natural Resources (2016) reports that, as of July 2015, there are hundreds of major resource projects under construction or planned in Canada over the next 10 years, totalling more than \$700 billion in investment. Virtually every one of these projects implicates at least one First Nations community and therefore there is tremendous opportunity to ensure that they derive lasting benefits from resource development (Baines 2013).

As the global economic picture remains uncertain, diversification of export markets for our natural resources is key to maximizing their economic benefits. Yet several obstacles – including environmentalist opposition, a protracted regulatory review process, and unresolved challenges with some Aboriginal communities – stand in the way. Developing Canada's natural resources in a responsible way continues to be a key issue for policy-makers. We cannot afford to get this wrong.

## CANADA'S CURRENT REGULATORY FRAMEWORK

It is critical, then, that we have a well-functioning and credible process for reviewing prospective natural resource projects, including new oil and gas pipelines. Everyone, including the resource sector, agrees that we must have a robust regulatory process based on the best scientific and environmental analysis. It must also ensure that project proponents discharge their legal requirements for consulting and accommodating Aboriginal communities in an open and constructive manner. Consultation involves more than meetings; accommodation means more than small payments to purchase compliance. As the Liberal Party (2015) platform rightly says: "Canadians must be able to trust that government will engage in appropriate regulatory oversight, including credible environmental assessments, and that it will respect the rights of those most affected, such as Indigenous communities."

There has been much debate in recent years about Canada's environmental assessment and regulatory process. Overlapping jurisdictions between levels of government and different regulatory bodies whose acronyms sound like a bowl of alphabet soup can leave Canadians understandably confused about the process. This confusion can fuel concerns about the cost, efficacy, and reliability of the system. It is worthwhile to step back



and understand the different federal laws that govern the regulatory process and the various bodies involved in carrying it out.

A 2015 MLI study by Bram Noble and Aniekan Udofia provides a useful primer on the evolution of the system and its current legal and organization characteristics. The first federal environmental assessment provisions were established in 1974. These guidelines, which were passed by Order in Council rather than codified by legislation, were considered to be “mere administrative directives whose application was discretionary” (Douglas and Hébert 2002). Their scope was broad and captured any initiative for which there was a federal decision-making authority – from individual resource projects to regional resource development strategies. The process excluded any Aboriginal engagement or consideration of the impacts to Aboriginal traditional lands or culture. The review involved oral or written presentations to a formal review panel.

Calls to reform the regime – particularly with respect to Aboriginal consultation – began to mount in the late 1970s and precipitated a series of changes in the ensuing decades. The *Canadian Environmental Assessment Act*, passed in 1992, entrenched a federal environmental assessment regime. The new law set out the federal role in the environmental assessment process – including “timely and meaningful” public participation “throughout” the review (Noble and Udofia 2015) – and criteria for evaluating projects such as “environmental effects of the project” and “any comments from the public” (Douglas and Hébert 2002). There was also an emphasis placed on ensuring greater engagement with Aboriginal communities and organizations as part of the exercise.

The legislation was further amended in 2003 to better harmonize the federal environmental assessment process with those of the provinces and territories and to provide for the specific incorporation of Aboriginal traditional knowledge in the process. It also sought to focus the federal process on projects that were “more likely to have significant adverse environmental effects” and to move away from those with less potential effects (Canadian Environmental Assessment Agency 2013). The amended law still maintained separate roles for various federal departments and agencies, an arrangement which produced delays and often overlapping and even competing conditions.

Two Supreme Court of Canada decisions in 2004 changed the conversation – and the review processes – by establishing clear requirements under the heading of “duty to consult and accommodate.” These arrangements made it incumbent on governments to work with Indigenous groups to evaluate the potential impact of any project on their traditional territories and, where demonstrated impacts could be identified, to accommodate Indigenous interests in a fair and just manner. These decisions, re-enforced and clarified more over time, add a strong and appropriate Indigenous dimension to the evaluation process, and brought Indigenous governments and communities into the centre of the environmental assessment system (Coates and Newman 2014; Newman 2014).

Thereafter the regime evolved over time in conjunction with provincial and territorial policies and judicial decisions. As the environment is an area of shared legislative jurisdiction, provinces and territories have also developed their own rules and policies that are sometimes applicable to the same projects subjected to federal assessments. Modern treaties, particularly in northern Canada, have further clarified government and corporate responsibilities regarding engagement in the development process. Successive court decisions concerning Aboriginal rights led to industry concerns about project delays and convinced many companies to step forward and assume primary responsibility for securing Indigenous engagement. This, in turn, produced a “kind of privatized participation in the form of negotiated agreements, or impact and benefit agreements” (Noble and Udofia 2015). These types of financial arrangements have been negotiated in tandem with the formal environmental assessment process. Dual processes further complicate things and have created uncertainty and delays and added to development costs.

The regime did not undergo any other meaningful legislative reforms until 2012. Concerns about regulatory

overlap and unnecessary delays caused the Harper government to enact sweeping reforms to the process with a new *Canadian Environmental Assessment Act*.<sup>1</sup> The Library of Parliament has provided Parliamentarians with a good overview of the new legislation and how it differs from the previous law (Becklumb and Williams 2012). The key changes included narrowing the types of “designated projects” subject to federal review and limited the number of federal departments and agencies involved in issuing permits or authorizations for a project to only three organizations – the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission. Refined timelines for the review process to occur were hard-wired in the legislation to provide project proponents greater certainty. The role of public participation was narrowed and Aboriginal consultation was integrated into the review process in order to limit the risk of perpetual consultation and comment.

What remains is two types of environmental assessments under the *Act* – assessments by one of the three responsible authorities or by an appointed review panel. The process is determined by a project’s designation under the legislation. The assessment of the proposed Energy East pipeline is being conducted by the National Energy Board. The review remains largely embryonic. Oral hearings with affected Aboriginal communities have commenced. But the whole process remains on hold while the proponent re-jigs its application after deciding to remove a port in Quebec from the scope of the project (Canada Environmental Assessment Agency 2014). Ultimately the process will play out – including public consultations – and eventually the National Energy Board will provide its independent recommendations to the new Cabinet.

The evolution of the federal rules pertaining to the environmental assessments of major projects has led to a much more robust and appropriate process than 40 years ago. This is a positive development. Major resource projects ought to be properly reviewed to ensure that they meet high environmental and safety standards and that affected communities have input into the process. But we also need to be mindful of the economic costs imposed by a protracted and laborious process. Deliberate, well-designed delays to allow for careful, dispassionate review make sense. Symbolic, ill-conceived delays do not.

This is especially critical when one considers the ongoing challenges that major pipeline projects have faced in recent years. Consider, for instance, the Northern Gateway project’s difficult history. The pipeline, which would transport Alberta bitumen to the BC coast for export to Asian markets, formally entered the review process in 2010 and soon became the target of significant opposition from environmental groups and Indigenous peoples. The process was protracted and divisive – as one First Nation famously said: “Under no circumstances, come hell or high water, will there be a heavy oil pipeline through our territory” (Hoekstra et al. 2014). The Harper government finally approved the project in 2014 subject to 209 conditions, including a requirement for further consultation with First Nations. The new government’s announced ban on oil tanker traffic on the West Coast has once again put the project’s future at serious risk. The result is the \$6.5 billion project, which would help to diversify Canadian energy exports from the United States to new markets in the Pacific Rim, is at best stuck in limbo and at worst is lost to avoidable delays.

There is no question that the current system is far from perfect and could benefit from the government’s proposed review. The experience of the Northern Gateway project is not an exception. We are not properly maximizing the economic benefits that ought to be derived from natural resources, particularly for our First Nations communities. This is the reality that the new government inherits.

## THE NEW GOVERNMENT’S PLAN

The Liberals arrived in office with an agenda that diverges from their predecessor’s in a number of areas relevant to resource development. They championed a new, collaborative federalism that seeks to build consensus and establish cooperation with other levels of government and Aboriginal communities. They talked about restoring public trust in the regulatory review process for major resource projects, although

there is little evidence that the citizenry at large have lost confidence in the reviews. And they have committed to shifting the federal policy away from resource development – as the prime minister famously said: “My predecessor wanted you to know Canada for its resources. I want you to know Canadians for our resourcefulness” (Wherry 2016). This observation riled thousands in the resource sector, for it ignored the fact that Canadian resource development is technologically and environmentally sophisticated and proceeds – in sectors as diverse as heavy oil extraction, shale gas production, and highly technical mining systems – on the basis of advanced scientific and technological innovation.

Within weeks of the prime minister’s clever yet superficial quip, these first two priorities – collaborative federalism and a strengthened regulatory system – have emerged as key public issues. Interprovincial bickering about Energy East has become divisive. The launch of new interim changes to the environmental assessment process has left industry and communities with questions about how the new rules apply to projects currently under review and what further actions are likely when the government completes its longer review of the system. The result is that the future of resource development has quickly climbed to the top of the national policy agenda.

The government’s message has been that greater collaboration with regional and local governments and stakeholders, especially Aboriginal communities, and a stronger regulatory system is critical to the long-term viability of resource development. Its spokespeople insist that its objectives with regards to developing Canada’s natural resources and diversifying our export markets for them have not changed from its predecessor’s. As the natural resources minister has said:

We believe there are export markets for Canadian resources, [and] we believe the diversification of those markets is important and particularly important in light of recent decisions taken in the United States [with regard to the Keystone pipeline] . . . Ultimately we are faced with the challenge of assuring our markets, our customers and our citizens that the assessment process factors in everything one ought to consider important as we develop our resources sustainably. (McCarthy 2015)

To put it differently: the government purports to believe that the solution to breaking our energy logjam is more collaboration and a more robust review process. It is too early to judge whether this approach can achieve better results. It is conceivable that the government’s positive tone and its credibility on Aboriginal and environmental issues may make it easier to get projects moving – although the immediate response from outspoken environmentalists and some Indigenous leaders is not reassuring in this regard. There may be potential for a so-called “Nixon goes to China” moment whereby a prime minister disassociated from resource development may *actually* be the best one to advance our energy interests. Prime Minister Trudeau’s decision to meet Montreal’s mayor and counter his claims about the Energy East project is a good example.

But there are also significant risks. Implementing new and still vague regulatory reforms with respect to upstream emissions and greater Aboriginal consultation seem premature given the government’s review has yet to commence. We do not know whether they were the result of consultation with First Nations or if these changes meet their needs or expectations. There is as of yet no evidence that these processes will necessarily be useful. What are the objectives and what testable standards will be applied? How, for instance, will the government measure the upstream emissions impact of projects in the face of real methodological limitations? How will these estimates – which environmental groups will invariably stretch as far as is conceivably possible – affect government decision-making with respect to project licences? And what does it mean for the application of carbon pricing? Will these upstream emissions come to be reflected in the costs imposed on companies and consumers? It would be ironic – and sad – if enhanced Canadian regulations would divert purchasers to less regulated and less environmentally sound energy sources.



Herein lies the risk that the government's stated objectives with respect to constructing energy infrastructure and diversifying our exports will run into conflict with its short-term solutions – especially since there is little evidence as yet that the opponents of resource development will acquiesce in response. The contrary is more likely: new, nebulous rules about estimating the extent of upstream emissions and expanding First Nations consultations provide additional tools to pipeline opponents to create greater delays rather than securing broader support for specific projects.

Moreover, there is little effort being made to ascertain the wishes of Canadians at large about national standards and expectations for natural resource development. There are some who have a strong wish to leave the resources, oil, gas, and otherwise, in the ground and to have the government take a world-leading anti-development position. At the opposite extreme, there are some who believe that governments already over-regulate the industry and that developers should have a much freer hand. Furthermore, it is not clear that Canadians, at large, understand the full trade-offs at play in this debate, including the balance between environmental concerns, Indigenous interests, economic development, jobs, and revenues for government. There is a strong consensus about having world-class environmental standards. There is a strong consensus, but less uniform, about respecting and accommodating Indigenous interests – and this is much overdue in Canada.

But the right balance remains elusive. Canada was, 40 years ago, tilted too far toward unfettered resource development, and the pendulum has swung substantially in the opposite direction. But what balance does the Government of Canada desire and where, in the concrete terms of jobs, economic activity, and revenue generation, is the government heading?

## CONSEQUENCES OF CHANGING THE CANADIAN DEVELOPMENT MODEL

The consequences of further delays to the construction of new energy infrastructure should not be understated. It would not only have considerable economic implications, but also for the environment and Canadian federalism. The new government may not have been responsible for the latest pipeline controversy but it must respond in a careful and thoughtful way. The national stakes are high.

We have already discussed the importance of the oil and gas industry to Canada's economy. An inability to move forward with critical energy infrastructure would cast serious doubt on Canada's economic model which at present and for the foreseeable future will need to maximize our natural resource wealth. The failure to proceed with key projects such as Energy East will result in lost investment, jobs, and government revenues (Canadian Chamber of Commerce). This last point is key: it would ultimately come to represent a serious hit to government revenues – including federal, provincial, territorial, and Aboriginal governments – with real short- and long-term consequences for government programs and Canadian well-being.

It is important to remember the nature of Canadian oil and gas production. Oil sands extraction is more capital intensive than the light crude oil fields in countries such as Saudi Arabia. This means that decisions about capital expenditures here must be longer-term. Put simply: Canadian companies cannot turn the taps on and off easily. Pipeline infrastructure and production facilities must be maintained by regular operations or large-scale investment is lost potentially forever.

Another risk is that companies shift energy transportation to less safe alternatives such as rail or transport trucks. This is already occurring. A growing share of rail capacity is being dedicated to the transportation of oil and it is producing a serious displacement of the transportation system's capacity to deliver Canadian

agricultural products to market. The Harper government's extraordinary decision to impose legislative directives about grain handling for rail companies in 2014 was in part a response to growing oil traffic on Canada's rail system.

The problem with shipping oil by rail and truck is that the environmental and safety risks are much higher than pipeline transportation, according to a growing body of research.<sup>2</sup> The tragedy of the Lac-Mégantic rail disaster in July 2013 has brought these risks fully into focus. Policy-makers must therefore not treat the pipeline issue in isolation. The real debate is about pipelines versus other modes of transportation. The research and Canadian experience shows that pipeline infrastructure is the best option.

The third consequence is it would represent an enormous missed opportunity for First Nations communities. As one of us has testified before a Parliamentary committee, the potential for resource development in partnership with Aboriginal communities represents our "first chance, really since Confederation, to create an opportunity to share prosperity with First Nations, Inuit, and Métis people" (Coates 2015a). Failing to maximize Canada's energy endowment would thus be a major economic letdown. Instead we should seek to improve the system so that First Nations can be genuine partners in resource development and reap the benefits of greater employment, opportunity, and ultimately self-sufficiency.

The last risk is heightened interprovincial conflict and the potential for a real crisis in Canadian federalism. This is a dangerous game. Parochial interests and local politics cannot trump the constitution or national interests. As MLI Senior Fellow Dwight Newman (2016) has noted, this is precisely the reason that the constitution puts interprovincial transportation projects in the sole jurisdiction of the federal government. Its purpose is to ensure that it is the federal government that is positioned to transcend regional or local calculations and make decisions based on the overall national interest. Collaborative federalism may be useful to the extent that it can bring competing interests together to better understand one another and broker a consensus on objectives if not on specifics. But it is a problem if this vision of Canadian confederation becomes an excuse for inaction or buck-passing.

An abandonment of the Energy East project as a result of narrow interests, be it concerns in Ontario and Quebec, the expectations of environmentalists, or the demands of some Indigenous leaders, could catalyse a legitimate constitutional and political crisis, especially in the face of the current economic challenges facing energy-producing provinces such as Alberta and Saskatchewan. It would invariably enflame regional tensions and, in turn, create pressure from these provinces to revisit our entire system of fiscal federalism. The federal government must avoid falling victim to a political calculus about regional trade-offs and instead act in the country's long-term interests.

## **RECOMMENDATIONS TO BREAK THE ENERGY LOGJAM**

These risks are real. The Liberal government must proceed carefully. How it handles this issue – the so-called "energy logjam" – is its toughest challenge to date. It may be among the most important issues it confronts as a government.

Details about its planned review of the regulatory system are still undeveloped but one of its goals for reform is to "provide ways for Canadians to express their views" (Liberal Party of Canada 2015). In the spirit of contributing to the discussion on this vital public policy issue, we offer four key ideas to help the government inform its policy thinking.

The first is that the Government of Canada must recognize and publicly acknowledge that resource development is in the national interest. The prime minister's formulation about resources versus resourcefulness creates

a false choice. The right goal is to be known for both our resources and our resourcefulness and even our resourcefulness in development of our resources, which is one of this country's true sweet spots. Maximizing the economic and social benefits of Canada's natural resources requires ongoing resourcefulness and constant innovation. Oil does not sprout from the earth on its own and pipelines are not constructed and maintained without brilliant engineering. This is self-evident for the millions of Canadians whose employment directly or indirectly depends on resource development. Apparently it is less obvious to Eastern politicians who seem prepared to use the issue for political ends. Politicizing resource development is bad for the Canadian economy and worse for the health of our federation.

The federal government ought to let the independent review process on individual projects proceed without political interference. It is right to want to ensure the public's trust in the regime's impartiality and focus on science and evidence. But, after it reviews the findings and makes a decision to approve a project, the government should be prepared to shift its position from one of detached observer to national advocate, based on its confidence in the rigour of the evaluation process. The bully pulpit can be a powerful tool – particularly for the current prime minister – and the government should use it to promote resource development as a key part of Canada's economic future rather than evidence of backwardness. This is one of the problems with the prime minister's comments in Davos. It risks contributing to a diminishment of public trust in the environmental assessment process in particular, and public support for resource development more generally.

The second is that the government should seek to avoid policies or pronouncements that contribute to uncertainty, especially in light of the current challenges facing the oil and gas industry. Early steps have failed in this regard. The moratorium on oil tanker traffic, the introduction of regulatory changes prior to the launch of a longer review process, and the Liberal Party's platform commitment to effectively provide Aboriginal communities a veto over new projects have sown confusion and uncertainty about the prospects of energy development in Canada (Zum 2016). This uncertainty has real economic consequences.

That does not mean that the government cannot make changes to the regulatory process or to the consultative arrangements with First Nations. The latter, in particular, are urgently required. There are changes that can improve these processes and enhance certainty. But it does mean that the government should not be cavalier about vague commitments that scare away investment and opportunity.

This also applies to Canada's participation in international climate change negotiations. The government has rightly said that we must contribute to a global effort to arrest climate change but this must be done in a way that takes Canada's unique nature into account. We are a large country with a small population and massive energy resources. We live in a cold climate that will always impose higher energy costs and usage than in most other parts of the world. Canada's climate change position must recognize the country's requirements, resources, and responsibilities. It is simple for non-energy producing (but high energy-using) countries to call on us to limit our development and production but that fails to account for the sector's important economic benefits. Canada must do what is in the national interest.

The third recommendation is that the government must recognize that most of the zealous opponents of resource development or pipelines will not be mollified by further regulatory consultations – in fact, to the extent that more consultation provides an opportunity for greater delays, it represents a victory. This is not to say that the government should be indifferent about public support for resource development. It is an important ingredient in the process and it is right to focus on the public's trust of the system. But it must also recognize that there are limitations to securing the support of a small minority that is dogmatically opposed, in this instance, to pipeline construction. As MLI Managing Director Brian Lee Crowley (2016) writes:

Toughened process requirements cannot satisfy pipeline opponents or even cause them to be less vociferous in their attacks because they believe that any process that approves pipelines is

itself vicious and flawed and they are willing to toss democracy, the rule of law and balanced treatment of conflicting interests on the trash heap to achieve their aims.

The reality is that this small yet vocal group is not opposed to pipelines per se. It is not like it advocates for transportation via rail or trucks. It is opposed to resource development writ large. This is a perfectly legitimate position, and those who hold it should be encouraged to speak out. But there is no evidence that this is the majority position among Canadians and governments should not govern on the assumption that this group is reflective of broader public opinion. The challenge, then, is that any concessions to this group would fail to mollify them and instead could be used as a means to achieve further delays. This means expending political capital to make the case that resource development – done environmentally and socially responsibly – is in the national interest and will not be hijacked by special interests.

The final and most important recommendation is to develop new ways to improve the partnership with First Nations. This should start with a recognition that the federal government and project proponents have handled this file clumsily in the past. Consultation was lacking and the benefits accrued by affected communities were inadequate. We should set and meet a higher bar as companies and among governments. First Nations do not want short-term deals. They want lasting benefits. Energy projects can and should be the foundation for a new Canadian partnership and the first real prosperity sharing in Canadian history.

The first step is clarifying what *consent* means and what the expectations are with regards to the “duty to consult.” The current lack of clarity not only creates uncertainty for project proponents, it often becomes an obstacle to entering into meaningful negotiations. This need not be done in confrontation, for Indigenous people are much more ready to collaborate than most Canadians appreciate. Not all Indigenous communities share a common view and some projects face more opposition than others. Overall, however, it is completely reasonable to expect that a shared position can be achieved.

There needs to be an orderly means for consulting with Aboriginal communities in the spirit of partnership. MLI has published path-breaking policy work on how to transform the duty to consult and accommodate from an obstacle to development into a source of trust and stronger relationships (Newman 2014). Short-term improvements can include exercising caution when discussing how the duty function is executed and engaging in consultations in good faith. Long-term options may include setting out clear expectations for the duty to consult and accommodate in federal legislation; ideally, provincial, federal, and territorial governments would participate in the process with Aboriginal peoples.

The next step is to produce options that ensure that all affected Indigenous communities derive real benefits from resource development. MLI has analysed one proposal to extend equity stakes in resource projects to affected communities and found that it may be part of the solution (Coates 2015a). There is potential for this type of arrangement to become a means of creating long-term wealth and sustained opportunity. It is an option that the government ought to prioritize and explore with interested Indigenous communities in the short term.

## CONCLUSION

Resource development in general and the construction of major energy infrastructure in particular have emerged as top issues for the new federal government. These issues present both opportunities and challenges for the prime minister and his Cabinet. The recent national debate about the Energy East pipeline proposal has highlighted how carefully the government must proceed to advance the country's economic interests and protect national unity.

Thus far, the government has set the objective of building trust in the regulatory process in order to obtain sufficient support for major energy projects. This is an important goal for the country. The government is right to focus on it.

But there is a risk that its plan to meet its objective is insufficient. Its new regulatory and consultative requirements for projects already under review add further delays with no assurance of benefit. The minister has even acknowledged that the new rules are unlikely to generate a consensus in favour of resource development. These new requirements may fail to satisfy pipeline opponents and thus get us no closer to the goal of advancing Canada's energy and economic interests.

This essay proposes four recommendations to help the government better support the development of our natural resources and the diversification of the customer base for our products. Maximizing the benefits from Canada's natural resources endowment remains in the national interest – the economic, social, and national unity implications can be lasting. It is an important moment for the country, as the minister of natural resources has alluded. Here is hoping the new government seizes it.



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He has previously published on such topics as Arctic sovereignty, Aboriginal rights in the Maritimes, northern treaty and landclaims processes, regional economic development, and government strategies for working with Indigenous peoples in Canada. His book, *A Global History of Indigenous Peoples: Struggle and Survival*, offered a world history perspective on the issues facing Indigenous communities and governments. He was co-author of the Donner Prize winner for the best book on public policy in Canada, *Arctic Front: Defending Canada in the Far North*, and was short-listed for the same award for his earlier work, *The Marshall Decision and Aboriginal Rights in the Maritimes*.

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Sean Speer is a Senior Fellow at the Macdonald-Laurier Institute. He previously served in different roles for the federal government including as senior economic advisor to the Prime Minister and director of policy to the Minister of Finance. He has been cited by *The Hill Times* as one of the most influential people in government and by *Embassy Magazine* as one of the top 80 people influencing Canadian foreign policy. He has written extensively about federal policy issues, including personal income taxes, government spending, social mobility, and economic competitiveness. His articles have appeared in every major national and regional newspaper in Canada (including the *Globe and Mail* and *National Post*) as well as prominent US-based publications (including *Forbes* and *The American*).

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## ENDNOTES

- 1 The 2012 Budget listed a series of examples of seemingly needless delays and regulatory duplication. See: Government of Canada, 2012, *Jobs, Growth and Long-Term Prosperity*.
- 2 See, for instance, Kenneth P. Green and Taylor Jackson, 2015, "Safety in the Transportation of Oil and Gas: Pipelines or Rail?"



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