Cassels

Unlocking Canada's Potential to Build Projects: The Need for Swift and Consensus-Driven Government Leadership

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Recent events in the United States have caused Canadians to rethink how we have typically approached the Canadian economy, building projects and Canada's place in the global economic order. The demand for faster project approvals is evident from industry and all major political parties. However, these announcements have few details regarding how governments will overcome key challenges, such as opposition to projects from Indigenous governments, provinces and lengthy approval processes.

To successfully develop new energy, resource and infrastructure projects, it is essential for federal, provincial (including territorial), and Indigenous governments to not only expedite projects, they must now also build consensus on what and where to build.

Specific reforms to Canada's environmental assessment and Aboriginal consultation processes are necessary to expedite approvals while upholding constitutionally-protected Aboriginal and treaty rights. New parallel approaches to Aboriginal consultation and major project reviews, aiming to achieve swift, fair and more consensus-based government decisions are necessary if Canada is to meet the challenges it currently faces.

Recently, some premiers have claimed to have "pre-approved" certain projects such as pipelines. Federal leaders have also proposed general plans to streamline approvals and finally achieve the long-heralded vision of "one project, one review." The emerging consensus from these governments does not address the core challenge: federal, provincial and Indigenous governments often disagree about which projects should be located in specific locations, particularly projects that are inter-provincial and also engage constitutional requirements associated with consulting with Indigenous Peoples.

Any plans for reforms must move from pre-approval to pre-agreement, among federal, provincial and Indigenous governments. The hard work must start now with our federal and provincial governments reaching out across the country to their counterparts and Indigenous governments to select the types of projects eligible for expedited processes and agreement.

This engagement is necessary. Much of the delays with recent projects have involved the long lead time for private companies to engage with Indigenous governments, go through multi-year federal and provincial environmental assessment processes and deal with governments reluctant to make decisions clearly within their authority. In some cases, at the end of these cumbersome processes, the project proponents hold

approvals from the federal government but face continued opposition from provincial and Indigenous governments. This does not lend confidence to Canada's ability to be a real player in the fight to attract foreign capital to our country and access global markets for our resources.

With respect to Aboriginal consultation, significant reform is needed. Following the federal election, parties should propose new approaches to ensure that Aboriginal and treaty rights holders are meaningfully consulted. Governments typically rely heavily on multi-year regulatory processes to fulfil a large portion of their consultation obligations. We see opportunities for governments to engage in meaningful consultation led by decision-makers with direct lines to federal and provincial cabinets that would occur concurrently with project, environmental and other assessments.

Working with Indigenous governments across the country, we often hear that concerns are related to project development, but the project concerns evolve into discussions pertaining to underlying issues relating to housing, water and other infrastructure needs (and other issues) that go well beyond the scope of any proposed projects. If federal and provincial governments engage honourably about the effects of these projects, as well as other issues in parallel processes, it will promote the possibility for agreement between all orders of government with respect to the development of particular projects.

Given the extended delay with recent infrastructure projects in Canada, new approaches to environmental assessment and regulatory processes are necessary. It is time for governments to consider playing a role in identifying locations or corridors where assessment of environmental effects could be done in advance to speed up subsequent projects. For example, the McLeod Lake Indian Band in British Columbia has proposed a multibillion-dollar energy transition hub for a variety of projects on its own reserve lands, under a federal legislative framework and with support of the province of British Columbia and other First Nations. The development of transportation and utility corridors across the country are also examples of how governments can identify corridors for development.

Corridors typically are owned by governments and any meaningful energy export or transportation project would undoubtedly affect private lands. However, leaving these challenges to individual private proponents to overcome independently is increasingly unworkable and unfair. That is why governments must play their part at the outset to tackle project development, environmental and Aboriginal consultation challenges head on with government in a leadership role to address any concerns that are not narrowly related to a particular project. Once these concerns are addressed, private proponents can locate their project within areas that federal, provincial and Indigenous governments generally agree are appropriate for development. Governments can also rely on streamlining orders to approve classes of common projects without lengthy project-specific reviews.

In a time of significant challenges with trade issues with the United States and the imminent election of a new federal government, Canada must be willing to innovate to realize the potential of our people, our resources and access to world markets. Such development can be done honourably in consultation, and

often agreement, with affected Indigenous governments. This does not mean that every project should be approved or approved in the face of major opposition. Government decision-makers and regulators must adhere to their obligations to ensure all legal and regulatory requirements are met, including honourable dealing with Aboriginal Peoples. However, governments must also be prepared to make project determinations in a streamlined manner even if there isn't a consensus among all stakeholders.

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