Foreword

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Indigenous peoples have had an intimate relationship with the Earth for millennia. They have relied on the lands, waters, and their resources to sustain themselves both physically and spiritually. They still do. I have listened to many elders describe the lands and waters of their territory as being a part of who they are, and, conversely, they are a part of their territory. I have listened to a Chief describe the destruction of her community's territory as being akin to losing a limb. There is no question that Indigenous peoples feel the impacts of development deeply. When you also consider that defence of Indigenous peoples' use of the lands and waters for traditional activities is gaining support internationally and resulting in legal protections in some countries, well, it is easy to see why so many Indigenous peoples are standing up to have their voices heard.

However, having represented Indigenous peoples in environmental impact assessment (EIA) processes in Canada for most of my legal career, I can attest to the fact that those voices are often like silent screams falling on deaf ears. The reason for this is, in part, because most of the time an individual project will not be responsible for the desecration of a species or the loss of large swaths of a hunting and gathering territory (although sometimes this is the case). What is usually responsible for these kinds of large impacts is the cumulative impacts of development, and project-based EIAs are simply ill-equipped to address these larger concerns.

Take, for example, the 'Ring of Fire'. The Ring of Fire is an area in Ontario's far north, in the muskeg of the James Bay Lowlands, one of the world's largest wetland ecosystems. It is a fragile environment, much of it in pristine condition untouched by industrial development. It currently has no all-season roads or rail corridors. Its northern boreal ecosystem is home to diverse wildlife, including woodland caribou, a wildlife species at risk. It is also the home of the Matawa First Nations, a group of First Nations who are virtually the only people who have had enduring settlements in the Ring of Fire area and live there on a permanent basis.

In the first decade of the 2000s, it became known that the homeland of the Matawa First Nations was also the site of significant mineral deposits, namely the area contains significant quantities of chromite, nickel, copper, and platinum, as well as zinc, gold, and diamonds. The Ring of Fire was soon said to be the largest mineral development opportunity in Ontario in over a century. As a consequence, the Matawa First Nations found themselves in the middle of a mineral rush of historic proportions. Exploration companies flooded their territories; mining companies quickly bought up mineral interests. According to provincial officials, dozens of companies now have interests in tens of thousands of mineral claims in the Ring of Fire area.

The first company to get its mineral development project underway was Cliffs Natural Resources Inc. The Cliffs Chromite Project included an open pit chromite mine and processing facilities for 6000 to 12 000 tonnes per day of chromite ore, expected to run for 30 years with a transition to underground operations. It also included: additional facilities in and around the mine site, including an ore processing facility; tailings ponds; a diesel generating station; fuel, chemical, and explosive storage facilities, and other infrastructure; transportation facilities, including a 340 km all-season road going north-south through the homelands of several Matawa First Nations to a railroad facility near Nakina and an all-season airstrip near the mine; and a ferrochrome production facility to be located near Sudbury.

The Cliffs Chromite Project was by far not the only project planned in the Ring of Fire; it was merely the first project to be submitted for an EIA. Each additional potential project came with its own proposed infrastructure and transportation facilities. The culmination of development had the potential to change the face of the homelands of the Matawa First Nations, and their lives, forever.

The Matawa First Nations raised their concerns around the opening up of their territory and the cumulative impacts of all of the potential projects in the Ring of Fire in the EIA process for the Cliffs Chromite Project. Despite the fact that dozens of companies had interests in tens of thousands of mineral claims in the area, and that additional projects were in the advanced exploration phase and would lead to further mine development proposals in the region, the Matawa First Nations were told that the only the impacts of the Cliffs Chromite Project could be considered as those other projects did not yet exist.

Taken on its own, the Cliffs Chromite Project may have been something that the homelands of the Matawa First Nations could have sustained. But what the Matawa First Nations wanted to understand was whether or not this project would ‘open the floodgates’ for fundamental changes to their communities and induce development that would forever impact the practice of their traditional rights. Although future mine proposals would need to consider the cumulative effects of earlier approved mines, was there no way to understand the big picture of potential changes they were being asked to accept? Would they instead need to respond to each new project as it potentially incrementally compromised their territory? They were also told, at the time, that there would be no assessment that would consider all of the different corridors being proposed for the different projects.

Would it not be beneficial to have someone consider whether multiple roads were really necessary, especially given the massive changes that a single new road can induce to the surrounding environment and settlements? The Chiefs of some of the more remote, fly-in communities were worried about a road bringing unprecedented changes to their societies, particularly the social and cultural impacts that might flow from that. They were worried not only about the impacts on species such as the caribou, but also about the impacts on people and their traditional ways of life. Would a new road bringing transient workers to the area ultimately invite more drugs into the community? Would it bring violence, disease, and sex trafficking? What might be the cumulative effects of multiple roads in the area?

The concern over cumulative effects and how to properly assess them is something I heard time and time again from participants when I sat on Canada’s Expert Panel for the Review of Environmental Assessment Processes. It was a concern voiced by many, but particularly by First Nations and other Indigenous groups. It was a problem that we tried to grapple with in our resulting report, *Building Common Ground: A New Vision for Impact Assessment in Canada*. As a way to help assess, plan, and address cumulative impacts, we urged that the federal government conduct more regional assessments. At the time of writing our report, although the existing federal EIA legislation (then called the *Canadian Environmental Assessment Act, 2012* (CEAA)) provided for the conduct of regional studies on the effects of existing or future physical activities, no studies had been conducted under it. The Expert Panel reasoned that ‘[r]egional [Impact Assessments] can play a major role in managing cumulative impacts on matters of federal interest in an airshed, watershed or other regionally defined area. It may therefore play an important role in addressing cumulative impacts on Indigenous communities and their ability to exercise their constitutionally-protected Aboriginal and treaty rights’.

Sadly, the above statement hints at an important qualifier that really limited the utility of regional assessments under CEAA 2012, and which also similarly limits regional assessments under the new federal *Impact Assessment Act, 2019*. That is, regional impact assessment can play a major role in managing cumulative impacts ‘on matters of federal interest’. A robust federal regional assessment is of little to no assistance in managing cumulative effects if provincial areas of jurisdiction are implicated and the province in question doesn’t sign on. Similarly, a provincial regional impact assessment is of no use if in order to address cumulative effects the federal government would need to abide by its recommendations and it declines to do so.

Joint or coordinated regional impacts assessments would seem to be the answer but they, too, fall short. What about the Indigenous groups whose lands are at issue and whose rights are at stake? Surely we are past the day and age of simply treating these groups as ‘stakeholders’ and inviting them to participate. Many of these groups would instead call for Indigenous-led regional assessments if the area being assessed is within the traditional territory of an Indigenous group and their rights are being impacted. I would join them in this call and would hope to see all orders of government agree to implement and abide by the recommendations that flow from such assessments. Indigenous-led regional assessments offer much promise by elevating Indigenous world views and environmental management practices: an holistic approach to the stewardship of lands and waters that is arguably far more sustainable than past approaches underpinned by reductionist western science and technocracy.

One thing is certain: development, and the need for it, does not seem to be slowing down. Our lands, waters, and resources are not limitless, no matter where in the world. Indigenous groups are literally running out of places to practice their rights and running out of resources to harvest. Now, more than ever, is the time to get a handle on dealing with the cumulative effects of development. I am happy to see this collection of chapters on such an important topic. My hope is that the practitioners working in this space internationally keep in mind the rights of Indigenous peoples that are being impacted by development and put the assessment of the impacts to those rights front and center in their work.

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