

Bill C-69: Changes to Canada's Environmental Assessment Regime

Rangi Jeerakathil
MLT Aikins LLP
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**Law Society
of Saskatchewan**



BILL C-69: CHANGES TO CANADA'S ENVIRONMENTAL ASSESSMENT REGIME

- **Part 1: Impact Assessment Act**
 - Repeals and replaces the Canadian Environmental Assessment Act, 2012 to overhaul previous federal environmental assessment process
- **Part 2: Canadian Energy Regulator Act**
 - Repeals and replaces the National Energy Board Act and replaces the National Energy Board with the Canada Energy Regulator
- **Part 3: Canadian Navigable Waters Act**
 - Amends the Navigation Protection Act and renames it the Canadian Navigable Waters Act





PART 1: IMPACT ASSESSMENT ACT

- On August 28, 2019, the Impact Assessment Act became law and repealed and replaced the Canadian Environmental Assessment Act, 2012.





CANADIAN ENVIRONMENTAL ASSESSMENT ACT (CEAA)

- Introduced in 1992
- The federal government sought to achieve sustainable development by:
 - conserving and enhancing environmental quality; and
 - encouraging and promoting economic development that conserves and enhances environmental quality.



CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012 (CEAA 2012)

- Introduced in 2012
- Replaced CEAA
- One of the purposes of CEAA 2012 was to protect the components of the environment that are within federal jurisdiction from significant adverse environmental effects caused by a designated project
 - Examples: Fish, fish habitat, species at risk, migratory birds, Aboriginal peoples, federal lands, and interprovincial and international effects



CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012 (CEAA 2012)

- Applied to designated projects
 - “Designated project” means one or more physical activities that:
 - are carried out in Canada or on federal lands;
 - are designated by regulations or in a Ministerial order; and
 - are linked to the same federal authority as specified in those regulations or that order

- Two types of environmental assessments under CEAA 2012
 - 1. Agency/NEB/CNSC; or
 - 2. Review Panel



BILL C-69

- Preceded by the report prepared by the expert panel that was established to conduct a review of Canada’s environmental assessment processes
- Proposed to repeal CEAA 2012 and enact the Impact Assessment Act (the “IAA”)
 - Proposed to overhaul the existing federal environmental assessment process
- Introduced on February 8, 2018
- Passed the House of Commons and received Royal Assent on June 21, 2019
- Came into force on August 28, 2019



IMPACT ASSESSMENT ACT (IAA)

- Repeals CEAA 2012
- Shifts the assessment process from:
 - an “environmental assessment”
 - to an “impact assessment”
- An impact assessment is a planning and decision-making tool used to assess:
 - positive and negative environmental, economic, health, and social effects of proposed projects; and
 - impacts to Indigenous groups and rights of Indigenous peoples
- Implements a new impact assessment process



IAA - OVERVIEW

The IAA:

- outlines the impact assessment process and timelines
- identifies facts that must be considered during impact assessment and decision-making
- provides tools to foster cooperation and coordination with other jurisdictions
- enables the Impact Assessment Agency to support participant engagement through funding programs
- requires and fosters transparency through information made public via an online Registry
- provides tools and authorities to ensure compliance





THE IMPACT ASSESSMENT AGENCY OF CANADA

- Canadian Environmental Assessment Agency (the “**Former Agency**”) is continued as the Impact Assessment Agency (the “**IA Agency**”)
- The IA Agency is responsible for conducting impact assessments under the IAA





DESIGNATED PROJECTS

- The IAA applies to designated projects
 - “designated project” means one or more physical activities that:
 - are carried out in Canada or on federal lands; and
 - are designated by regulations or in a Ministerial order
- “designated project” also includes any physical activity that is incidental to those physical activities



DESIGNATED PROJECTS

- Similar to CEAA, 2012 with respect to a list of projects that trigger the IAA
- Different than CEAA, 1992, where that Act was triggered by the requirement to obtain various federal permits or the provision of federal funding
- Ebb and flow since 1992 with respect to the number of projects that the federal environmental assessment process will apply to





PROJECTS SUBJECT TO THE IAA

- Designated projects are described in the *Physical Activities Regulations* (the “**Project List**”)
- The Minister may designate any project that is not prescribed, based on factors set in the legislation
- Project examples: major projects within the following sectors or groups can be found on the Project List:
 - Renewable energy
 - Oil and gas
 - Linear and transportation-related
 - Marine and freshwater
 - Mining
 - Nuclear
 - Hazardous waste
 - Federal lands and protected areas





REGULATIONS

Physical Activities Regulations

- Describes designated projects
- The Project List focuses federal impact assessments on projects that have the most potential for adverse environmental effects in areas of federal jurisdiction

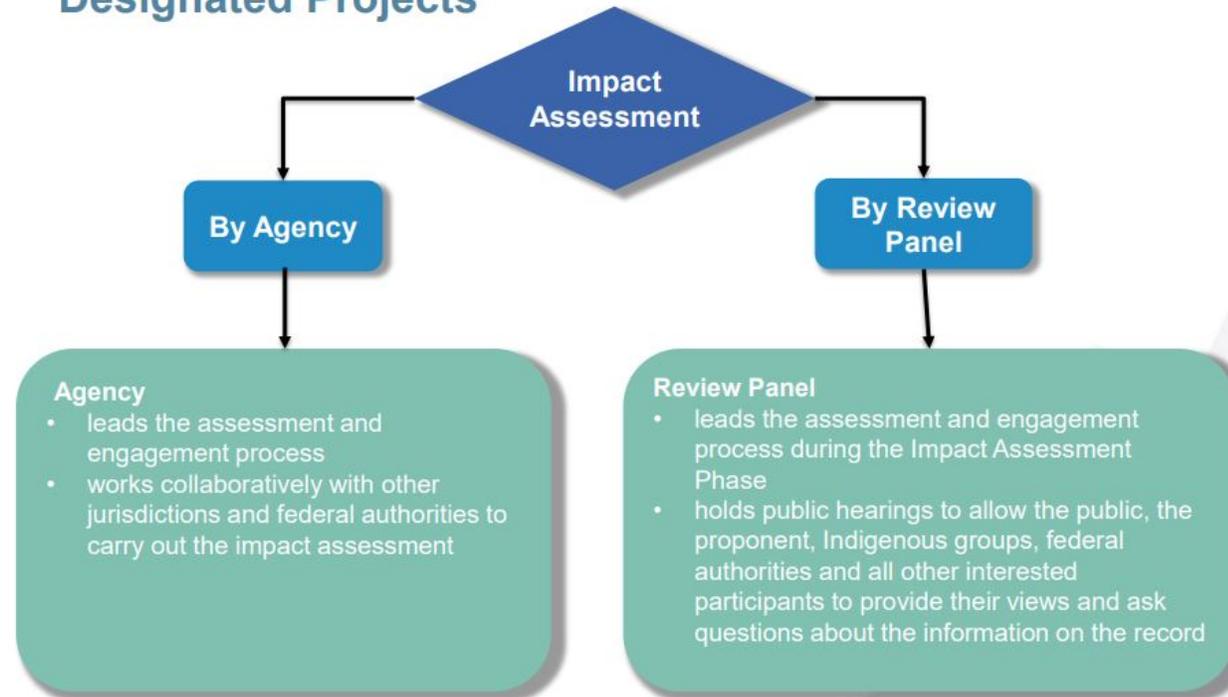
Information and Management of Time Limits Regulations

- Outlines the information that the proponent must provide to support early planning
- Outlines the documents the IA Agency must provide to guide the impact assessment
- Provides the circumstances in which the IA Agency may suspend the legislated timelines



TYPES OF IMPACT ASSESSMENT

Types of Impact Assessment Designated Projects



* Image obtained from the Government of Canada's website, available at: <<https://www.canada.ca/content/dam/iaac-acei/documents/mandate/president-transition-book-2019/overview-impact-assessment-act.pdf>>





ASSESSMENT CRITERIA

- The IAA broadens slightly the assessment criteria and considers certain legislative effects (including changes to the environment or to health, social or economic conditions) in relation to various federal heads of power
 - Examples: Fish, fish habitat, species at risk, migratory birds, Indigenous peoples, federal lands, and interprovincial and international effects
- The amended IAA maintains the test from CEAA, 2012 of whether environmental effects are “significant” but goes further to require the Minister consider whether the effects are “significant, in the public interest” based on the factors in section 63.





IMPACT ASSESSMENT PROCESS

1. Planning Phase
2. Information Gathering
3. Impact Assessment Report
4. Impact Assessment Decision





1. PLANNING PHASE

- Proponent provides initial description of Project (s. 10(1)) and this is posted (s. 10(2))
- If project is determined to be a “designated project”, IA Agency must offer to consult with any jurisdiction that has powers in relation to the Project, including the province and affected Indigenous groups (s. 12)
- IA Agency must provide proponent with summary of issues it considers relevant (including from public comments) and post the same on its website (s. 14)



1. PLANNING PHASE

- Proponent provides the IA Agency with a notice concerning how it will address the issues identified and a detailed description of the project, in accordance with regulations, but IA Agency can request additional information (s. 15)
- After notice addressing issues is posted, IA Agency must decide whether impact assessment of Project is required taking into account factors in s. 16(2) and post decision whether impact assessment is required and reasons (adverse effects within federal jurisdiction, Indigenous peoples, etc.)



2. INFORMATION GATHERING

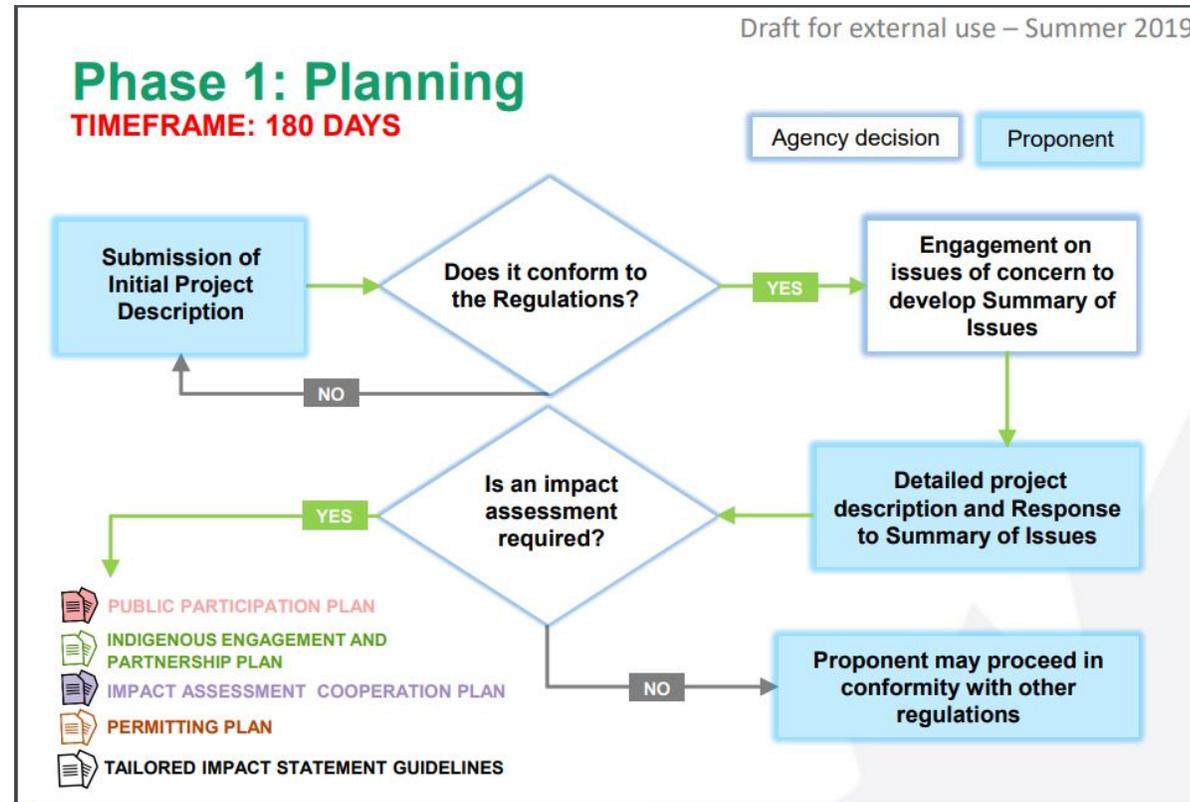
- If impact assessment is required, IA Agency posts a Notice of Commencement that sets out the studies the IA Agency considers necessary to conduct the impact assessment (s. 18)
- The IA Agency has 180 days to post the Notice of Commencement after the initial project description is posted under s. 10(2), which may be extended by 90 days by the Agency on request by a specified jurisdiction to cooperate with other jurisdictions (270 days total)
- Cabinet can also make regulations to prescribe activities that suspend the time limit
- Compare to CEAA, 2012 – 45 days



2. INFORMATION GATHERING

- When providing the proponent with a Notice of Commencement, the Agency must also provide the proponent with any documents specified by regulations created under paragraph 112(1)(a) of the IAA. Pursuant to the Information and Management of Time Limits Regulations, these include:
 - Cooperation Plan;
 - Permitting Plan;
 - Public Participation Plan; and
 - Indigenous Engagement and Partnership Plan

PLANNING PHASE AND INFORMATION GATHERING



* Image obtained from the Government of Canada's website, available at: <https://www.canada.ca/content/dam/iaac-acei/documents/mandate/president-transition-book-2019/overview-impact-assessment-act.pdf>





GUIDANCE ON PLANNING PHASE DOCUMENTS

The Practitioner’s Guide to Federal Impact Assessments under the IAA contains documents and templates to guide practitioners in the development of Planning Phase documents:

Overview of Document	Template
Cooperation Plan	Cooperation Plan Template
Permitting Plan	Permitting Plan Template
Public Participation Plan	Public Participation Plan Template
Indigenous Engagement and Partnership Plan	Indigenous Engagement and Partnership Plan Template
N/A	Tailored Impact Statement Guidelines Template

OVERVIEW OF PLANNING PHASE DOCUMENTS

Document	Description
Initial Project Description	High-level description of the proposed project
Summary of Issues	List of issues provided by the Agency following engagement and cooperation discussions
Response to the Summary of Issues	Notice prepared by the proponent outlining how they plan to address the issues described in the Summary of Issues
Detailed Project Description	Document containing updated information about the designated project and information about the possible environmental, social, health and economic effects of the project
Public Participation Plan	Document outlining how the public would be engaged throughout the impact assessment process
Indigenous Engagement and Partnership Plan	Document describing how Indigenous groups would be engaged throughout the impact assessment process
Impact Assessment Cooperation Plan	Document describing how the Agency will work with other jurisdictions throughout the impact assessment process
Permitting Plan	Document outlining the anticipated permits, licenses and authorizations required for the designated project
Tailored Impact Assessment Guidelines	Document outlining the information required in the proponent's Impact Statement
Notice of Commencement	Notice issued by the Agency before the end of the 180-day time limit that sets out the information and studies necessary to conduct the impact assessment





3. IMPACT ASSESSMENT REPORT

- The impact assessment is conducted by the IA Agency or a Review Panel
- The proponent has 3 years after the posting of the Notice of Commencement to complete the indicated studies and the IA Agency must post notice when it is satisfied with the content of the studies, which is extendable on request of the proponent (s. 19(1)-(3))
- The IA Agency may request or require the proponent to undertake further studies it views as necessary (s. 26(2))
- If the proponent does not provide the IA Agency with the information or studies within the relevant time limit, the impact assessment is terminated (s. 20(1))





IMPACT ASSESSMENT REPORT – IA AGENCY

- For IA Agency review, the IA Agency prepares a report and posts a draft report on the internet site and must seek public comments and finalize the report
- The IA Agency must submit the final report to the Minister within 300 days of the proponent providing the required information and studies and notice being posted under s. 19(4), but this may be extended by the Minister by up to 90 days for certain purposes, including consultation with other jurisdictions, and indefinitely by Cabinet (s. 28(2), (6)-(7))
- Before the impact assessment commences, the Agency may establish a shorter or longer time limit in certain circumstances (s. 28(5))
- Proponent delay such as under s. 26(6) of CEAA, 2012 does not appear to be explicit





IMPACT ASSESSMENT REPORT – IA AGENCY

- The IA Agency prepares a report that sets out the effects that are likely to be caused by carrying out the designated project and sets out which effects are adverse within federal jurisdiction, and direct or incidental, and the extent to which those effects are significant (see section 22)
- Unclear whether this will involve the same paradigm as current environmental assessments and whether determinations of significance will still be central, eg. Selection of VEC, Project Interactions, Existing Conditions, Assessment of Project Environmental Effects and Cumulative Effects, Determination of Significance
- Delegation and substitution are available to the Minister





FACTORS TO BE CONSIDERED IN AN IMPACT ASSESSMENT

Subsection 22(1)

- | | |
|-----|---|
| (a) | Changes to the environment or to health, social or economic conditions (including malfunctions, accidents and cumulative effects) |
| (b) | Mitigation measures that are technically and economically feasible |
| (c) | The impact that the designated project may have on any Indigenous group |
| (d) | The purpose of and need for the designated project |
| (e) | Alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies |
| (f) | Alternatives to the designated project that are technically and economically feasible |
| (g) | Indigenous knowledge provided with respect to the designated project |





FACTORS TO BE CONSIDERED IN AN IMPACT ASSESSMENT

Subsection 22(1)

- | | |
|-----|--|
| (h) | The extent to which the designated project contributes to sustainability |
| (i) | How the designated project hinders or contributes to Canada's environmental obligations and its commitments towards climate change |
| (j) | Changes to the designated project that may be caused by the environment |
| (k) | Requirements of the follow-up program in respect of the designated project |
| (l) | Considerations related to Indigenous cultures |
| (m) | Community knowledge provided with respect to the designated project |
| (n) | Comments received from the public |





FACTORS TO BE CONSIDERED IN AN IMPACT ASSESSMENT

Subsection 22(1)

- | | |
|-----|--|
| (o) | Comments from a jurisdiction that are received in the course of consultations conducted under section 21 |
| (p) | Any relevant assessment referred to in section 92, 93 or 95 |
| (q) | Any assessment conducted by or on behalf of an Indigenous governing body |
| (r) | Any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body — that is in respect of a region related to the designated project |
| (s) | The intersection of sex and gender with other identity factors |
| (t) | Any other matter relevant to the impact assessment that the IA Agency or the Minister requires to be taken into account |





IMPACT ASSESSMENT REPORT – REVIEW PANEL

- Within 45 days of the Notice of Commencement, the Minister may refer an impact assessment to a Review Panel if he/she considers it in the public interest
- If a review panel led the impact assessment, the IA Agency makes recommendations to the Minister with respect to conditions to address any adverse effects within federal jurisdiction
- The review panel's report and the IA Agency's recommendations must be submitted to the Minister within 600 days from the date the proponent provides all of the required information or studies. The Agency can set a longer time limit in certain circumstances; the Minister can extend the time limit by up to 90 days in certain circumstances and Cabinet can extend it indefinitely (s. 37)



IMPACT ASSESSMENT REPORT – REVIEW PANEL

- Designated projects regulated under Nuclear Safety and Control Act and Canadian Energy Regulator Act require a mandatory Review Panel.
- The review panel's report and the Agency's recommendations must be submitted to the Minister within 300 days from the date the proponent provides all of the required information or studies, but the Agency can extend this time limit up to 600 days (s. 37.1)



4. IMPACT ASSESSMENT DECISION

- Public Interest Decision / Decision Statement
 - The Minister or the Governor in Council (Minister may also refer to GIC) makes the “public interest decision” (s. 60(1)(a), 61)
 - Are the adverse “effects within federal jurisdiction” and the adverse “direct or incidental effects” that are indicated in the report, including the extent to which those effects are significant, in the public interest (in light of the legislated factors in section 63)?
 - The Minister issues a decision statement that informs the proponent of the Minister’s or the GIC’s decision and sets out any conditions that are established with respect to the project within 30 days if the Minister makes the decision and within 90 days if the GIC makes the decision
 - These timeframes can be extended by 90 days by the Minister and indefinitely by the GIC



IMPACT ASSESSMENT DECISION

Factors in the Public Interest Determination:

- (a) the extent to which the designated project contributes to sustainability;
- (b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;
- (c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;





IMPACT ASSESSMENT DECISION

Factors in the Public Interest Determination (continued)

- (d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- (e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.



IMPACT ASSESSMENT DECISION

- The Minister must establish a timeframe in which the proponent must substantially begin to carry out the project, subject to reasonable extension in Minister's discretion (s. 70(1))
- If the proponent does not comply with timeframe then the decision statement expires at end of the period, but the period can be extended (s. 70(2), (3))





IMPACT ASSESSMENT PROCESS - TIMELINES

- IAA proposes to shorten the assessment process
- However, timelines can be extended
 - Examples:
 - The Agency may establish a longer time limit for both Agency-led and panel-led reports to allow for cooperation with other jurisdictions or to take into account circumstances that are specific to the project
 - The proponent of a designated project has three years to provide the IA Agency with the information and studies that are set out in relevant notice; this time limit may be extended at the request of the proponent, in which case, the Agency may require additional information or studies to be provided by the proponent
 - Cabinet may extend most timelines indefinitely



IMPACT ASSESSMENT PROCESS – TIMELINES

- It is difficult to predict with any certainty how long an impact assessment will ultimately take given the number of opportunities for extension and the number of parties that may be involved
- Senate amendments restricted Ministerial extension powers
- 180 days, subject to extensions to determine if IA is required as opposed to 45 days for CEAA, 2012
- Up to 3 years for studies under IAA, but could be significantly less
- Agency has 300 days to complete IA, subject to extensions as opposed to 365 days under CEAA, 2012 for completion of the EA, but CEAA, 2012 excluded proponent delay in timelines (s. 27(6), 48)
- Significantly broader public interest criteria to make decisions under IAA

IAA TIMELINES – AGENCY-LED IMPACT ASSESSMENT

Impact Assessment Act Step	Minimum Days	Maximum*	
Initial Project Description			
Agency posts Summary of Issues			
Proponent posts notice on how it will address issues			
Agency must post decision on whether EA required			
Notice of Commencement which sets out studies	180	270	
Studies completed	180	1095	**
Impact Assessment Report	300	390	
Minister's Decision Statement	30	120	
Total	690	1875	
Years	1.9	5.1	
*assuming no extensions by Agency or Cabinet			
** assuming 6 months for completion of studies and assumes no requested extension by proponent			



Section 82 Determination

- Even if a project is not on the project list, if a project takes place on federal lands, the act applies eg. Reserve lands or port lands
- Although a full impact assessment is not required in these circumstances, a federal authority must determine whether significant adverse environmental effects will result from the project and if so whether they are justified in the circumstances
- Includes potential referral to cabinet if significant adverse environmental effects are likely to occur
- Uses CEAA, 2012 language





TRANSITIONAL PROVISIONS

- The IAA contains several transitional provisions
- Examples:
 - If the proponent of a designated project has provided a description of the designated project to the Former Agency, and the Former Agency has not decided (before the IAA comes into force) whether an environmental assessment is required, the screening is terminated (but the project description is deemed to be an initial project description under the IAA) (s. 180)



TRANSITIONAL PROVISIONS

- Examples (continued):
 - If the Former Agency posted a notice of commencement for an environmental assessment of a designated project under CEAA 2012, then the environmental assessment is continued under CEAA 2012 as if that Act had not been repealed
 - A decision statement issued under CEAA 2012 is deemed to be a decision statement issued under the IAA



TRANSITIONAL PROVISIONS

The transitional provisions in previous versions of Bill C-69 did not explicitly address certain circumstances, including:

- If the proponent of a designated project has provided a project description to the Former Agency and the Former Agency has decided that an environmental assessment is not required
- If the proponent of a project has not provided a project description to the Former Agency because the project is not a designated project under CEAA 2012 (and therefore the environmental assessment provisions of CEAA 2012 were not triggered)
- There were also no clear transitional provisions applicable to Section 67 determinations that have been made under CEAA 2012
- These circumstances are now addressed in section 185.1 of the IAA





TRANSITIONAL PROVISIONS

Non-application of this Act

185.1 (1) This Act does not apply to a designated project, as defined in subsection 2(1) of the 2012 Act, that is a designated project, as defined in section 2 of this Act, if the former Agency determined that no environmental assessment was required under the 2012 Act or that section 128 of that Act applied to the project.

Non-application of this Act

(2) This Act does not apply to a designated project, as defined in section 2 of this Act, that is not a designated project, as defined in subsection 2(1) of the 2012 Act, if one of the following conditions applies:

- (a)** the proponent began the carrying out of the project before the day on which this Act comes into force;
- (b)** a federal authority, as defined in subsection 2(1) of the 2012 Act, exercised a power or performed a duty or function conferred on it under any Act of Parliament, other than this Act, that could permit the project to be carried out, in whole or in part;
- (c)** an environmental assessment of the project was commenced or completed before the day on which this Act comes into force by a jurisdiction other than a federal authority, as those terms are defined in subsection 2(1) of the 2012 Act.





PART 2: CANADIAN ENERGY REGULATOR ACT

- On August 28, 2019, the Canadian Energy Regulator Act (CER Act) became law and repealed and replaced the National Energy Board Act





NATIONAL ENERGY BOARD (NEB)

- The NEB was an independent economic regulatory agency created by the Government of Canada in 1959 to oversee international and inter-provincial aspects of the oil, gas and electric utility industries
- The main responsibilities of the NEB were established under the National Energy Board Act (NEB Act) and included regulating:
 - The construction, operation and abandonment of pipelines that cross international borders or provincial/territorial boundaries, as well as the associated pipeline tolls and tariffs;
 - The construction and operation of international power lines and designated interprovincial power lines; and
 - Imports of natural gas and exports of crude oil, natural gas liquids (NGL), natural gas, refined petroleum products and electricity



CANADA ENERGY REGULATOR (CER)

- The CER was formed on August 28, 2019 when the CER Act became law.
- The CER was established to improve the regulation of Canadian energy under five broad themes:
 - 1. modern and effective governance;
 - 2. enhanced certainty and timelier decisions;
 - 3. more inclusive public engagement;
 - 4. greater Indigenous participation; and
 - 5. strengthened safety and environmental protection



1. MODERN AND EFFECTIVE GOVERNANCE

- The structure and composition of the CER is different than the NEB in the following ways:
 - the CER includes a Board of Directors to provide oversight, strategic direction and advice on operations
 - the Chief Executive Officer, who is responsible for day-to-day operations, is separate from the Chair of the Board and will not serve on the Board
 - the CER includes up to seven full-time commissioners and may include a complement of part-time commissioners
 - at least one director and one full-time commissioner must be Indigenous



2. ENHANCED CERTAINTY AND TIMELIER DECISIONS

Integration

- The new legislation adopts a “one project, one assessment” framework
- New energy projects requiring an impact assessment undergo a single, integrated process, carried out jointly by the Impact Assessment Agency of Canada and the CER

Timelines for Decisions

- Major projects requiring an impact assessment under the IAA have a maximum 2 year timeline for a decision.
- Certain projects not subject to the new IAA saw the timeline for review reduced from 450 days to 300 days:
 - 450 days for the certification of a pipeline;
 - 300 days for the certification of an international and interprovincial power lines;
 - 300 days for the certification of an offshore renewable energy project or power line; and
 - 180 days for licences for the exportation of oil and gas





3. MORE INCLUSIVE PUBLIC ENGAGEMENT

- The CER Act aims to provide for more participation by the public and Indigenous peoples
- The CER Act removes the “standing” test used under the NEB Act, which required participants to be either directly affected by the project or have relevant information or expertise
- The CER Act states: “Any member of the public may, in a manner specified by the Commission, make representations with respect to an application for a certificate” (s. 183(3))
- The CER Act also includes other provisions allowing the CER to establish processes to consult with the public and Indigenous persons.





4. GREATER INDIGENOUS PARTICIPATION

- The CER Act generally codifies the CERs mandate (formerly the NEB) to consult with Indigenous persons, as recognized by the Supreme Court of Canada
- The CER Act requires the CER to “consider any adverse effects that the decision, order or recommendation may have on the rights of the Indigenous peoples of Canada ...” (s. 56(1))
- The CER Act also allows the Minister to pass regulations authorizing Indigenous governing bodies to exercise the powers or perform the duties and functions under the CER Act (s. 77)





5. STRENGTHENED SAFETY AND ENVIRONMENTAL PROTECTION

The CER Act updates the CERs legal framework by:

- Updating the powers of federal inspection officers
- Imposing legislative requirements on companies to protect their infrastructure
- Authorizing the CER to take action to safely cease pipeline operations where the owner is in receivership, insolvent or bankrupt





PART 3: THE CANADIAN NAVIGABLE WATERS ACT

- On August 28, 2019, the Navigation Protection Act (NPA) was amended and renamed the Canadian Navigable Waters Act (CNWA) to better reflect its purpose





CHANGES TO THE NAVIGATION PROTECTION ACT

Bill C-69 amended the NPA to, among other things:

- rename it the Canadian Navigable Waters Act
- expand its application to all navigable waters
- provide a comprehensive definition of “navigable water”
- amend the criteria and process for adding a navigable water to the schedule
- amend the approval regime
- amend the provisions regarding depositing and dewatering
- increase the penalties for an offence
- establish a public registry





Canadian Navigable Waters Act

- *navigable water* means a body of water, including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the *Constitution Act*, 1982, and
- there is public access, by land or by water;
- there is no such public access but there are two or more riparian owners; or
- Her Majesty in right of Canada or a province is the only riparian owner.





Canadian Navigable Waters Act

- In other words, a "navigable water" is a body of water that:
 - is used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes or for Indigenous peoples; or
 - there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes or for Indigenous peoples.
- In order to be a "navigable water", the body of water must also: (i) be accessible to the public by land or by water; (ii) have two or more riparian owners; or (iii) have Her Majesty in right of Canada or a province be the only riparian owner.



Canadian Navigable Waters Act

- Certain bodies of water are listed in a schedule to the Act.
- The *Canadian Navigable Waters Act* also provides new processes with respect to proposed works on navigable waters.
- The *Canadian Navigable Waters Act* provides that it is prohibited, except in accordance with the Act, "to construct, place, alter, rebuild, remove or decommission a work in, on, over, under, through or across any navigable water". For the purposes of this Memorandum, "construct" will be used in place of "construct, place, alter, rebuild, remove or decommission".



Canadian Navigable Waters Act

- The Minister may, by order, designate minor works and major works.
- Different processes apply depending on whether the work is minor or major and whether the work may interfere with navigation.
- It is important to highlight though that the processes only apply to works to be constructed on a "navigable water". A finding that a water is a "navigable water" is a precondition to the application of the Act.



Canadian Navigable Waters Act

- The *Canadian Navigable Waters Act* also provides two processes for owners who propose to construct a work that is not a major or minor work and that does not cross a navigable water that is listed in the schedule.
- If an owner proposes to construct a work (other than a minor or major work) on a navigable water that is not listed in the schedule and the work would not interfere with navigation, then, prior to beginning construction, the owner must provide the Minister with certain information and publish a notice.



Canadian Navigable Waters Act

- If an owner proposes to construct a work (other than a minor or major work) on a navigable water that is not listed in the schedule and the work may interfere with navigation, then the owner may: (i) make an application for approval to the Minister; or (ii) provide the Minister with certain information and publish a notice. An application for approval is deemed to be an application for approval of a major work or a work across a navigable water listed in the schedule. It is subject to the processes outlined above *Canadian Navigable Waters Act*, s 9.1.



Q & A





THANK YOU

Rangi Jeerakathil

Partner

T: (306) 975-7107

rjeerakathil@mltaikins.com

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