Government of Quebec
Minister of the Environment and the Fight Against Climate Change

Quebec City, February 5, 2019

Ms. Rosa Galvez, Chair
Mr. Michael L. MacDonald, Deputy Chair
Standing Senate Committee on Energy, the Environment and Natural Resources
Senate
Ottawa ON K1A 0A4

Dear Madam Chair and Mr. Deputy Chair,

I am writing to present the Government of Quebec’s comments and requests with respect to Bill C-69, specifically Part 1, which enacts the Impact Assessment Act, and the proposed regulatory approaches. The previous government submitted similar comments and requests to the Minister of Environment and Climate Change, Catherine McKenna, on June 4, 2018, but they are not reflected in the bill passed by the House of Commons.

First, Quebec would like to remind the committee that, generally speaking, intraprovincial projects fall primarily under provincial jurisdiction. Such projects are subject to federal environmental assessments because of tangential jurisdictions governing them. In addition, most projects are located entirely on provincial territory, and their environmental impacts have a primarily local effect.

Furthermore, the federal process duplicates the Quebec regime, which has been in place longer and is proven effective. Quebeckers are familiar with and have confidence in the processes applicable to northern and southern Quebec. The Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund, assented to on March 23, 2017, improved the southern Quebec process and created a clear, predictable, optimized process for Quebec that complies with the highest environmental protection standards. The Government of Quebec has always advocated for the “one project, one assessment” principle within Quebec and believes that only Quebec’s environmental assessment processes should apply to projects that fall primarily under Quebec’s jurisdiction.

Quebec considers the federal government’s proposed new impact assessment process to be virtually incompatible with its own process. The “one project, one assessment” principle should reduce the number of projects subject to both federal and Quebec assessments, but Bill C-69 will make it difficult to respect that principle. The scope of the federal assessment being broader, a greater number of projects would be subject to dual assessment.
To remedy the situation, we want the *Impact Assessment Act* to include a provision specifying that, at the request of a province, only that province’s process will be used to assess intraprovincial projects on its territory that fall primarily under provincial jurisdiction and have only tangential impacts in areas under federal jurisdiction. In Quebec's case, this request also refers to procedures that apply to Quebec territory covered by the James Bay and Northern Quebec Agreement, thereby exempting projects in that area from the *Impact Assessment Act* and recognizing the environmental protection regimes set out in that 1975 territorial agreement. That approach is preferable to the one proposed in clause 109, which states that the Governor in Council may make regulations “varying or excluding any requirement set out in this Act or the regulations as it applies to physical activities to be carried out on lands covered by land claim agreements referred to in section 35 of the *Constitution Act, 1982*”.

As such, the federal process would be used in conjunction with the relevant Quebec process only in the case of projects in which the federal government has jurisdiction over the work (e.g., interprovincial pipelines) or the activities to be carried out (e.g., ports (navigation), airports (aviation), telecommunication towers (telecommunications)). In such cases, not only should Quebec laws continue to apply, but in order to abide by the “one project, one assessment” principle, the federal government should recognize the Government of Quebec’s integral role and work closely with it to carry out environmental assessments for projects on or impacting Quebec territory.

Quebec believes that the *Impact Assessment Act* and its implementation must not infringe in any way on the application of Quebec’s land use and environmental protection legislative framework for any and all projects. The *Impact Assessment Act* must therefore make it clear that no project located in whole or in part on provincial territory may be exempt from environmental legislation adopted by that province’s legislative body. To ensure that, the collaboration mechanisms set out in the *Impact Assessment Act* must enable the provinces to play an integral role with respect to all projects on their territory.

Integral application of the “one project, one assessment” principle is crucial to avoiding duplication of assessment procedures, which creates an additional undue administrative burden and causes delays for project proponents, the people affected and the indigenous communities consulted. As such, the best way to honour the “one project, one assessment” principle is to listen to Quebec’s comments and requests and to integrate them into Bill C-69.

Enclosed are more detailed comments about the *Impact Assessment Act* and the proposed regulatory approaches.

Sincerely,

[signed]
BENOIT CHARETTE

Encl.
APPENDIX 1
Quebec’s Detailed Comments on Bill C-69 (Part 1 Concerning the *Impact Assessment Act*)

*Limitations on projects subject to the Impact Assessment Act*

A limited number of projects should be designated as subject to the *Impact Assessment Act*.

The Act should include a provision specifying that, at the request of a province, only that province’s process will be used to assess intraprovincial projects on its territory that fall primarily under provincial jurisdiction and have only tangential impacts in areas under federal jurisdiction.

As such, the federal process would be used in conjunction with the relevant Quebec process only in the case of projects in which the federal government has primary jurisdiction over the work (e.g., interprovincial pipelines) or the activities to be carried out (e.g., ports (navigation), airports (aviation), telecommunication towers (telecommunications)). In such cases, not only should Quebec laws continue to apply, but in order to abide by the “one project, one assessment” principle, the federal government should recognize the Government of Quebec’s integral role and work closely with it to carry out environmental assessments for projects on or impacting Quebec territory.

The federal government must inform Quebec as soon as possible when a project triggers the application of the *Impact Assessment Act*. Given the considerable local impact of such projects, there must be provisions for cooperative and collaborative impact assessments. The Bureau d’audiences publiques sur l’environnement public consultation and information mechanisms must always be respected.

*Approach to changing the list of projects*

First, Quebec is in favour of maintaining a list of types of projects subject to the federal environmental assessment process.

In 2017, Quebec adopted the *Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund*, which revised and reformed its environmental authorization regime to make it clear, predictable, optimized and in compliance with the highest environmental protection standards. To focus assessment efforts on projects with the greatest environmental impact, the new approach to determining which projects are subject to assessment is based on the level of environmental risk. This new approach also adapts the authorization regime to better meet the unique needs of research and experimental projects. Quebec already assesses these projects, so we recommend that, in revising the list of projects subject to assessment under the *Impact Assessment Act*, the federal government should include only projects whose environmental risks are considered major under federal legislation.

Projects not subject to Quebec’s environmental impact assessment and review process because they have been determined by Quebec to pose a lesser environmental risk should not be listed in the federal regulations designating physical activities. Such projects are already subject to a simplified but thorough
assessment adapted to the level of risk they represent. For example, mine rehabilitation should not be subject to the federal process.

From an environmental risk management perspective, we also think it would be best to exclude interprovincial and international electricity transmission lines from the list of projects because they clearly do not have environmental impacts comparable to those of pipeline projects.

The *Impact Assessment Act* should also provide for consultation with provincial governments prior to amending the list of designated projects or designating a project that is not on the list.

**One project, one assessment: Quebec’s perspective**

In Quebec’s view, the “one project, one assessment” principal is crucial to avoiding duplication and ensuring subsidiarity by enabling the appropriate level of authority to take charge of the process.

Once again, it is important to note that Quebec’s environmental assessment process is rigorous and upholds the highest environmental protection standards. Quebec also has extensive experience in this domain.

When selecting which single process to use, Quebec’s process should take precedence for projects that fall primarily under provincial jurisdiction.

The *Impact Assessment Act* should therefore provide for more flexibility in establishing and implementing mechanisms to reduce overlap.

Under the Impact Assessment Act, the “one project, one assessment” principle can only be achieved if the mechanisms authorized by the Act are designed to achieve similar results and effects rather than harmonizing the approach to carrying out impact assessment.

The *Impact Assessment Act* should include an equivalency provision similar in spirit to the one in the *Fisheries Act*. The *Impact Assessment Act* could set out an equivalency process enabling the Governor in Council to exempt projects from the Act. Any overlap reduction mechanisms (substitution, equivalency or other collaboration agreement) should apply to all designated projects located entirely on Quebec territory.

*Respect for provincial legislation*

The *Impact Assessment Act* should explicitly state, in a general provision or its preamble, that none of its provisions preclude the application of provincial environmental protection laws.

*Predictability*
Quebec is concerned that provisions in the proposed *Impact Assessment Act* could make it difficult for proponents to predict whether their projects will be subject to the federal assessment process. Predictability is essential to all environmental authorization regimes.

Specifically, there should be restrictions on the minister’s discretionary power to designate by order a physical activity that is not prescribed by regulations, as set out in subclause 9(1) of the *Impact Assessment Act*.

The Government of Canada should consider adopting the approach in Quebec legislation. Subsection 31.1.1 of the *Environment Quality Act* provides for similar powers exercised by the government (on the recommendation of the minister) in exceptional cases only. In addition, the minister must, within three months after an authorization application is filed, inform the applicant of the minister’s intention to recommend to the government that it make the project subject to Quebec’s impact assessment process.