February 15, 2019

Via e-mail: enev@sen.parl.gc.ca
Clerk of the Senate Standing Committee on Energy, the Environment and Natural Resources

RE: CAPP submission on Bill C – 69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Dear Committee Members,

Introduction
The Canadian Association of Petroleum Producers (CAPP), and its members, appreciate the opportunity to provide input on the study of Bill C-69. CAPP represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP’s member companies produce about 80 per cent of Canada’s natural gas and crude oil. CAPP membership is inclusive of approximately 150 organizations. Together CAPP’s members and associate members are an important part of a national industry with revenues from crude oil and natural gas production of about $110 billion a year benefitting all Canadians. CAPP’s mission, on behalf of the Canadian upstream crude oil and natural gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance and be the preferred source of global supply based on these considerations.

CAPP has a significant interest in the proposed new Impact Assessment Act, Canadian Energy Regulatory Act, and the Canadian Navigable Waters Act both as a producer and as a pipeline shipper. Moreover, Bill C-69 in its current form, has fundamental problems that increase the complexity and uncertainty of the major project review process that must be addressed before it can be adopted. CAPP has undertaken to develop proposals to address these challenges within the bill.

Context
Canada’s upstream oil and natural gas industry takes pride in meeting some of the world’s highest environmental standards, and employs more than half a million Canadians. Industry is proud of its role in economic reconciliation, with more than $3.3 billion in procurement from Indigenous-owned businesses in 2017. Canada should be the supplier of choice in a world that needs energy to grow the global middle class. The Canadian oil and natural gas sector presents a significant opportunity that provides broad benefits to Canadians. Under Bill C-69 all these benefits are at risk.

CAPP and its members place the highest value on building and maintaining the trust of Canadians and the investment community. We share the government’s view that timely and
predictable regulatory review processes can help foster that trust and build relationships between project proponents and Indigenous groups, local communities and Canadians broadly. As a result, any changes to the current major project review framework should provide the foundation for regulatory regime that enables the responsible and timely development of Canada’s natural resources, and minimizes future litigation risks for projects. At the same time, the proposed new major project regime should restore investor confidence, as well as provide a clear and efficient process for both proponents and intervenors to follow.

Without clear rules, these reviews will continue to be long, complex processes with uncertain, politicized outcomes that, in the end, will be appealed and overturned. Canada and the world will miss out on the social and economic benefits of these resource development projects as well as the environmental leadership of Canada’s upstream oil and gas industry.

Examples of our Members’ projects that are currently subject to environmental assessments (to be renamed impact assessments) under various authorities include:

- Mining oil sands projects (by the Canadian Environmental Assessment Agency)
- Offshore petroleum exploration and production activities (by the Canada-Newfoundland and Labrador Offshore Petroleum Board and Canada-Nova Scotia Offshore Petroleum Board “the Offshore Petroleum Boards”)
- Electricity generating facilities (Canadian Environmental Assessment Agency)
- Sour gas processing facilities (Canadian Environmental Assessment Agency)
- Heavy oil upgraders (Canadian Environmental Assessment Agency)
- Major pipeline projects (by the National Energy Board)

**CAPP Engagement**

Over the past three years, CAPP has provided a number of submissions in response to Expert Panels, House of Commons Committees, and to Government of Canada staff related to the transformation of the major project review process in Canada as currently expressed in Bill C-69. All of CAPP’s submissions were developed through engagement with our members and were focused on providing the government with constructive recommendations to design a good project review framework for Canada.

In addition, CAPP commissioned a 2016 WorleyParsons Canada study of environmental assessment (EA) practices worldwide. The study observed that, while Canada has an EA process that is one of the most thorough and comprehensive, it also “…currently has one of most expensive, time and resource consuming EA processes in the world.”1 A summary of the report is included as Attachment 2.

While CAPP has undertaken significant efforts to inform the review process, Bill C-69 has actually expanded the scope of the assessment process to include broader societal or policy matters that may or may not be relevant to a proposed project and provides no clarity or

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direction on how to weigh such factors in the decision making. As written, the proposed legislation will simply amplify the challenges experienced in Canada’s major project review process.

**Bill C-69 Proposed Areas of Amendments**

CAPP has prepared a full analysis of the challenges in Bill C-69 and has proposed solutions to improve the regulatory framework and provide clarity, certainty and shorter timelines. This package of solutions is needed to ensure that the legislation does not act as a barrier to investment for Canada.

CAPP asks that the Senate Committee consider a package or system of amendments to make Bill C-69 what it is intended to be – a solution to the uncertainty that exists in Canada’s current project review system. Ultimately, success will mean a review process that:

- Provides a clear path to project approval and construction;
- Leverages the unique expertise of both the federal and provincial life-cycle regulators;
- Establishes a clear framework for the review process in Bill C-69’s Early Planning Phase, defining required information and included stakeholders;
- Removes the debate on public policy questions that should be addressed outside of project-specific review; and,
- Provides responsible boundaries to the now proposed arbitrary powers of both the Minister of Environment and Climate Change Canada and federal Cabinet, and ensures decisions are upheld.

These amendments must be considered as a system. If one amendment is adopted and others not, the Bill will fall short of its intended outcomes. The full assessment of the necessary amendments is included in **Attachment 1**.

CAPP’s proposed amendments are grouped into the following issue areas:

- Issuance of Approvals and the Path to Construction
- Public Participation
- Timeline Certainty
- Project Planning Certainty
- Decision Making / Public Interest
- Involvement of Life Cycle Regulators in Review Panels
- Navigable Waters

**Issue: Issuance of Approvals and the Path to Construction**

Bill C-69 increases complexity and will encourage further multiple litigations on project decisions. As written, it will continue the long, drawn-out, uncertain regulatory and judicial processes that have faced projects like the Trans Mountain Expansion Project (“TMEP”). These complex and expensive processes have made significant drains on proponents, communities and governments, and created deep division amongst Canadians. Bill C-69 creates even
greater regulatory uncertainty and litigation risk, both of which will result in decreased investor confidence. In addition, areas of public policy debate have been further entrenched into project review on existing areas such as climate and new ones such as the intersection of sex and gender with other identity factors.

**RECOMMENDATION 1**
Factors relevant to project review and material to decision-making must be defined with certainty early in the process and trust needs to be placed in the expert staff of the agency and regulator to make evidence-based decisions. Political interference must be restricted. Public policy debates need to be firmly removed from project assessments and adjudications and put where they belong in strategic assessments or policy forums.

In order to achieve the above recommendation, changes are required to the following sections of the Impact Assessment Act: **Section 18, Section 22, Section 33(1), Section 42, Section 49**, as well as the addition of new privative clauses. The detailed amendments are included on pages 1-7 of Attachment 1.

In order to achieve the above recommendation, changes are also required to the **Section 183 (2)** of the Canadian Energy Regulator Act. The detailed amendments are included on page 18-19 of Attachment 1.

**Issue: Public Participation**
Public participation must be meaningful. There is concern that the voices of local communities will be drowned out by distant commentators. Lacking the discretion to make determinations about how different groups will participate in the process, any differentiation between parties will make processes vulnerable to legal challenge.

**RECOMMENDATION 2**
The assessment process itself needs to be clearly defined as creating means to ensure meaningful participation. Review panels need to have the discretion to determine the nature and scope of participation of members of the public and to consider the information, expertise and opinions of other knowledgeable persons as they see fit.

In order to achieve the above recommendation, changes are required to the following sections of the Impact Assessment Act: **Section 11, Section 51**, and the addition of new clause providing discretion to the Agency. The detailed amendments are included on page 8 of Attachment 1.

In order to achieve the above recommendation, changes are required to the **Section 52** of the Canadian Energy Regulator Act. The detailed amendments are included on page 18 of Attachment 1.
**Issue: Timeline Certainty**
There are numerous provisions in the Act that create potential for delay and that allow the Governor in Council to extend timelines without providing justification. There is no hard time cap for the overall process.

RECOMMENDATION 3
Improve predictability of timelines including an overall maximum. Encourage discipline from all parties by requiring publication of reasons for extensions.

In order to achieve the above recommendation, changes are required to the following sections of the Impact Assessment Act:
**Section 15, Section 16, Section 18(5)**, and the addition of new clause providing an overall timeline to provide greater certainty and discipline into the process. The detailed amendments are included on pages 9-11 of Attachment 1.

In order to achieve the above recommendation, changes are also required to the **Section 262(7)** of the Canadian Energy Regulator Act. The detailed amendments are included on page 19 of Attachment 1.

**Issue: Project Planning Certainty**
As currently worded, the proposed Act prohibits a proponent from doing any act or thing in connection with a designated project. Currently, this is so broadly drafted that it would preclude any activity including those that would generate positive benefits to Indigenous or local communities, making the routine planning and preparation work to develop a project proposal subject to penalties.

RECOMMENDATION 4
Clearly link the prohibited pre-approval actions of proponents to real changes to the environment more in line with similar prohibitions in other legislation.

In order to achieve the above recommendation, changes are required to **Section 7** of the Impact Assessment Act. The detailed amendment is included on page 11 of Attachment 1.

**Issue: Decision Making / Public Interest**
When making public interest decisions on designated projects, there is no express requirement for decision makers to consider the economic benefits of projects. Jobs, economics and infrastructure development are positive legacies that should be included in public interest deliberations. In addition, the Act gives complete discretion to the Minister regarding whether or not to designate a project for assessment, as well as granting them the power to refuse to undertake an assessment at all. This sort of political uncertainty is not acceptable.

RECOMMENDATION 5
Restrict the broad discretionary powers granted to the Minister. Make explicit in the Act that
decision makers must specifically consider the economic and social effects, including benefits, of projects.

In order to achieve the above recommendation, changes are required to the following sections of the Bill:

**Section 6, Section 9, Section 17, Section 63.** The detailed amendments are included on page 12-14 of Attachment 1.

**Issue: Involvement of Life Cycle Regulators in Review Panels**
Offshore projects on Canada’s East Coast are specifically required to undergo panel review assessments regardless of scope or scale; this could add years to the review of projects that would last 120 days. In addition, where an impact assessment includes activities regulated by a life cycle regulator and is referred to a review panel, the panel chairperson may not be a member of the life cycle regulator nor may members of the life cycle regulator make up a majority of the review panel. In short, life cycle regulators and their expertise and experience are, by design, marginalized in the process. This marginalization of expertise does not benefit Canada or the safety and environmental performance of projects.

**RECOMMENDATION 6**
Allow flexibility to scale assessment reviews to project complexity and scope. Remove the requirements that marginalize the involvement and use of the expertise of regulators. Allow flexibility for the best placed candidates to comprise and/or chair review panels.

In order to achieve the above recommendation, changes are required to the following sections of the Bill:

**Section 21, Section 43, Section 47.** The detailed amendments are included on page 15-17 of Attachment 1.

**Issue: Navigable Waters**
The Navigation Protection Act has been broadened to address all changes to water flows and water levels.

**RECOMMENDATION 7**
Focus the consideration and associated approval conditions allowed under this Act to proponent-induced impacts, not the remedy of natural flow conditions or cumulative impacts over which proponents may have no control.

In order to achieve the above recommendation, changes are required to **Section 7** of the Navigation Protection Act. The detailed amendments are included on page 20 of Attachment 1.

**Outstanding Items**
The Government of Canada has continued to message that the Draft Regulations will provide the necessary clarity to demonstrate the concerns being raised by all stakeholders can be addressed without amendments to the Bill. However no draft regulations to provide that clarity
have been provided. CAPP would note that Regulations are not an effective or reliable mechanism to address deficiencies that exist within Legislation. It is important to first address such issues within the legislation to ensure there is a solid foundation for regulatory development.

The outstanding key regulatory components related to Bill C-69 include:
- IAA Schedule 3, factor definitions
- The Designated Project List
- Information Requirements and Time Management Regulations
- Climate Change Strategic Assessment
- Sustainability Policy Framework
- Policy Guidance on Intersection of Sex and Gender

In absence of clarity around what types of projects will be subject to this new major projects review process, it is impossible to determine if the process is suitable. Despite our best efforts to provide feedback regarding the types of projects that CAPP deems appropriate for such an assessment process, that feedback could be very different depending on the regulatory approach the government choses to take with the Project List.

As the draft regulations have not been made available, CAPP provides the following feedback on the proposed Project List.

The Designated Project List
The specific list of projects that will be subject to the proposed impact assessment process is still unknown. CAPP strongly recommends the federal government clearly define thresholds or criteria for making any additions and deletions to the current Designated Project List and then consistently apply that criteria to all industries and project types. Only complex high-risk projects that could result in significant, adverse environmental effects and require unproven mitigation approaches should be included on the list. Routine projects with well-established impact mitigations that will be addressed through the approval of lifecycle regulators (e.g., Offshore Petroleum Boards) should be excluded from the List.

For example:
- Exploration Drilling and Geophysical Programs do not belong on the federal Designated Project List.
  - Emphasis must be placed on existing environmental regulatory review processes and on those physical activities with the greatest potential to cause adverse environmental effects in offshore federal jurisdictions. A distinction must be made in the requirements for a routine activity (such as a 120-day exploration well of which there have been more than 300) and a 30 to 40 year production facility. Environmental assessment for drilling an exploration well is a one to five-month regulatory process in the United Kingdom and Norway. The levels of environmental protection in Norway and the U.K. are not
less than Canada. They have applied a model that is appropriate for the activity of exploration drilling.

**Conclusion**

Without some important changes, Bill C-69 will amplify the challenges experienced in Canada’s major project review process or make it completely unworkable. There is an opportunity to provide a legislative framework that is workable for both proponents, intervenors and Governments. The system should provide the necessary confidence to both Canadians and those looking to invest in Canada.

CAPP urges the Committee to fully consider and adopt the proposed system of amendments in **Attachment 1**.

Should you have any questions or require further clarification regarding this submission, please contact Patrick McDonald at (403) 267-1136. Thank you.

Sincerely,

Tim McMillan
President and Chief Executive Officer

Encl.
**IMPACT ASSESSMENT ACT**

**Issue: Issuance of Approvals and the Path to Construction**

The recent Federal Court of Appeal’s decision regarding the Trans Mountain Expansion Project (TMX) is evidence Canada’s regulatory system not only creates uncertainty for industry and investors, but also is so complex even the Government of Canada and National Energy Board have not met regulatory requirements. Bill C-69 will add to the complexity and therefore will not prevent decisions like TMX. Instead, Bill C-69 will create greater regulatory uncertainty and litigation risk, both of which will result in decreased investor confidence. Amendments to the Bill are required to ensure key items are well defined at an early stage (such as the scope of the impact assessment, and the scope and process for consultation) and to ensure various discretionary decisions made under the Impact Assessment Act (the Act) may only be challenged in limited circumstances and are provided appropriate deference.

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<th>Section</th>
<th>Current Wording</th>
<th>Reasons for Amendment</th>
<th>Proposed Amendment</th>
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<td>18</td>
<td>Notice of commencement</td>
<td>Issuing the notice of commencement pursuant to subsection 18(1) of the Act provides an opportunity for the Agency to define the scope of the impact assessment at an early stage, which then sets out the process and requirements against which the impact assessment should be measured. This will give participants increased certainty regarding the process, factors to be considered in the impact assessment, and the process for consulting Indigenous groups that may be affected by the designated project. CAPP believes the purpose of subsection 18(1.1) is effectively achieved and clarified through our proposed amendment to subsection 18(1) and proposed amendment to subsection 22(1), below. Accordingly, subsection 18(1.1) should be deleted.</td>
<td>Amend subsection 18(1.1)(a) as follows: Notice of commencement</td>
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<td>18 (1)</td>
<td>If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with (a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and</td>
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(i) \text{ the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment;}
(ii) \text{ the information or studies that the Agency considers necessary for it to conduct the impact assessment;}
(iii) \text{ the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project;}
(iv) \text{ subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a);}
\]
| 22(1) | **Factors — impact assessment**  
22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors: … |
| --- | --- |
|  | As currently written, section 22 is stated in mandatory terms: the impact assessment of a designated project “must” take into account the listed factors. The Agency or review panel has no discretion to determine what factors are accounted for in an impact assessment, and an impact assessment that does not take into account a factor in the list may be attacked for failing to comply with requirements.  
The list of factors in section 22 that “must” be taken into account is extensive. It is very likely one or more of the factors listed will not be relevant to a given project’s impact assessment. Nonetheless, if the Agency or review panel does not expressly address one of the factors, the entire process – including the proponent’s considerable time and expense – could be invalidated.  
The proposed amendment directs the conduct of the impact assessment to the notice of commencement issued pursuant to subsection 18(1). Further to the referenced amendment, the notice of commencement will give the Agency an opportunity to consider the factors under subsection 22(1) that are relevant to a given project’s impact assessment, allowing the Agency or review panel to focus on relevant matters while reducing the risk that the process will be invalidated because an irrelevant factor was not expressly addressed. Discretion regarding what information must be considered is common in provincial environmental assessment legislation (e.g., British Columbia Environmental Assessment Act, section 11; Alberta Environmental Protection and Enhancement Act, section 49).  
Amend subsection 22(1) as follows:  
22 (1) In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be taken into account in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, the Agency must take into account consider the following factors: … |  
|  | y) in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project.  
Delete subsection 18(1.1). |
Factors – impact assessment

22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) 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;

(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, and the effects of those means;

(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

(g) Indigenous knowledge provided with respect to the designated project;

(h) the extent to which the designated project contributes to sustainability;

(i) 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;

Project assessments are not the place to debate broader public policy issues. Policy debates have plagued environmental assessments for more than a decade, resulting in delays, increased cost and regulatory uncertainty. A project proponent expects the assessment to focus on the project being reviewed, not become a forum to debate public policy.

The Act provides government with the powers to undertake strategic and regional assessments and develop policy guidance that, if implemented properly, can be the forum needed for considered discussions on public policy issues such as climate change, sustainability, and the intersection of sex and gender with other identity factors.

One critical outcome of a strategic assessment is to define a framework to assess whether an individual project is compliant with a given public policy objective. In this way, policy debates will not have to be repeated for every project application.

Public policy items in the list of factors in subsection 22(1) should be referred to any applicable completed strategic or regional assessments, or other policy guidance. If boundaries are not established for public policy items, the Act will open impact assessments to broad policy debates, which negatively affects certainty, efficiency, and the overall purpose of the process.

Regarding paragraph 22(1)(f) – alternatives to a designated project – there is no value in requiring a proponent to complete an assessment of theoretical project alternatives they have no intention to invest in or build. Spending proponent, stakeholder and government time and resources in this way will result in inefficiency and waste. The objectives of this type of exercise are appropriately addressed in paragraph (e), alternative means of carrying out a project, as this allows for an investigation of alternative, feasible methods for carrying out a project that still address the project’s need and purpose.

Amend subsection 22(1) as follows:

22 (1) In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be taken into account in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, the Agency must consider the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) 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;

(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, and the effects of those means;

(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

(g) Indigenous knowledge provided with respect to the designated project;

(h) relevant published policy on the extent to which the designated project contributes to sustainability framework that is developed by the Agency under paragraph 155(h) and that is
(i) any change to the designated project that may be caused by the
environment;
(k) the requirements of the follow-up program in respect of the
designated project;
(l) considerations related to Indigenous cultures raised with
respect to the designated project;
(m) community knowledge provided with respect to the
designated project;
(n) comments received from the public;
(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 of the effects of the designated project that is
conducted by or on behalf of an Indigenous governing body and
that is provided with respect to the designated project;
(r) any study or plan that is conducted or prepared by a
jurisdiction — or an Indigenous governing body not referred to in
paragraph (f) or (g) of the definition jurisdiction in section 2 — that
is in respect of a region related to the designated project and that
has been provided with respect to the project;
(s) the intersection of sex and gender with other identity factors;
and
(t) any other matter relevant to the impact assessment that the
Agency or — if the impact assessment is referred to a review panel
— the Minister requires to be taken into account.

Scope of factors
(2) The scope of the factors to be taken into account under
paragraphs (1)(a) to (f), (h) to (l) and (s) and (t) is determined by

identified in the tailored guidelines provided to a proponent of a
designated project under paragraph 18(1)(b);
(h) any relevant assessment referred to in section 92, 93 or 95
regarding 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, where the assessment has been
completed prior to the notice of commencement of the impact
assessment of the designated project;
(i) any change to the designated project that may be caused by
the environment;
(j) the requirements of the follow-up program in respect of the
designated project;
(k) considerations related to Indigenous cultures raised with
respect to the designated project;
(l) community knowledge provided with respect to the designated
project;
(m) comments received from the public;
(n) comments from a jurisdiction that are received in the course of
consultations conducted under section 21;
(o) any relevant assessment referred to in section 92, 93 or 95
that is not related to a factor noted in paragraph 22(1)(h), where
the assessment has been completed prior to the
notice of commencement of the impact assessment of the designated
project;
(p) any assessment of the effects of the designated project that is
conducted by or on behalf of an Indigenous governing body and
that is provided with respect to the designated project;
(q) any study or plan that is conducted or prepared by a
jurisdiction — or an Indigenous governing body not referred to in
paragraph (f) or (g) of the definition jurisdiction in section 2 — that
is in respect of a region related to the designated project and that
has been provided with respect to the project;
(r) relevant published policy on the intersection of sex and gender
with other identity factors that is developed by the Agency under
paragraph 155(h) and that is identified in the tailored guidelines
provided to a proponent of a designated project under paragraph
18(1)(b); and
any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.

Amend subsection 22(2) as follows:

Scope of factors
(2) The scope of the factors to be taken into account under paragraphs (1)(a) to (e), (g) to (k) and (r) and (s) is determined by
(a) the Agency; or
(b) the Minister, if the impact assessment is referred to a review panel.

Add the following after subsection 22(2):

(3) For clarity, notwithstanding paragraphs 22(1)(h) and (o), the Agency or review panel shall not adjourn or defer the impact assessment of a designated project by reason only of the incompletion of an assessment referred to in section 92, 93 or 95.

(4) In considering an assessment referred to in section 92, 93 or 95, the Agency or review panel shall, in its discretion, consider the weight to be given to an assessment, having regard to both the relevance of the assessment and its conclusions to the project under consideration and the strength of evidence supporting the assessment’s conclusions.

Add the following after section 94:

94.1 For clarity, the purpose of an assessment under section 92 or 93 shall include, but is not limited to
(a) improving knowledge of baseline environmental conditions in a region; and
(b) providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.

Add the following after section 95:

CAPP supports the use of regional and strategic assessments if developed and used appropriately. CAPP believes these assessments can provide appropriate opportunities to address broader public policy issues. Regional assessment can be an effective tool, provided the governments of Canada, the provinces and territories work together to complete assessments.

However, CAPP is concerned that regional and strategic assessments have no clarity about how they will be used. As written, there are no mandated boundaries or guidance in the Act for the completion of a regional or strategic assessments.
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<td>(ii) authorize the Agency to conduct the assessment; and</td>
<td>A condition of approving substitution, per paragraph 33(1)(a), is that the process to be substituted will include a consideration of the factors set out in subsection 22(1). Where a process may be substituted for an impact assessment under the Act, subsection 31(1) stipulates that a decision will be made prior to a notice of commencement being issued under subsection 18(1). If this process is followed, the Agency will not yet have determined the factors that will be considered in the impact assessment. Accordingly, where substitution is being considered, the Minister should make a determination as to the factors that are relevant to the designated project. Alternatively, a process could be established whereby the Agency makes a determination on the relevant factors, which is then considered by the Minister when reviewing a request for substitution.</td>
<td>Revise paragraph 33(1)(a) as follows:</td>
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<td>(b) the Minister and the Minister of Foreign Affairs may enter into an agreement or arrangement with any jurisdiction referred to in paragraph (h) or (i) of that definition respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.</td>
<td>As per the proposed amendment to subsection 18(1), by the time an arrangement or agreement to jointly establish a review panel is executed, the Agency will have determined the relevant factors under subsection 22(1). Accordingly, such arrangement or agreement should require consideration of the relevant factors set out in the notice of commencement, as opposed to all factors set out in subsection 22(1).</td>
<td>Amend section 42 as follows:</td>
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<td>33(1) Conditions</td>
<td>42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that ...</td>
<td>42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in the notice of commencement provided to a proponent pursuant to subsection 18(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that ...</td>
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<tr>
<td>33(1)(a) The Minister may only approve a substitution if he or she is satisfied that</td>
<td>49 Where a designated project is referred to a review panel, and before the terms of reference for the review panel are established by the Minister, the Agency will have: (i) issued a notice of commencement pursuant to subsection 18(1), setting out the information and ...</td>
<td>Amend section 49 as follows:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of</td>
</tr>
</tbody>
</table>
In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14.

<table>
<thead>
<tr>
<th>None</th>
<th>Currently no provision.</th>
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</thead>
<tbody>
<tr>
<td>49</td>
<td>The Act has many decision points, any of which could mean that in early planning stages the reviewing court could substitute its judgment for the Agency, the review panel, the Minister or the Governor in Council, and then deem determinations to be in error because of a failure to strictly adhere to the impact assessment process as perceived by the court.</td>
</tr>
</tbody>
</table>

The government will have established an expert Agency as well as a roster of subject matter experts who may be appointed to a review panel. In light of this specific expertise, decisions made under the Act should be respected in order to protect the expert review process, and provide a level of certainty to process participants. Court challenges should be narrowly focused on matters of law and jurisdiction, and not create an opportunity to re-litigate matters of fact and the reasonable judgement rendered by the Agency, a review panel, the Minister, or the Governor in Council.

The proposed provision is analogous to the one proposed in section 70 of the Canadian Energy Regulator Act, and other examples that can be found in governing statutes of federal agencies and tribunals, such as the National Energy Board Act.

Add the following in the Act:

**Section [X]** Except as provided for in this Act, every decision of the Agency, a review panel, the Minister or the Governor in Council made under this Act is final and conclusive.

**Section [Y (1)]** An appeal from a decision of the Agency, a review panel, the Minister or the Governor in Council under this Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

**Section [Y (2)]** Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.

**Section [Y (3)]** An appeal must be brought within 60 days after the day on which leave to appeal is granted.

**Section [Y (4)]** For greater certainty, a report submitted by the Agency under subsections 28(2) or 59(1) or by a review panel under 51(1)(e) is not a decision or order for the purposes of this section and neither is any part of the report.

**Section [Y (5)]** The filing of a notice of appeal under section [Y (1)] does not suspend the operation of a decision made under this Act.
<table>
<thead>
<tr>
<th>Issue: Public Participation</th>
<th>In its current form, the Act may result in processes that are unworkable from a public participation perspective.</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>Currently no provision.</td>
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<tr>
<td></td>
<td>Repeated references in the Act to meaningful public participation, which is undefined, will lead to unintended consequences such as drowning out the voices of directly impacted parties.</td>
</tr>
<tr>
<td></td>
<td>As currently drafted, the Act does not provide appropriate discretion to the Agency to determine the nature and scope of public participation in an impact assessment. Without appropriate discretion, any decision by the Agency regarding public participation would be vulnerable to legal challenge.</td>
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<tr>
<td></td>
<td>The Agency must have appropriate discretion to determine its own processes, and this should be clearly stated in the Act.</td>
</tr>
<tr>
<td></td>
<td>Add the following after section 27:</td>
</tr>
<tr>
<td></td>
<td>27.1 The Agency has discretion to determine the nature and scope of participation by a member of the public in an impact assessment of a designated project conducted by the Agency. A decision of the Agency under this section is final and conclusive.</td>
</tr>
<tr>
<td>51</td>
<td>Review panel’s duties</td>
</tr>
<tr>
<td>51 (1)</td>
<td>A review panel must, in accordance with its terms of reference, ...</td>
</tr>
<tr>
<td></td>
<td>Determining public participation is even more critical for review panels, as hearings are mandatory. Without clear discretion for a review panel to make determinations on its own processes, including public participation, the costs and time associated with hearings will increase and any decision by the review panel regarding public participation would be vulnerable to legal challenge.</td>
</tr>
<tr>
<td></td>
<td>Add the following after subsection 51(3):</td>
</tr>
<tr>
<td></td>
<td>51 (4) A review panel has discretion to determine the nature and scope of participation by a member of the public in a hearing conducted under paragraph 51(1)(c). A decision of a review panel under this subsection is final and conclusive.</td>
</tr>
<tr>
<td>11</td>
<td>Public participation</td>
</tr>
<tr>
<td>11</td>
<td>The Agency must ensure that the public is provided with an opportunity to participate meaningfully in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</td>
</tr>
<tr>
<td></td>
<td>References to meaningful participation in the Act should be bound by reference to the regulatory and legal framework created by the Act. If not, the term &quot;meaningful participation&quot; will be open to interpretations outside the regulatory framework, resulting in unacceptable uncertainty.</td>
</tr>
<tr>
<td></td>
<td>Amend section 11 as follows:</td>
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<tr>
<td></td>
<td>11 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, as set out in the Act, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</td>
</tr>
<tr>
<td></td>
<td>For consistency throughout the Act, similar amendments are required in section 27, paragraphs 31(1)(e) and (f), paragraph 51(c), section 99 and subsection 181(4.1).</td>
</tr>
</tbody>
</table>
### Issue: Timeline Certainty

The Government of Canada contends that the proposed Impact Assessment Act will shorten regulatory timelines and increase timeline certainty; however, a number of provisions in the Act do exactly the opposite, creating potential for delay and allowing the Governor in Council to extend timelines without providing reasons. This creates uncertainty and issues regarding transparency and discipline of the impact assessment process.

#### Proponent’s obligation — notice

<table>
<thead>
<tr>
<th>15</th>
<th>Proponent’s obligation — notice</th>
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<tr>
<td><strong>15 (1)</strong></td>
<td>The proponent must provide the Agency with a notice that sets out, in accordance with the regulations, how it intends to address the issues referred to in section 14 and a detailed description of the designated project that includes the information prescribed by regulations made under paragraph 112(a).</td>
</tr>
<tr>
<td><strong>Additional information</strong>&lt;br&gt;<strong>(2)</strong></td>
<td>If, after receiving the notice from the proponent, the Agency is of the opinion that a decision cannot be made under subsection 16(1) because the description or the prescribed information set out in the notice is incomplete or does not contain sufficient details, the Agency may require the proponent to provide an amended notice that includes the information or details that the Agency specifies.</td>
</tr>
<tr>
<td><strong>Copy posted on Internet site</strong>&lt;br&gt;<strong>(3)</strong></td>
<td>When the Agency is satisfied that the notice includes all of the information or details that it specified, it must post a copy of the notice on the Internet site.</td>
</tr>
</tbody>
</table>

While the use of a planning phase in the Act has certain advantages if done properly, as presently drafted it is onerous for proponents. In particular, the requirement under section 15 to provide a notice that sets out how issues raised by the public and Indigenous groups will be addressed is unnecessary and duplicative at this stage of the assessment. Such information will be set out in the information and studies provided by the proponent in the impact assessment. CAPP recommends that this step be removed from the planning phase and that section 15 be deleted.

Delete subsections 15(1)-(3).

#### Decision

<table>
<thead>
<tr>
<th>16</th>
<th>Decision</th>
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<tbody>
<tr>
<td><strong>16 (1)</strong></td>
<td>After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.</td>
</tr>
<tr>
<td><strong>Factors</strong>&lt;br&gt;<strong>(2)</strong></td>
<td>In making its decision, the Agency must take into account the following factors:</td>
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</table>

While the planning phase is 180 days, there are no interim timeframes related to various steps in the process. In particular, for projects that the Agency determines will not be subject to an impact assessment, it is important to receive that decision as soon as possible, and certainly before the 180-day period has elapsed. CAPP recommends a timeline be established in regulations applicable to issuing a decision under section 16. In addition, the Government of Canada has indicated that certain projects on the “Project List” may be excluded from requiring an impact assessment if there is a regional or strategic assessment in place that addresses impacts from such projects. However, it is not clear in the Act how this will work in practice. CAPP believes that

Amend subsections 16(1) and (2) as follows:

16 (1) After posting a copy of the notice on the Internet site under subsection 10(2), the Agency must decide within the time period prescribed by regulations made under paragraph 112(b) whether an impact assessment of the designated project is required.

16 (2) In making its decision, the Agency must take into account the following factors:

...
<table>
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<tr>
<th>18(5)</th>
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<tr>
<td><strong>18(1)...</strong></td>
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<tr>
<td><strong>Extension of time limit by Governor in Council</strong></td>
</tr>
<tr>
<td><strong>(4)</strong></td>
</tr>
<tr>
<td><strong>Posting notice on Internet site</strong></td>
</tr>
<tr>
<td><strong>(5)</strong></td>
</tr>
<tr>
<td>18(5)</td>
</tr>
<tr>
<td>Add the following after section 62:</td>
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<tr>
<td><strong>62.1</strong> (1) Notwithstanding subsections 28(5), 28(6), 28(7), 28(9), 36(3), 37(3), 37(4), 37(6), 37.1(2), 37.1(4) and 65(5), a decision pursuant to paragraph 60(1)(a) or section 62 for a designated project must be made within 730 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project.</td>
</tr>
<tr>
<td><strong>62.1 (2)</strong></td>
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<tr>
<td>Amend subsection 18 (5) by adding the underlined wording:</td>
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<tr>
<td><strong>18 (5)</strong></td>
</tr>
<tr>
<td>This revision is also required for subsections 28(8) and 37(5).</td>
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</tbody>
</table>
When the Minister makes a determination under paragraph 60(1)(a), he or she must issue the decision statement no later than 30 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

When the Governor in Council makes a determination under section 62, the Minister must issue the decision statement no later than 90 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

The Minister may extend the time limit referred to in subsection (3) or (4) by any period — up to a maximum of 90 days — for any reason that the Minister considers necessary.

The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (5) any number of times.

Issues: Project Planning Certainty
As currently worded, the proposed Impact Assessment Act prohibits a proponent from doing any act or thing in connection with a designated project that may cause any change to the health, social or economic conditions of the Indigenous peoples of Canada.

Section 7 (1)(d),... 
7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:...

(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on
   (i) physical and cultural heritage,
   (ii) the current use of lands and resources for traditional purposes, or

This clause captures a wide range of activities that presumably are not meant to be prohibited by the section (e.g., executing capacity funding agreements with Indigenous groups) and it creates considerable uncertainty for proponents in terms of project planning.

The terms “may cause” and “any change” are vague criteria not tied to an environmental impact, have no materiality thresholds, and would apply even where changes are positive. In addition, given the complex social, economic and other factors that affect the health, Amend section 7 as follows:

7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:...

(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on
   (i) physical and cultural heritage,
| (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; | social or economic conditions of Indigenous groups, almost any activity anywhere “may cause” changes in conditions. |
| (d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; or | As currently drafted, this paragraph would prohibit pre-approval activities that would have a positive impact on health, social or economic conditions of Indigenous groups. For instance, paragraph 7(1)(d) could be interpreted to prohibit a proponent from signing capacity building or impact benefit agreements with Indigenous groups regarding a designated project, as such agreements could change economic conditions. To address this uncertainty, CAPP recommends that paragraph (d) be included as Roman numeral (iv) in paragraph (c), as the effects listed in paragraph (c) are tied to a “change to the environment.” |

**Issue: Decision Making / Public Interest**

When conducting an impact assessment or making public interest decisions on designated projects, there is no express requirement to consider the economic benefits of projects. This results in an imbalance of considerations, particularly regarding a public interest determination. Economic growth and prosperity should also be expressed as an aim in the Purposes section (6(1)) of the Impact Assessment Act, to be balanced against other factors such as environmental protection and impacts on the rights of Indigenous peoples.

| 9(1) Minister’s power to designate | The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria to identify projects that may require impact assessments under the Act. As stated in the Government of Canada’s consultation paper on the “Project List,” the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.”¹ |
| — 9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation. | As written, the provision leaves total discretion to the Minister regarding whether to designate a project under subsection 9(1). This results in considerable uncertainty for proponents, even where proposed projects are not included on the “Project List.” There should be some minimum threshold for designation that guides the Minister. The proposed amendment sets out objective standards, similar to those used to develop the “Project List,” to guide the Minister’s decision-making under subsection 9(1). Further, |

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physical activities not included in the Project List should only be designated pursuant to subsection 9(1) in exceptional and unique circumstances.

Further, tying the Minister’s power to a prescribed timeframe (i.e. public disclosure of a project) in subsection 9(7) would help address industry concerns about the open-ended timeframe for designations, and would prevent either the Agency or special interest groups from proposing designations for federal reviews when projects are already at an advanced stage of provincial review processes.

Amend subsections 9(2) and (7) as follows:

9(2) Before making the order, the Minister must take into account any adverse impact that a physical activity may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 as well as any relevant assessment referred to in section 92, 93 or 95.

(7) The Minister must not make the designation referred to in subsection (1) if more than 90 days after the day on which the proponent publicly discloses a physical activity that will require the preparation of an environmental impact assessment under provincial law, more than 90 days after the day on which the proponent files an application with a provincial regulatory agency to seek approval for a physical activity that does not require an environmental impact assessment under provincial law, if the carrying out of the physical activity has substantially begun; or if a federal or provincial authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act or under an Act of a Legislature that could permit the physical activity to be carried out, in whole or in part.

17 Minister’s obligation

17 (1) If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1), a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part, or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the CAPP acknowledges that subsection 17(1) was amended from First Reading such that the Minister is no longer empowered to order the Agency not to conduct an impact assessment if a notice is provided. However, it should be clear that written notice under subsection 17(1) does not, in any circumstances, terminate the impact assessment of the designated project.

Add the following after subsection 17(2):

17 (3) For greater certainty, the provision of a written notice to a proponent of a designated project under subsection 17(1) does not suspend or terminate the impact assessment of the designated project.
Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion. The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister’s opinion.

<table>
<thead>
<tr>
<th>Section 63</th>
<th>Factors — public interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
<td>The Minister’s determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council’s determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:...</td>
</tr>
</tbody>
</table>

Further, and consistent with CAPP’s proposed amendments to subsection 22(1), consideration of Canada’s obligations and commitments in respect of climate change should be framed under applicable completed regional or strategic assessments.

While references to protecting the environment are found throughout the Impact Assessment Act, economic considerations do not figure prominently in the legislation. To ensure that economic the Minister’s stated objectives underlying the legislation are recognized and factored into decision making. To address this perceived imbalance, it should be explicit that a decision maker will consider the economic and social effects of a designated project.

Amend section 63 as follows:

63 The Minister’s determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council’s determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:...

(e) any relevant assessment referred to in section 92, 93 or 95 regarding 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, where such assessment was completed prior to the notice of the commencement of the impact assessment of the designated project; and

(f) the potential economic and social effects of the designated project.

6(1) Purposes

6 (1) The purposes of this Act are

... See comments above under section 63.

Revise subsection 6(1) by adding paragraph 6(1)(o):

6 (1) The purposes of this Act are...

(o) to improve investor confidence, strengthen the Canadian economy, encourage prosperity and improve the competitiveness of the Canadian energy and resource sectors.

Issue: Involvement of Lifecycle Regulators in Review Panels

2 https://openparliament.ca/debates/2018/2/14/catherine-mckenna-3/
As currently worded, the Act directs that where an impact assessment of a designated project that includes activities regulated by a lifecycle regulator (i.e., Canadian Energy Regulator; Canadian Nuclear Safety Commission; Canada-Nova Scotia Offshore Petroleum Board; Canada–Newfoundland and Labrador Offshore Petroleum Board) is referred to a review panel, the panel chairperson may not be a member of the lifecycle regulator for the CER and CNSC, and members of lifecycle regulators may not make up a majority of the review panel in all cases. This is counterproductive and limits the usefulness of establishing a roster of subject matter experts from lifecycle regulators. Since the roster of experts who may be appointed to a review panel will have been established by the Minister, nothing can be accomplished by constraining their eligibility to sit on a review panel.

47(4)

47 (1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the Canadian Energy Regulator Act to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel’s terms of reference and appoint the chairperson and at least two other members. 

Not majority

(4) The chairperson must not be appointed from the roster and the persons appointed from the roster must not constitute a majority of the members of the panel.

This clause minimizes the involvement of lifecycle regulators and the expertise of such organizations. Review processes should leverage the unique expertise of both provincial and federal lifecycle regulators, especially since the Minister will have established the roster of experts who may be appointed to a review panel.

Amend section 47 by deleting subsection 47(4). Subsections 44(4) (Canadian Nuclear Safety Commission), 46.1(4) (Canada–Nova Scotia Offshore Petroleum Board) and 48.1(4) (Canada–Newfoundland and Labrador Offshore Petroleum Board) should also be deleted for the reasons set out.

21

21 The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — must offer to consult and cooperate with respect to the impact assessment of the designated project with

(a) any jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the Canada Oil and Gas Operations Act, the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act, the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act or the Canada Transportation Act; and

(b) any jurisdiction referred to in paragraphs (c) to (i) of that definition if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of the designated project.

CAPP proposes removing the mandatory panel review and opening up all existing process options in the Act to offshore oil and natural gas activities (i.e., Agency review, panel review, submissions and joint panel reviews). This allows the “scale of the assessment to be aligned with the scale of the potential impacts.”

In support of a joint collaborative Agency/Board process, we have also proposed amendments to section 21, which currently requires that the Agency or Minister “offer to consult and cooperate” with the Boards. CAPP’s proposed process obligates the Boards and Agency/Minister to cooperate, and sets out a process for collaboration. For Agency reviews, the Boards and Agency should conclude a memorandum of understanding (MOU) as to how they want to proceed. This MOU process has precedent in the Accord Act, where the Boards are obligated to enter into MOUs with other government departments and agencies to avoid duplication and ensure effective coordination. We have used similar language here.

Amend section 21 as follows:

21 (1) —

(a) any jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the Canada Oil and Gas Operations Act, the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act, the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act or the Canada Transportation Act; and

Add the following after section 21:

(2) The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — and the

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With respect to impact assessments referred to review panels, we have suggested the Minister must include provisions for cooperation in the panel’s terms of reference, and the panels must include Board members. This approach is similar to the current process, but mandates closer cooperation than the currently proposed process, where the Minister simply appoints two offshore board members.

Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, shall cooperate with respect to the impact assessment of a designated project that includes activities that are regulated under the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act or the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act.

(3) The Agency and the Canada-Nova Scotia Offshore Petroleum Board and Canada-Newfoundland and Labrador Offshore Petroleum Board shall, to ensure effective cooperation and avoid duplication of work and activities, conclude memoranda of understanding in relation to the conduct of impact assessments – other than impact assessments referred to a review panel – referred to in subsection (2) above.

(4) Sections 25-29 apply mutatis mutandis to the Agency and the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, in relation to the impact assessment of a designated project – other than any impact assessment referred to a review panel – referred to in subsection (2) above.

(5) Where the Minister has referred the impact assessment of designated project referred to in subsection (2) above to a review panel:

(a) the panel’s terms of reference established by the Minister in accordance with section 41 shall include provisions for the panel’s cooperation with the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be; and

(b) the Minister, on the recommendation of the Chairperson of the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, shall appoint to such panels at least two persons.
The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:
(a) the Nuclear Safety and Control Act;
(a.1) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;
(b) the Canadian Energy Regulator Act.
(c) the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act.

CAPP proposes that the mandatory review panel requirement be removed for designated offshore oil and natural gas projects regulated under the Accord Acts, and that flexibility be added by permitting substitutions and joint panel reviews where appropriate. A proposed amendment to Section 43 is provided. To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a.1) and (c).

For most designated projects, the Act permits a variety of impact assessment processes. Where an impact assessment is required, the Agency will generally conduct the impact assessment (ss. 24-29); however, the Minister also has the discretion to refer the impact assessment to a review panel process if the Minister is of the opinion that a review panel is in the public interest (s. 36).

On the request of certain jurisdictions, the Minister may approve the use of that jurisdiction’s assessment process in substitution of an impact assessment under the Act (ss. 31(1)). If the Minister refers an impact assessment to a review panel, the Minister may enter into an agreement with certain jurisdictions to jointly establish a review panel and the manner in which the impact assessment will be conducted (ss. 39(1)).

By allowing a variety of levels and types of impact assessment processes, the scale of the assessment and the type of process used can be aligned with the particular circumstances, nature, scope and potential impact risks associated with the designated project. However, this flexibility is inapplicable to the assessment of offshore

Amend section 43 as follows:
43 The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:
(a) the Nuclear Safety and Control Act;
(a.1) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;
(b) the Canadian Energy Regulator Act.
(c) the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act.

To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a.1) and (c).
<table>
<thead>
<tr>
<th><strong>Issue: Public Participation</strong></th>
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<tbody>
<tr>
<td><strong>Section</strong></td>
<td><strong>Current Wording</strong></td>
</tr>
<tr>
<td>52</td>
<td>Public hearings 52 (1) A hearing before the Commission with respect to the issuance, suspension or revocation of a certificate under Part 3 or 4 must be public.</td>
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<tr>
<th><strong>Issue: Issuance of Approvals and the Path to Construction</strong></th>
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<tbody>
<tr>
<td><strong>183(2)</strong></td>
<td><strong>Factors to consider</strong> 183(2) The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data — all considerations that appear to it to be relevant and directly related to the pipeline, including (a) the environmental effects, including any cumulative environmental effects; (b) the safety and security of persons and the protection of property and the environment; (c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors; Project assessments are not the place to debate broader public policy issues. The lack of a proper forum to do so has plagued project assessments for more than a decade. The Impact Assessment Act provides government with the powers to undertake strategic and regional assessments and develop policy guidance that, if implemented properly, can be the forum needed for considered discussions on public policy issues such as climate change, sustainability, and the intersection of sex and gender with other identity factors. The Commission can consider consistency with applicable strategic and regional assessments conducted under the IAA.</td>
</tr>
</tbody>
</table>
(d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
(e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
(f) the availability of oil, gas or any other commodity to the pipeline;
(g) the existence of actual or potential markets;
(h) the economic feasibility of the pipeline;
(i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
(j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;
(k) any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act; and
(l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

Public policy items should be removed from the list of factors to be included in a project assessment in subsection 183(2) and replaced with a requirement to consider consistency with applicable strategic and regional assessments. Further, consideration of the intersection of sex and gender with other identity factors should be framed by reference to applicable policy published by the regulator.

(c) the health, social and economic effects, including policy published by the Regulator with respect to the intersection of sex and gender with other identity factors;
(d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
(e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
(f) the availability of oil, gas or any other commodity to the pipeline;
(g) the existence of actual or potential markets;
(h) the economic feasibility of the pipeline;
(i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
(j) any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act regarding 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, where the assessment has been completed prior to the date on which the application for a certificate was filed;
(k) any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act that is not related to a factor noted in paragraph 183(2)(j), where the assessment has been completed prior to the date on which the application for a certificate was filed;
(l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

Add the following after subsection 183(2):

(3) For clarity, notwithstanding paragraph 183(2)(j), the Commission shall not adjourn, defer, deny, refuse or reject an application by reason only of the incompletion of an assessment referred to in section 92, 93 or 95 of the Impact Assessment Act.
### Issue: Timeline Certainty

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| 262(7) | The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4). | To ensure greater certainty and predictability, there must be a reasonable limit on the extensions of time the Minister may grant to the maximum legislated time limit. | Amend subsection 262(7) as follows:  
262(7) The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4), provided that in no case can the time limit in subsection (4) be extended beyond 550 days after the day on which the applicant has, in the Commission’s opinion, provided a complete application. |

### Issue: Navigable Waters

The proposed *Navigation Protection Act* has changed the approach to how interference with navigation is characterized by including changes to water flows and water levels. The Minister also has the ability to attach any conditions he or she considers appropriate in relation to water flows and water levels. This is a fundamental shift in the approach to the navigation and will be more onerous for all parties regulated under the proposed Act.

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</table>
| 7       | (1) If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.  
(9) The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to  
(a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or  
(b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister. | References to changes to water flow and water levels as connected to interference with navigation is a fundamental change to regulation of navigation and could have significant consequences for proponents that operate, for example, water intakes. Further, jurisdiction over water flows and water levels arguably lies with the provinces. The inclusion of a power in subsection 7(9) for the Minister to attach terms and conditions to an approval in relation to water flows and water levels may conflict with provincial regulations or approvals, and should be removed. | Amend subsection 7(1) as follows:  
7 (1) If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.  
Amend subsection 7(9) as follows:  
(9) The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to  
(a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or  
(b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister. |
Countries were selected for the review because of their relative similarity to Canada in terms of regulatory maturity, environmental sentiment, and level and types of development. The World Bank practices and procedures were included in the review to provide expertise, technical guidance and financing to help low- and middle-income countries. The World Bank’s Environment and Natural Resources Global Practice provides expertise and technical assistance to sustainably manage land, sea and freshwater natural resources.
CANADA’S ENVIRONMENTAL ASSESSMENT PROCESS

The Canadian Environmental Assessment Act 2012 (CEAA) and its regulations establish the legislative basis for the federal practice of environmental assessment in most regions of Canada. The Government of Canada is currently reviewing CEAA and the EA processes to regain public trust and help get resources to market.

AN INTERNATIONAL REVIEW

The Canadian Association of Petroleum Producers (CAPP) commissioned Worley Parsons Canada to conduct a study comparing Canada’s environmental assessment (EA) process with four countries: Australia, the United Kingdom (UK), Norway and the United States (US). In addition, the review included the World Bank and International Finance Corporation (World Bank) practices and procedures.

The review’s purpose was to investigate and summarize government regulatory practices and advancements in the selected jurisdictions, and to identify lessons learned, best practices, and opportunities to improve Canada’s federal EA process.

REVIEW METHODS

The following methods were used to gather information for the review:

1. Interviews with subject matter experts from each of the selected countries and the World Bank;
2. Research, based on publicly available information, into each of the selected countries EA processes; and
3. A high-level literature review of recent papers that discuss lessons learned, challenges and best practices in EA.

INITIAL RESULTS

The international review emphasized that Canada’s EA processes are among the best in the world with real opportunities to provide public input and transparent in both process and outcomes.

However, while Canada is a world-leader in EA, we also have one of the most expensive, time and resource consuming EA processes in the world. Implementation of some of the international best practices will help the Canadian EA process continually improve.
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HOW DOES CANADA COMPARE?

Canada’s EA processes are among the best in the world. The international review emphasized that Canada’s EA process is state of the art with real and independent opportunities to provide public input, transparent in both process and outcomes, with processes that involves independent scientists, stakeholders, peers and experts.

Canada is a leader within the best practices related to integrating TK into the EA process. Early engagement and use of TK during evaluation of alternatives in an adaptive and collaborative design process has been well implemented in certain areas of the country. Canadian practitioners are among the leaders in the areas of Indigenous involvement, and social and health impact assessment.

The Regional Strategic Environmental Assessment has been used to improve Canada even though guidelines exist for Canada to follow. In the recent, however, Strategic Environmental Assessments were completed for four offshore exploration blocks west of Labrador and Newfoundland (www.cnlopb.ca/hea).

In Canada, EA follow-up is extensive at the individual project level. Effectiveness and transparency associated with reporting the follow-up process was found to be lacking. A project level approach sees limited effectiveness of follow-up in terms of dealing with the cumulative effects of multiple developments and sustainability issues.

Canada has a series of best practices and success stories within the international review noted that the key to better projects is better decisions. Building trust is critical both within communities and proponents. Incorporating TK into the EA process is an important source of appropriate decisions. Early and meaningful consultation is necessary for one-window approaches and bi-lateral agreements between overlapping federal and provincial/territorial processes, and enhance the overall process.

In Europe, the mandatory requirement for a number of minerals, the definition of relevant social, environmental and cumulative effects assessment and proactive, and ensure that each following up has a plan for and budget for follow-up. Successful follow-up activities must be timely and resource efficient. The international review noted the importance of public engagement, good understanding between local government and communities is the way forward. Thus a holistic regional/strategic and cumulative assessment for areas with multiple developments will help the Canadian EA process continually improve.

Canada has the existing frameworks, the global sharing of best practices, most essential, for sharing the capacity and the capable people to make improvements to EA for the benefit of the country and for the benefit of the environment, communities and the economy.
Countries were selected for the review because of their relative similarity to Canada in terms of regulatory maturity, environmental sentiment, and level and types of development. The World Bank practices and procedures were included in the review to provide technical assistance and finance to help low- and middle-income countries. The World Bank’s Environment and Natural Resources Global Practice provides expertise and technical assistance to help manage land, sea and freshwater natural resources.