25 March 2019

Maxime Fortin
Clerk of the Senate Standing Committee on Energy, the Environment, and Natural Resources
Senate of Canada
Centre Block, Parliament Hill
Ottawa, ON K1A 0A4

Dear Maxime,

On behalf of the Saskatchewan Chamber of Commerce (SCC), thank you for the opportunity to provide the following brief to the Senate Standing Committee on Energy, the Environment, and Natural Resources (SSCEENR) for use in their analysis and handling of Bill C-69. This package includes the brief to the Committee, along with additional SCC documents related to the Bill located in the Appendix section.

Sincerely,

SCC Environment Committee Chair
To: Maxime Fortin, Clerk of the Senate Standing Committee on Energy, the Environment, and Natural Resources

From: R.J. (Bob) Schutzman, P. Eng., Chair of the Saskatchewan Chamber of Commerce Environment Committee

Subject: SCC Submission on Bill C–69, The Impact Assessment Act to the Senate Standing Committee on Energy, the Environment, and Natural Resources

Date: 25 March 2019

Introduction and Position
The Saskatchewan Chamber of Commerce (SCC) is a member-based research and advocacy organization that represents the interests of over 10,000 individual businesses, industry associations, and local chambers across Saskatchewan through its Chamber Network. As the voice of business for the province, the Chamber has a responsibility to articulate to the Federal Government, the concerns of its members, many of whom will be directly impacted by the draft legislation and accompanying regulatory framework being proposed.

The SCC is grateful for the opportunity to provide the following brief to the Senate Standing Committee on Energy, the Environment, and Natural Resources (SSCEENR) for use in their analysis and handling of Bill C-69. SCC believes that robust environmental protections and a thriving investment climate can go hand in hand. The SCC is seeking an assessment and permit approval process that is timely, predictable, robust, and promotes investor certainty. However, the Bill as it is written, contains significant deficiencies and offers no real improvement upon the current legislation, The Canadian Environmental Assessment Act, 2012 (CEAA 2012).

Issue:
In February 2018, the Government of Canada introduced new legislation in the form of Bill C-69, The Impact Assessment Act. The Bill was drafted in an attempt to restore public trust in the system, restore the confidence of prospective investors, advance Indigenous reconciliation, and protect the environment. The Bill seeks to overhaul the federal regulatory process by replacing both the Canadian Environmental Assessment Agency (CEAA) and the lifecycle regulator National Energy Board (NEB) with the proposed Impact Assessment Agency of Canada (IAAC) and the Canadian Energy Regulatory (CER). In addition, the Bill also seeks to make consequential amendments to other acts, most notably The Navigation Protection Act and The Fisheries Act.

Discussion and Analysis:
The SCC Environment Committee has been actively involved with this file from the outset. The SCC Environment Committee is comprised of technical experts, many of whom have experience managing federally regulated resource development projects. The SCC’s research and advocacy efforts around this issue has included a number of meetings with stakeholders and government
since 2016. SCC has also submitted letters to the government on the issue, including on the CEAA 2012 expert panel review report, the Environmental and Regulatory Reviews discussion paper; and on various iterations of Bill C-69 in May 2017, August 2017, April 2018, and January 2019 respectively. Copies of those documents are appendices to this brief for your reference.

Below are our detailed analyses of the major changes proposed in Bill C-69:

A. Broadening the Scope of the Assessment Process

The Bill attempts to broaden the scope of a future assessment process in two ways. The first includes moving away from the existing threshold of whether “significant adverse environmental effects” will occur under CEAA 2012 in favour of a broader “public interest” test. The second consideration is the inclusion of factors above and beyond the bio-physical environment, like socio-political issues, public health, economic, gender, indigenous rights, GBA+ criteria, etc. The challenge with the first consideration is that the public interest test is inherently more vague and subjective than the more narrowly-defined “significant adverse environmental effects” test that currently exists.

With regard to the second consideration, while a vibrant democratic society should address timely and important socio-political challenges, project assessments are not the appropriate venue to resolve such contentious and often highly-divisive issues. It can be reasonably assumed that broadening the scope would be expected to further politicize the process, which ironically runs counter to the Government’s assertion from the outset that project assessments are not an effective forum for resolving broader public policy matters. Furthermore, based on consultations with professional environmental managers, the coupling of environmental factors with larger socio-political factors would make it more difficult to properly control for and measure adverse environmental impacts.

B. Integration of Permit Granting Authority with Lifecycle Regulator

Bill C-69 proposes to bundle the decision-making authority (Impact Assessment Agency of Canada) and the lifecycle regulators (Canadian Energy Regulator and Canadian Nuclear Safety Commission) together into one project review agency. Based on the information gathered, it remains unclear how bundling together the proposed IAAC and a lifecycle regulator will achieve any meaningful efficiencies. The Canada West Foundation’s report, What Now? Rebooting Bill C-69, asserts that bundling together both energy regulation and impact assessment into one process means it is likely the Bill will attempt to take on too much and end up doing neither aspect particularly well. While both the decision-making authority and the lifecycle regulator require technical expertise, each entity’s focus will not necessarily overlap.

C. Ministerial Decision-Making Power

Bill C-69 assigns a very strong role for the Minister of Environment and Climate Change when determining a number of important factors, most notably if a proposed project is in the public interest; determining what should or should not be included in an assessment; and the authority to amend decision statements.

While the rationale for this provision offered by the Government of Canada was to allow for flexible and adaptive management and to ensure that accountability is tied to an elected official, if unchecked, this provision would allow the Government to effectively change the rules of the game midway through the process, leading to a loss of ownership of the project by the proponent. Such a large concentration of power in any one person or Crown entity also risks undermining the Government’s stated objectives of enhancing transparency and would allow for political discretion.
where there should be none. Based on our research, it can be reasonably expected this would have very negative impacts on investor confidence.

D. Legislated Timeframes

The SCC acknowledges the explicit reference to shortened, legislated timelines in the Bill - for example, requiring that an agency panel assessment be delivered in a maximum of 300 days (currently 365 days), and a review panel assessment in 600 days (currently 720 days) for more complex projects. The Bill also establishes a mandatory, 180 day early planning and engagement phase that does not currently exist under CEAA 2012. In all phases of the proposed regulatory process, the Minister of Environment can extend timeframes by 90 days almost indefinitely. In addition, virtually unlimited opportunities exist for delays to occur during the project initiation phase, as well as during the actual review process. Under Bill C-69, there is almost unlimited opportunity for either the Minister or Cabinet to delay what should otherwise be a final decision.

A potential consequence is that it will be difficult to predict with any reasonable certainty, how long an impact assessment will take, in light of the opportunities for timeframe extensions and the increased number of stakeholder groups that may be involved. Based on our discussions with business leaders, the lack of predictability in terms of concrete timeframes is unlikely to encourage or inspire investor confidence in Canada’s regulatory process; in fact, investors are already leaving. Given the opportunities present for the Government to stop the clock, delay tactics become more likely in the event there is strong political opposition to a proposed development project, regardless of the project’s merits.

E. Scope of Public Participation and the Standing Test

Bill C-69 seeks to enhance and broaden public participation in the assessment process by eliminating the NEB’s Standing Test. While eliminating the standing test at least theoretically would allow for more diverse viewpoints, it also significantly increases the likelihood that stakeholder groups not participating in good faith and not on the basis of direct involvement would derail the hearing process without consequence. It can be reasonably expected this will have repercussions on the timeliness and efficiency of the assessment process. For practical reasons, it would be impossible to accommodate every single participant that might wish to make their views heard on a particular matter and some sort of screening would need to take place to realize the Government’s objective of a timely and well-informed hearing process.

F. Status of Uranium Mining and Mills under Bill C-69

For uranium mines and mills under Bill C-69, it has been estimated that timelines, at least in practice, would be longer than is currently the case under CEAA 2012. Credible estimates include a minimum of seven years from the beginning of the assessment process to production. This is in conjunction with the loss of a single-window assessment and licensing regime under the current CEAA 2012. Over the course of a lengthier review panel process, the economics of a proposed project are likely to have changed multiple times over. Uranium mines and mill projects under CEAA 2012 are presently subject to joint federal-provincial regulatory oversight.

Empirically, uranium mines and mills in Canada have a proven and effective track record in terms of environmental assessment, project impact assessment, and regulatory lifecycle management. There is no gap in sustainability governance in this subsector of mining that would justify an automatic referral to an extensive review and panel process as proposed under Bill C-69. Maintaining a practical approach to assessment and lifecycle regulation is imperative in light of a recent Natural Resource Canada report stating that total mining projects planned and under construction have decreased by more than 50% in value from June 2014 to June 2017.
G. Mining Activities in Saskatchewan and the Project List

As of March 2019, the Regulations Designating Physical Activities (Project List) intended to supplement Bill C-69 has not been released to the public. There is a possibility that mining projects in Saskatchewan could be designated as projects that would require a federal impact assessment process. Under the Constitution, mining and mineral resource development is under Provincial jurisdiction. The Government of Saskatchewan already has significant technical expertise, as well as a robust and efficient process for assessing the environmental and socio-political impacts of a proposed project. Given its many decades of world-class expertise and proximity, the Government of Saskatchewan is logically in the best position to carefully assess the overall cost and benefits of a proposed mining project.

Recommendations:

The following are our recommendations to resolve the problems with the Bill:

1. On the Scope of the Assessment Process

Canada's future assessment regime should be limited to significant adverse environmental effects within a factual, science-based process that is informed by accepted quantitative measures. Expanding the scope of a federal EA process to become a much broader Impact Assessment (IA) process is regressive and serves to dilute the importance of the environmental component.

2. On the Integration of the Permit Granting Authority with the lifecycle Regulator

An assessment agency should not be involved in operational permitting and project operation. Both the permit granting authority and the relevant lifecycle regulator should remain separate and distinct entities.

3. On the Creation of the Canadian Energy Information Agency

The SCC supports the creation of the proposed Canadian Energy Information Agency that has a mandate to collect, analyze, and disseminate energy-related information independent of the lifecycle regulator.

4. On Ministerial Decision-Making Power

The SCC endorses the Canadian Chamber of Commerce's recommendation of adding the Minister of Natural Resources and a Crown Minister with an economic portfolio (Finance, Trade Diversification, etc.) to a joint decision-making panel with the Minister of Environment and Climate Change on such matters throughout the Bill.

5. On Legislated Timeframes

The SCC recommends the Government of Canada ensure greater predictability for project proponents by providing reasonable and concrete timeframes for decisions. Timelines need to be no longer than three years total from beginning to end.
6. On Defining the Scope of Public Participation

The SCC recommends the Government of Canada carry over the Standing Test from the NEB to the new assessment regime. Proving a direct connection should be maintained. The SCC also recommends that an amended version of Bill C-69 more clearly define the nature and scope of public participation during the assessment process.

7. On Clarifying Project Criteria and Stakeholder Responsibilities

Section 22 of the Bill needs to be revised to more clearly define the relevant impact factors, including e.g. the use of GBA+ criteria, in future assessments. If socio-political concerns have to be factored in, the SCC believes the best way to accomplish this would be to put the socio-political issues and detail under guidelines separate from the assessment process.

8. On the Crown’s Duty to Consult

The SCC recommends an amendment to the Bill seeking to compensate proponents and partnering Indigenous groups that adhere to and fully comply with Canada’s regulatory process, but find their project cannot proceed because of errors and omissions made by the Government of Canada in attempting to meet its Duty to Consult. Such compensation should cover lost opportunities in terms of foregone direct investment and job creation.

9. On Recent Amendments to the Bill

The SCC supports the Government of Canada’s ongoing commitment to the concept of one project-one review. The SCC welcomes the inclusion of recent amendments that provide greater transparency around ministerial decision-making.

10. On Proposed Amendments for Uranium Mining and Mills

The SCC strongly recommends that SSCEENR amend Section 43 of the proposed Impact Assessment Act and remove the mandatory referral to a review panel for designated uranium mining or milling projects. Specifically, amend section 43 of the IAA (with additional amendments to ss. 39(2)(a), 44(1), 46 and 67(1)) as indicated by the following underscored text would remove the mandatory referral to a review panel for designated uranium mining or milling projects and would achieve the goal described above:

39(2) However, the Minister is not authorized to enter into an agreement or arrangement referred to in subsection (1)…

(a) the Nuclear Safety Control Act other than for a uranium mine or mill.

43 The Minister must refer the impact assessment of designated project to a review panel if the project includes physical activities that are at a nuclear facility regulated under any of the following Acts:

(a) the Nuclear Safety Control Act other than a uranium mine or mill.
44(1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the Nuclear Safety Control Act, other than a uranium mine or mill, to a review panel...

46 For the purposes of conducting..., including preparing a report with respect to that impact assessment, a review panel referred to in s. 43 may exercise the powers...

67(1) The Minister...the Nuclear Safety and Control Act other than a uranium mine or mill, designate...

11. On Mining Activities and the Project List

The SCC recommends that the assessment of mining projects should remain under provincial jurisdiction and the federal assessment process should only apply to jurisdictions in which an established environmental assessment process is absent or where a jurisdiction requests for the federal requirements to apply. The rationale for this recommendation is that mineral resource development falls under provincial jurisdiction. An exception would be made for uranium mines and mills given the Federal Government's jurisdiction over the regulation of nuclear-related activities.
Appendix: SCC Documents


04 January 2019

The Honourable Rosa Galvez, Senator
Chair of the Standing Committee on Energy, the Environment, and Natural Resources
Senate of Canada
Centre Block, Parliament Hill
Ottawa, ON K1A 0A4

RE: 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 Senator Galvez,

On behalf of the Saskatchewan Chamber of Commerce (SCC) Environment Committee, I am contacting you about our concerns with Bill C-69 currently under review by your committee. In April 2018, the SCC provided comment on an earlier version of the Bill to the House of Commons Standing Committee on Environment and Sustainable Development. The purpose of this letter is to provide feedback on an amended version of Bill C-69.

The Saskatchewan Chamber of Commerce is a member-based research and advocacy organization that represents the interests of over 10,000 individual businesses, industry associations, and local chambers across the province through its Chamber Network. As the voice of business for the province, the Chamber has a responsibility to articulate to the Federal Government, the concerns of its members, many of whom will be directly impacted by the draft legislation and accompanying regulatory framework being proposed.

SCC Position

The SCC believes that robust environmental protections and a thriving investment climate can go hand in hand. We are seeking an impact assessment process for development projects that is predictable, timely, and promotes investor certainty – both domestic and foreign. Saskatchewan and Western Canada’s long-term prosperity depends on getting our resources to market in a responsible and sustainable manner. This is particularly important in light of recent evidence suggesting that investment dollars – both at home and abroad - are going elsewhere.

Recent Amendments to Bill C-69

The SCC would like to acknowledge some of the recent amendments to the draft legislation that have been made since our last correspondence in April 2018. The SCC is encouraged by the Government of Canada’s ongoing commitment to the concept of one project-one review. This is manifested in the specific amendment allowing integrated review panels that involve federal regulators to cooperate with other jurisdictions, thereby having one assessment per project that meets all requirements. However, the use and effectiveness of this cooperation remains to be seen.

The SCC also welcomes the inclusion of amendments that provide greater transparency around ministerial decision-making. This includes disseminating Ministerial and Governor-in-Council
public interest decisions online; promptly informing companies of the reasons why timelines for issuing a decision statement following an assessment need to be extended; and requiring the newly-proposed Impact Assessment Agency of Canada (IAAC) to publish all public comments online during the project review.

**Scope of Draft Legislation**

As you are aware, Bill C-69 seeks to significantly broaden the scope of the assessment process. This includes moving away from the question of whether "significant adverse environmental effects" will occur under CEAA 2012 in favour of a "public interest" test that is both vague and subjective.\(^1\) Further, the proposed assessment process under Bill C-69 seeks to broaden the scope to include elements well beyond environmental impact considerations, such as socio-economic and political issues, public health, Indigenous rights, gender-based analysis, etc.

The SCC maintains that broadening the scope of impact assessments in Canada is retrogressive and serves to dilute the importance of the environmental component. While our society should address timely and important socio-political challenges, project assessments are not the appropriate venue to resolve such contentious and often highly-divisive issues. Doing so can be expected to further politicize the process, which runs counter to the Government's objective of re-establishing the public's trust in our assessment process. The SCC recommends the scope of Canada's future assessment regime be limited to significant adverse environmental effects within a factual, science-based process that is informed by accepted quantitative measures.

**Integration of Permit-Granting Authority with Life-cycle Regulator**

In our previous correspondence to the Federal Government on Bill C-69 in April 2018, the SCC expressed concerns over the proposed measure to bundle the decision-making authority (Impact Assessment Agency of Canada) and the life-cycle regulator (Canadian Energy Regulator) together in one process. The SCC agrees with the Canada West Foundation's assertion that bundling together both energy regulation and impact assessment in one process means the Bill will attempt to take on too much and end up doing neither aspect particularly well. While both the decision-making authority and the lifecycle regulator require technical expertise, each entity's focus will not necessarily overlap.\(^2\) The SCC maintains that an assessment agency should not be involved in operational permitting and day-to-day project operations.

**Ministerial Decision-Making**

While the proposed amendments encouraging increased transparency are welcome, significant problems with the Bill still remain. The Canadian Chamber of Commerce (CCC) in its recent submission alluded to the fact that Bill C-69 assigns a very strong role for the Minister of Environment and Climate Change when determining a number of important factors, most notably if a proposed project is in the public interest.\(^3\) The SCC was initially alarmed by this aspect and expressed its concerns over the concentration of decision-making power with the Minister of Environment and Climate Change in its April 2018 correspondence. A manifestation of this

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3. Canadian Chamber of Commerce. "Written Submission by the Canadian Chamber of Commerce on Bill C-69 to the Senate Standing Committee on Energy, the Environment, and Natural Resources." September 28, 2018.
problem can be found under Section 9 (1) of the Bill whereby "the minister may, on request or on his or her initiative, by order, designate a physical activity that is not prescribed by regulations."

It is these kinds of provisions in the Bill that allow for far too much room for political discretion where there should be none. In order to restore confidence in our regulatory process, it is imperative that the Federal Government’s role throughout the process be that of a fair and neutral arbiter making fact-based decisions. The SCC continues to maintain that such a large concentration of power in any one person or Crown entity ultimately undermines the Government’s stated objectives of enhancing transparency and making the process more open and accessible to Canadians. Simply put, the Bill as it is written creates too many avenues for political interference where none should exist.

The SCC endorses the CCC’s recommendation of adding the Minister of Natural Resources and a Crown Minister with an economic portfolio (Finance, Trade Diversification, etc.) to a joint decision-making panel with the Minister of Environment and Climate Change on such matters throughout the Act. We also recommend that the Ministers’ mandate require that economics benefits be factored in when evaluating the merits of a proposed project. Specific considerations around economic benefits include direct investment and jobs created, indirect economic spin-offs, an estimate of additional tax revenues projected for all levels of government, along with an estimation of the opportunity and reputation costs of not approving a proposed project.

**Uncertainty over Timeframes**

The recent amendments made to Bill C-69 do very little to address the business community’s deep-seated concerns around the lack of concrete timelines. Based on feedback from our members, the current version of Bill C-69 at best offers no improvement from CEAA 2012 and at worst, will lead to potential development projects being shelved. For example, in all phases of the proposed regulatory process, the Minister or the Governor-in-Council can extend timeframes by 90 days almost indefinitely. Virtually unlimited opportunities exist for delays to occur during the project initiation phase, as well as during the actual review process. Delay tactics become more likely in the event there is strong political opposition to a proposed development project, regardless of the project’s merits. It has been calculated that a project approval could take eight-to-nine years. This is unacceptable; these time-lines need to be under three years.

Compounding this problem even further is that under Bill C-69, there is almost unlimited opportunity for either the Minister or Cabinet to delay what should be a final decision. For project proponents and partnering Indigenous communities alike, it will be difficult to predict with any reasonable certainty, how long an impact assessment will take, in light of the opportunities for timeframe extensions and the number of stakeholder groups that may be involved. The lack of predictability in terms of concrete timeframes does nothing to encourage or inspire investor confidence in Canada’s regulatory process. The SCC recommends the Federal Government ensure greater predictability for project proponents by providing reasonable, concrete timeframes for decisions.

**Public Participation**

The SCC is supportive of mechanisms that encourage both project proponents and stakeholder groups impacted by a proposed development project to meet in-person, exchange relevant information, and address potential concerns throughout the assessment process. The SCC

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believes that robust and meaningful public engagement is crucial in ensuring public confidence and fostering mutual trust between affected communities and project proponents.

In our previous correspondences to both the CEAA expert review panel and the House of Commons Standing Committee on the Environment and Sustainable Development in May 2017 and April 2018 respectively, we expressed our concerns over a proposal to eliminate the National Energy Board’s Standing Test. The SCC opposed the elimination of the Standing Test because it is impossible to accommodate every potential participant that might wish to make their views heard on any particular matter. Eliminating the Standing Test also creates opportunities for stakeholder groups not participating in good faith and on the basis of direct involvement to derail the hearing process without consequence. This will have repercussions on the timeliness and efficiency of the assessment process. The SCC recommends that the Government carry over the Standing Test from the National Energy Board to a new assessment regime to be proposed. Proving a direct connection should be maintained.

The SCC is in agreement with the CCC that it is especially important that project proponents engage meaningfully with those directly affected by the development of a project. The SCC asks that those who are most directly impacted by a proposed development project be given priority during the public hearing phase. The SCC also recommends that a subsequent version of Bill C-69 more clearly define the nature and scope of public participation during the assessment process.

**Clarifying Project Criteria and Stakeholder Responsibilities**

Another criticism of the Bill that we have heard from our member businesses and one that has been articulated by the CCC in their submission, is the lack of clarity in relation to the impact factors outlined in Section 22 of the Act. If the scope of the assessment process being proposed is to be broadened to include socio-political considerations, additional clarity is needed to reassure project proponents and partnering Indigenous communities that they can comply with the new criteria being introduced. Of course, the best option would be not to mix the socio-political considerations with the environmental assessment process.

For example, the inclusion of impact factors such as the "intersection of sex and gender with other identity factors" as well as the concept of Gender-Based Analysis Plus (GBA+) are new additions to the formal assessment process and are by nature extremely subjective. The SCC joins the CCC and other business groups in recommending Bill C-69 be revised to more clearly define the impact factors outlined in Section 22. Perhaps the best way to accomplish this would be to put the socio-political issues and detail under guidelines separate from the environmental assessment.

**The Crown and its Duty to Consult**

The SCC is extremely supportive of the Federal Government’s efforts around improving relations with Indigenous peoples. We also recognize that reconciliation with Indigenous peoples is an ever-evolving societal responsibility, and not just the responsibility of the Crown.

As the Federal Court of Appeals decision in Tsleil-Waututh Nation v. Canada (Attorney General) regarding the Trans Mountain Pipeline Expansion Project demonstrated, when the Federal Government fails to successfully execute its Duty to Consult, it can have major repercussions for project proponents and affected communities. Repercussions include costly delays, cancellations, increased investor uncertainty and, lost opportunities in terms of job creation for many Indigenous communities that have established partnership agreements with project proponents.
This is a classic example of moral hazard and it is fundamentally unfair when project proponents and partnering Indigenous communities are being penalized as a result of errors made by the Federal Government when exercising its Duty to Consult. It is imperative that when project proponents adhere to the conditions and stipulations of Canada’s regulatory process and follow the rules, they need to know they will not be unfairly penalized as a result of errors attributed to another entity.

The SCC recommends an amendment to the Act championed by the CCC, seeking to compensate proponents that adhere to and fully comply with Canada’s regulatory process but find their project cannot proceed because of errors and omissions made by the Government during the consultation and assessment process. Such compensation should cover lost opportunities in terms of foregone direct investment and job creation.

**Conclusion**

Thank you for the opportunity to provide comment on the draft legislation. The SCC is supportive of the Federal Government’s main objective of ensuring that Canada has an assessment regime for development projects that is transparent, timely, fair, predictable, furthers reconciliation with Indigenous peoples, and promotes investor certainty. However, the Bill as it is written contains a significant number of deficiencies and offers no improvement upon CEAA 2012. An amended version of Bill C-69 needs to bring the principles of fairness and reasonableness back into the process. The Federal Government also needs to accept that achieving political consensus on high-profile development projects is highly unlikely and that consensus cannot be a replacement for good decision-making.

We understand that changes may be made to the Bill, and we look forward to further discussion with you on the comments and recommendations made herein. We look forward to your response.

Sincerely,

\[Signature\]

SCC Environment Committee Chair

Cc:
Saskatchewan Chamber of Commerce Board of Directors
Saskatchewan Chamber of Commerce Environment Committee
Hon. Dustin Duncan, Saskatchewan Minister of Environment
Hon. Lin Gallagher, Saskatchewan Deputy Minister of Environment
Hon. Bronwyn Eyre, Saskatchewan Minister of Energy and Resources
Hon. Amarjeet Sohi, Federal Minister of Natural Resources
Hon. Ralph Goodale, Federal Minister of Public Safety and Emergency Preparedness
Hon. Catherine McKenna, Federal Minister of Environment and Climate Change
Hon. Perrin Beatty, President and CEO, Canadian Chamber of Commerce
Hon. Raynell A. Andreychuk, Senator
Hon. Denise Batters, Senator
Hon. Lillian Eva Dyck, Senator
Hon. Marty Klyne, Senator
Hon. David Tkachuk, Senator
Hon. Pamela Wallin, Senator
April 26, 2018

Thomas Bigelow
Clerk of the Standing Committee on Environment
and Sustainable Development
6th Floor, 131 Queen Street
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The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change
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The Honourable Dominic Leblanc, P.C., M.P.
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The Honourable James G. Carr, P.C., M.P.
Minister of Natural Resources
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The Honourable Marc Garneau, P.C., M.P.
Minister of Transport
330 Sparks Street
Ottawa, ON K1A 0N5

RE: 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 Mr. Bigelow and Honourable Ministers:

On behalf of the Saskatchewan Chamber of Commerce, we wish to provide further comment on Bill C-69 currently before the House of Commons. The Chamber, through its Environment Committee, has actively participated in the stakeholder consultations surrounding the recent review of the Canadian Environmental Assessment Agency (CEAA) and the National Energy Board (NEB), and we will continue to be a part of this process moving forward.

Our analysis of the Environmental and Regulatory Reviews discussion paper that was circulated by the Government of Canada in June 2017 acknowledged the improvements that were made upon the initial CEAA Expert Panel Review recommendations, and noted concerns that our members (particularly those involved in energy and resource-related development) had with the recommendations as they were written at the time.

The Chamber’s main concerns at the time centered on the following:

- Broadening the scope of the assessment process to include socio-political elements
- Lack of clarity around the phrase ‘national interest’, making it open to interpretation
- Recommendation to establish a single government agency
- Elimination of the Standing Test
The Chamber is encouraged by the Government of Canada's commitment to the principle of one project, one assessment. The Chamber is reassured by the Government of Canada's commitment that projects will not be required to go back to the starting line and that the new legislation will not be applied to current federally approved projects, like TransMountain, the Keystone XL pipeline, Enbridge Line 3, or other pending LNG export projects that have already received approval. The decision to address the cumulative impacts of a project, rather than just on a project-by-project basis as is currently being done, is a prudent move and the Chamber welcomes its inclusion going forward.

Inclusion of Shortened, Legislated Timelines
The Chamber acknowledges the explicit reference to shortened, legislated timelines in the draft legislation, for example requiring that a final recommendation from the soon-to-be created Impact Assessment Agency of Canada (IAAC) be delivered in 300 days (currently 365 days), and 600 days (currently 720 days) for more complex projects involving a joint panel. Project proponents require clear deadlines and predictable processes when assessing the economic viability of a major development project. The language around shortened timelines will hopefully enhance investor confidence and serve as a first positive step toward addressing the regulatory uncertainty that has become a barrier to investment in Canada's resource and energy sectors.

While the Chamber welcomes the language around shortened legislated timelines, we have concerns that the proposed legislation still allows for lengthening or delaying timelines to final decision. For example, the process for consultation between the IAAC and key stakeholders after the initial submission has no firm deadline attached to it. The lack of fixed deadlines, and the fact that there is no clear distinction about what constitutes a major or minor project, could create unintended consequences and serve to undermine the Government's stated objective of removing uncertainty.

Broadening the Scope of the Assessment Process
Per our earlier letter, the Chamber remains concerned about the recommendation to broaden the scope of a future assessment process to include elements above and beyond the biophysical environment, such as socio-political issues, public health, economic, gender, indigenous rights, etc. The Chamber maintains that broadening the scope of the IAAC is retrogressive and serves to dilute the importance of the environmental component.

While our society should address timely and important socio-political challenges, individual project reviews are not the appropriate venue to resolve such contentious and often highly-divisive issues. Doing so can be expected to politicize the assessment process, which runs counter to the Government's stated goal of re-establishing the public's trust in our permitting and assessment regimes. Furthermore, broadening the scope of the assessment process adds subjectivity to an assessment process that should be science-based. For example, attempting to address measures around a gender-based analysis component is almost impossible to quantify and implement in practice.

The Chamber believes the shift from a factual, science-based process reliant on quantitative measures to a mix of both quantitative and qualitative factors, along with the inherent subjectivity of the latter make such an assessment process difficult to implement under real-world conditions.
Definition of Public Interest and Final Decision-Making Powers

While the draft legislation provides more concrete details around the phrase national interest, definitional issues remain. For example, under the 'project's contribution to sustainability' clause featured in the public interest test, the word "sustainability" is too vague and open to interpretation. The public interest test would benefit from a more concrete definition of the 'sustainability clause.'

Furthermore, the Chamber is alarmed by the legislation's provision for the significant concentration of decision-making power under the Governor-in-Council or the Minister of Environment and Climate Change, to determine what should or should not be included in an assessment, the authority to amend decision statements, and the ability to set unrealistic parameters for mitigating adverse environmental impacts resulting from a project. This would mean that the Government of Canada now has the ability to decide which projects are proposed, leading to loss of ownership of the process by the project proponent to the Government.

While the rationale for this provision given by the Government of Canada was to allow for "flexible" and "adaptive" management, if unchecked, this provision would allow Government to effectively change the rules of the game midway through the process. Such a concentration of power in one entity would undermine the stated objectives of enhancing transparency and making the process more open and accessible to Canadians.

Relationship between Permit-Granting Authority and Life-Cycle Regulator

It also remains unclear how the IAAC and the Canadian Energy Regulator (CER) - the new life-cycle regulator replacing the National Energy Board - will work together on assessments for major development projects that require a joint panel review. The language contained in the proposed legislation around the breakdown of responsibilities between the permit-granting authority and the lifecycle regulator is vague. The Chamber believes that more details need to be provided in this regard to mitigate against any potential for misunderstanding between the two entities. We continue to believe that an assessment agency should not be involved in operational permitting and project operation.

Elimination of the Standing Test

In our previous letter on the June 2017 Environmental and Regulatory Reviews discussion paper, we opposed the recommendation of eliminating the National Energy Board's Standing Test because it is impossible to accommodate every single participant that might wish to make their views heard on the matter, particularly in light of newly legislated timeframes. Eliminating the standing test creates opportunities for those stakeholder groups not acting in good faith to derail the hearing process without consequence. This is likely to undermine the Government's stated goal of making timely decisions in a cost-effective manner. The Chamber continues to maintain that the standing test process should be carried over to the CER and those who are directly affected by a proposed project or possess special expertise deemed useful by the CER, be eligible to participate.
Conclusion
Thank you for the opportunity to provide comment on the legislation. The Chamber would be pleased to discuss with you any of the comments or suggestions made herein. We look forward to your response.

Sincerely,

SCC Environment Committee Chair

Cc:

Saskatchewan Chamber of Commerce Environmental Committee
Canadian Chamber of Commerce Environment and Natural Resources Committee
The Honourable Dustin Duncan, Minister of Environment, Government of Saskatchewan
Lin Gallagher, Deputy Minister of Environment, Government of Saskatchewan
the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness
August 28, 2017

The Honourable Catherine McKenna, P.C., M.P.  
Minister of Environment and Climate Change  
200, Sacré-Cœur Boulevard, 2nd Floor  
Gatineau, QC K1A 0H3

The Honourable Dominic Leblanc, P.C., M.P.  
Minister of Fisheries and Oceans  
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Ottawa, ON K1A 0E6

The Honourable James G. Carr, P.C., M.P.  
Minister of Natural Resources  
580 Booth Street, 21st Floor  
Ottawa, ON K1A 0E4

The Honourable Marc Garneau, P.C., M.P.  
Minister of Transport  
330 Sparks Street  
Ottawa, ON K1A 0N5

RE: Discussion Paper on Review of Environmental and Regulatory Processes

Honourable Ministers:

On behalf of the Saskatchewan Chamber of Commerce, thank you for the opportunity to provide comments on the Environmental and Regulatory Reviews discussion paper that was released in June 2017. Before we begin, The Chamber would like to recognize the efforts of officials with the Government of Canada who recently met with Chamber staff and its members to discuss the earlier CEAA Expert Panel Review. We greatly appreciate their willingness to meet with us and actively listen to our members’ concerns.

The Saskatchewan Chamber of Commerce is an advocacy organization that represents the interests of over 10,000 individual businesses and industry associations across the province through its chamber network. As the voice of business in the province, the Chamber has a responsibility to articulate to the Federal Government the concerns of its members, some of which have experience participating in an Environmental Assessment (EA) process and no doubt will be directly impacted by the recommendations outlined in the Environmental and Regulatory Reviews discussion paper.

As you are aware from our earlier CEAA Expert Review Panel submission, the Chamber expressed serious apprehension over a number of recommendations around the EA process. There were significant concerns from business groups at the time that the changes being proposed would in fact undermine the Federal Government’s stated objectives of streamlining the EA process and getting resources to market in a timely and expedient manner.

Improvements Upon Initial CEAA Expert Panel Review Recommendations

Upon further review of the most recent discussion paper, it is evident that many of the business community’s concerns surrounding the timeliness and workability of the Expert Panel’s recommendations have been taken into account. The Chamber is encouraged by the Federal Government’s renewed commitment to the goal of one project - one assessment, with specific reference to the maintaining of legislated project assessment timelines for clarity and certainty, along with the retention of substitution with provinces and territories where there is equivalency with federal standards.
In addition, we are encouraged by the Federal Government’s pledge to retain the concept of a proponent-led project and for providing further clarification around the phrase national interest, as the Chamber felt that an earlier definition of the term was extremely broad and allowed for a wide latitude of interpretation. Furthermore, we are encouraged by the Federal Government’s pledge that no project will be asked to go back to the starting line and for the decision to keep the National Energy Board head office in Calgary.

**Broadening the Scope of Assessments**

While we are appreciative of the fact that a number of our concerns have been considered, several issues still remain. Consistent with what was communicated in our CEAA submission, the Chamber maintains that expanding the scope of a federal EA process to a much broader Impact Assessment (IA) process is regressive and serves to dilute the importance of the environmental component. While there are certainly legitimate socio-political questions that our society should address, an EA regime that is scientifically rigorous and relies on peer-review is not the appropriate venue for such a debate. The inclusion of socio-political considerations would serve to hobble the process and trigger significantly more development projects, leading to unnecessary costs and delays for proponents. The Chamber highly recommends uncoupling the socio-political elements referenced above and instead focus on the environmental element in any future assessment regime.

**Recommendation to Establish a Single Government Agency**

Outlined in the most recent Environmental and Regulatory Reviews discussion paper is consideration around establishing a single government agency responsible for conducting environmental assessments and coordinating consultations with key stakeholders. The Chamber believes that this is not the best solution moving forward and is of the view that there is merit in separating the permit-granting authority from the lifecycle regulator once the project proponent has been issued the appropriate permit to proceed. Consistent with the Canadian Chamber of Commerce, we tentatively support the creation of a brand new Canadian Energy Information Agency that has a mandate to collect, analyze, and disseminate energy-related information independent of the regulatory agency.

**Early Planning and Engagement**

Private sector proponents are acutely aware of the fact that planning and engagement efforts early on with affected parties are crucial to the success of a development project. The Chamber supports the Federal Government’s emphasis on early planning and engagement that is led by project proponents with clear direction from government. Echoing the concerns of the Canadian Chamber of Commerce and other industry stakeholders, we were alarmed with the way this principle was communicated in the most recent discussion paper. There is a crucial distinction between project planning, which is the responsibility of the project proponent, and planning the assessment process, which is ultimately the responsibility of the Federal Government.

As is industry best practice in many sectors, project proponents already undertake a substantial amount of community engagement and information gathering. This information is later fed into a project proponent’s internal decision-making processes prior to the final decision being made. The Chamber cautions against putting too much restrictions on a project proponent before they can properly assess the viability of a project. The Chamber urges the Federal Government not to be too prescriptive on early engagement practices.
Elimination of the Standing Test

While we find the Federal Government’s goal of increased opportunities for meaningful public participation and transparency around assessment and regulatory reviews laudable, we oppose the elimination of the standing test that was previously used by the National Energy Board for those wishing to participate in assessments. We oppose the elimination of the standing test for the following reasons. As you well know, it is impossible to accommodate every single participant that might wish to make their views heard on a particular matter. For purely practical reasons, it is absolutely necessary that some sort of screening take place to ensure a timely and well-informed hearing process. Any hearing process absent these restrictions risks being delayed or obstructed by those acting in bad faith.

While not specifically mentioned in the most recent discussion paper, the Chamber would like to reiterate its position on an earlier recommendation suggesting that public participation should extend beyond the project approval stage and through to the project implementation stage. The Chamber maintains that this recommendation is ill-advised, as it creates an unnecessary politicization of the process following what should be a final decision.

Concluding Remarks

While the most recent discussion paper rightly considers the cumulative effects or changes to the environment caused by multiple development activities over a period of time, the paper makes no reference to the cumulative impact of increased fees, taxes, and regulations currently being placed on businesses that are separate and distinct from the environmental and regulatory changes currently being proposed. It is imperative that if a whole new system is implemented, it must take into account Canadian business competitiveness and not become a significant barrier to investment.

Once again, thank you for the opportunity to offer comments to the recommendations outlined in the Environmental and Regulatory Reviews discussion paper. The Chamber would be pleased to discuss with you any of the comments or suggestions made herein. We look forward to your response.

Sincerely,

Joshua V. Kurkjian, M.A.
Director of Research and Policy Development
Saskatchewan Chamber of Commerce

Cc:

Saskatchewan Chamber of Commerce Environmental Committee
Canadian Chamber of Commerce Environment and Natural Resources Committee
The Honourable Scott Moe, Minister of Environment, Government of Saskatchewan
Lin Gallagher, Deputy Minister of Environment, Government of Saskatchewan
The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness
05 May 2017

Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change Canada
200, Sacré-Coeur Blvd
Gatineau, Quebec K1A 0H3

Via E-mail: ec.ministre-minister.ec@canada.ca;
CEAA.EAR Review-ExamenEE.ACEE@ceaa-acee.gc.ca

Honourable Minister;


The Saskatchewan Chamber of Commerce has noted the Government of Canada decision to conduct an Expert Panel review of the environmental assessment (EA) regime as currently outlined in the 2012 Canadian Environmental Assessment Act (CEAA). The Federal Government has had the Panel engage with stakeholders in an effort to find ways to restore the public's trust and confidence, as well as address outstanding issues related to delays and uncertainty. As the voice of business for the province of Saskatchewan, the Chamber must note that if implemented, the Panel's recommendations will achieve the opposite of the Federal Government's stated goal of streamlining and improving the federal EA process.

While the Saskatchewan Chamber of Commerce supports the intent of the Expert Panel review, several of our members, including those involved in the extraction of primary products, have brought forward concerns with many of the proposed recommendations contained in the Expert Panel's final report. Further, a 30-day public consultation period is an insufficient amount of time to carefully review, analyze, and respond to the many disruptive recommendations contained in the report. On behalf of our concerned members, we call for a longer review period, and a longer period for review of the Federal Government's response to the report.

Furthermore, the Panel report recommends a considerably expanded and more diffuse process than the EA regime currently in place. The recommendation to replace the EA process with a new process called Impact Assessment (IA) moves far beyond the original focus of potential adverse effects on the bio-physical environment. In addition, a federal EA is now triggered when the project is located on federal land, on a regulated list, or determined by ministerial decision. The Panel's suggestion to broaden the scope beyond environmental issues to include "any physical activity or undertaking that impacts one or more matters of federal interest" is extremely broad and would allow wide latitude in interpretation.

The Chamber submits that the recommendation to expand the range of projects triggering an IA is retrogressive and will dilute the importance of the environmental impact component. An expanded scope for assessments has the potential to trigger significantly more development projects for review, leading to unnecessary costs, delays and a backlog of applications. This would contribute to a climate of economic uncertainty for businesses, as well as undermine the objective to get resources to the market in a timely and expedient manner.

Another concerning recommendation is the establishment of a newly consolidated IA authority that would be required to lead the development of an IA statement, rather than the proponent of the project as is currently done. This body would have the authority to conduct consultations with indigenous communities on behalf of the Crown, compile technical expertise from scientists, and evaluate the scientific evidence against the 'five sustainability pillars'. It is the Chamber's opinion that an expanded role of the Federal Government in this capacity would serve to undermine the authority and technical expertise of both the project proponent and...
participating provincial governments. It would also become an incursion by the Federal Government into provincial jurisdiction.

One must also ask the question - if the Federal Government were to usurp the role of the proponent, who would actually "own" the project? Moreover, the recommended changes as they are written would ask businesses and project proponents to fund activities that are currently the responsibility of the Federal Government, such as paying for technical review expertise. This would create additional uncertainties regarding timelines, as well as potentially unforeseen costs for both project proponents and taxpayers alike.

While the Chamber recognizes that meaningful public participation is a key element to the legitimacy and success of an assessment process, the proposed recommendation that public participation extend beyond the project approval stage and through to project implementation is ill-advised as it creates an unnecessary politicization of the process following what should be a final decision. The implementation stage of a project should be best left to the professionals and experts such as scientists, engineers, and policy implementers in regulatory agencies.

The inclusion of a broader 'sustainability test' would result in the Federal Government considering impacts under provincial jurisdiction, opening up the potential for increased conflict with provincial governments. Also, the elimination of the "equivalency" option available under the current EA regime could lead to an unnecessary layering of regulations, and multiple reviews resulting in more unfinished projects. A more adversarial tone between the Provinces and the Federal Government on matters of economic development would contradict the stated objective in the report that aims to "make co-operation among jurisdictions essential to ensure Canadians realize the benefit of IA."

While the Saskatchewan Chamber of Commerce agreed with the Federal Government's decision to address the deficiencies contained in CEAA, such a dramatic change and broadening of the EA process as articulated in the Expert Panel's final report is largely impractical, unworkable, and increases complexity without increasing effectiveness. For businesses this means increased uncertainty with respect to timelines and costs.

We await your response to our members' concerns. We respectfully ask that the changes to EA be separated from the broader intent to expand the process to IA, and that the proposed move to IA be subjected to much more thorough evaluation and consultation.

Sincerely,

Robert J. Schutzman
Chair, Saskatchewan Chamber of Commerce Environmental Committee

Cc: Saskatchewan Chamber of Commerce Environmental Committee
    Canadian Chamber of Commerce Environment and Natural Resources Committee
    Honourable Scott Moe, Minister of Environment, Government of Saskatchewan
    Lin Gallagher, Deputy Minister (SMoE)
    Honourable Jim Carr, Minister (NRCan)
    Honourable Ralph Goodale, Minister (PSEP)