PRESENTATION TO THE STANDING SENATE COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

REGARDING

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

PRESENTED BY

Rowland Harrison, Q.C., Dennis McConaghy, P.Eng., and Ron Wallace, Ph.D.,

April 4, 2019

Calgary, Alberta
STATEMENT: SENATE TESTIMONY Bill C-69

Honourable Chairman and Members:

This opening statement, accompanied by our more detailed written brief, is presented jointly on behalf of Mr. Rowland Harrison, Q.C., Mr. Dennis McConaghy and Dr. Ron Wallace (detailed biographic information is attached at the end of the written brief). In our oral presentation we attempt to highlight some of the key points contained within our written presentation to which we respectfully refer the Committee members.

By way of introduction, Mr. Harrison was one of the longest-serving Permanent Members to the National Energy Board (NEB) with more than 45 years’ experience in Canadian energy regulation. Mr. McConaghy is a former Executive Vice-President at TransCanada Corporation Pipeline Strategy and Development with more than 25 years of experience in oil and gas, including prior responsibility for the Keystone XL pipeline project. Dr. Wallace is a published former environmental research scientist, has served on Federal, Provincial and Territorial energy and environmental regulators, governmental advisory boards and retired as a Permanent Member of the NEB.

Mr. Harrison

I want to bring to the attention of the Committee, that Bill C-69 is proposed to provide the Minister of Environment and Climate Change Canada (ECCC) exceptional powers and discretion. In spite of government assurances to the contrary, stated timelines for the process are meaningless because the Minister will be accorded the purely political, unilateral right to suspend the process and hearings to accommodate process “extensions”. This factor alone will present material unknowns for any proponents contemplating a major resource project.

Equally as significant, the Minister of ECCC is to be granted powers that could circumvent the ability of applicants to proceed to an assessment. Such potentially politically-charged decisions confer enormous powers of Ministerial discretion as to the environmental acceptability, or unacceptability, of project applications, opinions that could ultimately be used to prevent hearings into development proposals. Even if accompanied by a Written Notification, this politicization of decision-making over the resource management sector allocates exclusive responsibilities to the Minister ECCC. Such unique, unilateral and discretionary powers to prevent an assessment, and therefore to predetermine matters related to the National Interest, is troubling.

Bill C-69 establishes an IAA, in place of the NEB, that will have no power of decision whatsoever while according the Minister of ECCC enormous, non-transparent powers. It is a well-established principle that Cabinet proceedings are subject to strict rules of confidentiality, if not secrecy, principles that will defeat any promises of “transparency”.

There is evidence that Bill C-69 will entrench decision-making at the political level, contrary to the stated aims of this government and the legislation. Hence, there is a looming specter that the IAA will be nothing more than an information-gatherer for Cabinet, with the substantial risks that non-transparent, political decisions will become Canadian regulatory standard practice. Here are quotes from ECCC Minister McKenna on 2nd reading (Hansard - 264, February 14, 2018 [emphasis added]):
"Canadians became concerned that project approvals were based on politics rather than robust science." "Those interim principles made it clear that decisions would be based on robust science, evidence, and indigenous traditional knowledge;"

"The impact assessment agency of Canada will work with and draw expertise from other bodies, such as the Canadian energy regulator, which is currently the National Energy Board, the Canadian Nuclear Safety Commission, and offshore boards, but the final decision on major projects will rest with me or with the federal cabinet, because our government is ultimately accountable to Canadians for the decisions we make in the national interest."

It is emphasized that the openly-acknowledged result of Bill C-69 is to transfer ultimate decision-making to the political level (Minister or Cabinet). This makes a mockery of pretensions of reliance on "scientific evidence", "openness", "independence" and "accountability". It might be recalled that the pervasive adoption of ministerial discretion under the 1980 National Energy Program was a major factor that led to the complete rejection, and reversal, of core elements of that Program just six years later (1986).

Mr. McConaghy

I consider that there are three fundamental points to be understood in the torrent of reaction to Bill C-69:

• Environmental assessment is not an end in itself. It only has relevance in the context of actual projects advanced by private capital seeking regulatory approval.
• Any regulatory regime has no value unless private capital is prepared to take on the risk of using it. Unless of course the whole point of that regime is to nullify the specific development that is within the jurisdiction of that regulatory regime.
• It would naïve in the extreme not to appreciate that this is the fundamental purpose of Bill C-69. The prime target is the Western Canadian hydrocarbon production industry – oil sands and LNG development specifically.

What must be done?

• We recommend that the Federal government stand down on C69, full stop.
• We consider that the federal government first clarify it policies as to whether it is prepared to countenance future hydrocarbon growth, or not, for Canada, and how such commitments to such growth would be related to Canadian carbon policy on the understanding that some regulatory reform of the existing CEEA 2012 “as is” would be justified.
• If Canadian policy is to embrace hydrocarbon growth and its attendant massive economic contribution, then it must have a consistent regulatory regime, not Bill C-69. Governments should be concerned with adopting regulatory processes that public interest decisions as soon as possible and not to disingenuously allow processes to run for years with costs to proponents and investors that involve expenditures of hundreds of millions end results known from the outset.
• If a project is deemed to consistent with the public interest within a finite period of disclosure of its essential elements, then it should be delegated to the regulators to set appropriate
conditions on the operations and construction of that project, inclusive of appropriate accommodation to mitigate legitimate costs on directly impacted stakeholders. This is the essential “re-invention” required: Instead, Bill C-69 makes the existing process more risky, disingenuous and susceptible to obstruction.

A Final reality check:
- A regulatory process is not a discovery process or a focus group. It is fundamentally technocratic. The determination of legitimated conditions should be consistent with global standards and risk tolerances. We need to recognize that projects that pass private sector capital allocation processes that culminate in seeking a regulatory approval have real economic value. Real value hangs in the balance.

If Canada wants to eschew those traditional values for resource development and capital investment then I recommend that it does so via transparent policies instead of distorting the regulatory approval process - for which environmental assessment is but one component.

Dr. Wallace

I consider that Bill C-69 greatly complicates decision-making for major project investments. Canada is already facing material loss in capital investment in the resource sector. Recall the debacle over Enbridge Northern Gateway Pipeline. Additionally, in 2015 Cabinet unilaterally imposed a ban on oil tanker traffic on the north coast of British Columbia, a decision that effectively, retroactively killed the pipeline project. Then in November 2016 the Federal Cabinet officially rejected plans for the pipeline.

It should be no surprise that there are legitimate fears in the international investment community that Bill C-69 will complicate, delay and exacerbate decisions for new resource investment in Canada. Capital Group, one of the largest international investors in the Canadian energy sector, laments Canada’s lack of market access, which is driving energy investments to other jurisdictions:

“Increasingly, investors are questioning the merits of investing in Canadian energy and with that, Canadian companies will struggle to access capital, create jobs, develop resources and provide a significant revenue stream for the country.”

Since the time that Natural Resources Canada began tracking planned investments in major Canadian resource projects in 2014, the projected value for these projects declined from a high of $711 billion in 2015 to $585 billion in 2018. In 2018 alone, 37 projects with an investment value of $77 billion were cancelled. Planned energy sector investment dropped by $100 billion – a figure that represents approximately 4.5% of Canadian GDP.¹

¹ C.D. Howe institute forthcoming report
National and international private sector managers and proponents who answer to Boards of Directors and, ultimately to shareholders, when proposing investments involving millions, if not billions, must consider all risks, including factors relating to politically expedient, non-transparent, decisions of governments. Discretionary, unilateral powers allocated to Ministers have the potential to deliver Canada into the realms of undeveloped countries that have traditionally made problematic major, corporate decisions for potential resource developments.

I submit that Bill C-69 exacerbates that capricious interpretation of the National Interest. While some consider that Cabinet should have exclusive powers for decisions for which they, at the end of the day, inherit political responsibility, these new powers greatly diminish any separation of powers by expert tribunals long established through the NEB and increase the probability of arbitrary decisions or even political interference. Worse, in such cases where a de facto nationalisation of projects like pipelines and atomic energy facilities may result from federal backstops, guarantees or direct financial participation, Canada will in effect be seeking regulatory project approvals from itself through a process mediated solely by a Cabinet decision-making process. Would this be the best process, absent independent quasi-judicial expert panels, to determine the National Interest?

Many legal and regulatory experts have voiced concerns that Canada’s overlapping environmental regulatory processes have become so complex that even with the direct participation of governments themselves, those hurdles may not be overcome by major project proponents. Indeed the Act, coming at huge cost to the taxpayers, if passed by the Senate, would disrupt and seriously exacerbate the current regulatory process. This is at a time when institutional stability is central to any progress required to rekindle the last pipeline project that assures Canadian access to tidewater.

I suggest that it would be irresponsible of the government to, in the midst of this economic, regulatory and legal chaos to proceed with passage of a seriously flawed Bill C-69, and to set about attempting to establish a new Canadian Energy Regulator (CER) and a new Impact Assessment Agency (IAA). Aside from the disruption this will cause, Bill C-69 promises to deliver an untested, uncertain and far more complex regulatory process for all federally-permitted resource projects. Worse, the legislation will yet again allow Cabinet the discretion to pick and choose among major projects at the end of costly, and what would become increasingly undefined, review processes.
SUPPLEMENTARY EVIDENCE: STATEMENT SENATE TESTIMONY C-69

OVERVIEW

The authors believe that Bill C-69 is highly consequential to the Canadian resource sector but is so flawed that even with extensive amendments the legislation it represents a material step backward in Canadian resource assessment and regulation. Bill C-69 is not a “Modernization” of the NEB – instead it effectively constitutes the destruction of an independent Expert Tribunal and compromises prior transparent, legal precedents and procedures for evidence-based rulings substituting these with opaque, “opinions” of certain Ministers.

1. The legislation fails to clarify regulatory processes, to achieve greater transparency, or to provide regulatory certainty for timelines. These deficiencies will further accelerate flight of investment capital for resource developments from Canada. The consequences of Bill C-69 for Canada’s resource sector will be so significant that the Senate, at very least, should return the draft legislation to the House for a major refit and refuse to endorse the legislation in its current form. In addition to many crucial amendments that are required to clarify the intent and application of Bill C-69, definition of Project Lists and associated Regulations should be first examined in detail before the legislation should be made law. We note that the draft legislation has not been subjected to a Regulatory Impact Assessment or to a detailed, independent legal review. In this respect, recent critiques by highly qualified legal scholars and practionners like Andrew Roman\(^2\) have revealed significant deficiencies both in definition and application of the legislation.

2. In many ways, Bill C-69 repeats, even amplifies historical errors in resource regulation and serves to exacerbate them. An unintended consequence of Bill C-69 is that government may increasingly be seeking approval from itself for resource development projects that, caused by the accelerating loss of private sector capital investment from Canada (as in the case of the TransMountain Pipeline) must be owned or financially backstopped by government in order to proceed. Canada has already developed a reputation in the international investment community of being unable to navigate its own assessment processes and this fact has seriously disrupted capital investment.

3. Bill C-69 appears to be devised to assess a wide spectrum of policies of government, many of which have no place in assessment hearings for resource projects such as pipelines. Proponents should only be expected to deal with specific concerns of relevance to their projects. As much as intervenors may wish it, proponents cannot realistically be expected to deal with conflated, theoretical debates on the future of the planet.

4. *Bill C-69* compounds the error by proposing hearings to be conducted by non-expert, non-judicial appointees who would make recommendations to Ministers whose subsequent ‘opinions’ will shape decisions referred to a cabinet without the benefit of having expert advice or having heard the evidence. *Bill C-69* would replace the Rule of Law with the “Law of Rules” resulting in decisions subject to opinion and non-transparent discretionary powers. This outcome is at complete variance with the intentions and objectives originally set for *Bill C-69* because it incorporates many poorly-defined clauses that will unquestionably present opportunities for subsequent legal challenge.

5. At very least *Bill C-69* promises to dilute established Expert Tribunals to reduce their quasi-judicial powers and add uncertainty, complexity, costly implementation and arbitrary delays of process. The value of independent, expert tribunals has been entirely overlooked in the Bill, especially in matters related to the assessment of technical issues that require specialized expertise and operational knowledge. Instead, it appears *Bill C-69* overly sensitive to issues of potential conflicts that may appear as a point of influence for agencies like the CNSC and the NEB. Forgotten, are the highly-developed technical skills that allow for a comprehensive comprehension of very technical matters related to the lifecycle operation of nuclear facilities and pipelines. Worse, politicians have not considered the lessons of history and appreciated the value of the separation of powers between the ruling political establishment and parties-at-interest. Instead, as is increasingly witnessed since 2015, *Bill C-69* further risks repeating the drama experienced during the Great Pipeline Debate and the electoral consequences that flowed from those debates.

Rules and procedures established for the NEB prior to the 2012 changes to the NEB Act provided a qualified, informed “buffer” between the political establishment and experts empowered to make determinations in the Public Interest, decisions that were subsequently referred to Cabinet. The phenomenon whereby certain interests have increasingly sought resolution for their grievances in the courts should not be taken as a sign of weakness of the prior system it should be appreciated for the degree to which Cabinet itself has been insulated from such heated debates in which specific political and social objectives may obscure broader issues of National Interest. Any misapprehension that challenges and litigation will be diminished by the relegation of expert tribunals to history through *Bill C-69* will soon be dispelled by the consequential political fallout of non-transparent, subjective Cabinet decisions.

Increasingly, Canadian citizens, the investment community and provincial governments are witnessing these predictable consequences. *Bill C-69* promises to diminish independent resource decision-making, complicate assessment processes and exacerbate the existing, accelerating capital flight from Canada.
CONSEQUENTIAL ARGUMENTS

1. Consequences of the Loss of Quasi-Judicial independence of Expert Tribunals

The most significant regulatory change made in a previous government that allowed amendments (CEAA 2012) that transferred decision-making powers from the NEB to federal Cabinet. This change significantly altered the long-standing, proven role and regulatory independence of the NEB as an expert decision-making tribunal to, effectively become an advisory body to Cabinet. *Bill C-69* amplifies this error through the creation of the new (diluted and non-expert tribunal) Impact Assessment Agency (IAA) that will be tasked with extensive hearings without the quasi-judicial capability for Decisions. In short, the Federal Cabinet is allocated all responsibilities. This process constitutes a major reversion in the Canadian energy regulatory process and regressively returns Canada to the politically-charged days that preceded the Great Parliamentary Pipeline Debate that led to the formation of the NEB.3

The IAA’s non-binding recommendations will not contribute to transparency of investment certainty. Like the Gateway Pipeline Project decision, Cabinet will be allocated final, non-transparent decision-making at the end of the process. Now, as then in 1958, the Federal Cabinet would be wiser to encourage and embrace ‘depoliticized’ decisions from expert, quasi-judicial appointees who are far removed and insulated from external political or public entreaties making determinations of the National Interest. Regrettably, *Bill C-69* materially violates the established principles of expert tribunals insulated from arbitrary and direct political interference in determinations of the public interest.

2. Exceptional Ministerial Discretion

*Bill C-69* provides the Minister of Environment and Climate Change Canada (ECCC) exceptional powers and discretion. In spite of government assurances to the contrary, stated timelines for the process are meaningless because the Minister will be accorded the purely political, unilateral right to suspend the process and hearings to accommodate process “extensions”. This factor alone will present material unknowns for any proponents contemplating a major resource project.

Equally as significant, the Minister of ECCC is to be granted powers that could circumvent the ability of applicants to proceed to an assessment. Such potentially politically-charged decisions confer enormous powers of Ministerial discretion as to the environmental acceptability, or unacceptability, of project applications, opinions that could ultimately be used to prevent hearings into development proposals. Even if accompanied by a Written Notification, this politicization of decision-making over the resource management sector allocates exclusive responsibilities to the Minister ECCC. Such unique, unilateral and discretionary powers to prevent an assessment, and therefore to predetermine matters related to the National Interest, is troubling.

*Bill C-69* establishes an IAA, in place of the NEB, that will have no power of decision whatsoever while according the Minister of ECCC enormous, non-transparent powers. It is a well-established principle that

3 The NEB was created November 2, 1959 as an independent economic regulatory agency overseeing “international and inter-provincial aspects of the oil, gas and electric utility industries”.
Cabinet proceedings are subject to strict rules of confidentiality, if not secrecy, principles that will defeat any promises of “transparency”.

There is evidence that Bill C-69 will entrench decision-making at the political level, contrary to the stated aims of this government and the legislation. Hence, there is a looming specter that the IAA will be nothing more than an information-gatherer for Cabinet, with the substantial risks that non-transparent, political decisions will become Canadian regulatory standard practice. Here are quotes from ECCC Minister McKenna on 2nd reading (Hansard - 264, February 14, 2018 [emphasis added]):

"Canadians became concerned that project approvals were based on politics rather than robust science." "Those interim principles made it clear that decisions would be based on robust science, evidence, and indigenous traditional knowledge;"

"The impact assessment agency of Canada will work with and draw expertise from other bodies, such as the Canadian energy regulator, which is currently the National Energy Board, the Canadian Nuclear Safety Commission, and offshore boards, but the final decision on major projects will rest with me or with the federal cabinet, because our government is ultimately accountable to Canadians for the decisions we make in the national interest." [emphasis added].

It is emphasized that the openly-acknowledged result of Bill C-69 is to transfer ultimate decision-making to the political level (Minister or Cabinet). This makes a mockery of pretensions of reliance on "scientific evidence", "openness", "independence" and "accountability". It might be recalled that the pervasive adoption of ministerial discretion under the 1980 National Energy Program was a major factor that led to the complete rejection, and reversal, of core elements of that Program just six years later (1986).

3. Investment Uncertainty

Bill C-69 greatly complicates decision-making for major project investments. Canada is already facing material loss in capital investment in the resource sector. Recall the debacle over Enbridge Northern Gateway Pipeline. In June 2014, subject to 209 conditions, the Northern Gateway pipeline project was approved by the federal government. Subsequently, in 2015 the Cabinet unilaterally imposed a ban on oil tanker traffic on the north coast of British Columbia, a decision that effectively killed the pipeline project. Subsequently, in November 2016 the Federal Cabinet officially rejected plans for the pipeline. Paralleled by the history of the Trans Mountain pipeline expansion, there are legitimate fears in the international investment community that Bill C-69 will exacerbate negative decisions for new resource investment in Canada. A letter written to the Prime Minister by an official at Capital Group Cos., one of the biggest international investors in the Canadian energy sector, spells out the potential consequences of getting things wrong. The letter, written prior to passage of Bill C-69, laments Canada’s lack of market access, which is driving energy investments to other jurisdictions:
“Increasingly, investors are questioning the merits of investing in Canadian energy and with that, Canadian companies will struggle to access capital, create jobs, develop resources and provide a significant revenue stream for the country.”

Since the time that Natural Resources Canada began tracking planned investments in major Canadian resource projects in 2014, the projected value for these projects declined from a high of $711 billion in 2015 to $585 billion in 2018. In 2018 alone, 37 projects with an investment value of $77 billion were cancelled. Planned energy sector investment dropped by $100 billion – a figure that represents approximately 4.5% of Canadian GDP.⁴

National and international private sector managers and proponents who answer to Boards of Directors and, ultimately to shareholders, when proposing investments involving millions, if not billions, must consider all risks, including factors relating to politically expedient, non-transparent, decisions of governments. Discretionary, unilateral powers allocated to Ministers have the potential to deliver Canada into the realms of undeveloped countries that have traditionally made problematic major, corporate decisions for potential resource developments. The decision processes behind the Northern Gateway and TransMountain Pipeline proposals demonstrate that the Federal Cabinet may choose to accept, or reject, major project proposals arbitrarily. Bill C-69 exacerbates that capricious interpretation of the National Interest. While some consider that Cabinet should have exclusive powers for decisions for which they, at the end of the day, inherit political responsibility, these new powers greatly diminish any separation of powers by expert tribunals long established through the NEB and increase the probability of arbitrary decisions or even political interference. A major investment house considering a resource development proposal in Canada would certainly be aware of the perils of such Ministerial discretion. Consider that Bill C-69, as already demonstrated in the case of the TransMountain Pipeline Expansion Project, will force private sector investors away from critical investments and to demand governmental co-participation in projects or the creation of guarantees to offset delays or public protests that intentionally derail regulatory processes.

Worse, in such cases where a de facto nationalisation of projects like pipelines and atomic energy facilities may result from federal backstops, guarantees or direct financial participation, Canada will in effect be seeking regulatory project approvals from itself through a process mediated solely by a Cabinet decision-making process. Would this be the best process, absent independent quasi-judicial expert panels, to determine the National Interest?

Many legal and regulatory experts have voiced concerns that Canada’s overlapping environmental regulatory processes have become so complex that even with the direct participation of governments themselves, those hurdles may not be overcome by major project proponents. It is, therefore, a supreme irony that the same day that Canada affirmed its $4.5 billion purchase of the Kinder Morgan Pipeline, due to clear deficiencies in the consultative and regulatory processes, not of the proponent,

⁴ C.D. Howe institute forthcoming report
but of government itself, the Federal Court of Appeal struck down the Certificate of Public Convenience and Necessity previously issued by the NEB.

Like the Northern Gateway Project before it, the now nationalized Kinder Morgan Project passed every test presented. Nonetheless, the regulatory failings that attracted the often-lethal attentions of the opponents and the Federal Courts have been demonstrated consistently to have originated not with proponents but with agencies of Canada. In a classic example of the ‘cure being worse than the disease’, this intolerable circumstance is about to be made worse through the introduction of Bill C-69, currently before the Senate, which promises, at the worst possible time during any attempts to “re-boot” the now compromised Kinder Morgan Pipeline project, greatly complicate Canada’s regulatory environment for major resource projects.

At this juncture, the Federal government should quickly disabuse itself of any notion that passage of Bill C-69 may constitute a solution to its problems with the Kinder Morgan approval process or any future development applications. Indeed the Act, coming at huge cost to the taxpayers, if passed by the Senate, would disrupt and seriously exacerbate the current regulatory process. This is at a time when institutional stability is central to any progress required to rekindle the last pipeline project that assures Canadian access to tidewater.

Continued regulatory chaos could be a further blow to Canadian competitiveness further damaging Canada’s reputation as a secure destination for international capital investment. Imperial Oil Chairman Rich Kruger recently described the Canadian energy sector as being surrounded by a “cloud of uncertainty”. The recent Court decision on Kinder Morgan has turned that “cloud” into a veritable storm. Senior Canadian bankers have repeatedly called attention to the accelerating capital exodus from Canada.

It would be irresponsible of the government to, in the midst of this economic, regulatory and legal chaos to proceed with passage of a seriously flawed Bill C-69, and to set about attempting to establish a new Canadian Energy Regulator (CER) and a new Impact Assessment Agency (IAA). Aside from the disruption this will cause, Bill C-69 promises to deliver an untested, uncertain and far more complex regulatory process for all federally-permitted resource projects. Worse, the legislation will yet again, allow Cabinet the discretion to pick and choose among major projects at the end of costly, and what would become increasingly undefined, review processes. Aside from the fact that the Senate has not been granted the considerable benefit of being able to consider advice from the governments’ own Economic Strategy Tables while witnessing damaged federal-provincial relations from a federal climate plan presently subject to court challenges.

4. **Standing Test**

Bill C-69 proposes to removes the standing test that has been used by the NEB that requires intervenors either to be directly affected or to have relevant information and expertise. Bill C-69 instead references “meaningful public participation” without defining the term. With the removal of this language, in
theory anyone or any group that wants to comment on a project would need to be heard. Elimination of the standing test is a misguided initiative and, as has already been demonstrated in several NEB hearings, has the potential to “swamp” hearings and seriously delay processes by the intentional efforts of non-affected groups and individuals who have little, or no direct interest in applications. It opens the door to those whose sole intention is to delay and disrupt Canadian regulatory processes. Expert, quasi-judicial tribunals have the ability, and mandate, to ensure the relevance of inputs into the process and to test the qualifications of those allowed to present evidence. In order to hear from thousands of not directly affected individuals organized solely to effect administrative protests against a project, Bill C-69 threatens to dilute the legitimate opinions of those who are directly impacted by the project, such as landowners and Indigenous groups, and to overwhelm qualified, expert testimony. It is highly likely that such processes will incur substantially increased administrative costs and cause significant delays without enhancing decision-making. Legislators should instead be concerned with developing regulatory processes that balance the need for public involvement with expert testimony all presented within legislated timelines. Full participation in hearings should continue to be based on existing “directly affected” criteria that allows for cross examination of expert witnesses.

5. Project Certification

Bill C-69 overlooks the most substantial interest of proponents, like those heard by the NEB, to enter into assessment processes: They are there to obtain Certificates of Public Convenience and Necessity (CPCN) which, when granted, continue in perpetuity. Hence the important term “lifecycle regulator” applied to the NEB and the CNSC. The CPCN contains enforceable terms and conditions that, through inspections and operationally-enforceable conditions have been the foundational basis for achieving safe pipeline operations in Canada for decades. Bill C-69, with its legislative attentions focussed significantly on “assessments” unnecessarily risks diminishing this crucial regulatory component and leaves open the possibility that the IAA and/or Cabinet may attempt to impose conditions that address wider policy concerns of government(s), conditions which would be beyond those that any proponent could achieve in practice. Inspections and the enforceability of precise conditions in the CPCN have been the foundation of safe pipeline operations in Canada for decades, yet appear to be relegated to a lesser concern as compared to the wider issues of social and environmental objectives examined in order to conform to broader policies of government. Also, who will issue and enforce the CPCN?

Unquestionably, it would be incorrect to advocate that conditions included in a CPCN should address broad policy concerns that extend to global or perhaps even national effects. Such conditions would fall well outside the ability of any proponent to address. It would be self-defeating if the CPCN’s that are issued are so deficient, or loaded with undefined, indefensible conditions, that they result in operational realities that could ultimately endanger public safety.
About the Presenters

Rowland J. Harrison, Q.C.

Rowland Harrison has more than 45 years’ experience in Canadian energy regulation, as a lawyer in private practice, a senior government official and as an academic. From 1997 until 2011, he served two successive terms as a permanent member of the National Energy Board in Calgary, making him one of the longest-serving members in the Board’s history. He has also undertaken advisory assignments on energy regulatory matters for several federal Ministers. Prior to his appointment to the NEB in 1997, he was a partner in the Ottawa and Calgary offices of Stikeman Elliott, one of Canada’s leading national and international law firms. He is co-Managing Editor of Energy Regulation Quarterly. In 2013, he was a recipient of an Energy Law Forum Energy Bear award for his contributions to energy regulation.

Dennis McConaghy, B.SC. (Eng.), M.Sc. (Eng.)

Dennis McConaghy is the former Executive Vice-President of Corporate Development at TransCanada Corporation. Previously, he was Executive Vice-President, Pipeline Strategy and Development having joined TransCanada in 1998, and has held senior positions in Corporate Strategy & Development, Midstream/Divestments, and Business Development. He has more than 25 years of experience in oil and gas, including prior responsibility for the Keystone XL pipeline project and authored the book “Dysfunction”.

Ron Wallace, Ph.D.

Dr. Wallace is a published former environmental research scientist, Executive Vice President of an international engineering corporation and corporate Chief Executive Officer and Board Vice Chairman of a publicly-traded manufacturer. He has served on Federal, Provincial and Territorial energy and environmental regulators, governmental advisory boards and was appointed as a Permanent Member of the National Energy Board. His experience includes service with the World Bank (Washington), the Asian Development Bank (Manila) and the European Bank for Reconstruction and Development (London) work which was recognized with the 1996 Alberta Emerald Award for Environmental Excellence. He is currently a Fellow of the Canadian Global Affairs Institute and has written extensively on issues of the environment, energy regulation, national defense and northern economic development.