ATCO Group

Written Brief Submitted to the Senate Standing Committee for Energy, the Environment and Natural Resources

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.

ATCO is pleased to provide this brief to the Senate Standing Committee for Energy, the Environment and Natural Resources (Senate Committee) on Bill C-69. This brief, along with ATCO’s table of proposed amendments to Bill C-69 (Amendments Table), forms ATCO’s written submission to the Senate Committee.

ATCO is a proudly Canadian company that was founded more than 70 years ago. Based in Alberta, ATCO has grown into a $22 billion global enterprise with approximately 6,000 employees, engaged in Structures & Logistics; Electricity Generation, Transmission and Distribution; Natural Gas Pipelines & Liquids and Retail Energy.

Core to our operating philosophy is partnering with Indigenous communities where possible. ATCO has formed as many as 47 partnerships with Indigenous groups as far back as 1987. We generated about $250 million in revenue for our Indigenous partners in 2018.

ATCO continues to be a leader in the transition to a lower-carbon energy future. Examples include our “Off Diesel” solar/battery projects in northern communities, EV charging networks and fuel switching initiatives such as electricity generation coal-to-gas conversions and the development of low emissions power plants including the Oldman River Hydro project.

ATCO has been actively engaged in the federal environmental assessment (EA) reform process since 2016. We presented to the expert panel established to review the federal EA process and have since been proactive in trying to make Bill C-69 workable for Canadians. We have worked collaboratively with Ministers, officials, advisors and Parliamentarians, as well as industry associations and the Alberta government.

ATCO supports the underlying objectives of Bill C-69:

- high environmental standards;
- meaningful public participation on project impacts and effective Indigenous consultations;
- a robust, science-based review; and
- a competitive resource sector and strong economy.

ATCO’s concern is that the detailed drafting of the Bill frustrates the Bill’s stated objectives. As currently drafted, Bill C-69 will increase the scope and complexity of federal impact assessment, and will add to, not reduce, regulatory uncertainty. It will also increase project delays and litigation opportunities for opponents of major projects. If passed in its current form, Bill C-69 will make it
more difficult to get significant projects built in Canada. This is true not just for pipelines or oil and gas projects. It is true for investment in replacement and new electrical generation, transmission, and distribution capacity – investment needed to transition to a lower-carbon energy system.

Building energy projects and other infrastructure is critical for Canada’s prosperity and must be a shared priority. Essential infrastructure underpins growth, enhances competitiveness, creates and enables good middle-class jobs, including for Indigenous communities, and contributes to sustainability. Significant amendments to the Bill are necessary to create an improved assessment system that promotes high environmental standards while also fostering a positive investment climate for good projects.

The federal government has stated that some of the uncertainty present in the proposed legislation will be addressed in the regulations. However, we do not believe that this is effective. Vaguely drafted enabling legislation will open the door to numerous regulatory delays, litigation opportunities and will increase the associated project risk.

ATCO has sought to develop a coherent package of amendments with simple themes and clear, targeted outcomes to improve the Bill without sacrificing its objectives. In the Amendments Table, we have proposed detailed wording and rationales for a finite set of doable amendments. ATCO proposes specific amendments to the Impact Assessment Act (IAA), Canadian Energy Regulator Act and the Canadian Navigable Waters Act.

It is important to note that the amendments proposed by ATCO were developed as a system, such that simply adopting one or two of them will not address the fundamental problems with the current drafting of the Bill. If ATCO’s package of amendments were adopted, we would have greater certainty that good projects could be properly assessed within a reasonable timeline and then built with confidence.

Within Bill C-69, ATCO has identified three themes or areas that need to be addressed. These themes are described briefly below. Detailed amendments and rationales to address these themes are presented in ATCO’s Amendments Table. In the table, the individual amendments are presented in chronological order and are expressly linked to one of the themes.

**Theme 1: Consideration of Economic and Other Factors**

Objectives related to bolstering competitiveness, enabling good projects and strengthening the economy do not factor expressly into the Bill. Further, there is no express direction to consider the economic benefits of a project in public interest decisions. This needs to be addressed to ensure an appropriate balance of considerations in relation to designated projects.

**Theme 2: Certainty**

For proponents to invest, they will need a clear path to building the project under known or predictable conditions from a project’s beginning to the end. We have proposed several improvements to help achieve a greater focus on certainty:
• **Certainty of Process**  
The impact assessment process as set out in Bill C-69 lacks sufficient certainty. In this regard, ATCO has concerns about the considerable ministerial discretion, lack of a public participation threshold, and a lack of direction in the legislation in terms of the scope and process for impact assessments.

• **Certainty of Timelines**  
While the government has touted the new timelines as being shorter than those in the *Canadian Environmental Assessment Act, 2012*, there are several issues, including an expanded scope of assessment, unlimited public participation, and numerous opportunities to extend the timelines, that will make meeting those timelines very difficult. There needs to be greater discipline, specified criteria, and complete transparency on timelines within the Bill. The Bill also requires a hard, legislated cap on the time for an impact assessment.

• **Certainty of Decision**  
As drafted, the Bill will create new scope and, with it, regulatory uncertainty in terms of how to fulfill the requirements of the new legislation. This will result in new opportunities to litigate a multitude of issues that will ultimately have the effect of delaying or potentially killing projects. The federal government has acknowledged that the additional factors for consideration in the IAA and new steps in the impact assessment process do “present potential litigants with more opportunities to challenge a decision made under the act”.

**Theme 3: Role of Life-Cycle Regulators**

The Bill is drafted such that it marginalizes the role of life-cycle regulators (including the Canadian Nuclear Safety Commission, Canadian Energy Regulator and offshore boards) in the impact assessment process. For ATCO, it appears counter-intuitive that you would have specific provisions within the legislation that prohibit an individual from the expert life-cycle regulator being the chair of a review panel, or from individuals of the life-cycle regulator making up a majority of the panel.

**Conclusion**

ATCO appreciates the work the Senate Committee is doing and strongly encourages the Senate Committee to consider the amendments ATCO has put forward. ATCO is not seeking a major overhaul of Bill C-69 nor is it suggesting that the Senate Committee allow the Bill to die on the order paper. Through its comprehensive package of amendments, ATCO has proposed changes that are manageable and doable. The amendments aim to increase certainty and provide a clear process from start to finish for proponents. Providing a system that continues to uphold high environmental standards while allowing good projects to proceed is key to Canadian growth and prosperity.
Proposed Table of Amendments Submitted to the Senate Standing Committee for Energy, the Environment and Natural Resources

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.
### IMPACT ASSESSMENT ACT (the “Act”)

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Rationale</th>
<th>Suggested Amendment</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble</td>
<td>Currently no provision.</td>
<td>In the Government of Canada’s consultation materials for Bill C-69, it is noted that, “[d]eveloped wisely, major resource projects can power economies, support communities, and create jobs.” However, recognition of the societal benefits associated with major infrastructure projects is missing from the Act. As the preamble effectively sets the basis for the legislation, it should include an explicit reference to the benefits of major projects. This will help ensure that it is clear that one of the objectives of the Government of Canada’s new legislation is getting good projects built. ATCO notes there is in fact a reasonably strong statement along these lines in the preamble to Bill C-69: <em>Whereas the Government of Canada is committed to enhancing Canada’s global competitiveness by building a system that enables decisions to be made in a predictable and timely manner, providing certainty to investors and stakeholders, driving innovation and enabling the carrying out of sound projects that create jobs for Canadians;</em> However, these principles have not been incorporated into the preamble of the Act.</td>
<td>Add the following in the preamble to the Act after “Whereas the Government of Canada is committed to fostering sustainability”: <em>Whereas the Government of Canada recognizes that the carrying out of sound infrastructure and natural resource projects contributes to economic growth, creates jobs, supports communities, and contributes to sustainability;</em></td>
<td>Consideration of Economic and Other Factors</td>
</tr>
<tr>
<td>Preamble</td>
<td>Currently no provision.</td>
<td>The legal implications of the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) in</td>
<td>Add the following in the preamble to the Act after “Whereas the Government of Canada is committed to implementing the</td>
<td>Certainty of Process</td>
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1. [https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/ia-handbook-e.pdf](https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/ia-handbook-e.pdf)
Canada have been subject to wide-ranging debate. In particular, some argue that UNDRIP, once implemented, will provide Indigenous groups with a *de facto* veto over Crown decisions in their territories.

To date, Canadian courts have been clear that the duty to consult does not provide Indigenous groups with a “veto” over final Crown decisions, including in relation to infrastructure and resource developments. Prime Minister Trudeau has publicly agreed with this assessment, noting that, “Ottawa doesn’t recognize the unconditional right of First Nations to unilaterally block projects.”

While Indigenous groups may have a “special public interest” in Crown decisions, those interests must be balanced against other competing societal needs.

The reference in the preamble of the Act to the Government of Canada’s commitment to implementation of UNDRIP, will open any positive decision statement on a designated project to legal challenge where the consent of an Indigenous group has not be obtained. This results in uncertainty which could be addressed with a statement in the preamble that notes that the rights and interests of both the public and Indigenous groups do not result in or provide a veto over a designated project.

**6(1) Purposes**

6 (1) The purposes of this Act are

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

6 (1) The purposes of this Act are

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Consideration

of

Economic

and

Other

Factors

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES”:

Whereas the impact assessment process requires consideration of the effects of a designated project on the rights and interests of the public and Indigenous peoples of Canada, the Government of Canada recognizes that the Minister or the Governor in Council, as the case may be, is the final decision-maker on whether a designated project is in the public interest and the refusal by any person, group or community to accept or consent to a designated project will not be determinative of whether a designated project is in the public interest;

| 7(1)(d) | 7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:  
  (c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on  
  (i) physical and cultural heritage,  
  (ii) the current use of lands and resources for traditional purposes, or  
  (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;  
  (d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; or  

As currently drafted, paragraph 7(1)(d) would prohibit pre-approval activities that could have a positive impact on health, social or economic conditions for Indigenous groups. For instance, paragraph 7(1)(d) could be interpreted to prohibit a proponent from signing capacity building or impact benefit agreements with Indigenous groups regarding a designated project, as such agreements could change the economic conditions for Indigenous peoples of Canada.  

In order to address this uncertainty, paragraph (d) should be included as roman numeral (iv) in paragraph (c), as the effects listed in paragraph (c) are tied to a “change to the environment”.  

Amend section 7 as follows:  

7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:  
  (c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on  
  (i) physical and cultural heritage,  
  (ii) the current use of lands and resources for traditional purposes, or  
  (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and  
  (iv) the health, social or economic conditions of the Indigenous peoples of Canada;  

Delete subsection 7(1)(d). |

| 9(1) | The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.  

The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria in order to identify projects that may require impact assessments under the Act. As stated in the federal government’s consultation paper on the “Project List”, the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.” In order to provide  

Amend subsection 9 (1) as follows:  

9 (1): Subject to subsection (1.1), the Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, the carrying out of that physical activity may cause significant adverse effects within federal jurisdiction or adverse direct or incidental effects.  

Certainty of Process | 9(1) | The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.  

The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria in order to identify projects that may require impact assessments under the Act. As stated in the federal government’s consultation paper on the “Project List”, the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.” In order to provide  

Amend subsection 9 (1) as follows:  

9 (1): Subject to subsection (1.1), the Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, the carrying out of that physical activity may cause significant adverse effects within federal jurisdiction or adverse direct or incidental effects.  

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

(7) The Minister must not make the designation referred to in subsection (1) if
(a) the carrying out of the physical activity has substantially begun; or
(b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act that could permit the physical activity to be carried out, in whole or in part.

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

Add the following after subsection 9(1):

9 (1.1): The Minister may only designate a physical activity under subsection (1) if there are unique or exceptional circumstances that warrant designation of the physical activity.

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

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

(7) The Minister must not make the designation referred to in subsection (1) if
(a) more than 90 days after the day on which the proponent publicly discloses a physical activity that will require the preparation of an environmental impact assessment under provincial law; (b) more than 90 days after the day on which the proponent files an application with a provincial regulatory agency to seek approval for a physical activity that does not require an environmental impact assessment under provincial law; (c) if the carrying out of the physical activity has substantially begun; or (d) if a federal or provincial authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act or under an Act of a Legislature that could permit the physical activity to be carried out, in whole or in part.
<table>
<thead>
<tr>
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<th>Amendments</th>
<th>Certainty of Process and Timelines</th>
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| 11      | **Public participation**  
11 The Agency must ensure that the public is provided with an opportunity to participate meaningfully in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies. | References to meaningful participation in the Act should be bound by reference to the regulatory and legal framework created by the Act. If not, the term “meaningful participation” will be open to interpretations outside the regulatory framework, resulting in unacceptable uncertainty.  
Amend section 11 as follows:  
11 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, as set out in the Act, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.  
For consistency throughout the Act, similar amendments are required in section 27, paragraphs 33(1)(e) and (f), paragraph 51(c), section 99 and subsection 181(4.1). |  |
| 15      | **Proponent’s obligation — notice**  
15 (1) The proponent must provide the Agency with a notice that sets out, in accordance with the regulations, how it intends to address the issues referred to in section 14 and a detailed description of the designated project that includes the information prescribed by regulations made under paragraph 112(a).  
**Additional information**  
(2) If, after receiving the notice from the proponent, the Agency is of the opinion that a decision cannot be made under subsection 16(1) because the description or the prescribed information set out in the notice is incomplete or does not contain sufficient details, the Agency may require the proponent to provide an amended notice that includes the information or details that the Agency specifies.  
**Copy posted on Internet site**  
(3) When the Agency is satisfied that the notice includes all of the information or details that it | While the use of a planning phase in the Act has certain advantages if done properly, as presently drafted it is onerous for proponents. In particular, the requirement under section 15 to provide a notice that sets out how issues raised by the public and Indigenous groups will be addressed is unnecessary and duplicative at this stage of the assessment. Such information will be set out in the information and studies provided by the proponent in the impact assessment. ATCO recommends that this step be removed from the planning phase and that section 15 be deleted.  
Delete subsections 15(1)-3. |  |
| 16      | **Decision**  
16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.  
**Factors**  
(2) In making its decision, the Agency must take into account the following factors: ... | While the planning phase is 180 days, there are no interim timeframes related to the various steps in the process. In particular, for projects that the Agency determines will not be subject to an impact assessment, it will be important to receive that decision as soon as possible. Accordingly, ATCO is recommending that a timeline be established in regulations applicable to the issuance of a decision under section 16.  
Amend subsection 16(2) as follows:  
16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide within the time period prescribed by regulations made under paragraph 112(b) whether an impact assessment of the designated project is required. |  |
(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; and (g) any other factor that the Agency considers relevant

Projects on the “Project List” should not require an impact assessment if there is a regional or strategic assessment in place that addresses impacts from such projects or if the effects under federal jurisdiction are otherwise appropriately regulated (e.g., GHG emissions for gas-fired power plants). Where there is scope for such exclusion under defined criteria, there should be an explicit reference in the regulations. Further, when making a determination as to whether an impact assessment is required, the Agency should take into account any such exclusion criteria.

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

- any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency;
- exclusion criteria set out in any applicable regulations; and
- any other factor that the Agency considers relevant.

17 Minister’s obligation

17 (1) If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1), a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part, or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion. The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister’s opinion.

ATCO believes it should be clear that provision of written notice under subsection 17(1) does not terminate the impact assessment of the designated project in any circumstances.

Add the following after subsection 17(2):

17 (3) For greater certainty, the provision of a written notice to a proponent of a designated project under subsection 17(1) does not suspend or terminate the impact assessment of the designated project.

Certainty of Process

18 Notice of commencement

18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with the notice of commencement issued under subsection 18(1) effectively kicks off the impact assessment of a designated project under the Act. It is an opportunity to set out at an early stage the scope of information and process requirements against which the impact assessment will be measured. This is similar in nature to a terms of reference commonly used in provincial environmental assessment processes.

Amend subsection 18(1)(a) as follows:

Notice of commencement

18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with
| (a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and | In order to provide increased certainty to participants in an impact assessment, the content of a notice of commencement should be expanded to include the Agency’s determination of the factors under subsection 22(1) that will be considered, the scope of those factors, the scope of the designated project to be assessed and the process for public participation and consultation of Indigenous groups that may be affected by the carrying out of the designated project. The purpose of subsection 18(1.1) is effectively achieved and clarified through the proposed amendment to subsection 18(1) and proposed amendment to subsection 22(1), below. Accordingly, subsection 18(1.1) should be deleted. | (a) a notice of the commencement of the impact assessment of the project that sets out: |

- the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment; 
- the information or studies that the Agency considers necessary for it to conduct the impact assessment; 
- the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project; 
- subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a); and 
- in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project. |

Delete subsection 18(1.1). |

18(5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister’s reasons for granting that extension, and a notice of any extension granted under subsection (4). |

The bill reasonably requires that where the Minister extends a timeline (for example under subsection 18(3)), the extension and the reasons for granting the extension must be published (for example as per subsection 18(5)). The bill does not impose the same requirement for publication of reasons where the extension is decided by the Governor in Council. There is no apparent reason for this gap and it should be rectified for purposes of transparency and discipline of the process. |

Amend subsection 18 (5) as follows: 18 (5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister’s reasons for granting that extension, and a notice of any extension granted under subsection (4), including the Governor in Council’s reasons for granting that extension. This revision is also required for subsections 28(8) and 37(5). |

Certainty of Timelines |

22(1) Factors — impact assessment |

As it is currently written, section 22 requires the Agency or review panel to take into account all of the listed factors when conducting an impact assessment. |

Amend subsection 22(1) as follows: 22(1) As it is currently written, section 22 requires the Agency or review panel to take into account all of the listed factors when conducting an impact assessment. |

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

- (a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including
  - (i) the effects of malfunctions or accidents that may occur in connection with the designated project,

...
ATCO – BILL C-69 TABLE OF PROPOSED AMENDMENTS

| (ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and | The Act provides government with the powers to undertake strategic assessments and regional assessments that, if implemented properly, can be the forum needed to have a fulsome, regional discussion on public policy issues such as, among other things, climate change. One critical outcome of a strategic assessment is to define a framework to assess whether an individual project is compliant with a given public policy objective. In this way, policy debates will not have to be repeated for every single project application. To address the foregoing issues, public policy items in the list of factors in subsection 22(1), including sustainability, climate change and the intersection of sex and gender with other identity factors, should be considered with reference to any applicable completed strategic and regional assessments or policy guidance in relation to the items. If such items are not properly bounded, then the Act will open impact assessments to wide scale policy debates, which reduces certainty and efficiency and negatively impacts the overall purpose of the process. While ATCO acknowledges the potential usefulness of regional and strategic assessments, it is important that project-specific assessment processes not be deferred or delayed pending the completion of a regional or strategic assessment. ATCO has proposed an amendment that clarifies this, following a similar provision in provincial legislation.³ |
| (iii) the result of any interaction between those effects; | consequences of these changes that are likely to be caused by the carrying out of the designated project, including |
| (b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project; | (i) the effects of malfunctions or accidents that may occur in connection with the designated project; |
| (c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982; | (ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and |
| (d) the purpose of and need for the designated project; | (iii) the result of any interaction between those effects; |
| (e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means; | (b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project; |
| (f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project; | (c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982; |
| (g) Indigenous knowledge provided with respect to the designated project; | (d) the purpose of and need for the designated project; |
| (h) the extent to which the designated project contributes to sustainability; | (e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means; |
| (i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; | (f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project; |
| (j) any change to the designated project that may be caused by the environment; | (g) Indigenous knowledge provided with respect to the designated project; |
| (k) the requirements of the follow-up program in respect of the designated project; | (e) relevant published policy on the extent to which the designated project contributes to sustainability framework that is developed by the Agency under paragraph 155(h) and that is identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b); |
| (l) considerations related to Indigenous cultures raised with respect to the designated project; | (b) any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its |

³ See subsection 7(1) of the Alberta Lower Athabasca Regional Plan.
**Scope of factors**

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

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### Regarding paragraph 22(1)(f) – alternatives to a designated project

- There is no value in requiring a proponent to complete an assessment of project alternatives they have no intention to invest in or build. This is akin to a review of the proponent’s business case, which is not necessary or appropriate in this process. Spending proponent, stakeholder and government time and resources on this sort of theoretical exercise is of no value in the context of a single project and results in inefficiency and waste. The objectives of this type of exercise are appropriately addressed in paragraph (e), alternative means of carrying out a project, as this allows for an investigation of alternative, feasible methods for carrying out a project that still address the project’s need and purpose.

### Commitments in respect of climate change

- Where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project:
  - Any change to the designated project that may be caused by the environment;
  - The requirements of the follow-up program in respect of the designated project;
  - Considerations related to Indigenous cultures raised with respect to the designated project;
  - Community knowledge provided with respect to the designated project;
  - Any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
  - Any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
  - The intersection of sex and gender with other identity factors; and
  - Any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.
<table>
<thead>
<tr>
<th></th>
<th>Currently no provision.</th>
<th>Repeated references in the Act to meaningful public participation, which is undefined, will lead to unintended consequences such as drowning out the voices of directly impacted parties. As currently drafted, the Act does not provide appropriate discretion to the Agency to determine the nature and scope of public participation in an impact assessment. Without appropriate discretion, any decision by the Agency to make such a determination regarding public participation in an impact assessment would be vulnerable to legal challenge.</th>
<th>Amend subsection 22(2) as follows: Scope of factors (2) The scope of the factors to be taken into account under paragraphs (1)(a) to (j) (e), (k) (g) to (l) (k) and (s) (r) and (t) (s) is determined by ... Add the following after subsection 22(2): (3) For clarity, notwithstanding paragraphs 22(1)(h) and (o), the Agency or review panel shall not adjourn or defer the impact assessment of a designated project by reason only of the incompletion of an assessment referred to in section 92, 93 or 95. (4) In considering an assessment referred to in section 92, 93 or 95, the Agency or review panel shall, in its discretion, consider the weight to be given to an assessment, having regard to both the relevance of the assessment and its conclusions to the project under consideration and the strength of evidence supporting the assessment’s conclusions. Add the following after section 27: 27.1 The Agency has discretion to determine the nature and scope of participation by a member of the public in an impact assessment of a designated project conducted by the Agency. A decision of the Agency under this section is final and conclusive.</th>
<th>Certainty of Process</th>
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<tr>
<td>27</td>
<td>Currently no provision.</td>
<td>Repeated references in the Act to meaningful public participation, which is undefined, will lead to unintended consequences such as drowning out the voices of directly impacted parties. As currently drafted, the Act does not provide appropriate discretion to the Agency to determine the nature and scope of public participation in an impact assessment. Without appropriate discretion, any decision by the Agency to make such a determination regarding public participation in an impact assessment would be vulnerable to legal challenge.</td>
<td>Amend subsection 22(2) as follows: Scope of factors (2) The scope of the factors to be taken into account under paragraphs (1)(a) to (j) (e), (k) (g) to (l) (k) and (s) (r) and (t) (s) is determined by ... Add the following after subsection 22(2): (3) For clarity, notwithstanding paragraphs 22(1)(h) and (o), the Agency or review panel shall not adjourn or defer the impact assessment of a designated project by reason only of the incompletion of an assessment referred to in section 92, 93 or 95. (4) In considering an assessment referred to in section 92, 93 or 95, the Agency or review panel shall, in its discretion, consider the weight to be given to an assessment, having regard to both the relevance of the assessment and its conclusions to the project under consideration and the strength of evidence supporting the assessment’s conclusions. Add the following after section 27: 27.1 The Agency has discretion to determine the nature and scope of participation by a member of the public in an impact assessment of a designated project conducted by the Agency. A decision of the Agency under this section is final and conclusive.</td>
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<td>33(1)</td>
<td>Conditions</td>
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<td><strong>33 (1)</strong> The Minister may only approve a substitution if he or she is satisfied that <em>(a)</em> the process to be substituted will include a consideration of the factors set out in subsection 22(1);</td>
<td>A condition of approving substitution, per paragraph 33(1)(a), is that the process to be substituted will include a consideration of the factors set out in subsection 22(1). Where a process may be substituted for an impact assessment under the Act, subsection 31(1) stipulates that a decision will be made prior to a notice of commencement being issued under subsection 18(1). As a result, the Agency will not yet have determined the factors under subsection 22(1) that will be considered in the impact assessment (per ATCO’s proposed amendment). Accordingly, where substitution is being considered, the Minister should make a determination as to the factors under subsection 22(1) that are relevant to the designated project. ATCO proposes an amendment to address this. Alternatively, a process could be established whereby the Agency makes a determination on the relevant factors which is then considered by the Minister in its determination on a request for substitution.</td>
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<td>Amend paragraph 33(1)(a) as follows: <strong>33 (1)</strong> The Minister may only approve a substitution if he or she is satisfied that <em>(a)</em> the process to be substituted will include a consideration of the factors set out in subsection 22(1) that the Minister has determined are relevant to the designated project.</td>
<td>Certainty of Process</td>
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<tr>
<th>42</th>
<th>Provisions of agreement</th>
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<td><strong>42</strong> When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that</td>
<td>As per the proposed amendment to subsection 18(1), by the time an arrangement or agreement to jointly establish a review panel is executed, the Agency will have determined the factors under subsection 22(1) that are relevant to the impact assessment of the designated project. Accordingly, such arrangement or agreement should require consideration of the factors set out in the notice of commencement that the Agency has determined are relevant to the impact assessment as opposed to all factors set out in subsection 22(1).</td>
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<td>Amend section 42 as follows: <strong>42</strong> When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in the notice of commencement provided to a proponent pursuant to subsection 18(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that</td>
<td>Certainty of Process</td>
</tr>
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</table>
47(4) When the Minister refers an impact assessment of a designated project that includes activities regulated under the Canadian Energy Regulator Act to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel’s terms of reference and appoint the chairperson and at least two other members.

Not majority

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

The Minister will have established the referenced roster of persons that may be appointed to sit on a review panel, yet this clause minimizes the involvement of life cycle regulators and the expertise of the organizations. Review processes should leverage the unique expertise of both provincial and federal life cycle regulators and appointments to a review panel from an expert regulator should not be narrowly circumscribed by the Act.

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

49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14.

Where a designated project is referred to a review panel, and before the terms of reference for the review panel are established by the Minister, the Agency will have: (i) issued a notice of commencement pursuant to subsection 18(1), setting out the information and studies required to conduct the impact assessment; and (ii) determined that the proponent has provided all of the information and studies required pursuant to the notice of commencement (see subsection 19(4)). The foregoing represents a significant part of the overall impact assessment process. In essence, the scope of the impact assessment will have already been determined to a large degree. Accordingly, in setting the terms of reference for a review panel, the Minister should have regard to the work that has already occurred and, in particular, the Agency’s determination in the notice of commencement as to what information is required to conduct the impact assessment. The rationale for this proposed amendment remains valid whether or not ATCO’s proposed amendment to subsection 18(1) is accepted.

Amend section 49 as follows:

49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14 and the content of the notice of commencement for the designated project provided to the proponent pursuant to subsection 18(1).
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<td>51</td>
<td>Review panel’s duties</td>
<td>The concern identified in relation to the Agency’s discretion to determine participation is even more pronounced for review panels, as hearings are mandatory. Without clear discretion for a review panel to make determinations on its own processes, including in relation to public participation, the costs and time associated with hearings will increase.</td>
<td>Add the following after subsection 51(3): 51 (4) A review panel has discretion to determine the nature and scope of participation by a member of the public in a hearing conducted under paragraph 51(1)(c). A decision of a review panel under this subsection is final and conclusive.</td>
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<td>62</td>
<td>No current provision</td>
<td>The Act contains several different opportunities for timeline extensions in the impact assessment process (an unlimited number of extensions in some cases), which creates uncertainty for project proponents in project planning and development. A maximum legislated timeframe on the overall impact assessment process is required to provide greater certainty and discipline of process.</td>
<td>Add the following after section 62: 62.1 (1) Notwithstanding subsections 28(5), 28(6), 28(7), 28(9), 36(3), 37(3), 37(4), 37(6), 37(12), 37(14) and 65(5), a decision pursuant to paragraph 60(1)(a) or section 62 for a designated project must be made within 730 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project. 62.1 (2) On the proponent’s request, the Minister may extend the time limit in subsection 62.1(1) by any period requested by the proponent. If the Minister extends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.</td>
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</table>
| 63 | Factors — public interest | In discussing Bill C-69, the Government of Canada has noted repeatedly that a clean environment and a strong economy are not mutually exclusive. Despite this, references to economic considerations in decision making do not figure prominently in the Act. To address this imbalance, it should be explicit that a decision maker will consider the economic effects of a designated project. Further, and consistent with ATCO’s proposed amendments to subsection 22(1), consideration of Canada’s environmental obligations and commitments in respect of climate change should be framed with reference to applicable completed regional or strategic assessments. | Amend section 63 as follows: 63 The Minister’s determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council’s determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors: (e) any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, where such assessment was completed prior to the notice of the
### Certainty of Timelines

#### 65(6)

**65 (1)...**

- **(3)** When the Minister makes a determination under paragraph 60(1)(a), he or she must issue the decision statement no later than 30 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

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

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

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

Delete subsection 65(6).

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### Certainty of Decision

#### 68

**Minister’s power — decision statement**

- **68 (1)** The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.

**Limitation — condition**

Proponents that have received a positive decision statement must have the confidence that they may proceed and build their project with reasonable certainty about the conditions that they must meet and the corresponding costs of compliance. Subsection 68(1) introduces a power for the Minister to amend a decision statement, on the condition specified in 68(2) that this not make effects of the project more adverse. However, Amend subsections 68 (1) and (2) as follows:

- **68 (1)** The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it, and is not permitted to remove, add or amend conditions of a decision statement referred to in subsections 67(1), (2) or (3).
(2) The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse. There is no economic constraint on the use of this power, introducing an unquantifiable contingent liability for the proponent outside its control. Section 68(2) could appropriately be re-cast to require that the use of the power by the Minister not unreasonably affect the technical and economic feasibility, or timeline of implementation, of the project. In addition, the Minister should not have authority to unilaterally amend a decision statement that forms part of an approval issued by the Canadian Nuclear Safety Commission or the Commission under the Canadian Energy Regulator Act. A limit on this authority ought to be included in subsection 68(1).

The provisions as written are open-ended. There should be reasonable limits on the costs that are reimbursable, such as in other federal legislation (e.g., Fisheries Act). For purposes of predictability, transparency and financial discipline, the estimated costs should be documented and made available to the proponent in the form of a budget.

Add the following after subsection 76(2):

76 (2.1) Costs and expenses incurred pursuant to subsection (1) and subsection (2) shall only be recoverable to the extent they can be established to have been reasonably incurred in the circumstances, of and incidental to the exercise of the powers or the performance of the duties or functions of the Agency or the review panel, as the case may be.

76(2.2) The Agency or the review panel will provide the proponent of a designated project with an estimated budget for costs that they may incur under subsection (1) and subsection (2), in the case of the Agency, within 30 days of a notice being provided pursuant to subsection 18(1), and in the case of a review panel, within 30 days of the establishment of the review panel by the Minister.

Certainty of Process
(b) any prescribed amount that is related to the exercise by the Agency or review panel of that power or the performance by it of that duty or function.

ATCO supports the use of regional and strategic assessments if developed and used appropriately. As written, there are no mandated objectives or guidance in the Act for the completion of a regional or strategic assessment or its subsequent use. Due to this lack of clarity, ATCO is concerned about how regional and strategic assessments will be completed and used.

Add the following after section 94:

94.1 For clarity, the purpose of an assessment under section 92 or 93 shall include, but is not limited to:

(a) improving knowledge of baseline environmental conditions in a region; and

(b) providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.

Add the following after section 95:

95.1 For clarity, the purpose of an assessment under section 95 shall include, but is not limited to, providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.

Certainty of Process

None

Currently no provision.

Timelines that may be established and applied in law will be of no benefit if there is open-ended opportunity for parties to challenge the process and the judgement and decisions of authorities in court. Absent some privative clause, this bill creates a wide new range of opportunities to challenge the completeness and robustness of the regulatory process.

The government will have taken the time to establish an expert Agency as well as a roster of persons who may be appointed to a review panel that will have specific expertise in relation to the projects under review and / or administration of the

Add the following in the Act:

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

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

Section [Y (2)] Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within

Certainty of Decision
## Canadian Energy Regulator Act

<table>
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<tbody>
<tr>
<td>2</td>
<td>Minister means the member of the Queen’s Privy Council for Canada designated under section 8.</td>
<td>The Impact Assessment Act defines the responsible “Minister” as the Minister of Environment. The National Energy Board currently reports to Parliament through the Minister of Natural Resources, as activities of the Board properly fall within the NRCan portfolio. There is no reason the activities of the CER would fall into a different portfolio or under a different Minister, and the Canadian Energy Regulator Act (“CERA”) should</td>
<td>Amend the definition of “Minister” in section 2 as follows: Minister means the <strong>Minister of Natural Resources</strong> member of the Queen’s Privy Council for Canada designated under section 8.</td>
<td>Certainty of Process</td>
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4 See section 56 and section 45 of the Responsible Energy Development Act.
<table>
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<tr>
<th></th>
<th>Order designating Minister</th>
<th>specify the Minister of Natural Resources is the responsible Minister.</th>
<th>Delete section 8.</th>
<th>Certainty of Process</th>
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<td>8</td>
<td>Order designating Minister</td>
<td>8 The Governor in Council may, by order, designate any member of the Queen’s Privy Council for Canada to be the Minister for the purposes this Act.</td>
<td>See comments regarding section 2 (responsible Minister).</td>
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<td>28</td>
<td>Appointment</td>
<td>It is critical that a specialized tribunal such as the Commission be able to have continuity and an opportunity to rely on the experience and expertise of serving commissioners. Having a term maximums leads to a potential loss of expertise and continuity which, in the context of major project applications with significant timelines, can be very disruptive.</td>
<td>Amend Subsection 28(2) as follows: 28 (2) A commissioner may be reappointed for one or more terms of up to six years each. However, a commissioner is to serve no more than 10 years in office in total.</td>
<td>Certainty of Process</td>
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<td>52</td>
<td>Public hearings</td>
<td>It is critical that a specialized tribunal such as the Commission be able to have continuity and an opportunity to rely on the experience and expertise of serving commissioners. Having a term maximums leads to a potential loss of expertise and continuity which, in the context of major project applications with significant timelines, can be very disruptive.</td>
<td>Add the following after subsection 52(4): 52 (5) The Commission has discretion to determine the nature and scope of participation by a member of the public in a hearing conducted under this Act. A decision of the Commission under this subsection is final and conclusive.</td>
<td>Certainty of Process</td>
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<td>70</td>
<td>Decisions final</td>
<td>The revisions are proposed to reflect the various different decision-makers under the CERA and to align with the privative clause proposed by ATCO in the Impact Assessment Act.</td>
<td>Amend subsection 70(1) as follows: 70 (1) Except as provided for in this Act, every decision or order of the Commission, a review panel, the Minister, the Governor in Council, a designated officer or an inspection officer is final and conclusive.</td>
<td>Certainty of Decision</td>
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<td>72</td>
<td>Appeal to Federal Court of Appeal</td>
<td>As with the Impact Assessment Act, the CERA does not provide appropriate discretion to the Commission to determine the nature and scope of public participation in a hearing. Without appropriate discretion, any decision by the Commission to exclude a party from participating in a hearing would be vulnerable to legal challenge. In order to ensure the Commission has appropriate discretion to determine its own processes, this should be clearly stated in the Act.</td>
<td>Amend subsection 72(1) as follows: 72 (1) An appeal from a decision or order of the Commission, a review panel, the Minister or the Governor in Council under this Act.</td>
<td>Certainty of Decision</td>
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Challenges to the courts should be narrowly focused on matters of law and jurisdiction and not create an opportunity to re-litigate matters of fact and the judgement that will have been applied reasonably by the Commission, a review panel, the Minister, or the Governor in Council.

Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

Amend subsection 72(4) as follows:

(4) The Regulator is entitled to be heard on an application for leave to appeal a decision of the Commission and at any stage of an appeal.

Add the following after subsection 72(6)

Notice of Appeal

(7) The filing of a notice of appeal under subsection 72(1) does not suspend the operation of a decision made under this Act.

<table>
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<tr>
<th>183(2)</th>
<th><strong>Factors to consider</strong></th>
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<tr>
<td>183(2) <strong>The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data — all considerations that appear to it to be relevant and directly related to the pipeline, including</strong></td>
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<td><strong>(a)</strong> the environmental effects, including any cumulative environmental effects;</td>
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<td><strong>(b)</strong> the safety and security of persons and the protection of property and the environment;</td>
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<td><strong>(c)</strong> the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;</td>
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<td><strong>(d)</strong> the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;</td>
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<td><strong>(e)</strong> the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;</td>
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<td><strong>(f)</strong> the availability of oil, gas or any other commodity to the pipeline;</td>
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<td>Project assessments are not the place to debate broader public policy issues. The lack of a proper forum to do so has plagued project assessments for over a decade.</td>
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<td>The Impact Assessment Act provides government with the powers to undertake strategic assessments and regional assessments that, if implemented properly, can be the forum needed to have a fulsome, nationwide discussion on public policy issues such as, among other things, climate change, intersection of sex and gender, and the definition of a Sustainability Framework.</td>
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<td>One critical outcome of a strategic assessment is to define a framework to assess whether an individual project is compliant with a given public policy objective. In this way, policy debates will not have to be repeated for every single project application.</td>
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<td>Amend subsection 183(2) as follows:</td>
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<td>183(2) <strong>The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data — all considerations that appear to it to be relevant and directly related to the pipeline, including</strong></td>
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<td><strong>(a)</strong> the environmental effects, including any cumulative environmental effects;</td>
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<td><strong>(c)</strong> the health, social and economic effects, including policy published by the Regulator with respect to the intersection of sex and gender with other identity factors;</td>
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<td><strong>(d)</strong> the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;</td>
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<td><strong>(f)</strong> the availability of oil, gas or any other commodity to the pipeline;</td>
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(g) the existence of actual or potential markets;
(h) the economic feasibility of the pipeline;
(i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
(j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;
(k) any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act; and
(l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

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

Add the following after subsection 183(2):

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

Delete section 188.

Certainty of Decision
(a) the application must be filed in the Registry of the Federal Court of Appeal within 15 days after the day on which the order is published in the Canada Gazette;  
(b) a judge of that Court may, for special reasons, allow an extended time for filing and serving the application or notice; and  
(c) a judge of that Court must dispose of the application without delay and in a summary way and, unless a judge of that Court directs otherwise, without personal appearance.

262(7) Extension

262(7) The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4).

In order to ensure greater certainty and predictability, there must be a reasonable limit on the extensions of time the Minister may grant to the maximum legislated time limit.

Amend subsection 262(7) as follows:

262(7) The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4), provided that in no case can the time limit in subsection (4) be extended beyond 550 days after the day on which the applicant has, in the Commission’s opinion, provided a complete application.

Certainty of Timelines

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| 7       | (1) If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.  
(9) The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to  
(a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or | References to changes to water flow and water levels as connected to interference with navigation is a fundamental change to regulation of navigation and could have significant consequences for proponents that operate, for example, water intakes. Further, jurisdiction over water flows and water levels arguably lies with the provinces. The inclusion of a power in subsection 7(9) for the Minister to attach terms and conditions to an approval in relation to water flows and water levels may conflict with provincial regulations or approvals, and should be removed. | Amend subsection 7(1) as follows:  
7 (1) If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.  
Amend subsection 7(9) as follows:  
(9) The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to | Jurisdiction |
| (b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister. | (a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or (b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister. |