Ecojustice Presentation to the Senate Committee on Energy, the Environment and Natural Resources with respect to Bill C-69

1. Introduction

Ecojustice appreciates the opportunity to discuss Bill C-69 with the Senate Standing Committee on Energy, the Environment and Natural Resources. This brief follows the appearance of Joshua Ginsberg, Ecojustice Lawyer and Director of Legislative Affairs, before the Committee on April 2, 2019. It elaborates on Mr. Ginsberg’s comments and provides additional detail on Ecojustice’s recommendations to further strengthen the bill, including draft amendments.

Ecojustice is a national environmental law charity. Since 1990, we have provided free legal services to Canadian conservation groups and other concerned citizens working to protect the environment. In this capacity, lawyers from Ecojustice appear across the country before courts and tribunals at every level. Lawyers from Ecojustice have frequently intervened in cases before the Supreme Court of Canada and the Federal Court of Canada dealing with the interpretation and application of federal environmental assessment law. We have also represented clients in reviews of the proposed Enbridge Northern Gateway and Kinder Morgan Trans Mountain Expansion projects, the Imperial Oil Kearl Oil Sands Mine and Shell Jackpine Mine Expansion projects, in litigation resulting from those assessments, and before the Trans Canada Energy East Pipeline NEB Panel. We have also worked on several occasions with the federal and provincial governments to reform environmental assessment laws.

Bill C-69 is not perfect. It falls short of delivering the comprehensive reform of Canada’s approach to environmental assessment that Ecojustice and other groups have advocated. However, the bill is a significant step towards a modern effective federal impact assessment process. We propose here, and in a brief prepared jointly with other environmental organizations, dated March 27, 2019, a select number of amendments that would strengthen the bill while preserving the balance it strikes.

Bill C-69 is built in part on the recommendations of the 2017 Report of the Expert Panel Review of Environmental Assessment Processes. The Expert Panel drew on the expert knowledge of federal and provincial environmental assessment practitioners, industry organizations, environmental organizations, Indigenous groups, organizations and communities, and academics.1 The Expert Panel heard from over 1,000 participants in in-person sessions and received more than 520 written submissions from Indigenous groups, individuals, academics,

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environmental groups, provinces, territories, municipalities, industry associations and companies.²

Bill C-69 did not fully meet the aspirations of any one group – not industry, not Indigenous communities and not environmental organizations. Yet, never before has a Canadian impact assessment process been based on such thorough consultation and on such wide-ranging expert knowledge. The result is a balanced, modern and credible federal impact assessment process.

Some industry groups and provincial governments have argued that Bill C-69 will create uncertainty and discourage investment. In fact, Bill C-69 does the opposite. It provides greater transparency and clarity as to the factors to be considered in approving or not approving a project. It provides for a better balance in the consideration environmental, health, social and economic impacts in determining if a project is in the public interest. It provides reasonable timelines for the assessment of complex projects. It considers project effects against an established framework of government policies aligned with the public interest.

2. **Bill C-69 considers environmental, health, social and economic impacts**

Both the 1992 version of the *Canadian Environmental Assessment Act* (“CEAA 1992”) and the *Canadian Environmental Assessment Act, 2012* (“CEAA 2012”) focused on identifying the significant adverse environmental impacts of a proposed project. The benefits of a project, economic or otherwise, were usually raised only in the context of the establishing the need for the project or determining that the significant adverse environmental effects of the project were “justified in the circumstances”. As recommended by the Expert Panel, the focus of impact assessment should shift from simply avoiding or minimizing significant adverse environmental effects to promoting projects that advance sustainability: net benefits to environmental, social, economic, health and cultural well-being.³

The purposes of the *Impact Assessment Act* (“IAA”) include protecting environmental, health, social and economic conditions from adverse effects.⁴ The purposes include ensuring that impact assessments take into account all effects, both positive and negative.⁵ The factors to be considered in the impact assessment reflect these purposes and include taking into account the changes to the environment, and to health, social or economic conditions, including the positive and negative consequences of those changes.⁶ A new independent Assessment Agency (“Agency”) or Review Panel prepares a report on each factor. Based on a consideration the report, the Minister or Governor in Council determines if a project is in the public interest and provides detailed reasons for that determination.⁷

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² Ibid.
³ Ibid, at 20.
⁴ 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*, 1st Sess, 42nd Parl, 2018, cl 1, para 6(1)(b), (as passes by the House of Commons 20 June 2018).
⁵ Ibid, cl 1, para 6(1)(c).
⁶ Ibid, cl 1, para 22(1)(a).
⁷ Ibid, cl 1, paras 63, 65(1).
Rather than simply focusing on the question of whether the significant adverse environmental effects of a project can be mitigated, and if not, if the impacts are justified in the circumstances, the IAA provides for a balanced, transparent and constructive approach to impact assessment and for a positive contribution to environmental, health, social and economic well-being.

**Recommended amendments:** In order to ensure that the Minister or Governor in Council is in the best position possible to make the public interest determination, the IAA should more clearly instruct the review panel or agency conducting the assessment to provide a recommendation on that determination, including their opinion on each of the factors for decision.

<table>
<thead>
<tr>
<th>Section</th>
<th>Suggested amendment</th>
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<tbody>
<tr>
<td>28(3)</td>
<td>The report must set out the effects that, in the Agency’s opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are adverse. It must also set out the Agency’s findings, conclusions or recommendations in relation to all factors listed in subsection 22(1) and all public interest considerations listed in subsection 63.</td>
</tr>
<tr>
<td>51(1)(iv)</td>
<td>sets out the review panel’s rationale, conclusions and recommendations in relation to all factors listed in subsection 22 and all public interest considerations listed in subsection 63, including conclusions and recommendations with respect to any mitigation measures and follow-up program;</td>
</tr>
</tbody>
</table>

3. **The timelines in the IAA are reasonable for complex projects**

Some industry groups and governments have expressed concern over the timelines for completion of the impact assessment and decision making under Bill C-69. For instance, the Canadian Association of Petroleum Producers has called for shortening certain time limits, requiring a decision within 730 days of the notice of commencement of the impact assessment, and removing the Governor in Council’s ability to extend the decision making period.8

The following Table 1 illustrates the legislated timelines under CEAA 2012 and the IAA, excluding the Planning Phase of the IAA. As Table 1 illustrates, the regulated timelines under the IAA, in all cases, are shorter than under CEAA 2012.

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8 Canadian Association of Petroleum Producers, “CAPP Senate Priority Areas Summary (Bill C-69) – Proposed Amendments”, (16 November 2018) at 9-10 [“CAPP”].
Table 1

<table>
<thead>
<tr>
<th></th>
<th>Decision to refer to a review panel</th>
<th>Complete assessment</th>
<th>Decision</th>
<th>Total (days)</th>
</tr>
</thead>
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<td><strong>CEAA 2012</strong></td>
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<td>n/a</td>
<td>365</td>
<td>365</td>
</tr>
<tr>
<td>Agency led review</td>
<td></td>
<td></td>
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<td>Review panel</td>
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<td>730</td>
<td></td>
<td>795</td>
</tr>
<tr>
<td>NEB jurisdiction</td>
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<td>455</td>
<td>90</td>
<td>545</td>
</tr>
<tr>
<td><strong>IAA</strong></td>
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<td>300</td>
<td>30</td>
<td>330</td>
</tr>
<tr>
<td>Agency led review</td>
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<tr>
<td>Review panel</td>
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<td>600</td>
<td>90</td>
<td>735</td>
</tr>
<tr>
<td>CER jurisdiction</td>
<td>45</td>
<td>300</td>
<td>90</td>
<td>435</td>
</tr>
</tbody>
</table>

Table 2 illustrates the legislated timelines under *CEAA 2012* and the *IAA*, including the 180-day Planning Phase of the *IAA*.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>Planning Phase</th>
<th>Decision to refer to a review panel</th>
<th>Complete assessment</th>
<th>Decision</th>
<th>Total (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CEAA 2012</strong></td>
<td></td>
<td>n/a</td>
<td>n/a</td>
<td>365</td>
<td>365</td>
</tr>
<tr>
<td>Agency led review</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Review panel</td>
<td></td>
<td>60</td>
<td>730</td>
<td></td>
<td>795</td>
</tr>
<tr>
<td>NEB jurisdiction</td>
<td></td>
<td></td>
<td>455</td>
<td>90</td>
<td>545</td>
</tr>
<tr>
<td><strong>IAA</strong></td>
<td></td>
<td>180</td>
<td>n/a</td>
<td>300</td>
<td>30</td>
</tr>
<tr>
<td>Agency led review</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review panel</td>
<td>180</td>
<td>45</td>
<td>600</td>
<td>90</td>
<td>915</td>
</tr>
<tr>
<td>CER jurisdiction</td>
<td>180</td>
<td>45</td>
<td>300</td>
<td>90</td>
<td>615</td>
</tr>
</tbody>
</table>

Even with the inclusion of the 180-day planning phase, the total regulated timelines are only slightly longer under the *IAA*. However, the 180-day planning phase covers some activities not accounted for in the *CEAA 2012* timelines and in fact may shorten some of the later stages of the impact assessment.

Most time delays in environmental assessment processes are incurred in the period during which the proponent is responding to requests for additional information by the review panel, Agency or Minister as the case may be. Under *CEAA 2012*, the time required for the proponent to
provide this information is excluded from the calculation of the time limits.\textsuperscript{9} Under the \textit{IAA}, the excluded time periods will be defined in regulations not yet issued.\textsuperscript{10} However, it is expected that the \textit{IAA} regulations will contain a similar exclusion of time while a proponent is responding to requests for additional information or studies. Therefore, under both the \textit{CEAA 2012} and the proposed \textit{IAA}, the time expended in the impact assessment process is largely controlled by the proponent and the effort made to respond to information requests in a timely manner.

Further, the 180-day planning phase under the \textit{IAA} may act to reduce delays later in the assessment process by ensuring that the proponent is fully aware of the issues and the information requirements early in the process.

The other source of delay in assessment processes occurs when the review panel requests additional time to complete their work. Under the \textit{IAA}, the Minister may extend the time limit by a maximum of 90 days and the Governor in Council may extend the time limit by an unlimited time.\textsuperscript{11} This is unchanged from the current \textit{CEAA 2012}. For example, in the recent Joint Review Panel hearings into the proposed Teck Frontier Oil Sands Mine, the Panel requested additional time to complete its report citing the scale and complexity of the project, the volume of evidence presented, and the regulatory agency’s work load with respect to other projects.\textsuperscript{12} Such requests reflect that the time allotted under either \textit{CEAA 2012} or the proposed \textit{IAA} may not be sufficient for a review panel to complete their reporting for complex projects.

In summary, delays in the completion of the environmental assessment of any project are normally not the result of timelines set within the governing statute, but are determined by the willingness and capacity of the proponent to provide required information in a timely manner and the capacity of the review panel to consider the available evidence. The timelines within the proposed \textit{IAA} are reasonable, are comparable to those under the \textit{CEAA 2012}, and are not an unreasonable barrier to timely project approval.

4. The \textit{IAA} does not re-open public policy debates

Some industry associations have recommended that factors such as climate change, the intersection of sex and gender, and the definition of sustainability be removed as factors to be considered in the impact assessment process.\textsuperscript{13} They argue that Bill C-69 opens up these issues to debate in the impact assessment process, and that a “proponent of a project expects the assessment to be focused on the project being reviewed and not a forum to debate public policy.”\textsuperscript{14} These arguments misinterpret the impact assessment process under the \textit{IAA}.

Section 22 of the \textit{IAA} provides that an impact assessment must take into account the extent to which the project contributes to sustainability, the extent to which the effects of the project hinders or contributes to Canada’s ability to meet its climate change commitments, and the

\textsuperscript{10} Bill C-69, \textit{supra} note 4, cl 1, para 37(6).
\textsuperscript{11} \textit{Ibid}, cl 1, s. 37(3)-(4).
\textsuperscript{13} CAPP, \textit{supra} note 8, at 3, 17.
\textsuperscript{14} \textit{Ibid}, at 3
effects of the project on the intersection of sex and gender.\textsuperscript{15} Section 63 of the \textit{IAA} repeats the effects on sustainability and on climate change commitments as factors to be considered in determining if a project is in the public interest.\textsuperscript{16} The \textit{IAA} does not open up any of those public policies to debate. The \textit{IAA} simply requires that the effects of the proposed project on the achievement of the objectives of those already existing policies be considered.

The Government of Canada already has an established policy on sustainability. Canada has had a Federal Sustainable Development Strategy since October 2010.\textsuperscript{17} The current Sustainable Development Strategy sets out the government’s priorities, goals, targets and actions with respect to sustainability.\textsuperscript{18} The \textit{IAA} does not open up the Federal Sustainable Development Strategy for debate. It simply requires that the potential effects of a proposed project on the achievement of that strategy be considered in the impact assessment.

The Government of Canada has ratified the Paris Agreement under the United Nations Framework Convention on Climate Change. Therefore, Canada has committed to the aim of holding global average temperature to well below 2°C above pre-industrial levels and to pursuing efforts to limit the increase to 1.5°C. To achieve those aims, Canada has committed, amongst other things, to aim to undertake rapid reductions in greenhouse gas emissions, to balance anthropogenic emissions and removals by sinks by the second half of the 21st century, to conserve sinks and reservoirs of greenhouse gases, and to enhance adaptive capacity to climate change. The \textit{IAA} does not open up those commitments for debate. It simply requires that the potential effects of a proposed project on the achievement of those commitments be considered in the impact assessment.

The Government of Canada has already committed to gender-based analysis across all government departments, policies, programs and legislation.\textsuperscript{19} The \textit{IAA} does not open up this policy for debate. It simply requires that the effects of a project on gender-based factors be considered in the impact assessment.

In summary, the \textit{IAA} does not open up any of Canada’s policies with respect to sustainability, climate change or gender equity for debate in the impact assessment process. There are other forums in which those policies can be debated, including in Parliament. The \textit{IAA} simply requires that the effects of proposed projects on the achievement of those existing national policy goals be considered in the impact assessment process. Concerns about debating public policies in the \textit{IAA} process are unfounded.

\textbf{Recommended amendments:} While the \textit{IAA} integrates sustainability and climate considerations in assessments of designated projects, it fails to do so for assessments of non-designated projects on federal lands. It is contrary to the \textit{IAA}’s purposes that federal reviews are subject to different

\textsuperscript{15} Bill C-69, \textit{supra} note 4, cl 1, para 22(1).
\textsuperscript{16} \textit{Ibid}, para 63.
considerations than designated projects – as currently drafted, reviews of federal projects are not “impact” assessments at all. Reviews by federal authorities should consider the full spectrum of criteria set out in section 22 of the IAA. If the federal authority determines that the project will have adverse impacts, the Governor in Council should determine whether those effects are in the public interest with reference to the same criteria used in assessments of designated projects.

In addition, federal assessments should capture not only projects on federal lands, but those with federal proponents or that are federally funded. Note that projects or classes of projects deemed to have insignificant effects may be exempted from assessment under section 88 – similar to the “exclusion list” under CEAA 1992. However, we recommend that such exclusions be made by the Minister to ensure cumulative effects of excluded projects are fully taken into account.

<table>
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<tr>
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<tbody>
<tr>
<td>81</td>
<td>project means &lt;br&gt; (a) a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project; and &lt;br&gt; (b) a physical activity that is designated under section 87 or that is part of a class of physical activities that is designated under that section; and &lt;br&gt; (c) a physical activity that is carried out in Canada not on federal lands for which a federal authority is a proponent or provides funding, and that is not a designated project (projet)</td>
</tr>
<tr>
<td>82</td>
<td>An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless &lt;br&gt; (a) taking into account the factors in subsection 22(1), the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or &lt;br&gt; (b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances in the public interest.</td>
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<tr>
<td>84</td>
<td>Can be deleted if the above amendment to s.82(a), requiring consideration of the section 22(1) factors, is adopted.</td>
</tr>
<tr>
<td>88(1)</td>
<td>An authority The Minister may designate a class of projects if, in its his or her opinion, the carrying out of a project that is a part of the class will cause only insignificant adverse environmental effects.</td>
</tr>
<tr>
<td>90(3)</td>
<td>When a matter has been referred to the Governor in Council, the Governor in Council must decide, taking into consideration the factors in subsection 63, whether the significant adverse environmental effects are justified in the circumstances in the public interest and must inform the authority of its decision.</td>
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</table>
5. The IAA is less discretionary and more transparent

Some provinces and industry groups expressed concern that Bill C-69 “introduces considerable discretion into decision-making […].”\textsuperscript{20} With respect, this is inaccurate. Bill C-69 does not expand the discretionary powers available to the Minister from what exists today under \textit{CEAA 2012} – and in fact, it imposes additional constraints on that discretion.

Under the IAA, the Minister will no longer have the authority to reject projects before an impact assessment is conducted. If the Minister is of the opinion that the designated project is likely to cause unacceptable environmental effects in an area of federal jurisdiction, or if the Minister has been informed by a federal authority that it will not issue a required permit or authorization, then the Minister must issue a notice to the proponent. The proponent can then decide whether it wants to proceed with the environmental assessment.

The power of the Minister to designate for assessment projects that do not appear in the “project list” remains unchanged from \textit{CEAA 2012}.\textsuperscript{21} Such flexibility is necessary to provide adequate oversight for projects that though not listed are particularly environmentally sensitive or attract overwhelming public interest that the regulatory permitting processes cannot address.

Under \textit{CEAA 2012}, responsible authorities are tasked with making a highly discretionary determination as to whether a project’s negative effects will be “significant.” Cabinet then decides, without being required to provide reasons, whether any such effects are “justified in the circumstances.”

In contrast, under the IAA, the decision-maker (either the Minister or Cabinet, as the case may be) must decide whether a project is in the public interest. The decision-maker’s discretion in making this determination is constrained by the requirement to consider five factors: (1) sustainability; (2) whether the project helps or hinders Canada’s ability to meet environmental obligations; (3) how negative any adverse effects actually are; (4) mitigation; and (5) effects on Indigenous rights. Far from introducing additional discretion, this new decision-making framework provides greater certainty and clarity about whether and how projects can be approved.

In addition, the IAA increases transparency and accountability by requiring the decision-maker to publicly explain its decision. Every decision made by the Minister or by Cabinet must be explained in an official Decision Statement posted on the Impact Assessment Agency’s website.

Finally, unlike \textit{CEAA 2012}, the IAA imposes deadlines on decisions following the receipt of an impact assessment report. The Minister has 30 days to decide on a project following receipt of a report, and Cabinet has 90 days. Although these deadlines can be extended for an additional period of up to 90 days, the Minister must provide a public explanation for any delay. This further increases transparency and accountability in comparison to \textit{CEAA 2012}.

\textsuperscript{20} Letter from the Council of Atlantic Premiers to The Honourable Justin Trudeau, dated February 27, 2019.

\textsuperscript{21} See \textit{CEAA 2012}, section 14(2).
Strangely, while industry associations complain that the IAA is too discretionary, they are urging the Senate to adopt amendments that actually expand discretion. These amendments undermine the purpose of the bill, are contrary to settled law, and should be rejected.

The Canadian Association of Petroleum Producers wants to add discretion for the Agency to determine “the scope of the designated project…that will be subject to the impact assessment” and “the factors under subsection 22(1) that…will be taken into account in the impact assessment of the designated project”.\(^2\) However, permitting responsible authorities to define the scope of the project in a manner that is different from the project as proposed risks allowing important issues to go un-assessed and opens the door to litigation. The Supreme Court has decided that term “project” as used in CEAA 1992 meant “project as proposed” and not “project as scoped”, and held that assessing a project based only on its scoped content was unlawful.\(^\)\(^3\) This is why CEAA 2012 eliminated references to the scoping of projects and spoke only of the scoping of factors. The IAA preserves this important distinction.

Similarly, the proposed discretion to eliminate entire factors from consideration risks ignoring important subjects that may only be revealed as relevant as the assessment progresses. As in CEAA 2012, the Minister (or the Agency where applicable) determines the scope of the factors to be taken into account.\(^\)\(^4\) This project-specific guidance tailors the review to the circumstances of the project without eliminating any factor entirely.

**Recommended amendments:** While decision making under the IAA is less discretionary than CEAA 2012, there are two areas of the bill in which discretion could be further reduced:

1. **Assess all major projects under federal jurisdiction**

The IAA is meant to review a select number of the thousands of projects carried out in Canada. Only those projects with the “most potential for adverse effects in an area of federal jurisdiction”\(^2\) will be designated on the “project list” as subject to assessment under the Act. However, the IAA grants the Agency and Minister wide discretion to allow even those select few projects to go un-assessed. Taking a precautionary approach, a designated project should always trigger an impact assessment unless it becomes clear that it does not implicate federal jurisdiction.

Section 16 currently allows the agency to determine that an impact assessment of a designated project is not required, based on any factors it considers relevant. If a project is potentially impactful enough to warrant being on the Project List, then the impact assessment should not be optional. The section should be amended to allow the Agency to determine that an assessment is not required only if it determines that there is no potential for impacts on areas within federal jurisdiction.

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\(^2\) CAPP, supra note 8, a p. 1  
\(^3\) MiningWatch Canada v. Canada (Fisheries and Oceans), [2010] 1 SCR 6 at para. 34.  
\(^4\) CEAA 2012 s 19(2), IAA s. 22(2).  
2. Facilitate regional and strategic assessments

Regional and strategic assessments are intended to give clear directions to the public and industry on what is and is not acceptable in future project-specific assessments. This will reduce the controversies that occur at the project level, where specific projects are often used as surrogates for broader policy concerns. Unfortunately, the IAA does not specify what criteria will be used in the assessments and does little to ensure that they will actually be conducted.

A House of Commons amendment moved in the right direction by requiring the Minister’s Advisory Council to provide advice with respect to regional and strategic assessments “to be given priority”. To ensure the assessments actually occur, the IAA should require the Minister to identify and list those regions and subjects assessments for which regional and strategic assessment will be carried out, and specify the timeframe in which such assessments will be completed. The assessments should be based on the same criteria (including sustainability, climate, etc.) as other assessments under the IAA.

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<table>
<thead>
<tr>
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| 16(2) Factors | In making its decision, the Agency shall only decide that an impact assessment of the designated project is not required if it determines that there is no potential for adverse impacts on areas within federal jurisdiction, must take into account the following factors:  
(a) the description referred to in section 10 and any notice referred to in section 15;  
(b) the possibility that the carrying out of the designated project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects;  
(c) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;  
(d) any comments received within the time period specified by the Agency from the public and from any jurisdiction or Indigenous group that is consulted under section 12;  
(e) any relevant assessment referred to in section 92, 93 or 95;  
(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 |
| 97(2) | When conducting an assessment referred to in section 92, 93 or 95, the Agency or committee, as the case may be, must take into account any scientific information and Indigenous knowledge provided with respect to the assessment, and the factors in subsections 22(1) and 63. |

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26 IAA section 118.
6. Conclusion

Bill C-69 brings a transparent, balanced and effective approach to impact assessment in Canada. It has been built thorough consultation and on wide-ranging expert knowledge. It provides for a balanced consideration of environmental, health, social and economic factors. It provides reasonable timelines for the assessment of complex projects. It ensures alignment with established public policies in the public interest. We urge the Committee to consider our suggestions to further strengthen Bill C-69 and to recommend timely passage of this important legislation.

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27 This amendment is based on an existing provision in the Canadian Environmental Protection Act, 1999, SC 1999, c 33, s.76 (1).