An Uneasy Compromise: The Modest Step Forward of Bill C-69

The Consumers Association of Canada (Manitoba) Inc. (CAC Manitoba)¹

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¹ With assistance of Byron Williams, Director, Public Interest Law Centre and Dr Patricia Fitpatrick, University of Winnipeg
An Evidence Based Voice for a Healthy Environment

- CAC Manitoba founded in 1947

- Consumers have a responsibility to use critical thinking to determine the environmental, economic, social and cultural impacts of product production

- Participated in numerous impact assessments

- Guided by Manitoba consumers, evidence and consumer rights to:
  - a healthy environment now and in the future;
  - a role in making government policies for the marketplace;
  - protection against goods or services that are harmful to our families.

- CAC Manitoba Advisors:
  - at least 10 major provincial and federal assessments involving over $30 Billion in proposed projects;
  - on behalf of western organizations such as CAC Manitoba as well as Indigenous organizations.

2 Patricia Fitzpatrick and Byron Williams.
3 Bipole III Transmission Line for CAC MB ($4.7 B), Enbridge Line 3 Pipeline ($5.3 B), Keeyask ($8.7 B), Wuskwatim ($1.8 B) and Conawapa ($10.5B) Hydro Generation Projects. All but Conawapa have undergone impact assessment and received approval. Conawapa was screened out in a Manitoba Needs for and Alternatives process. Dr. Fitzpatrick has published numerous peer reviewed articles, book chapters and reports on related areas.
4 Team members also participated extensively in legislative reviews undertaken by Canada regarding impact assessment, navigable waters, fisheries and NEB in various capacities and Mr. Williams serves as an alternate on the Multi-Interest Advisory Committee to CEAA.
While 2012 Federal Legislation Has Undermined Public Confidence and Effective Stewardship

Kinder Morgan pipeline review by NEB loses 35 participants over “flawed” process

Court Overturns Kinder Morgan Pipeline Approval; Project Future Questioned

There have been useful Provincial Learnings (not all successes)

- presentation of environmental impact statements from Indigenous World views (Keeyask 2013-14)
- attempted (a flawed) Regional Cumulative Effects Assessment to assess the cumulative effects of Hydro upon the people, land and waters of the Nelson River watershed (2013 BP III, 2018 RCEA)
- adoption of innovative monitoring tools including involvement of First Nations in post project monitoring (Keeyask 2014);
- employment of a sustainability based assessment (by CAC Manitoba) (Keeyask 2013-14, Hydro NFAT 2014)
- first Canadian jurisdiction to require post hoc analysis of 2 major projects (Bipole III and Keeyask) – to determine if the assessment was accurate; and
- mothballing of the high risk, $10.5 Billion Conawapa generating station after need for and alternative analysis demonstrated that market forces made it untenable.

5 Note the comments of the Premier of Alberta suggesting that CEAA 2012 is “broken, misguided and damaging” and the Premier of Newfoundland and Labrador that “the status quo is not acceptable,” and that “CEAA 2012 is not working”. February 28, 2019: https://sencanada.ca/en/Content/Sen/Committee/421/ENEV/54580-e.
8 Manitoba is one of a small number of jurisdictions requiring proponents to maintain websites, publically release monitoring reports and have project oversight committees (Keeyask and MMTP licenses).
9 The recommendation to stop working on the project flowed from a Need for and Alternatives Review (2014) rather than an impact assessment highlighting the importance of looking at alternatives.
Our Learning from our Experience

- **Meaningful Early Engagement Matters** - Early and meaningful public engagement, helps reasonable projects become better and makes their approval less contentious while providing early warning of unreasonable or highly risky projects;

- **Social and Economic Impacts are always in play – whether we acknowledge it or not** - The real question is whether they will be addressed transparently and with evidence as proposed in Bill C 69 or politically and behind closed doors;

- **If we ignore cumulative effects - we miss the point** – Good assessment decisions cannot be made in isolation. They require a better understanding of the health of the region in question. That assessment is difficult or impossible for proponents;

- **Innovation requires different perspectives** – What we are doing is not working. Innovation requires opening the door to different perspectives and alternatives;

- **Monitoring matters** - Without open transparent monitoring data, and community involvement in oversight, we can never understand the impact of development or test the accuracy of our predictions;

- **Process Fragmentation and the Absence of Federal Leadership** is stifling environmental learning and undermining public confidence.
Promising Elements of Bill C-69 – Engagement - Transparency - Different Perspectives

- **Extensive public engagement**\(^{10}\) - sent a clear message that 2012 legislation had failed;

- **Transparent recognition that a critical purpose of impact assessment is sustainability** - to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health;\(^{11}\)

- **Early planning involving the Agency and enabling meaningful public participation** - may foster improved public engagement, real consideration of alternatives, more effective design of processes and improved public confidence;\(^{12}\)

- **Transparent guidance for decision makers, participants and the public** – express factors for consideration, express public interest criteria and detailed reasons;\(^{13}\)

- **Facilitating Innovation and Various Perspectives** - consideration of science, Indigenous knowledge and issues relating to the intersection of sex and gender;\(^{14}\)

- **Recognizing that the building blocks of sustainable decision making are regional and strategic cumulative effects assessment** - may lead to more effective processes and improved public confidence;\(^{15}\)

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11 *Impact Assessment Act (IAA)*, s. 2, 6(1)(a), 22(1)(a) (h), 63(a).

12 IAA, s. 10 -15. It is strongly arguable that strict adherence to a 180 day period runs the risk of leaving important early plans uncompleted.

13 IAA, s. 22, 63, 65.

14 IAA, s. s. 6(1)(j), 22 (1)(c)(g)(q)(r)(s).

15 IAA, s. 93 – 103.
Some Concerns with Bill C-69

1. **MANY OF THE MOST COUNTER-PRODUCTIVE ELEMENTS**\(^{16}\) OF THE 2012 CHANGES REMAIN

[TH]e Impact Assessment Act is fundamentally built on CEAA 2012, using the same architecture. CEAA 2012 itself was a very significant departure from previous environmental assessment legislation but Bill C-69 is not.\(^ {17}\)

2. **THERE IS NO REQUIREMENT TO PUBLISH MONITORING RESULTS**

3. **WILL LEGISLATION PROTECT MANITOBA WATERS?**\(^ {18}\)

The Kischi Sipi translates to English as the great river, and is more commonly known today as the Nelson River. . . . The destruction of a vibrant sustenance sturgeon fishery downstream from GullRapids to the former Kettle Rapids, and from there to Limestone Rapids. The uncontrolled hunting and fishing by three decades of construction workers contributing to the near extirpation of brook trout and sturgeon from a number of local rivers and streams. . . . These are but a few examples of the cumulative impacts that are concentrated in the small geographic area that is Fox Lake’s homeland. To date these remain largely unmonitored, unmitigated, and un-rehabilitated.\(^ {19}\)

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16 The 2012 changes fundamentally weakens the ability to address cumulative effects by focusing on major projects. Notwithstanding the loss of public confidence in the NEB appears to have made only modest efforts to modernize it other than reducing its role in impact assessment reviews panels.


18 The Canadian Navigable Waters Act (CNWA) leaves significant gaps in protection. The factors for consideration in whether to issue an approval for a work under s. 7 do not include the environment. By virtue of the interaction between s. 2 of the CNWA and s. 220 and 269 of the Canadian Energy Regulators Act, pipelines and transmission lines do not appear to be recognized as works.

19 Leslie Agger, Manitoba CEC Hearing regarding the Bipole III Transmission Line, Vol 19, p. 3936-37 (emphasis added), These concerns extend to the Churchill, Burntwood and Saskatchewan Rivers.
Four Recommendations

1) Define “meaningful public participation” in section 2 of the Impact Assessment Act

   Meaningful public participation establishes the needs, values, and concerns of the public, provides a genuine opportunity to influence decisions, and uses multiple and customized methods of engagement that promote and sustain fair and open two-way dialogue.20

2) Oblige proponents to make monitoring reports publicly available and accessible by establishing a duty under the Act

3) Oblige the Minister to develop priority lists for Regional and Strategic Assessment

   97.1

   The Minister shall compile and may amend from time to time a list, to be known as the Priority Regional and Strategic Assessment List, and the List shall specify the regions or subject matter in respect of which the Minister is satisfied priority should be given in conducting regional or strategic assessments, and the timeframe in which such assessments must be completed.21

4) Pass Bill C-69 as amended above

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21 Ecojustice Presentation to the Senate Committee on Energy, the Environment and Natural Resources with respect to Bill C-69, (April 201