Submission of Heather M. Fast\(^1\) to the Senate of Canada Standing Committee on Energy, the Environment and Natural Resources

April 12, 2019

Honourable Senators,

Thank you for this opportunity to provide comments on Bill C-69. This Bill, along with Bill C-68, represents an important step forward for federal environmental regulation. Thus, I felt it was important to voice my support for these regulatory improvements to help you understand why it is important that Bill C-69 is passed without the significant amendments being called for by industry that would serve to weaken the regulatory amendments and new legislation proposed. Although there are many positive elements of Bill C-69, my comments focus on the proposed Impact Assessment Act (IAA) and its potential to reform the federal impact assessment process.

It was discouraging to be denied the opportunity to present in person during the Committee’s visit to Winnipeg. As a lawyer, academic and professor of environmental law, I am better equipped than many of my millennial peers to provide a voice for the generations that will ultimately bear the environmental consequences of the decisions made today. Bill C-69, although not perfect, is a symbol of hope, an indication that there has been recognition of the importance of strengthening Canada’s environmental laws to ensure government decisions, such as the approval of natural resource developments, are made with our future in mind. We are running out of time to make the changes necessary to ensure my generation and those that will come after us have a future that involves enjoyment of a healthy environment and access to the natural resources current and future Canadians need to survive. It is well past time for you, Honourable Senators, to recognize how terrified my generation is that those with your level of influence and power have already squandered Canadian environmental resources by focusing on short term economic gains instead of the long term condition of the planet that will determine what, if any, future we may have.

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Impact assessment has an important role in the development and approval of projects in Canada. However, there has been a troubling lack of regulatory progress in many Canadian jurisdictions which has resulted in a national framework of impact assessment legislation that is inconsistent, outdated and often lacking consideration of cumulative, climate, and socio-economic impacts. There is also often a lack of meaningful public participation opportunities and a failure to consider the full scope of impacts experienced by affected Indigenous communities.

There is a need for leadership at the federal level to send a clear message with the passage of Bill C-69, in its current form, that the will of the public electorate should be respected, and environmental regulatory protections, such as the impact assessment process, be strengthened, not weakened. There is a pressing need to enact a more robust federal impact assessment process so that a broader range of environmental issues, like climate change, can be better assessed and addressed by government decision-makers.

By setting a higher regulatory standard for impact assessment and project approvals at the federal level, a clear message will also be sent to legislators in other Canadian jurisdictions, like Manitoba, that there is a need for positive change. Despite considerable efforts on the part of Manitoban ENGOs, academics and legal organizations like the Public Interest Law Centre and the Manitoba Law Reform Commission\(^2\), there has been a failure to update Manitoba’s provincial environmental assessment process under *The Environment Act*\(^3\) leaving it substantially the same since its enactment thirty years ago. This has resulted in a significant degradation of public trust in the provincial environmental assessment process as Manitobans have been forced to rely on an outdated regulatory framework to protect their environmental interests. The actions of our current provincial government to erode Manitoba’s environmental legal protections in the name of “red tape”\(^4\) or “green tape”\(^5\) reduction is even more troubling as Manitobans now face a possible environmental regulatory devolution. The enactment of Bill C-69 in its current form will


\(^3\) SM 1987-88, c. 26

\(^4\) See, for example, *The Red Tape Reduction and Government Efficiency Act, 2017* S.M. 2017, c. 34.

show those of us fighting for positive change that our voices have been heard and are supported by at least one level of Canadian government.

The purpose of this submission is not to add to the already robust analysis of Bill C-69 and its potential implications, including the perceived weaknesses and recommendations for improvement of Bill C-69 and the new IAA submitted by many of my learned colleagues. While it is important the Senate considers such recommendations, my focus is on the identification of positive elements of the Bill that will contribute to the improvement of the federal impact assessment process and should be emulated in corresponding provincial legislation.

- **Public participation** – in terms of improving public participation, one of the most significant elements of the proposed IAA is the lack of legislative restriction on public participation. Although critics of the new open standing approach have suggested there is potential for the IAA process to be overwhelmed by the participation of those who are not “directly affected”, there is no evidence that an open standing approach, which we have here in Manitoba, actually creates this problem. There are many other barriers, such as costs, capacity and timing that will continue to limit the ability of individuals and organizations to participate in impact assessment processes.

- **Transparency and decision-making** – the proposed s. 63 public interest factors contained in the IAA represent an improvement in the transparency of government decision-making. Although the “public interest” is often referred to in environmental legislation as the basis of important decisions, there is often no indication of the factors considered by decision-makers in such situations. By identifying the factors to be considered in s. 63 of the IAA when a public interest determination is to be made and requiring the publication of a report identifying how such factors were considered by the decision-maker, a significant improvement to the transparency of decision-making within the federal impact assessment process will occur. For the growing number of millennials who have lost faith in the government’s representation of our interests, this improvement in transparency will provide much needed insight into the exercise of environmental decision-making powers.

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6 For example, please see the submissions and presentation materials of Dr. John Sinclair and Dr. Meinhard Doelle; Dr. Patricia Fitzpatrick; Dr. Robert Gibson; Anna Johnston, West Coast Environmental Law; and Byron Williams, Public Interest Law Centre on behalf of the Consumers Association of Canada (Manitoba Branch).
• **Consideration of a broader scope of impacts** – the IAA also contains positive changes in relation to the existing scope of factors considered during federal assessment processes which, if enacted, will expand the range of impacts considered in the federal impact assessment process. Legislated requirements to consider a broader scope of effects and factors in the IAA process, such as cumulative effects, impacts on federal climate change obligations and commitments, social and economic impacts, and impacts on Indigenous interests will serve to improve both the transparency of decision-making powers and accountability of the decision-makers themselves. More importantly, the expansion of the scope of impacts considered during the assessment process will allow for a more robust assessment of proposed projects and enable decision-makers to make environmental decisions in a way that is more reflective of the interests of current and future generations of Canadians and the Indigenous peoples who so often disproportionately bear the negative consequences of natural resource developments. When impact assessment processes do not adequately consider the full range of a project’s potential impacts, such as health and social factors, there can be severe consequences for the citizens and communities involved.7

The new impact assessment process set out in Bill C-69, although imperfect, is still a positive step forward in the development of Canadian environmental regulatory protections. The proposed IAA better recognizes the importance of pre-planning, democratic decision-making, meaningful public participation and the consideration of Indigenous interests. The IAA also better addresses the complexity of impact assessment and the need to consider a broader range of impacts in order to ensure the full scope of a project’s potential impacts are understood and considered by decision-makers before an approval is granted. If amendments are to be made to Bill C-69, they should be based on the recommendations of the ENGOs, environmental academics and legal practitioners who have provided numerous suggestions that would strengthen federal environmental regulatory protections, not weaken them.

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The passage of Bill C-69, in its current form, will send a message to Canadians that the interests of my generation and those that will come after us matter. We are the future and the Canada we will inherit is dependent on the decisions you make today. By enacting higher regulatory standards at the federal level for the approval of projects with detrimental consequences, environmental and otherwise, you have an opportunity to leave a legacy that will move Canada in a more sustainable direction and assure my generation that our future matters. By passing Bill C-69 without substantial amendment, you have a chance to make a difference and contribute to a sustainable shift in Canadian society that will influence positive change at all levels of government. Some may argue that “livelihoods are at stake”, but more importantly, the future of my generation and those Canadians that will come after us is at stake. What legacy will your generation choose to leave?

Sincerely,

Heather M. Fast, B.A., J.D., LL.M.