

Canada's Proposed New *Impact Assessment Act*

Good from afar, but far from good?

Anna Johnston

Staff Counsel | West Coast Environmental Law

ajohnston@wcel.org
www.wcel.org

What I Will Discuss

1. The mandate
2. *Impact Assessment Act* overview – main shifts
3. The *IAA* in reality – does it achieve its goals?
4. Key barriers
5. Amendments to align the *IAA* with the Minister's mandate



Minister McKenna's Mandate

Review Canada's assessment processes and introduce new, fair processes to:

- Regain public trust
- Get resources to market
- Restore robust oversight and thorough EAs
- Work with provinces and territories
- Ensure decisions are based on science, facts, and evidence, and serve the public's interest
- Provide ways for Canadians to meaningfully participate

“It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.” (*Prime Minister Trudeau*)

Impact Assessment Act Overview

Main Shifts

- Sustainability as a core objective
- Assess all major projects within federal jurisdiction
- Plan assessments early
- Base decisions on science and Indigenous knowledge
- Enable meaningful participation
- Transparency and accountability
- “One project, one review”
- Recognize Indigenous rights

The *IAA* in reality

What gets assessed

- Bill C-69 keeps “project list” regulation approach
- Focus is on projects with “the most potential for adverse environmental effects”
- Criteria for what becomes “designated project” on Project List:
 - Federal jurisdiction
 - Nature of effects (magnitude, geographical extent, timing, frequency, duration, reversibility)
- Minister may designate projects
- BUT “designated projects” do not require IA – Agency decides
- Takeaway: real risk for cumulative impacts to go unaddressed and untracked

The IA in reality

Assessment planning phase

- Purpose: Engage jurisdictions, public & stakeholders early, before assessments commence
- Process:
 - Begins with proponent's submission of basic project description
 - Public and Provincial/Indigenous engagement
 - Plan the assessment (scope, conduct of assessment, alternatives, public participation, etc)
- Noteworthy: Minister may reject project if it would cause “unacceptable effects”
- Shortcomings:
 - No prescribed outcomes beyond project description
 - Risk that it will become screening process for deciding no IA required

The IA in reality

Decisions based on science and IK

- ***“Whereas... impact assessments provide an effective means of integrating scientific information and the traditional knowledge of the Indigenous peoples of Canada...”***
- Planning phase likely to help ID necessary info and who should provide that info
- BUT “integration” risks assimilation and subsumation
- BUT proponent-led model continued, with little legislated reassurances that information will be sound
- BUT IAs must only “take into account” science and IK – what else can decisions consider?
- Takeaway: Much is left to guidance and policy

The /AA in reality

Meaningful public participation

- *Whereas the Government of Canada recognizes the importance of public participation in the impact assessment process...*
- Standing test removed
- Engagement begins earlier, in planning phase
- BUT no definition of “meaningful”
- BUT “meaningful” is absent from much of the Act (e.g., “*The Agency must ensure that the public is provided with an opportunity to participate*”)
- Takeaway: How and when the public is allowed to engage is largely left to guidance

The IAA in reality

Transparency and accountability

- *Whereas the Government of Canada... is committed to **providing Canadians with the information they need** in order to be able to participate in a meaningful way... [and] **the public should have access to the reasons** on which decisions... are based"*
- IAA continues the Agency's registry and internet site
- BUT information required to be posted only includes summaries – public must ask for full data
- Minister must provide detailed reasons for decision
- BUT does not need to justify public interest determination, or trade-offs
- Takeaway: Much is left to Ministerial and Agency discretion

The /AA in reality

“One project, one review

- *Whereas the Government of Canada recognizes the importance of cooperating with jurisdictions...”*
- Agency is responsible for all assessments (NEB and CNSC members now appointed to Agency-led review panels)
- Purpose: promote cooperation w/ provincial & Indigenous jurisdictions
- BUT main focus of C-69 appears to be substitution
- BUT no requirement that substituted process adhere to IA Act standards, or provide access to all information
- BUT no requirement that collaboration be primary goal
- Takeaway: No assurance that collaboration will be the primary vehicle

The /AA in reality

Indigenous governance, collaboration and rights

- *Whereas the Government of Canada is committed to **ensuring respect for the rights of the Indigenous peoples of Canada... and to fostering reconciliation and working in partnership with them***
- Purpose: promote cooperation and respect Indigenous rights
- Requires consideration of Indigenous rights at various stages
- Agency must consult with Indigenous peoples in planning phase
- BUT fails to mention UNDRIP, or “consent”
- BUT “Indigenous peoples” narrowly defined
- BUT no requirement that gov’t collaborate w/ Indigenous peoples
- Takeaway: Little assurance of real respect for Indigenous authority

Key Barriers to Achieving Change

1. Vast discretion in the IA Act
2. Institutional inertia
3. Decision-making that follows the opaque *status quo*



Recommended amendment areas

Ensuring the IA Act lives up to its promise

- Ensure all federally-regulated projects are registered, and all designated projects are assessed
- Prescribe outcomes of planning phase
- Require assessments be *based on* science and IK, ensure both are mutually respected, and facilitate peer-review
- Greater requirements for meaningful public participation
- Require decisions to justify public interest determination and trade-offs
- Focus on collaboration, not substitution, and heighten standards for substitution
- Enable, encourage and facilitate co-governance with Indigenous peoples at all levels of assessment
- “Future proof” the Act by tightening up discretion



WEST COAST
Environmental Law

Thank you

Blog on IA Act: www.wcel.org/blog/canadas-proposed-new-impact-assessment-act-good-a-far-far-good

Anna Johnston

Staff Counsel | West Coast Environmental Law

ajohnston@wcel.org
www.wcel.org