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Canada Resets Federal Environmental Assessment for Major Project Reviews

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In 2016, the Canadian government launched a formal review of key federal environmental assessment and regulatory processes. Expert panels were established and parliamentary committees engaged to conduct consultations and provide recommendations with respect to the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the *Fisheries Act* and the *Navigation Protection Act*, and energy regulation by the National Energy Board (for further details see our [bulletin](#)).

This week, the government tabled sweeping legislative changes to enhance key federal environmental protections and clarify the federal environmental assessment process for major projects. In addition to proposed amendments to the *Fisheries Act* and the *Navigation Protection Act*, the government has proposed the enactment of the *Impact Assessment Act* (IAA) to replace CEAA 2012 and the *Canadian Energy Regulator Act* to restructure the National Energy Board.

As expected, the proposed IAA would shift away from environmental assessment to an expanded impact assessment (IA) regime, which would account for a broader range of environmental, health, social and economic effects of major projects. Relevant factors to be considered would include impact on any Indigenous group and its rights, traditional knowledge of such groups and any assessment of effects by any Indigenous governing body.

The IA process would be centralized under a single agency, the Impact Assessment Agency of Canada (IAAC), which would work with the proposed Canadian Energy Regulator, the Canadian Nuclear Safety Commission and Offshore Boards to ensure that safety and other key regulatory factors are considered part of an integrated IA review. The IAAC would also coordinate an early “planning phase” and engagement process with Indigenous peoples and the public that may, if not properly resourced, present timing challenges to proponents.

The most significant change in the proposed IAA would be the shift away from decisions based solely on the significance of adverse environmental effects to focus on whether the designated project’s adverse effects are in the “public interest.” This public interest test would require consideration of, among other things, the designated project’s contribution to sustainability, the extent of the adverse effects, the appropriateness of the proposed mitigation measures and the ability of the government to meet its climate change commitments.

As part of this legislative process, the Canadian Environmental Assessment Agency is also seeking public comment by April 15, 2018, on two key proposed regulations under the IAA:

- a revised “Project List” to identify the major projects to be subject to the IAA. A proposed “criteria-based” approach would revise and periodically update the existing Project List to ensure inclusion of projects with the greatest potential to cause adverse effects in areas of federal jurisdiction; and
- the *Proposed Information and Time Management Regulations* to replace the existing regulatory requirements for the description of a designated project (i.e., the information that a proponent is required to provide at the early planning phase to allow Indigenous groups and the public to consider whether they may be affected). The proposed regulations would also outline the criteria for stopping the clock for the statutory timelines.

While the Canadian government states that the IAA would lead to more timely and predictable project reviews and encourage investment in Canada's natural resources sectors, it remains to be seen whether the proposed IA regime will help to get major projects across the finish line. We will be following the legislative process closely. With considerable public, Indigenous and economic pressures at play, the future of major project development in Canada requires a clear path forward.

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