

Sweeping Reforms Proposed to Federal Assessments, Energy and Waterway Regulation

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The federal Government of Canada has proposed significant reforms to federal regulatory regimes respecting the environment, federally regulated major projects in Canada and the regulation of waterways. Introduced on February 6 and 8, 2018, Bills C-68 and C-69, respectively, propose to replace the *Canadian Environmental Assessment Act, 2012* with a new *Impact Assessment Act*, replace the *National Energy Board Act* with the *Canadian Energy Regulator Act*, and also propose significant changes to the *Fisheries Act* and the *Navigation Protection Act*.

Introduction of New *Impact Assessment Act* and Impact Assessment Agency

Under Bill C-69, the new *Impact Assessment Act* will replace the *Canadian Environmental Assessment Act, 2012*, creating a new process for the assessment of impacts caused by specific federally regulated projects. The legislation is aimed at broadening project reviews from an environmental focus to an assessment that includes a broader focus on sustainability, enhanced transparency, increased public participation and more requirements for consultation of Indigenous peoples. A broader consideration of impacts will also be considered in the assessment process, including impacts on health, society, gender, climate change, jobs and the economy.

The Impact Assessment Agency will replace the Canadian Environmental Assessment Agency as the new authority responsible for leading all federal reviews of major projects, working with other federal bodies and in connection with provinces and territories and Indigenous jurisdictions. However, all final decisions to approve a federally designated project will be made by the Minister of the Environment or the federal Cabinet.

As proposed, the *Impact Assessment Act* will only require impact assessments for specific designated projects. However, it has not yet been determined whether the list of designated projects will be amended from the list under the current regulations to the *Canadian Environmental Assessment Act*. The federal government has initiated consultation to consider which projects should be designated under this new regime.

Introduction of New *Canadian Energy Regulator Act* and Canadian Energy Regulator

The existing *National Energy Board Act* will be replaced with the *Canadian Energy Regulator Act*. Under this

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new regime, the National Energy Board will be replaced by the Canadian Energy Regulator, which will be responsible for conducting consultations with groups affected by development and providing for the regulation of pipelines, international and interprovincial power lines, offshore renewable energy projects and offshore power lines. The Canadian Energy Regulator will also regulate the traffic, tolls and tariffs relating to the transmission of oil or gas through pipelines. Unlike the National Energy Board, while responsible for regulating energy projects within federal jurisdiction, the Canadian Energy Regulator will not have the authority to approve new major projects. This authority belongs to the Minister of the Environment or the federal Cabinet, as noted above.

Proposed Changes to the *Fisheries Act*

Bill C-68 contains proposed changes to the *Fisheries Act* which, amongst other changes, require comprehension protection against harming all fish and fish habitat, including the reinstatement of the “HADD” (harmful alteration, disruption or destruction of fish habitat) threshold for requiring federal approval for in-stream works. More generally, Bill C-68 proposes to give the federal government greater powers to protect fish and fish habitats and to pass regulations to regulate activities that could potentially harm fish and fisheries.

Federal authorization will also be required for any activities that may cause the death of fish. Additionally, Bill C-68 proposes to add federal approval requirements for certain designated works or for works that take place in a designated “ecologically significant area.” While in some case certain types of activities may proceed without federal approval so long as they comply with new codes of practice proposed under Bill C-68, the full extent of this exception remains unknown.

Furthermore, when making decisions under the *Fisheries Act*, the responsible Minister must also consider any adverse effects on Indigenous peoples.

Introduction of *Canadian Navigable Waters Act*

Bill C-69 also proposes to rename the *Navigation Protection Act* the *Canadian Navigable Waters Act*. Though there will not be changes to the schedule which dictates what bodies are considered navigable waters, a process will be created to allow the public to file comments related to any works in public water bodies. These comments could result in additional approval being required for projects, even if not in a “navigable water.” Additional protections are also proposed for waterways significant to Indigenous peoples and for those projects that may interfere with navigation.

Please contact Melissa Winch or any other member of the Cassels Municipal, Planning & Environmental Group for further information.

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