



## **Submission to the Standing Senate Committee on Energy, the Environment and Natural Resources Concerning Bill C-69, Part 1 – Impact Assessment Act**

23 April 2019

On behalf of the East Coast Environmental Law Association and the Ecology Action Centre, we are writing to provide our comments and recommendations to the Standing Senate Committee in relation to the *Impact Assessment Act (IAA)* in Part 1 of Bill C-69, as passed by the House of Commons on June 20, 2018.

The East Coast Environmental Law Association established in 2007 as a non-profit organization, responds to community inquiries, carries out legal and policy research and presents educational resources and opportunities to increase public awareness of environmental laws in Atlantic Canada. Our objective is to build capacity in the public and among legal practitioners so that we can work together to ensure that environmental laws are effectively used and strengthened. Our staff have participated in several federal and provincial environmental impact assessments in the Atlantic region including the Whites Point Quarry and Marine Terminal Joint Panel Review, the Fundy Tidal Energy Strategic EIA, the Emera Brunswick Pipeline Project and the Energy East Pipeline Project.

The Ecology Action Centre is an environmental charity based in Nova Scotia. We take leadership on critical environmental issues from biodiversity protection to climate change to environmental justice. We work to catalyze change through policy advocacy, community development and building awareness. We take a holistic approach to the environment and our economy to create a just and sustainable society. EAC staff have participated in numerous environmental assessments or reviews led by CEAA and/or CNSOPB of exploration drilling, production drilling and seismic blasting. The EAC also participated in the reviews of drilling in the Gulf of St. Lawrence and Georges Bank. The organization is a member of the Offshore Alliance and Save our Seas and Shores.

### **General Comments on Bill C-69**

The proposed Impact Assessment Act follows more than two years of public process and is based on a government commitment to address credibility concerns and improve environmental protections. We have always understood that Bill C-69 is founded on the work of the Expert Review Panel that toured the country and heard from over 1,000 people in-person and received more than 520 written submissions.<sup>1</sup> Not unlike the Senate tour, representatives from government, Indigenous groups, industry, environmental organizations as well as individuals and academics volunteered time and energy to participate in that

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<sup>1</sup> Expert Panel for the Review of Environmental Assessment Processes, *Building Common Ground: A New Vision for Impact Assessment in Canada – the Final Report of the Expert Panel for the Review of Environmental Assessment Processes*, (Ottawa: 2017) at 86.

process to build a better law. The Expert Panel Report entitled *Building Common Ground: A New Vision for Impact Assessment in Canada* was released in 2017.

Bill C-69 is not all that we had hoped it could be when we presented to the Expert Panel in December of 2016, but the process is far more inclusive and meaningful than current environmental impact assessment law, the *Canadian Environmental Assessment Act, 2012* which was delivered to Canadians in an omnibus bill with virtually no public process.

East Coast Environmental Law and the Ecology Action Centre support Bill C-69 and in particular we support elements of the Bill that incorporate the use of sustainability to guide decisions, recognition of climate commitments, acknowledgment of Indigenous rights and enhanced engagement, the introduction of an early planning phase and the elimination of the standing test. We do, however, recommend an amendment to the provisions addressing assessments by the Offshore Petroleum Boards. Before addressing that issue, we will make very brief points on climate considerations and public participation.

### **Climate Considerations**

Like climate change there are only a few who deny the critical importance of assessing the potential impacts of large-scale projects before they proceed. Yet, over the past few months there has been a push by some to eliminate Bill C-69. The argument, as we understand it, is that the assessment process envisioned by Bill C-69 will stop pipelines, kill investment in Canada and kill profitability.

All of this conversation and rhetoric completely ignores the elephant in the room; climate change. Attacking a Bill that takes a small step in paragraph 22(1)(i) toward factoring climate change considerations into impact assessments because the process may create a risk to short term investment or profitability utterly fails to consider the much more significant risk climate change poses to all Canadians.

### **Meaningful Public Participation**

In addition to concerns about the climate test, there have been concerns about the ability of citizens to participate in the assessment process. Some have argued that only those 'directly affected' by the project should have the opportunity to participate. We are curious about this perspective. Who are the directly affected? Do they live within a certain distance, do they draw their water from a specific source. Project impacts, particularly large resource-based projects, do not impact only those live near the physical structure. A decision to build a pipeline, a large dam or a mine have broad implications for all Canadians. Additionally, valuable expertise and citizen science is accessed across the country and not only in the geographical area where a project is located.

### **The Offshore Petroleum Boards in Impact Assessment**

As public interest organizations based on the East Coast, the Ecology Action Centre and East Coast Environmental Law have been closely following the development of offshore oil and gas proposals in Atlantic Canada. As you know, the Petroleum Boards are the regulatory bodies responsible for the development of oil and gas resources and the management of petroleum operations off the coasts of Nova Scotia and Newfoundland and Labrador.

Currently, under CEAA 2012 the Petroleum Boards do not conduct environmental assessments (EA) of designated physical activities. In this regard, they are treated differently than the other two 'energy regulators', the Canadian Nuclear Safety Commission (CNSC) and the National Energy Board (NEB). The NEB and the CNSC are Responsible Authorities under CEAA, 2012 with the power to conduct EAs of designated projects in combination with their own regulatory processes.

Of course, this was not always the case. Prior to CEAA, 2012 the NEB and CNSC did not conduct EA. The merging of project assessment processes and regulatory processes began under CEAA 1992 through the substitution provisions, and proceeded to be formalized for the NEB and CNSC under CEAA 2012. That change did not take place for the Petroleum Boards.

Under Bill C-69, the Minister will be **required** to refer an impact assessment to a **Review Panel** for any designated project regulated by the Petroleum Boards.<sup>2</sup>

- The Minister appoints the review panel including a chairperson and at least four other members.
- At least two of the persons the Minister appoints must come from an established roster that includes members of the Petroleum Boards and must be recommended by the Chairperson of the Petroleum Board.
- The persons appointed from the roster **must not constitute a majority** of the members of the panel.
- The review panel chair **can** be a Petroleum Board member.

In essence this means that a review panel with a minimum of 5 persons will conduct all federal impact assessments for designated projects in the Atlantic offshore and **at least 2** of those persons will be from or associated with the Petroleum Boards. Although members of the Petroleum Boards cannot constitute the majority of the Review Panel, a Petroleum Board member is not prohibited from serving as the chair of the Panel. **Under Bill C-69, the influence of Petroleum Boards on impact assessment will be significantly enhanced.**

For the most part the assessment process for the Petroleum Boards is the same as that for the CNSC and the Canadian Energy Regulator (CER), with one key difference. Designated activities regulated by the CNSC and the CER will be assessed by a review panel, but the review panel chair **cannot** be a CNSC or CER member. **Under Bill C-69 the influence of the CER and CNSC on impact assessment will be significantly curtailed.**

## Summary

Regulators have an important role in providing expertise to the impact assessment process, and we support consultation and cooperation with the regulator as prescribed in section 21 of the IAA. However, the assessment process should be conducted independently. As we presented to the House of Commons Committee, we continue to believe that selection of Review Panel members should be done on a case-by-case basis with the focus of ensuring that those selected have relevant expertise, local knowledge, and no conflict of interest. Limiting the role of the regulators in the assessment process to providing input and expertise rather than full participation as panel members helps to protect the independence of the assessment process.

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<sup>2</sup> Bill C-69 Part I, Amendments to the Impact Assessment Act, section 46.1.

However, at this time we specifically recommend amendments to subsections 46.1(4) and 48.1(4) to at least bring the requirements respecting panel composition of assessments of projects regulated by the offshore boards into alignment with those of projects regulated by the CER and CNSC.

### **Recommended Amendments**

#### Current Provisions

46.1 (4) The persons appointed from the roster must not constitute a majority of the members of the panel.

48.1 (4) The persons appointed from the roster must not constitute a majority of the members of the panel.

#### Recommended Provisions

46.1(4) The chairperson must not be appointed from the roster and the persons appointed from the roster must not constitute a majority of the members of the panel.

48.1(4) The chairperson must not be appointed from the roster and the persons appointed from the roster must not constitute a majority of the members of the panel.