

## Environmental Impact Assessment: A Legal Toolkit for Nova Scotia

This volume of the East Coast Environmental Law Summary Series provides an overview of the federal and provincial environmental impact assessment processes for Nova Scotia. The volume highlights key opportunities for public involvement. The goal of this publication is to assist members of the public in their understanding of the environmental impact assessment process and where they can contribute within it.

Definitions of words used in this publication can be found at the end of the document. This publication, as well as past volumes of our Summary Series and other environmental legal resources, can be found on our website at [www.ecelaw.ca](http://www.ecelaw.ca).

### Environmental Impact Assessment: An Overview

#### What is Environmental Impact Assessment (“EIA”)?

Environmental impact assessment (“EIA”) is a planning process to consider the potential environmental effects of a proposed project before it is carried out. EIA seeks to anticipate adverse effects, design measures to mitigate those effects, and predict whether the impacts, even after mitigation, will be significant. In cases when the EIA shows that significant impacts will arise, the project may not proceed or will proceed under conditions or modifications to minimize its negative effects. EIA may also be used to explore the project’s potential socio-economic impacts, including its effects on employment, local economy, and cultural traditions.

EIAs were first performed in Canada in the 1970s; however, it was not until the 1990s that EIA laws were adopted in Canada. The original federal law was the *Canadian Environmental Assessment Act* (“CEAA”), which was introduced in 1992. CEAA has been amended several times over the years, and in 2019 it was replaced by the *Impact Assessment Act* (“IAA”).

Provincially, Nova Scotia’s *Environment Act* (“NS EA”) and its *Environmental Assessment Regulations* govern the EIA process. Provincial EIAs are administered by Nova Scotia’s Minister of Environment.

#### Do not confuse “environmental impact assessment”, as described in this publication, with:

“environmental impact statement” or “environmental assessment report”, which are documents produced, usually by consultants, to describe the potential environmental effects of a proposed project as part of the EIA process;

“environmental site assessment”, which is a report that assesses the extent and nature of potential environmental contamination liabilities of a site (this can be done on any piece of real estate and is not part of the EIA process described in this publication); or

“environmental audit”, which is an evaluation used to identify environmental management and regulatory compliance of a specific operation and is not part of the EIA process.

#### Why is there a federal law and a provincial law to address EIA?

The authority to make laws is divided between the Parliament of Canada and the provincial legislatures. Article 91 of the *Canadian Constitution* defines the legislative authority of the federal government; Article 92 does the same for the provinces. There are also areas of shared jurisdiction, such as immigration and agriculture. Anything local and private in nature falls under the jurisdiction of the provinces, along with provincial Crown lands and natural resources. Criminal law, navigation, fisheries, and interprovincial and international trade fall under the jurisdiction of the federal government. As a result, the environment does not fall solely under federal or provincial

jurisdiction, and both federal and provincial governments have established environment departments. Where an activity falls within a federal area of constitutional jurisdiction, a federal impact assessment may be required; where it falls within a provincial area of constitutional jurisdiction, a provincial environmental assessment may be required. Sometimes both are required.

## The Federal Impact Assessment Process

### What is the *Impact Assessment Act*?

The *Impact Assessment Act* (“IAA”) significantly amended the federal government’s approach to EIAs. Where *CEAA*’s primary role was assessing, avoiding, and mitigating “significant adverse environmental effects”,<sup>1</sup> the *IAA*’s scope is broader than just environmental considerations and requires an assessment of both cultural and social impacts as well.<sup>2</sup> This change is not only reflected in the *IAA*’s title and the shift from the Canadian Environmental Assessment Agency to the Impact Assessment Agency (the “Agency”), but it is also reflected by core considerations throughout the impact assessment (“IA”) process, which calls for an assessment of “adverse effects” more generally.<sup>3</sup> Additionally, the IA procedure has been modified and is now organized into the following five-phase approach:

- (1) Planning;
- (2) Impact Statement;
- (3) Impact Assessment;
- (4) Decision-making; and
- (5) Post Decision.

The federal Minister of Environment and Climate Change (the “federal Minister”) remains the authority that governs the *IAA*, and providing opportunities for public participation remains fundamental to the federal assessment process.<sup>4</sup> The procedures, considerations, and timelines for each phase of the IA process are outlined below, with special attention drawn to opportunities for public engagement.

All documents that are subject to public comment are posted publicly to the Impact Assessment Registry, which can be accessed through the following link: <https://IAAc-aeic.gc.ca/050/evaluations>.

## Phase One: Planning

### **When is a project subject to an Impact Assessment?**

Typically, only those projects listed in the *Physical Activities Regulations* are subject to an IA,<sup>5</sup> but the federal Minister does have the ability to subject non-listed projects to the IA process as well.<sup>6</sup> If the project is subject to an IA, the proponent must provide the Agency with an Initial Project Description.<sup>7</sup> The description must meet the requirements of the federal *Information and Management of Time Limits Regulations* and must include information about the objectives, benefits, and location of the project as well as information about the local communities and Indigenous groups that may be affected.<sup>8</sup> When the Initial Project Description is submitted, the Agency may accept it or request more information from the proponent.<sup>9</sup>

**Public Participation Opportunity:** Once the Project Description has been accepted, the Agency has 180 days to determine whether an IA should be conducted. If an IA is necessary, the Agency will post the Notice of Commencement on the registry once they make their decision.<sup>10</sup> During this time, the Agency must meaningfully engage with the public in order to provide an opportunity for comments on the Initial Project Description.<sup>11</sup> In addition to this public consultation, the Agency must also consult, or offer to consult, with:

- a lifecycle regulator<sup>12</sup> (if the project is regulated by one);<sup>13</sup>
- federal authorities who may have relevant expert information;<sup>14</sup>
- provincial, territorial and Indigenous jurisdictions that may have responsibilities in relation to the assessment;<sup>15</sup> and
- Indigenous groups who may be affected by the project.<sup>16</sup>

The Agency then creates a Summary of Issues document, which must reflect any issues raised during consultation.<sup>17</sup> In response, the proponent must prepare a Revised Project Description that adequately addresses the concerns outlined by the Summary of Issues.<sup>18</sup> The Agency will then review the revised description before deciding whether an IA is required for the proposed project.<sup>19</sup> In making this decision, the Agency must consider any potential adverse impacts within federal jurisdiction, any comments received during consultation, any potential impact on Indigenous rights, and anything else the Agency considers relevant.<sup>20</sup>

## Phase Two: Impact Statement

### ***After determining that a federal IA is necessary, what are the next steps?***

Along with the Notice of Commencement, the Agency will also post a Public Participation Plan and Tailored Impact Statement Guidelines ("Guidelines") on the registry at the end of the Planning Phase.<sup>21</sup> The Guidelines serve as the terms of reference for the proponent's Impact Statement. In this way, the Guidelines set out any studies that must be conducted by the proponent, the relevant considerations that must be included for the subsequent assessment, and any other information necessary.<sup>22</sup> Once these documents are posted, the proponent has 3 years to develop and submit their Impact Statement to the Agency in accordance with the Guidelines before it is assessed in Phase Three.<sup>23</sup>

**Public Participation Opportunity:** In addition to the opportunities set out in the project-specific Public Participation Plan, a draft of the Guidelines will be posted to the Registry for public comment.<sup>24</sup> In this way, the public not only has an opportunity to participate during the proponent's development of the Impact Statement, but the public may also influence the scope of its considerations.

## Phase Three: Impact Assessment

### ***Who conducts the Impact Assessment?***

Once the Notice of Commencement is posted on the registry, the Minister has 45 days to determine if it is in the public interest to have the project referred to a Review Panel, otherwise the assessment is conducted by the Agency.<sup>25</sup> In making that decision, the Minister must consider multiple factors, including public concerns related to the adverse effects of the project.

### **Agency Assessment**

The Agency reviews the proponent's Impact Statement ("IS") to ensure that it complies with the Guidelines, considering the scope of the information provided and its sufficiency in addressing concerns. If necessary, the Agency may send the IS back for additional information.<sup>26</sup> Once the IS is complete, the Agency has 300 days to prepare an Impact Assessment Report ("IAR"), which outlines the likely adverse effects of the proposed project, the significance of those effects, and any public comments received.<sup>27</sup> The finalized IRA acts as the Agency's recommendation to the federal Minister and informs the Minister's decision as to whether the proposed project is in the public interest and should be approved or whether the

decision should be referred to the Governor in Council ("GIC").<sup>28</sup>

**Public Participation Opportunity:** The Agency must ensure that the public is provided opportunity to meaningfully participate during the Agency assessment.<sup>29</sup> Specifically, a draft IRA is posted to the registry and is subject to public comments, which must be considered before the Agency finalizes the report.<sup>30</sup>

### **Review Panel Assessment ("RPA")**

Within 45 days of determining that a RPA is necessary, the federal Minister establishes the terms of reference for the Review Panel, and the Agency must appoint members to the panel that are unbiased and possess relevant expertise.<sup>31</sup> The Agency remains responsible for reviewing the IS to ensure compliance with the concerns outlined in the Guidelines, but the Panel will review the IS for sufficiency in addressing those concerns. Following any necessary amendments, the Panel will hold public hearings to obtain all information necessary for an accurate assessment of the adverse effects of the project.<sup>32</sup> The Panel has a maximum of 600 days to provide the Agency with their findings.<sup>33</sup> Those findings act as the basis for the Agency's recommendations to the federal Minister before he or she refers the matter to the GIC to determine if the project is in the public interest and should be approved.<sup>34</sup>

**Public Participation Opportunity:** The RPA must hold public hearings. The Panel determines the hearing procedures, including summoning witnesses and ordering witnesses to present evidence and produce relevant records.<sup>35</sup> Interested parties may present evidence, concerns, and comments regarding the project's potential adverse effects, all of which must be reflected in the Review Panel's final report.<sup>36</sup>

### ***Do the processes vary if the project is regulated by a lifecycle regulator?***

If the project's activities fall under the authority of a lifecycle regulator, the IA must be completed by an Integrated Review Panel ("IRP").<sup>37</sup> Generally, the IRP assessment follows the same procedures and considerations as an RPA, but the IRP's terms of reference must be developed by the federal Minister in consultation with the respective regulatory authority.<sup>38</sup> Additionally, the appropriate lifecycle regulator must be represented by at least one member on the review panel, but such representation cannot form a majority.<sup>39</sup>

## Phase Four: Decision-Making

### **Who makes the final decision regarding the project's approval, and what are the considerations?**

The federal Minister or the GIC will make the final determination as to whether a proposed project's anticipated adverse effects are in the public interest.<sup>40</sup> In making this determination, the Minister or GIC must take the Impact Assessment Report into account as well as specific public interest factors, including:

- the extent to which the project contributes to sustainability;
- the significance of the adverse effects,
- the mitigation measures;
- the impact the project may have on the rights of Indigenous peoples; and
- the extent to which the project hinders or contributes to Canada's ability to meet environmental obligations and commitments to mitigating climate change.<sup>41</sup>

If the Minister or the GIC is of the opinion that the project is in the public interest, despite its adverse effects, the project may move forward, but it may be subject to follow-up programs and conditions mitigating adverse effects.<sup>42</sup>

## Phase Five: Post Decision

### **How are the follow-up programs or mitigation measures monitored for compliance?**

The federal Minister must post a Decision Statement on the registry within 30 days, if the Minister made the final determination, and within 90 days if the decision was referred to the GIC.<sup>43</sup> The Decision Statement is the document that outlines necessary mitigation measures, follow-up programs, and detailed reasons justifying the final decision and its corresponding conditions.<sup>44</sup>

Generally, the Agency is responsible for monitoring the proponent's compliance with the approval's conditions, and the Agency issues compliance reports regularly;<sup>45</sup> however, if the project is under the authority of a lifecycle regulator, that regulator takes on this monitoring role.<sup>46</sup> In cases where the Agency discovers non-compliance, enforcement officers and analysts will work with the proponent to help bring the activity back to conformity with the Decision Statement and the rest of the IAA.<sup>47</sup> During the process of reviewing non-compliance, the Agency will continue to post relevant information on the registry, including any reports prepared by the

officers or analysts, any notice of non-compliance, and any written orders issued.<sup>48</sup>

### **Can the approval conditions be updated or amended?**

The federal Minister may amend any conditions attached to the Decision Statement but cannot change the substantive outcome of their decision.<sup>49</sup> Furthermore, such amendments to the Decision Statement are only permitted if the federal Minister is of the opinion that making them will not increase any adverse effects related to the project.<sup>50</sup> If the project is under the authority of the *Canada Nuclear Safety Commission*, then the Minister cannot amend the approval conditions.<sup>51</sup>

**Public Participation Opportunity:** If the Minister intends to amend the Decision Statement, a notice that reflects the intended amendments will be posted on the registry and will be subject to public comment before the amended Decision Statement is finalized.<sup>52</sup>

## Federal Process under the IAA



# Nova Scotia Environmental Assessment Process

## What projects are subject to provincial environmental assessment?

According to the *NSEA*, an EA is triggered and a proponent must register their project for an EA when a project is considered an undertaking.<sup>53</sup> Schedule "A" of the *Environmental Assessment Regulations* outlines those projects that are designated as undertakings and are thus subject to a provincial EA. There are two classes of undertakings:<sup>54</sup>

**Class 1 undertakings:** Small scale projects that may or may not cause significant environmental impacts.

**Class 2 undertakings:** Large scale projects that are considered to have potential to cause significant environmental impacts.

## What procedures are available for a project subject to a provincial EA?

The provincial environmental assessment ("EA") process, like the federal IA process outlined above, offers different pathways through which a project may proceed through an EIA. Where the environmental effects of an undertaking are limited or capable of mitigation, the project will be subjected to a preliminary and more streamlined assessment process (Class 1 undertaking). At the completion of this first-level review, projects may be referred to the more comprehensive second-level review process, where it appears that the environmental impacts warrant further study.<sup>55</sup> The provincial Minister of the Environment (the "Minister") has a large role to play in the choice of process. Larger scale (Class 2 undertakings) are submitted automatically to a more intensive review.<sup>56</sup>

A Class 1 undertaking requires the proponent to file a registration document. The document must include environmental baseline information and must be sufficient to enable the Minister to make one of the following 5 decisions:<sup>57</sup> (1) additional information is required; (2) the undertaking is approved; (3) a Focus Report is required; (4) an Environmental Assessment Report is required; or (5) the undertaking is rejected.<sup>58</sup> In making this decision, the Minister must consider any concerns expressed by the public or Indigenous peoples, any steps taken to address those concerns, and any potential or known adverse effects or

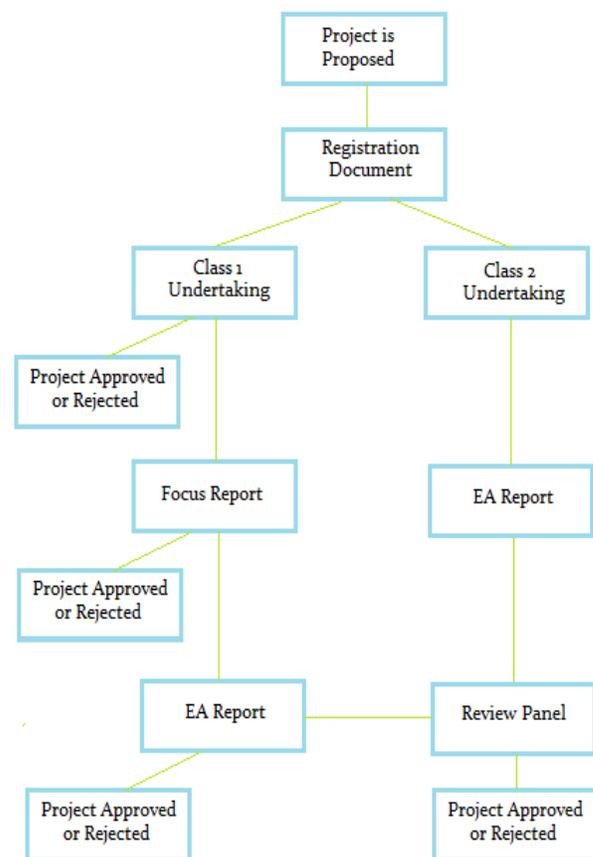
environmental effects, along with other logistical information related to the project.<sup>59</sup>

**Focus Report:** May be required where the Minister is seeking more information on a specific aspect of the proposed project. Members of the public have an opportunity to review and comment on the Focus Report. Following the Focus Report, the Minister may order an Environmental Assessment Report, approve the undertaking, or reject the undertaking.<sup>60</sup>

**Environmental Assessment Report ("EAR"):** Always required for a Class 2 undertaking and may be required for a Class 1 undertaking.<sup>61</sup> The scope is set in the Terms of Reference and may require the proponent to provide information on alternatives to the undertaking, an evaluation of the advantages and disadvantages of the project to the environment, a discussion of environmental adverse effects, etc.<sup>62</sup>

**Review Panel:** If an EAR is ordered for a Class 1 undertaking, a Review Panel may review the EAR, conduct public hearings, and make a recommendation to the Minister.<sup>63</sup> A Class 2 undertaking always requires a Review Panel.<sup>64</sup>

## Provincial EA Process



## Public Participation in Provincial Environmental Assessments

One of the purposes of the NS *EA* is to provide access to information and to facilitate effective public participation in the decision-making process.<sup>65</sup> The degree of public involvement varies depending on the size of the project and the processes elected by the Minister. These engagement opportunities are outlined below.

### How do I find out when an EA has begun?

The proponent must publish an advertisement notifying the public of the registration and invite the public to submit written comments to the EA branch.<sup>66</sup> This advertisement must be published in two newspapers: one that circulates in the vicinity of the undertaking and the other province-wide.<sup>67</sup> The registration document will be posted on the online database below.

For the list of current projects visit:  
[novascotia.ca/nse/ea/projects.asp](http://novascotia.ca/nse/ea/projects.asp).

### Registration

Once the EA registration document is received, there is a 30-day period where the public can submit their comments to the EA Administrator.<sup>68</sup> The Minister considers those comments when deciding if the proponent must submit additional information, a Focus Report, or an Environmental Assessment Report, or if the project should be approved or denied. After receiving the registration document, the Minister has 50 days to make this decision.<sup>69</sup>

### Focus Report

Once the proponent has submitted their Focus Report within one year of receiving their Terms of Reference, the public is given notice and may submit comments on the report within 30 days.<sup>70</sup> An Administrator reviews the Report in light of the public comments and makes recommendations to the Minister. The Minister then has 14 days to make their decision to approve or deny the undertaking or require an EAR.<sup>71</sup>

Unfortunately, the public is unable to provide comments on the Focus Report's Terms of Reference and is only able to comment on the report itself, rather than its scope.<sup>72</sup> Thus, new information, concerns, and the EA's scope are unlikely to be addressed at this stage by the public.

## Environmental Assessment Report

Unlike the Focus Report, when an EAR is required, there is a 30-day public comment period to review the proposed Terms of Reference.<sup>73</sup> The Administrator must consider those comments before providing the proponent with the finalized Terms of Reference.<sup>74</sup> This provides the public with an opportunity to impact the scope of the EA report and draw attention to issues that may not have been originally addressed.

After the Terms of Reference are finalized, a proponent has 2 years to submit a draft EAR to the Administrator.<sup>75</sup> If a Class 1 undertaking is not referred to the Review Panel, the Administrator will notify the public of their completed EA Report and accept comments for 48 days.<sup>76</sup> Following the comment period, the Administrator will, within 25 days, provide the Minister with a summary of the comments and recommendations.<sup>77</sup> Within 21 days of receiving this information, the Minister will make a decision to approve the undertaking, with or without conditions, or reject it.<sup>78</sup>

### Review Panel Hearing

If the project is a Class 2 undertaking, or a Class 1 undertaking that is referred to a Review Panel, the 3-5 members of the Review Panel will conduct a non-adversarial and informal hearing.<sup>79</sup> The public must be notified at least 21 days in advance of a hearing date.<sup>80</sup> The purpose of a hearing is to allow submissions from any interested party, and to allow the Panel to address questions on the environmental effects of an undertaking. Intervenor may participate if registered,<sup>81</sup> and any person may make written submissions to the Panel.<sup>82</sup>

Within 110 days of the referral, The Review Panel must produce their report as recommendations to the Minister.<sup>83</sup> The Minister has 21 days to make their final approval decision after reviewing the Panel's report.<sup>84</sup>

## Overarching Questions

### Does a federal or provincial process apply?

For both jurisdictions, the statute and regulations set out a list of designated activities or undertakings that will trigger the beginning of the EA process. For the *IAA*, the list can be found in the *Physical Activities Regulations*.<sup>85</sup> Provincially, Schedule "A" of the *Environmental Assessment Regulations* outline the undertakings subject to the process.<sup>86</sup> These lists are your primary

resource to determine whether or not an EA will apply to a project and for which jurisdiction.

*Physical Activities Regulations:*  
[www.gazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors285-eng.html](http://www.gazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors285-eng.html)

*Environmental Assessment Regulations:*  
[novascotia.ca/just/regulations/regs/envassmt.htm](http://novascotia.ca/just/regulations/regs/envassmt.htm)

## Federal IA in Nova Scotia

Since the 2012 amendments to *CEAA*, there has been a dramatic decrease in the number of projects that proceed with the federal assessment process, with only 7 projects being federally reviewed in the Province. These projects are limited to mining, oil and gas exploration, and the Boat Harbour Remediation Project.

Federal Project Registry: [www.ceaa-acee.gc.ca/050/evaluations/exploration?culture=en-CA](http://www.ceaa-acee.gc.ca/050/evaluations/exploration?culture=en-CA)

## Examples of when the provincial EA applies

Since 2000, Nova Scotia has reviewed over 170 projects through its EA process, 5 of which are currently ongoing. Examples of those projects assessed include:

- Mining projects;
- Highway development;
- Quarry Establishment and Expansions;
- Wind power projects

List of all projects reviewed after 2000:  
[www.novascotia.ca/nse/ea/projects.asp](http://www.novascotia.ca/nse/ea/projects.asp)

## How do the federal and provincial processes interact?

The *IAA* provides guidance for cooperation between jurisdictions. Generally, the Agency, or the federal Minister if the IA is to be conducted through a review panel, must offer to cooperate with any jurisdiction defined within the Act, so long as they have powers or responsibilities related to the designated project.<sup>87</sup> More specifically though, if any part of the IA may be conducted within another jurisdiction, the responsible federal authority may delegate that aspect to the appropriate authority.<sup>88</sup>

Additionally, the federal Minister of Environment and Climate Change may substitute some, or all, of the processes under the *IAA* with those of the provincial regime or another appropriate jurisdiction.<sup>89</sup> However, this substitution must be requested by the other jurisdiction, and the public must have an opportunity to comment on the

proposed substitution.<sup>90</sup> Comments from the public must be considered by the Minister before approving the substitution.<sup>91</sup> Substitution and delegation do not replace the federal decision-making power; they only alter the process leading to the federal decision. These substitutions may also be subject to additional terms and conditions before the Minister's approval is given.<sup>92</sup> IAs overseen by a review panel or a lifecycle regulator cannot be substituted.<sup>93</sup>

The Beaver Dam Mine Project is currently being reviewed under a Class I co-operative federal-provincial environmental assessment:  
[www.novascotia.ca/nse/ea/beaver-dam-mine-project.asp](http://www.novascotia.ca/nse/ea/beaver-dam-mine-project.asp).

## Are there funding programs for participation in the EA process?

The federal Agency administers a Participant Funding Program to provide financial assistance to individuals, not-for-profits, and Indigenous groups in order to prepare them for participation at certain stages in the IA process.<sup>94</sup> This is only applicable to reviews conducted by the Agency or a federal review panel and does not include substituted projects.<sup>95</sup>

In order to qualify for funding, you must show that your contribution will add value to the IA process, and you must meet at least one of the following criteria:

- have a direct, local interest in the project or engagement initiative, such as living or owning property in the project area;
- have community knowledge or Indigenous traditional knowledge relevant to the IA or engagement initiative;
- plan to provide expert information relevant to the anticipated effects of the project or engagement initiative; or
- have an interest in the potential impacts of the project on treaty lands, settlement lands, or traditional territories and/or related claims and rights.

For more information on how to apply, visit:  
[www.canada.ca/en/impact-assessment-agency/services/public-participation/participant-funding-application-environmental-assessment.html](http://www.canada.ca/en/impact-assessment-agency/services/public-participation/participant-funding-application-environmental-assessment.html).

## Can I challenge the decision made as a result of an IA or EA?

It is very difficult to challenge the results of an IA or EA. There is no legislative right to appeal the decision of the Minister or the responsible authority at the federal level, nor at the provincial

level. Therefore, the only option is to start a judicial review application.

Judicial review is the term used to describe a court's examination of the conduct or decision of a decision-maker such as a board, committee, or Minister to ensure that the conduct or decision was proper in law. Judicial review can only be sought by someone who has "standing",<sup>96</sup> which can require different kinds of connection to the issue in different circumstances.

If you wish to consider a judicial review proceeding, you should consult a lawyer who can explain the process in more detail and provide appropriate guidance.

## Do the processes meet the Crown's duty to consult?

The Government of Canada and the Government of Nova Scotia each have a duty to consult Indigenous peoples before engaging in activities that could threaten constitutionally protected Aboriginal or treaty rights.

Canada's courts have set out requirements for the duty to consult in a number of judicial decisions. The duty is defined by the common law (the law established through judicial decision-making) rather than by government statute or regulation.

Under Canada's constitutional common law, the duty to consult is triggered when the federal government or a provincial or territorial government knows about an Aboriginal claim or right and is considering some kind of action that could affect that Aboriginal claim or right negatively. The issuance of IA or EA approvals is government action that triggers the duty to consult.

Section 35 of Canada's *Constitution Act, 1982* protects Aboriginal and treaty rights that are held by Indigenous peoples in Canada. The Crown's duty to consult flows from that constitutional protection, which means that it is a constitutional duty that exists over and above any public participation or Indigenous consultation processes established in IA or EA regimes.

Indigenous participation in the provincial EA process will not necessarily meet the duty to consult, as the EA process is designed to assess proposed projects' impacts on the environment, whereas the duty to consult requires the government to consider proposed projects' impacts on Indigenous rights.

At the federal level, new processes for Indigenous participation and consultation now included in the

IAA reflect much of the common law on the duty to consult and will likely make it easier for federal departments and agencies to meet their constitutional duties by following the IA process.

The scope of the Crown's duty to consult varies on a case-by-case basis and is informed by the strength of the Aboriginal claim or right at stake as well as the prospect of harm. Ultimately, although consulting with Indigenous peoples using the frameworks or timelines of IA or EA processes may sometimes fulfill the duty to consult, it will not necessarily do so. The scope of the duty is unique in every case, and there is no "one size fits all" approach.

## Definitions

### *Impact Assessment Act, Section 2*

**Agency:** means the Impact Assessment Agency.

**Designated Project:** means one or more physical activities that are carried out in Canada or on federal lands and are designated by the *Physical Activities Regulations* or designated in an order made by the federal Minister under subsection 9(1) of the IAA.

**Effects:** means, unless the context requires otherwise, changes to the environment or to health, social or economic conditions and the positive or negative consequences of these changes.

**Environment:** means the components of the Earth, and includes

- a) land, water and air, including all layers of the atmosphere;
- b) all organic and inorganic matter and living organisms; and
- c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

**Follow-up Program:** means a program for verifying the accuracy of the impact assessment of a designated project and determining the effectiveness of any mitigation measures.

**Impact Assessment:** means an assessment of the effect of designated project that is conducted in accordance with the IAA.

**Indigenous Peoples of Canada** has the meaning assigned by the definition of *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*.

**Proponent:** means the person or entity – federal authority, government or body – that proposes the carrying out of, or carries out, a designated project.

**Sustainability:** means the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations.

### ***Environment Act, Section 3***

**Adverse Effect:** means an effect that impairs or damages the environment or changes the environment in a manner that negatively affects aspects of human health.

**Environment:** means the components of the earth and includes

- (i) air, land and water,
- (ii) the layers of the atmosphere,
- (iii) organic and inorganic matter and living organisms,
- (iv) the interacting natural systems that include components referred to in subclauses (i) to (iii), and
- (v) for the purpose of Part IV, the socio-economic, environmental health, cultural and other items referred in the definition of environmental effect.

**Environmental Assessment:** means a process by which the environmental effects of an undertaking are predicted and evaluated, and a subsequent decision is made on the acceptability of the undertaking.

**Environmental Effect:** means, in respect of an undertaking, (a) any change, whether negative or positive, that the undertaking may cause in the environment, including any effect on socio-

economic conditions, on environmental health, physical and cultural heritage or on any structure, site or thing including those of historical, archaeological, paleontological or architectural significance, and (b) any change to the undertaking that may be caused by the environment.

**Proponent:** means a person who (i) carries out and undertaking or activity, or (ii) is the owner or person having care or management of an undertaking or activity.

**Undertaking:** means an enterprise, activity, project, structure, work or proposal that, in the opinion of the Minister, causes or may cause an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a policy, plan or program or a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking.

### **For more information**

Please visit East Coast Environmental Law at [www.ecelaw.ca](http://www.ecelaw.ca) to access other legal resources and our free online Information Library.

To find the full text of the federal and provincial laws detailed in this Summary Series, go to:

[Impact Assessment Act](#)

[Physical Activities Regulations](#)

[Information and Management of Time](#)

[Limits Regulations](#)

[Nova Scotia Environment Act](#)

[Environmental Assessment Regulations](#)

## Disclaimer

Please note that this volume cannot cover all environmental impact assessment issues or all options available to you, nor should it be interpreted as legal advice. While East Coast Environmental Law works hard to update its materials, some information contained in this Summary Series may become outdated as statutes, regulations, and policies are updated and amended.

## East Coast Environmental Law Association

This Summary Series was developed by the East Coast Environmental Law Association, an environmental law charity based in Halifax, Nova Scotia that engages in public-interest environmental law throughout Atlantic Canada.

East Coast Environmental Law responds to community inquiries, carries out legal and policy research, and presents educational resources and opportunities to increase public awareness of environmental laws throughout 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.

## Support

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## The Environmental Law Summary Series

The Environmental Law Summary Series was one of the first public legal education activities undertaken by East Coast Environmental Law. Each volume of the Summary Series serves as a quick reference resource. The volumes are topical and generally address an area of interest or concern raised by communities or organizations.

Following is a list of East Coast Environmental Law's summary series documents:

- Volume 1 (2007), Overview of Environmental Legislation (Nova Scotia)
- Volume 2 (2008), Enforcing Environmental Laws (Nova Scotia)
- Volume 3 (2009), Bringing a Private Prosecution
- Volume 4 (2010), Who Owns the Coast (Nova Scotia) [updated, see Volume 10]
- Volume 5 (2010), Environmental Law for Land and Sea (Prince Edward Island)
- Volume 6 (2010), Environmental Law for Land and Sea (New Brunswick)
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## References

<sup>1</sup> *Canadian Environmental Assessment Act*, SC 2019, c 28 at s 52(4).

<sup>2</sup> *Impact Assessment Act*, SC 2019, c 28 at s 6(1)(b) [“IAA”].

<sup>3</sup> *Ibid* at ss 22(1), 36(2), 63.

<sup>4</sup> *Ibid* at Preamble and s 6(1)(h).

<sup>5</sup> *Physical Activities Regulations*, SOR/2019-285 [“*Physical Activities Regulations*”]; IAA, *supra* note 2 at s 2, “Designated Project”.

<sup>6</sup> IAA, *supra* note 2 at s 9(1).

<sup>7</sup> *Ibid* at s 10.

<sup>8</sup> *Information and Management of Time Limits Regulations*, SOR/2019-283.

<sup>9</sup> IAA, *supra* note 2 at s 15(1).

<sup>10</sup> *Ibid* at s 18(1).

<sup>11</sup> *Ibid* at s 11.

<sup>12</sup> The lifecycle regulators (formerly known as “Responsible Authorities”) are now the (1) Canadian Nuclear Safety Commission, (2) Canada Energy Regulator (formerly the National Energy Board or “NEB”), (3) Canada-Newfoundland and Labrador Offshore Petroleum Board, and (4) Canada-Nova Scotia Offshore Petroleum Board.

<sup>13</sup> *Ibid* at s 13(2).

<sup>14</sup> *Ibid* at s 13(1).

<sup>15</sup> *Ibid* at s 12.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid* at s 14(1).

<sup>18</sup> *Ibid* at s 15(1).

<sup>19</sup> *Ibid* at s 16(1).

<sup>20</sup> *Ibid* at s 16(2).

<sup>21</sup> *Ibid* at s 18(1)(b).

<sup>22</sup> *Ibid* at s 18(1)(a).

<sup>23</sup> *Ibid* at s 19(1).

<sup>24</sup> *Ibid* at s 18(2).

<sup>25</sup> *Ibid* at s 36(1).

<sup>26</sup> *Ibid* at s 19 (3).

<sup>27</sup> *Ibid* at ss 28(2), (3), (3.1), (3.2).

<sup>28</sup> *Ibid*, ss 60(1).

<sup>29</sup> *Ibid* at s 27.

<sup>30</sup> *Ibid* at s 28(1).

<sup>31</sup> *Ibid* at s 41(1).

<sup>32</sup> *Ibid* at s 51(1)(c).

<sup>33</sup> *Ibid* at s 37(2).

<sup>34</sup> *Ibid* at ss 51(1)(d), 55.1(1).

<sup>35</sup> *Ibid* at ss 53 (1), (2).

<sup>36</sup> *Ibid* at s 51(1)(d).

<sup>37</sup> *Ibid* at s 43.

<sup>38</sup> *Ibid* at ss 44(1), 47(1).

<sup>39</sup> *Ibid* at ss 44(3)-(4), 47(3)-(4).

<sup>40</sup> *Ibid* at ss 60, 62.

<sup>41</sup> *Ibid* at s 63.

<sup>42</sup> *Ibid* at ss 60, 62.

<sup>43</sup> *Ibid* at ss 65(1)-(4), 66.

<sup>44</sup> *Ibid* at s 65(1)(b), (2).

<sup>45</sup> *Ibid* at ss 105(2), 156(2)(e); Government of Canada, *Impact Assessment Process Overview*, “Phase 5” (8 November 2017), online: <<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase5.html>> [“IA Overview”].

<sup>46</sup> IA Overview, *supra* note 45.

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid*.

<sup>49</sup> IAA, *supra* note 2 at s 68(1).

<sup>50</sup> *Ibid* at s 68 (2).

<sup>51</sup> *Ibid* at s 68(4).

<sup>52</sup> *Ibid* at ss 69(1)-(2).

<sup>53</sup> *Environment Act*, RSNS 1994-95, c 1, s 33 [“NS EA”].

<sup>54</sup> *Environmental Assessment Regulations*, NS Reg 26/2018 at s11(1) [“NS Regulations”].

<sup>55</sup> *Ibid*.

<sup>56</sup> *Ibid* at s 11(2).

<sup>57</sup> *Ibid* at s 9(1A).

<sup>58</sup> *Ibid* at s 34(1).

<sup>59</sup> *Ibid* at s 12.

<sup>60</sup> *Ibid* at s 15.

<sup>61</sup> *Ibid* at ss. 11(1) and (2).

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- <sup>62</sup> *Ibid* at s 19(2).
- <sup>63</sup> *Ibid* at s24(1).
- <sup>64</sup> *Ibid* at s 24(2).
- <sup>65</sup> *Ibid* at s 2(h).
- <sup>66</sup> NS Regulations, *supra* note 54 at s 10(1B).
- <sup>67</sup> *Ibid* at ss 10 and 29.
- <sup>68</sup> *Ibid* at s 10(1B).
- <sup>69</sup> *Ibid* at s 13(1).
- <sup>70</sup> *Ibid* at s 16.
- <sup>71</sup> *Ibid* at s 18.
- <sup>72</sup> *Ibid* at s 18(a).
- <sup>73</sup> *Ibid* at s 19A (2).
- <sup>74</sup> *Ibid* at s 19(2)(a).
- <sup>75</sup> *Ibid* at s 20(1).
- <sup>76</sup> *Ibid* at s 23(1).
- <sup>77</sup> *Ibid* at s 25(1).
- <sup>78</sup> *Ibid* at s 26(1).
- <sup>79</sup> *Ibid* at s 42 (3); *Environmental Assessment Review Panel Regulations*, NS Reg 19/2013 at s 4(1) [“*Review Panel Regulations*”].
- <sup>80</sup> *Review Panel Regulations*, *supra* note 79 at s 7(3)(a).
- <sup>81</sup> *Ibid* at s 10.
- <sup>82</sup> *Ibid* at s 11.
- <sup>83</sup> *Ibid* at s 26(1).
- <sup>84</sup> NS Regulations, *supra* note 54 at s 26(1)(c).
- <sup>85</sup> *Physical Activities Regulations*, *supra* note 5.
- <sup>86</sup> NS Regulations, *supra* note 54 at Schedule A.
- <sup>87</sup> *IAA*, *supra* note 2 at s 21.
- <sup>88</sup> *Ibid* at s 29.
- <sup>89</sup> *Ibid* at s 31(1).
- <sup>90</sup> *Ibid*.
- <sup>91</sup> *Ibid* at ss 31(1)-(3).
- <sup>92</sup> *Ibid* at ss 33,34.
- <sup>93</sup> *Ibid* at ss 32(a)-(b). Additionally, the Minister cannot approve the substitution of a process if the activities are regulated under the *Canada Oil and Gas Operations Act*, the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, or the *Canada Transportation Act*.
- <sup>94</sup> *Ibid* at s 75.
- <sup>95</sup> *Ibid* at s 75(2).
- <sup>96</sup> *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para 36.