

## NEW FEDERAL IMPACT ASSESSMENT ACT

By Stanley D. Berger

The Canadian Government announced yesterday that they are proposing new rules for conducting environmental assessments to Parliament. The assessments will be broader than in the past covering health, social, economic and aboriginal impacts. The announcement suggests that the new law will adopt recommendations of the expert panel and the federal discussion paper which had been previously summarized on April 11 and July 17th, 2018 at:

<http://www.foglers.com/events-and-resources/publications>

Until the actual language in the legislation is finalized we will not be able to fully analyze precisely how this legislation might positively impact major infrastructure development in Canada. As soon as the legislative wording is finalized by Parliament we will provide a full analysis.

Here's what the Government Announcement said:

These better rules reflect what we heard from Indigenous Peoples, companies, provinces and territories, environmental groups, and the public over the course of 14 months. Under these better rules, decisions on projects would be guided by science, evidence and Indigenous traditional knowledge. Reviews would happen in partnership with Indigenous Peoples, as well as with provinces and territories, and communities will have their voices heard from the start. Companies would have more clarity about what is required of them, and review timelines would be more predictable. Project reviews would be both more rigorous and more efficient, with reduced legislated timelines and clearer requirements from the start.

The proposed changes include:

Restoring public trust:

We will increase public participation in project reviews, including a new early engagement phase. From the outset, we will recognize Indigenous rights and work in partnership with Indigenous Peoples.



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Transparent, science-based decisions:

We will ensure decisions are based on robust science and Indigenous traditional knowledge, and make easy-to-understand summaries of decisions publicly available.

More comprehensive impact assessments:

We will be replacing the *Canadian Environmental Assessment Act*, 2012, with the *Impact Assessment Act*, and expanding the types of impacts studied to understand how a proposed project could affect not just our environment, but also health, social and economic impacts, as well as impacts on Indigenous Peoples, over the long-term. Reviews will include gender-based analysis.

One project, one review:

We will reduce duplication and red tape by establishing the Impact Assessment Agency of Canada (currently the Canadian Environmental Assessment Agency) to lead all federal reviews of major projects, working with other bodies like the new Canadian Energy Regulator (currently the National Energy Board), the Canadian Nuclear Safety Commission and Offshore Boards, and in cooperation with provinces and territories and Indigenous jurisdictions.

Making decisions timely:

Project reviews would benefit from reduced timelines compared to the current system, and will be rigorously managed to ensure they are more timely, with fewer stops of the legislated clock.

Revising the project list:

We are seeking Canadians' feedback on a more robust project list, identifying types of projects within federal jurisdiction that could pose major risks to the environment and would therefore require review.

Protecting water, fish and navigation:

Restoring lost protections for all fish and fish habitats - not just those that could be affected by major projects - by amending the *Fisheries Act*. Further, protections under the *Canadian Navigable Waters Act* (currently the *Navigation Protection Act*) will be expanded to better protect the right to travel on all navigable waters in Canada, covering countless rivers, lakes and other waterways. This includes extra protections for those waterways most important to Canadians and Indigenous Peoples.

## Increased funding:

The government will invest up to \$1.01 billion over five years to support the proposed new impact assessment regime and Canadian Energy Regulator; increased scientific capacity in federal departments and agencies; changes required to protect water, fish and navigation; and increased Indigenous and public participation.

The new rules proposed today must still be passed by Parliament. Until the new rules come into effect, existing laws and interim principles for project reviews will continue to apply to projects under review. The government will seek input from Canadians on regulations and policy changes required to accompany the legislation. Once the new rules come into effect, the government will not be revisiting project decisions made under previous legislation.

With hundreds of major resource projects - worth over \$500 billion in investment - planned across Canada over the next 10 years, these better rules are essential to protect our environment and communities while making sure good projects can get built to create jobs for the middle class. Under these new rules, proposed projects would be held to a high standard - because that's what Canadians expect and deserve.