MAKING THE GRADE:
A REPORT CARD ON CANADA'S NEW IMPACT ASSESSMENT ACT

August 2019

On August 28, 2019, the federal government brought Canada's new *Impact Assessment Act* (IAA) into force, replacing the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The IAA follows more than three years of consultation and discussion of Canada's environmental assessment (EA) regime, and is claimed to fulfill the government's stated commitment to introduce new, fair processes to ensure decisions are based on science and Indigenous knowledge, and win back public trust.

How does the new IAA measure up? We graded the Act against the "essential elements of next generation EA" established in the Federal Environmental Assessment Reform Summit, the conclusions of the expert panel appointed to review Canada's EA processes, and the leading-edge thinking of EA experts across the country.[1] Each element is necessary to ensure that assessment processes promote environmental, social, cultural and economic sustainability, allow the public a meaningful say in decisions that affect them, advance reconciliation with Indigenous peoples, and achieve Canada's climate change and biodiversity conservation obligations.

While the overall grade of C is disappointing, it is an improvement over the C- given in our interim report card after the bill was tabled in March 2018. Plus, the IAA contains many enabling provisions that allow the federal government to enact regulations, establish policies, and develop practices that meet the standards of next generation EA. Through careful implementation, federal impact assessment can still make the grade.

Overall Grade

C

Overall, while the IAA touches on many of the basic requirements of next generation EA, it falls far short of ensuring they will be implemented in practice. These requirements include sustainability as a core objective, greater attention to regional and strategic assessment, meaningful public participation for everyone, strengthening the foundation of evidence used in decisions, and consideration of whether projects will help or hinder Canada's efforts to uphold its climate and biodiversity obligations. The new law neglects smaller projects and their cumulative impacts, and new regulations mean the IAA will apply to fewer projects than CEAA 2012. But while the Act leaves the Minister and Cabinet without adequate direction and accountability, it does set the stage for sustainable, fair decisions, meaning that implementation will be key to the Act's success.

[1] E.g.: Anna Johnston, *Federal Environmental Assessment Reform Summit Proceedings* (West Coast Environmental Law: 2016): https://www.wcel.org/sites/default/files/publications/WCEL_FedEnviroAssess_proceedings_fnl.pdf; Expert Panel, *Building Common Ground: A New Vision for Impact Assessment in Canada* (2017), online: https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf.

Essential elements of a next generation EA law	Grade	Rationale, and how the IAA stacks up
I. Sustainability as the core objective *The law should impose a test that helps us choose the best options for long-term social, economic and ecological well-being, through a clear sustainability purpose along with rules and criteria for how decisions are made.*	**B-**	While the IAA contains sustainability purposes and a requirement to consider sustainability when making final decisions, it leaves much discretion to the Minister and Cabinet to approve unsustainable projects, risking sustainability taking a back seat to other considerations.
II. Impact assessments are required of all projects with implications on sustainability *The law should include automatic triggers for assessments of projects that involve the federal government, such as by requiring a regulatory permit or federal funding. Regulations should require more rigorous assessments of all projects with serious impacts on climate or biodiversity.*	**F**	With the exception of limited reviews of projects on federal lands or projects outside of Canada with federal proponent or federal funding, the IAA contains no legislated triggers. Regulations designating which projects will require an IA are weaker than CEAA 2012 regulations and will likely result in fewer rather than more assessments.
III. Integrated, tiered assessments starting at the strategic and regional levels *EA should go beyond a project-by-project approach and examine whole regions and government policies so that individual projects can be assessed based on a strategic and informed view of the long-term needs of people and the environment. To that end, legislation should require regional and strategic assessments to identify ecological limits and preferred development scenarios.*	**C+**	The IAA allows for regional and some strategic assessments at the discretion of the Minister, but triggers are limited, process requirements are basic, and there is no requirement that outcomes be applied. However, a regional/strategic assessment regulation-making power enables the government to enact regulations to ensure that regional and strategic assessments are done correctly – an opportunity that should be acted upon swiftly.

IV. Cumulative effects done regionally *The law should require a hard look at historic, current and future impacts, and cumulative effects should be a key focus of assessments in order to ensure a healthy environment.*	**C**	The IAA requires consideration of cumulative effects, but not the identification of ecological limits. Cumulative effects assessment is likely to be limited to the project level, unless and until regulations are introduced and further commitments made respecting strong regional assessments.
V. Collaboration and harmonization *The law should require collaboration with willing provincial and Indigenous governments to avoid duplication, ensure high assessment standards and keep key players at the table, throughout all stages of assessment.*	**B-**	While one purpose of the IAA is to promote collaboration, there is no assurance of harmonization to the highest standard. Further, substitution to provinces is allowed, without any requirement for the new IA Agency of Canada (the Agency) to be engaged in substituted processes, or a requirement to pursue collaboration instead of substitution wherever possible. Restrictive timelines may dampen some collaborative efforts, especially with Indigenous peoples.
VI. Co-governance with Indigenous nations *Reconciliation should be a stated purpose of the law, which should further Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).*	**C**	While the IAA acknowledges reconciliation and recognizes some Indigenous jurisdictions, UNDRIP is mentioned only in the preamble, without any requirements to uphold Indigenous jurisdiction, laws and rights in accordance with UNDRIP. The IAA also limits recognition of Indigenous jurisdictions to those acknowledged or created under federal law and contains no explicit authority to establish co-governance boards.

VII. Climate assessments to achieve Canada's climate goals *The Act should mandate assessment of all projects that affect our ability to achieve necessary climate reductions, and set out clear requirements and guidance for considering all aspects of climate in order to ensure Canada meets its international goals and obligations.*	**C-**	The IAA requires consideration of the extent to which a project will help or hinder Canada in meeting its international climate obligations, but is largely silent on how it will analyze climate impacts and base decisions on climate considerations. Only designated (major) projects will be subject to impact assessment, and many high carbon projects will be exempt. Greenhouse gas emissions are not a trigger for an assessment in the new *Physical Activities Regulations.* The government's draft strategic assessment of climate change states that downstream emissions will not be considered, while allowing proponents to claim downstream reductions.
VIII. Credibility, transparency and accountability throughout *Canada needs a single, independent assessment authority to ensure that all EAs are conducted according to consistent standards. Regulators, such as the National Energy Board (NEB), Canadian Nuclear Safety Commission (CNSC), or offshore petroleum boards, should not lead environmental assessments, and decisions of the Minister should be subject to appeal.*	**C-**	The IAA establishes the Agency as the sole authority and introduces some requirements that the Agency be independent and free from bias. While the Act does not preclude the appointment of regulatory agencies to chair assessment review panels, it does require that the appointees of regulators not comprise the majority of panel memberships. It requires consideration of science and Indigenous knowledge but does not strengthen the evidence used to assess impacts or mitigation, increase independence, or require that evidence forms the basis of decisions. Also, the Act requires reasons for decision but not explicit justification, and doesn't provide mechanisms for appeals.

IX. Participation for the people *The public should be involved at the earliest stages, help design processes and have access to funding. Participation should be able to affect decisions: comment periods and hearings are not enough.*	**B**	One of the purposes of the IAA is to ensure meaningful public participation. The Act allows any member of the public to participate, and establishes a planning phase to engage the public early on in assessments. However, while the Act *enables* meaningful engagement throughout, too much is left to discretion, meaning that participation can largely remain a check-box exercise.
X. Transparent and accessible information flows *All assessment and follow-up information should be made permanently available on an open, accessible and searchable database.*	**C**	The IAA requires information (or summaries of information) to be publicly available and remain available until the conclusion of follow-up programs, but not beyond follow-up. It does not provide for peer review to ensure the integrity of the evidentiary basis of assessments, although it does not preclude peer-review, either. Overall, much of the quality and accessibility of information will depend on implementation.
XI. Ensuring sustainability after the assessment *The Act should mandate follow-up, monitoring, compliance and enforcement measures in order to ensure sustainability after the assessment.*	**C-**	The IAA requires decision-makers to impose conditions related to monitoring and follow-up, and to make the results of follow-up programs publicly available, but it lacks detail, and does not explicitly allow for revocations of permits where necessary.

XII. Consideration of the best option from among a range of alternatives *Assessments should evaluate the reasonable alternatives before decisions are made. Not approving a project should always be on the table.*	**B+**	The IAA requires all assessments to consider alternatives to the proposed project and alternative means of carrying it out, but limits alternatives to only those that are "related to the project" and does not specify how or when such consideration is to occur. As a result, alternatives assessments can remain check-box exercises rather than a core focus of the impact assessment.
XIII. Emphasis on learning *Assessments should learn from previous cases, as well as from monitoring and follow-up, in order to continuously improve processes and decisions.*	**D**	While the IAA does not preclude learning, it does not specifically mention it, much less provide mechanisms for learning such as considering follow-up or monitoring data from other projects.

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