



**Clifton Associates**

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# Federal Impact Assessment

## Who's In Charge of the Process?

# Federal Impact Assessment

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- Opening words
- Impact Assessment
- What is proposed
- Potential Issues
- Potential Impacts
- Final word

## To be clear....

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- Recognize value of impact assessment
- Value public participation
- Recognize value of Indigenous participation
- Not all of the proposed legislation is bad
  - I'm just not talking about it

## Bill C-69 - Perfect Design For:

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- Political interference/Court challenges
  - Lack of policy and planning
- Allowance of opposition/too many cooks
  - Delay
  - Inefficiency
- Government's continued abrogation of all responsibility for outcomes
  - Failure to complete Duty to Consult requirements
- Economic development continues to play the bad guy

## IA vs EA

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- We are talking about the proposed changes in the EA process (Bill C-69)
- IA is Impact Assessment
- Replaces EA: environmental assessment
  - EA worked because of broad definition of environment
- Why IA now
  - Differentiate the product
  - Broaden the scope of assessment
    - Science still included
    - More of focus on social and Indigenous issues
    - Now purports to look at all impacts

## CEAA

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- Wasn't working all that well to start with
- Changed in 2012 to current form
  - Some improvements (arguably NEB and CNSC as leads)
  - Added a 'may' to the process
  - Eliminated minor triggers
    - Caused problems in federally regulated activities
  - Overall, for large projects, no significant improvements in timeliness or predictability
    - TransMountain
    - Northern Gateway
    - Taseko's New Prosperity Mine
    - Etc.

## Why Now?

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- Election of the federal Liberals
- Campaign promises:
  - Environmental
  - Social justice
- Many interest groups wanted change
  - Mostly to more effectively oppose projects
- Revamping the Conservative's changes a key Liberal platform



## My Opinion

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- The EA Process has failed because:
  - The federal government has failed to be the neutral arbiter of the process
    - With the arguable exceptions of the CNSC and NEB
  - They have abrogated their rights to the ‘mob’ and allowed emotion to rule (and hence politics)
  - They have failed to find workable partnerships with Indigenous groups (or follow Duty to Consult requirements)
  - They have failed to provide policy guidance on what can be developed
  - They have failed to give everyone responsibilities in the process

## My Opinion

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- All of this has led to an erosion of process
  - Lack of trust (by all parties)
  - Lack of timeliness and predictability
  - Federal failure to abide by their own processes
    - Especially Duty to Consult
    - Reason for some major project failures
    - Failure to re-consult after EIA decision on acceptable projects
  - Knee jerk political decisions/legislation
  - Rule by court decisions in absence of clarity
- Net result = Mob rule

## February 2018 – Proposed Legislation

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- Federal government
  - Bills C-68 (Fisheries Act) and C-69 (IAA, CER, NPA)
- Bill C-69
  - Establishes the Impact Assessment Agency (IAA)
    - Replaces CEAA, NEB and CNSC for IAs
    - Undertake all federal IAs
    - Strong emphasis on social and Indigenous (> than science?)
    - Claim will increase timeliness and certainty

## Initiation Phase(s)

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- Starts with the “Initial description of the project” submission
  - Internet posting
  - Public comments
  - Initial consult with stakeholders
  - Provide proponent with summary of issues
- Proponent then submits detailed Project Description
  - And a notice on how will deal with issues
- IAA posts notice - starts 180 day Initiation Phase

## Initiation Phase cont'd.

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- A 180 day Initiation Phase commences
- IAA expects to broker discussion with Stakeholders
  - Develop consultation process, especially with Indigenous groups
  - Broker jurisdictional agreements
- But - New agency/new rules
  - Poorly defined as of now
    - 180 days of what?
    - Less definition at third reading
- Likely in proponent's best interest to do the consultation and engagement/IBAs/etc.

## Issues: Initiation Phase

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- Designed for increased participation
  - A lot of voices and direct project connection not required
  - Increased funding available
- Two Opposite Expectations:
  - Proponents will expect IAA to give a pre-approval of sorts from this phase
    - Project conceptually OK
  - Opponents will expect the project to be shelved

## End of Initiation Phase

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- Notice of Commencement – internet posting
- Proponent provided with list of mandatory studies/information (guidelines?)
- Element of pre-approval??
  - Government can stop process on policy grounds
  - If they don't.....?
- With so many stakeholders
  - Could have bizarre guidelines
- With 3 years to complete information requests
  - Will guidelines be written to fill this time?

## Timelines Under CEAA – U Mine/Mill

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- **Year 1:** Baseline
- **Year 2:** Guidelines, prepare and submit EIA
- **Year 3:** Complete EIA process, complete license submission(s)
- **Year 4:** CNSC Commission Hearings: EIA and initial license approvals
- **Year 5 & 6:** Construction, ongoing license submissions
- **Year 7:** Commission Hearing, operational license issued
- May 2017 CNSC licensing document indicates 8 years likely
- Add year for Panel under CEAA (say 8-9 years with panel)



## Timelines Under IAA – U Mine/Mill

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- No clear direction early on
  - Does one start baseline and/or simply submit project description
- 180 day Initiation Phase (Likely +90 days or more)
  - Initial consultation and public feedback
  - Working with other jurisdictions including Indigenous
  - At end - Government could cancel project at this point
  - At end – list of mandatory studies and project commencement notice
  - To be fair: for non-U mine project, at this point there could be a no-IA decision.
- Up to 600 days for Panel/or 300 days for CNSC panel
  - Do baseline, develop IA document (?), provide mandatory studies
  - Proponent has 3 years to complete studies (not part of 300/600 days)

## Timelines Under IAA – U Mine/Mill

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- Panel hearings
- Panel issues report to IAA?
- [Spot where most projects fail!!]
- Assume IAA issues decision document to Minister/Cabinet
- Cabinet decision
  - If positive – Panel can issue Commission IA ruling and possibly initial CNSC license (e.g. Site Preparation License)
  - CNSC takes over regulation of project per normal
- Total, if maximum time to start work at site: ~6 years
- Then approximately 8-9 years to production

## So.....for a U Mine/Mill

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- For a panel process, the timelines appear broadly similar to current (7 to 8 years) to production
  - Using best case – no delays
  - Not clear if the same opportunities exist for efficiency
- But, what could go wrong?
  - So many stakeholders involved
  - Implied veto for Indigenous groups
  - Almost unlimited opportunity for minister or cabinet to delay
    - *Project initiation*
    - *Length of review process*
    - *Final decisions*
  - New untested process
  - Will federal government finally follow own processes?

## CNSC and NEB

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- Actually doing what they were supposed to
  - Sin seems to have been approving projects
  - Making the hard decisions based on science
- Models of government regulation
  - Strong regulators
  - Currently arms length from politicians
  - Maintain neutral stance in EIAs
  - Can do parallel EIA and licensing

## Issue: Politics

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- Process appears designed for political interference:
  - In all phases, the government can delay by 90 day increments almost indefinitely
    - *If strong opposition*
  - Can kill project during Initiation Phase if not broadly acceptable
    - *No criteria for this*
  - Final decision sits with Minister or Cabinet
    - *No defined timelines*
- Project opponents will love this and act accordingly
  - Put pressure on politicians
  - Make noise
  - Court challenges

## Issue: Too Many Cooks

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- Expands stakeholders
  - Essentially without limit
  - No need for any form of standing
- Expands roles of Indigenous groups
  - Implied veto under free and informed consent language (UNDRIP)
  - May be included as ‘jurisdictions’
- Expanded stakeholder funding
  - Will fuel involvement
- No responsibilities for stakeholders in Bill
  - Responsiveness and/or timeliness to participate

## Issue: Timeliness

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- At the best, no improvement
- Likely, significant delay
  - Especially as no defined processes
  - Ripe for political interference/court challenges
- At worst, shelved projects/no development
- Loudest voices will win process

## And You Get to Pay for the Privilege

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- Cost recovery is baked into Bill C-69
  - No mechanism for appeal
  - Swift reaction if non-payment
- Uranium mines/mills
  - Get to pay twice
  - CNSC and IAA
- Increased intervenor funding
  - Not clear if proponent paying this too



## We all have common goals

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- A strong economy supports environmental and social growth and activities
  - Poor understanding of the creation of wealth in resource development
- Everyone wants a strong economy and the opportunities it brings
  - A future for our children
- Resource development and environmental protection are not mutually exclusive
  - Modern mining is very compatible with this notion
  - Mining doesn't take up vast areas
  - Mining is not very good at presenting counter arguments

## Who will this harm?

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- Just about everyone
  - Especially northern and Indigenous communities
  - Mining is already the largest private employer
- Canadian economy
  - Business wants fairness, predictability and timeliness
  - Process needs to follow the basic flow of investment money
- Canada's reputation as a safe country to invest in

## Final Word

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- Current process is not fair or reasonable
  - New one will be worse
- Need to bring principles of reasonableness back into the process
- All participants must have a legislated responsibilities
  - For timeliness and participation
  - Should not be able to delay vexatiously or frivolously
  - Consensus as a process is likely unworkable
- Federal government responsibilities
  - Policy development
  - Follow own Duty to Consult requirements
  - Don't make every EIA an *ad hoc*/one of



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