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Sweeping new federal environmental law bill contains promising changes, say environmental lawyers

Amendments needed to fulfill government's promise to restore public trust in environmental decisions

VANCOUVER, BC, Coast Salish Territories – Lawyers with West Coast Environmental Law Association say new federal legislation tabled today could put Canada back on the right course towards restoring public trust in environmental decision-making, if amendments are made to address key concerns.

Environment Minister Catherine McKenna tabled a [sweeping bill](#) this morning containing two proposed new laws to overhaul Canada's environmental assessment framework and replace the National Energy Board (NEB) with a new Canadian Energy Regulator. Bill C-69, tabled just days after a separate bill to amend the *Fisheries Act*, also contains proposed amendments to the *Navigation Protection Act* and related amendments to other Acts.

"The government promised to fix Canada's broken environmental laws, to 'restore lost protections and incorporate modern safeguards'," said Jessica Clogg, Executive Director & Senior Counsel. "This new bill contains important measures to help fulfill that commitment. At the same time, there are many unanswered questions, and important gaps that need to be addressed in order to rebuild trust in environmental decisions."

West Coast lawyers are optimistic about a number of very positive elements contained in the legislation, such as the consolidation of assessments in one agency, creation of a new energy regulator to replace the industry-captured NEB, mandatory consideration of Indigenous knowledge, and earlier and more meaningful opportunities for the public to participate in review processes.

However, some of these improvements are undermined by concerning flaws – including more restrictive timelines, a failure to require regional and strategic assessments (which remain discretionary under the new *Impact Assessment Act*), an absence of safeguards to ensure economic interests don't trump other considerations in a broad "public interest" determination, and only requiring assessments of a limited category of projects.

"The shift in the new *Impact Assessment Act* towards a sustainability approach that considers all environmental, social, health and economic concerns is welcome," said Anna Johnston, Staff Lawyer. "There are some loopholes in the new law that would continue to allow short-term economic interests to trump environmental and community needs, but we are confident that these gaps can be plugged and look forward to working with the government to make the necessary amendments."

"Replacing the National Energy Board with the new Canadian Energy Regulator addresses some, but not all of the issues of regulatory capture," said staff Lawyer Eugene Kung. "The tabled legislation has not implemented all of the recommendations of the NEB modernization panel to separate oil and state."

The legislation falls short of implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and appears to codify a consultation regime in which Aboriginal rights and title are just one factor to be considered, and thus potentially subject to override by a 'public interest' determination.

“We are also concerned that the spirit of UNDRIP is undermined by the absence of an Indigenous consent requirement, by reducing constitutionally protected aboriginal rights to one factor in a broad ‘public interest’ determination, and making the recognition of Indigenous jurisdiction to conduct assessments discretionary,” said Clogg.

While the new *Canadian Navigable Waters Act* does increase legal protection for most of Canada’s navigable waters, it falls short of “restoring lost protections,” as promised by the government. Traditionally Canada’s *Navigable Waters Protection Act* protected not just current use of waters for navigation, but future use and environmental and social values; the new Act ignores that broader context.

“Navigable waters are part of Canada’s heritage – allowing for commercial, recreational and Indigenous navigation, but also meeting social, cultural and environmental values,” said Andrew Gage, Staff Lawyer. “While we celebrate the return of protection of navigation to the vast majority of Canadian rivers, the bill takes an overly technical and narrow approach, ignoring the broader environmental and social benefits that Canada’s water systems provide and that Canadians value.”

The legislative changes tabled today are the culmination of the government’s lengthy review of environmental laws, which involved extensive consultation and reports from Expert Panels and Parliamentary Standing Committees.

West Coast lawyers will continue to be deeply involved in efforts to rebuild and strengthen these key federal environmental laws as the bills enter first and second reading, and consideration by committees.

“We look forward to working with MPs over the coming months to ensure that the strongest aspects of these bills are passed into law, and that the biggest concerns are addressed,” said Johnston.

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