An Introduction to Environmental Law and Policy in Canada 4th Edition (Williams/Muldoon)

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Update to: Chapter 7: Impact Assessment

Major changes to the federal impact assessment legislation and practice have been underway for several years now. Some of these changes are responses to the Supreme Court of Canada's Reference re Impact Assessment Act ruling (2023 SCC 23), concerning federal trespass into provincial jurisdiction. Others hope to meet global economic turbulence by attracting investors to rapidly approved major projects.

The changes are ongoing. The biggest recent step is federal Bill C-39, now before Parliament and under review by the House of Commons and the Senate. It will almost certainly pass, but there's been enough push-back to make amendments conceivable.

Bill C-39 and other federal assessment moves eliminate some impact assessment requirements and expedite review and approval processes. They are closely linked to the *Projects of National Interest* (PONIs) initiative to identify, pre-approve, support, and expedite selected big projects. Bill C-39 would add broader powers for application in selected *Regions of National Interest* (RONIs).

The general thrust of the changes so far and in Bill C-39 is:

- to separate federal and provincial areas of assessment authority (which could lead to better integration through cooperation, but now favours more deferral to weaker provincial processes and less attention to overall effects);
- to reduce the range and number of projects subject to relatively comprehensive assessment and review by the Impact Assessment Agency of Canada or joint panels;
- to speed project reviews and approvals by imposing a tight review process timeline, focusing on permitting requirements, and enabling pre-approvals for selected national interest projects;
- to respect Indigenous rights and meet obligations for related engagement in ways that do not impede speedy approvals; and
- to transfer more authority to less transparent political-level deliberations and decisions (e.g., on PONIs and RONIs in the Privy Council Office and its Major Projects Office).

The final consequences for the federal assessment regime and related areas of federal regulation and decision making remain uncertain. There are implications:

- for the provinces, some of which are also changing their processes;

- for decision making on major projects, including those involving the Canadian Energy Regulator or the Canadian Nuclear Safety Commission, as well as Projects of National Interest; and

- for other federal actions ranging from meeting international commitments (for example, for reaching net zero greenhouse gas emission targets), to maintaining regulatory permitting standards (such as those concerning fishing and fish habitat, and species at risk).

Roughly similar changes are underway in several other countries. All are understandable as national efforts to address rising global economic turbulence. But where they compromise open governance, core socio-ecological and climate systems, and global collaboration, they are more likely to feed lasting turbulence and undermine prospects for lasting wellbeing.

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