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Time to Move From Talk to Action on Regulatory Reform

Heather Exner-Pirot and Michael Gullo

This study was commissioned by the Centre for Civic Engagement. The CCE is a non-partisan Canadian charity dedicated to conducting original research on public policy issues related to Canadian prosperity, productivity, and national flourishing. The CCE's research informs an active program of policy seminars, events, conferences, and lectures all aimed at providing the policy making community with actionable insights that encourage informed decision making on issues that matter to Canadians.

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Introduction

Canada's growth and productivity challenges were already shifting the public and political appetite towards regulatory reform. The tariffs imposed by the Trump administration have only accelerated the call.

Regulatory reform for major projects is one of the most effective ways to pull more private capital into the economy and boost employment and incomes for Canadian workers. We're now seeing a political consensus emerge around the need for such reforms and the projects required to secure Canada's energy supply and improve its ability to export more energy and resources with its allies and trading partners.

Conservative leader Pierre Poilievre has promised[1] to "repeal C-69" within 60 days of being in office. Liberal candidate Mark Carney has similarly promised[2] to "require all federal regulatory authorities, including the Impact Assessment Agency, to complete their review of projects that serve the national interest on a two-year timeline (much faster than the government's current timeline of five years)."

All Canadian energy and mines ministers (federal, provincial, and territorial) recently declared[3] they would "accelerate resource development through more efficient and timely permitting and regulatory processes."

There are even calls to use emergency powers, or declare new projects in the national interest, to move them ahead faster.

It's become a question of how, not if, to reform our regulatory system.

Herein lies the purpose of our essay. The goal is to help bring expression to what such reform should look like. We aim to set out some concrete principles and policies for an agenda that expedites the regulatory process while honouring our collective responsibility to respect Indigenous rights and assuring Canadians that high environmental standards will be maintained.

Our chief recommendation is for the federal government to stay in its jurisdictional lane and focus on issues of federal relevance. The current regulatory system involves a lot of duplication and redundancy between the federal, provincial, and territorial governments. The policy goal should be "one project, one assessment, one decision."

1 Jenny Lamothe, "Poilievre promises 'common-sense Conservative government'," *sudbury.com*, January 13, 2024, https://www.sudbury.com/local-news/poilievre-promises-common-sense-conservative-government-8106880.

2 "Liberal Party of Canada," https://liberal.ca/.

3 "Joint Statement From Canada's Energy and Mines Ministers," *BOE Report*, March 4, 2025, https://boereport.com/2025/03/04/joint-statement-from-canadas-energy-and-mines-ministers/.

A Broken Process

Canada's regulatory systems are supposed to protect us from risk, not from progress.

Yet somehow our approaches to approving and permitting projects have evolved into an albatross: a burden on those who would build and invest in our country. Canadians have less infrastructure, jobs, productivity and economic growth as a result. The net effect has left Canadians poorer.

Collectively we have decided that this state of affairs is no longer tenable, and our political leaders describe on a daily basis how they will improve the system. Now we must do the hard work of actually peeling back the many layers of regulatory bureaucracy that have stymied our ambition and competitiveness.

At the top of the list of things that must change for Canada to start building major projects again is the *Impact Assessment Act (IAA)*, known colloquially as Bill C-69.

Shortly after the act received Royal Assent, the Business Council of Canada was emphatic[4] in its view that the bill was an improvement from the previous regulatory regime, but did not inspire the confidence required to develop projects that would diversify Canada's market share for energy beyond North America.

It was right. Canada continues to be faced with a 'one customer challenge' even though demand from other allies and trading partners for energy and resources remains high. This is perhaps most obvious with our dependence on the U.S. by far the biggest, and until Trans Mountain went into service, the sole customer for our oil and gas exports.

Objectively then, the IAA has been both a policy failure, with only one project, Cedar LNG, being approved under its auspices since its passage in 2019; and a legal failure, with parts of it being declared unconstitutional by the Supreme Court of Canada in October 2023. Reform is necessary to advance Canada's national economic and security interests.

The task should not be oversimplified. If the goal is to build more major projects, and fast, then we need to fix our processes rather than break them. The last thing we want is to create more uncertainty and polarization around building infrastructure.

[4] Goldy Hyder, "The amended Bill C-69 is an improvement but still doesn't do enough for Canada's energy sector," *Business Council of Canada* online, June 13, 2019, https://www.thebusinesscouncil.ca/publication/the-amended-bill-c-69-is-an-improvement-but-still-doesnt-do-enough-for-canadas-energy-sector/.

How Did We Get Here?

Reforming Canada's environmental assessment processes was a Liberal campaign promise during the 2015 election, and a response to the Harper-era CEAA 2012 *(Canadian Environmental Assessment Act)*. The IAA was introduced in 2018 and passed in June 2019, following contentious senate hearings and large protests across the country.

CEAA 2012 was not particularly successful in getting projects built quickly and smoothly. It resulted in a lot of court challenges, including by Indigenous groups who did not feel their rights were adequately being protected by federal processes; and it did not enjoy a high degree of public confidence, rightly or wrongly.

But if the goal of the IAA was to introduce a review process that was predictable and timely, and result in judicially resilient decisions that provided assurance to private investors and the public, it fell woefully short.

Amongst its fatal flaws was greatly broadening the scope of environmental assessment from the core task of identifying and mitigating impacts of major projects on the environment and human health; to advancing progressive goals around climate change, gender diversity and reconciliation.

It also formalized the ability of the federal government to effectively veto projects it did not like. CEAA 2012 had first provided for such political intervention in the form of a "public interest" designation, but corporations and provinces turned a blind eye, as its intent was seen as helping get projects approved, rather than rejected. Allowing for the Minister of Environment and Climate Change to designate any project for federal review under IAA added political risk, and immediately placed energy projects involving coal, oil and natural gas on an uneven playing field. Rather than fight what they expected would be uphill battles, many investors simply moved their capital to friendlier jurisdictions.

It is difficult to measure the project that never gets proposed. But the collapse[5] in the number and value of projects in Natural Resource Canada's major projects inventory tells a story. At its peak in 2015,[6] the inventory held $711 billion in major projects. By 2023[7] it had dropped to $572 billion. That is in real dollars. If Canada had retained 2015 levels of planned investment and kept pace with inflation, the figure today would be $886 billion. And if it had also kept pace with population growth—that is to say, if the planned investment in major projects had kept pace on a per capita basis—the figure would be $985 billion.

For the Canadian industrial sectors that were not as targeted as fossil fuels, the IAA still imposed additional layers of regulation and bureaucracy to projects, dampening their investment prospects. It did not just add more federal scrutiny to provincially regulated energy and mining projects; it added more federal scrutiny to federally regulated projects. Whereas inter-provincial pipelines and transmission were already covered by the Canadian Energy Regulator, and nuclear by the Canadian Nuclear Safety Commission – two federal regulators assessing areas clearly under federal jurisdiction – the IAA was applied to them as well.

[5] Heather Exner-Pirot, "The smoking gun for Canada's weak economic growth? A collapse in energy and resource investment," *Thehub.ca,* May 2, 2024, https://thehub.ca/2024/05/02/heather-exner-pirot-the-collapse-in-energy-and-resource-investment/.

[6] "Natural Resources: Major Projects Planned and Under Construction — 2016 to 2026," *Energy and Mines Ministers' Conference*, August 2016, https://natural-resources.canada.ca/sites/nrcan/files/emmc/pdf/major_projects_access_e.pdf.

[7] "Natural Resources: Major Projects Planned or Under Construction 2023 to 2033," *Natural Resources Canada* online, 2023, https://natural-resources.canada.ca/sites/nrcan/files/emmc/pdf/2023/2023-Major-Projects-Inventory-Report_EN_14Nov2023_OP.pdf.

In last Spring's mandatory five year review[8] of the IAA's project list – the description of major projects which are automatically subject to a federal impact assessment – industries affected by the legislation asked to be either excluded from the list altogether (i.e. exempt from an IAA assessment) or to raise the threshold at which a federal review would be triggered for one of their projects. This was a strong and explicit indication that proponents did not experience value from the IAA process, but rather saw it as a burden to be avoided.

The IAA also overreached into provincial affairs, with the Alberta Court of Appeal characterizing the Act as an "existential threat" to the division of powers outlined in the Constitution. The management of non-renewable natural resources (e.g. oil, gas, minerals), forestry resources and electricity are clearly identified in the Canadian Constitution (s.92A) as under the provinces' exclusive legislative power.

Alberta challenged the IAA on the grounds that it extended into its jurisdiction, and the other provinces joined them as intervenors. In October 2023, the Supreme Court of Canada found[9] that parts of the IAA were indeed unconstitutional, applying too broadly to social and environmental impacts. The Court determined the federal government needed to narrow its application to effects under federal jurisdiction, such as fisheries and migratory birds.

The federal government subsequently made amendments in June 2024. While the government made some effort to reduce the scope and reach of federal authority, the amendments are generally considered to have fallen short of making the IAA constitutional, and Alberta is challenging it in court again.[10]

[8] "Discussion paper on the review of the Physical Activities Regulations," *The Impact Assessment Agency of Canada* online, https://letstalkimpactassessment.ca/discussion-paper-on-the-review-of-the-physical-activities-regulations.

[9] *Reference re Impact Assessment Act, 2023 SCC 23, Supreme Court of Canada*, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20102/index.do.

[10] Carrie Tait, "Alberta launches second court challenge to federal Impact Assessment Act," *The Globe and Mail* online, November 28, 2024, https://www.theglobeandmail.com/canada/alberta/article-alberta-launches-second-court-challenge-to-federal-impact-assessment/.

Where to From Here?

The next federal government has an immense opportunity to strengthen the country's economic resilience and long-term competitiveness. Reforming our project approval and permitting regime should be viewed as a catalyst to unlocking a new era of investment that will accelerate development and ensure that Canadians realize the full value of their energy and natural resources. This would been a positive development for Canadian workers, since the natural resource sector is the source[11] of the highest average wages across the economy's industrial sectors and comprise well over half of Canada's merchandise exports.[12]

Globally, Canada will always remain a high-cost jurisdiction to doing business, but smart reform can ensure that our project approval and permitting processes become a competitive advantage instead of a liability.

Below are some key principles to guide regulatory reform that we believe will unleash new investment across a wide variety of sectors.

1. Stay in your lane

No one benefits from the duplication and redundancy that frustrates our current system. Going forward, environmental assessment in Canada should be founded on the principle of "one project, one assessment, one decision."

In practice, that means provinces and territories should lead environmental assessments for mines, oilsands projects, refineries, power generating facilities, and intra-provincial pipelines. Inter-provincial and international pipelines and transmission lines should be assessed by the Canadian Energy Regulator. Nuclear projects should be assessed by the Canadian Nuclear Security Commission. Railroads, marine terminals, offshore and other projects on federal lands that meet certain thresholds should be assessed by the Impact Assessment Agency of Canada.

Common performance standards should be agreed to in order to maintain consistency, confidence, and competitiveness. Proponents do not want to have to figure out thirteen substantially different systems.

Final decision-making authority should rest with the responsible regulator. Those regulators should seek to develop strong institutional expertise, earn public confidence, and shepherd projects through the process in a timely and responsive manner.

2. A narrow and short project list

The project list approach, introduced in CEAA 2012 and maintained in IAA, is a prudent and predictable way of identifying the types of projects subject to federal approval. It specifies the types of projects that automatically require a federal environmental assessment, based on certain thresholds or criteria.

[11] Andrew Evans, "DeepDive: Canada's natural resources are a long-neglected 'golden goose.' It's time to change that," *Thehub.ca*, May 13, 2024, https://thehub.ca/2024/05/13/deepdive-canadas-natural-resources-are-a-long-neglected-golden-goose/.

[12] "10 Key Facts on Canada's Natural Resources – 2023," *Government of Canada* online, January 9, 2025, https://natural-resources.canada.ca/science-data/data-analysis/10-key-facts-canada-s-natural-resources-2023.

The fastest way to reduce federal overreach and provide greater regulatory certainty to proponents is to make the IAA project list very short and narrowly focused on projects with significant adverse effects within federal jurisdiction.

To reduce the risk of political interference, and thus political risk, there should be no discretionary authority for a Minister to designate a project that is not already on the project list.

3. Bring greater clarity to the duty to consult

Section 35 of the Constitution recognizes Indigenous and treaty rights, and these cannot be legislated away. The application of these rights as they intersect with project approvals is still a huge source of uncertainty for proponents and investors. Which representatives, of which nations, must be consulted and accommodated by proponents, based on what impacts, and to what standard: this changes from province to province, from project to project, and from time to time.

Federal and provincial regulators need to provide clarity to proponents on their consultation obligations, ideally in a concerted manner. They need to scope Indigenous nations in, not out, of assessments. They need to provide financial and other support to ensure Indigenous nations have sufficient capacity to engage in the regulatory process, and are not made to be the bottleneck in project approvals. And they need to work with communities to develop and honour reasonable timelines for decision-making.

We appreciate that some First Nations prefer the federal approach to consultation over provincial ones.

All provincial and federal levels of government, and their designated regulators, are legally responsible, and jurisdictionally competent, to fulfill the Crown's Duty to Consult and Accommodate. They should immediately recognize the due diligence reflected by Indigenous communities and companies when they work together to create equity or benefit-sharing agreements for major projects.

If they want to attract more investment, all provinces need to inspire as much confidence, and preferably more, than the federal government at Indigenous consultation for projects under their jurisdiction.

4. Limit the gaming of the regulatory system

A clear and value-added role for public involvement should remain as a prominent feature of Canada's project approval regimes. But it has been abused. Lawfare – the strategic use of legal processes, litigation, and regulatory frameworks to achieve social and political objectives – is frequently used to stymie the approval of major projects in Canada.

To combat this phenomenon, active participation in the regulatory process should be limited to parties with rights to participate, based on their being directly affected by a project. Their views must be prioritized.

There may also be scope to narrow judicial review to ensure that the legal system can be availed for legitimate purposes but itself does not become used as a means to slow the process through spurious legal claims.

5. Strengthen timelines for regulatory decisions

In project development, time equals money. The extra year or two, or five, that proponents expect to face for a project approval in Canada versus a competitor jurisdiction is often the difference between a decision to invest capital here or somewhere else. Regulators often seem oblivious to the cost pressures they put on proponents by requiring more information or extending decision timelines. We can thus improve our productivity, spur growth and investment, and protect the environment by accelerating our processes.

To regain investor confidence, timelines for impact assessment processes, including permitting and project approvals at both the federal and provincial/territorial levels, should be concrete and adhered to, and enshrined in legislation. In a world where demand for energy and natural resources is poised to rapidly accelerate, Canada needs to benchmark against its international peers and strive to be best in class. Doing so can turn Canada's project approval and permitting system into a competitive advantage.

Here's what not to do.

Proponents and investors crave certainty. They spend billions of dollars on projects that take years to build and seek decades to operate, and thus will be exposed to multiple governments. The situation we have now – of a policy pendulum swinging from left to right, and back again – is far from ideal. The regulatory reforms we undertake should aim to gain support from a wide spectrum of Canadians, so there is confidence there won't be a whole new set of rules in four or eight years' time. The public desire for reform has never been better, so this is definitely possible. But the effort should strive to develop a coalition, not an opposition.

Similarly, regulatory reform needs to be inclusive and respectful of Indigenous rightsholders. There are good moral reasons for this. But there are legal ones too. Any process that runs roughshod over Aboriginal and Treaty rights will inevitably be challenged, and potential investors will want no part of the legal delays and reputational risk that brings. We can do better on regulation and permitting without doing worse on Indigenous engagement.

The Case for Action

Reforming the Impact Assessment Act is essential to attracting more investment, accessing export markets, and building and thinking bigger in Canada.

But it's not a panacea. Even if it greatly reduces its environmental assessment obligations, the federal government will still need to issue permits for activities under its jurisdiction, for example altering fish habitat, disturbing migratory bird nests, or building tall structures that affect air navigation. It needs to get better at those too.

Much can be done to fuse approval and permitting processes so that information and consultation conducted as part of an assessment can be leveraged to provide permitting authorities with the information they require to issue permits efficiently.

The federal government isn't the only jurisdiction that needs to up its game. Many provincial regulators have slow, unresponsive and complex processes that need to be streamlined. If provinces want to assume their full jurisdiction, then they need to exercise it with full competence.

Canadians want clean air and water, consideration for wildlife, respect for Indigenous rights and confidence that major projects won't compromise our safety. To achieve that, we need regulation.

But we don't need overregulation. Somewhere along the way we developed a system that sees the people and companies that build things in Canada – the mines, pipelines, refineries, power plants, ports, railroads, and roads – as adversaries from whom the public needs defending. We saw the approval of major projects as a luxury for the proponent instead of a necessity for Canadians. We're now reaping the consequences of that attitude.

Things are changing now, and quickly. Politicians of all stripes are saying the right things about reform and competitiveness and growth. We are excited for a new economic era in Canada, one that embraces ambition and growth.

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Heather Exner-Pirot is a Special Advisor and **Michael Gullo** is the VP of Policy at the Business Council of Canada.

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