Competitive Canada

RECOMMENDATIONS TO IMPROVE FEDERAL ASSESSMENT FOR MAJOR PROJECTS

How we can get better stuff built faster

CANADAWEST FOUNDATION

Marla Orenstein | September 2023

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Recommendations to improve federal assessment for major projects

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Many aspects of Canada's approval system for major projects are world-leading. The process is rigorous, inclusive and protective of the environment. However, it isn't efficient, coordinated or predictable.

This presents a competitiveness problem, but also a competitiveness opportunity. Many of Canada's competitors also struggle with slow regulatory and permitting regimes and are attempting to develop solutions.

This report focuses on opportunities for improving project approval under the federal *Impact Assessment Act*. Some solutions are relatively easy to implement; others require deeper change. However, as noted by the government of Australia, "Any regulatory system is only as good as its weakest link. Partial reform efforts are unlikely to achieve meaningful improvements."

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INTRODUCTION

Canada has a competitiveness problem. But also—a competitiveness opportunity.

Regulatory processes for authorizing major projects across the country are perceived as sluggish, duplicative, inefficient and subject to short-term political considerations. Not surprisingly, Canada has developed a reputation as a country where major projects can't get built.[1]

The result has been decreased private sector investment in Canadian projects.[2] This may jeopardize Canada's ability to build the infrastructure needed to meet federal and provincial emission reduction targets and support a rapid and secure global energy transition.

This isn't just a Canadian problem. As noted throughout this report, many of Canada's competitors are also struggling with slow regulatory and permitting regimes and are attempting to develop solutions. We can learn from their efforts. But there isn't a single fix that fits all countries; solutions are hugely context dependent.

The Canadian government has indicated a strong appetite to tackle the problem of regulatory efficiency and effectiveness. A policy window has opened—and if we can fix this problem, we have the opportunity to become Competitive Canada. We can't compete in dollars against the U.S. Inflation Reduction Act. Can an efficient, effective regulatory regime (with strong Indigenous participation) be our "secret sauce" instead?

This report focuses on the federal *Impact Assessment Act (IA Act)* and opportunities for improvement. The report identifies five major problems and a range of potential solutions that involve both the federal and provincial governments. Some of these solutions are relatively small and easy to implement. Others require deeper change – changes to the Act itself, or to cross-agency or cross-jurisdictional government processes.

We recognize that the federal and provincial governments may not have the appetite for deep change. However, you only get what you pay for. As noted by the government of Australia in its review of the country's assessment system for major projects, **"Any regulatory system is only as good as its weakest link. Partial reform efforts are unlikely to achieve meaningful improvements."**[3]

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1 Business Council of Alberta. (2023) *Future Unbuilt: Transforming Canada's Regulatory Systems to Achieve Environmental, Economic, and Indigenous Partnership Goals*

2 Bishop G and Sprague G. (2019) *A Crisis of Our Own Making: Prospects for Natural Resource Projects in Canada*. C.D. Howe Institute

3 Productivity Commission (2013) *Major Project Development Assessment Processes Research Report*. Government of Australia, Canberra.

Permitting reform efforts in the United States

One of the largest roadblocks to the U.S. delivering on its energy and climate leadership initiatives is the difficulty of building the necessary infrastructure in a reasonable timeframe. The average time for a renewable energy project to complete environmental reviews in the U.S. is 4.5 years and for transmission lines, 6.5 years. Timelines for fossil fuel and mining projects can be even lengthier. As put by John Podesta, senior adviser to President Biden on clean energy, "We got so good at stopping projects that we forgot how to *build* things in America." For the U.S., this problem obstructs funding offered under the *Inflation Reduction Act*, which only becomes available if projects receive approval to move forward.

As a result, there has been a flurry of interest from both parties in reforming the permitting process at the federal, state and local levels. The main areas of focus are to:

- Reduce time limits for environmental reviews
- Prioritize specific project types (energy security, emission reduction)
- Reduce assessment requirements for similar projects in similar regions
- Better coordinate the activities of the different agencies involved in permitting
- Improve data collection and data sharing
- Establish a statute of limitations on litigation and time limits for court decisions

Some actions taken to date:

- The Federal Permitting Improvement Steering Council (FPISC) was established in 2015 to coordinate the permitting activity of over 20 federal agencies.
- The *Infrastructure Investment and Jobs Act* (2021) included provisions to streamline environmental reviews.
- The rules on federal environmental assessment under the *National Environmental Policy Act* (NEPA) are being revised by the Council on Environmental Quality (CEQ), continuing work started under the Trump administration.
- Senator Manchin, Chair of the Senate Energy and Natural Resources Committee, introduced a permitting reform bill with bipartisan support, known as the *Building American Energy Security Act* of 2023. This bill has not yet passed. Three competing bills have also been proposed by members of Congress.
- In June 2023 the U.S. passed the *Fiscal Responsibility Act of 2023* with key permitting reform provisions including key pieces of Senator Manchin's proposed legislation.
- The Whitehouse has indicated it will use its authority to accelerate federal permitting and has produced the Biden-Harris Permitting Action Plan.
- National Interest Electric Transmission Corridors (NIETCs) have been designated by the Secretary of Energy to expedite the permitting and siting of electric transmission infrastructure.
- The White House Council on Environmental Quality (CEQ) announced two new task forces to work on improving permitting for CCUS projects.
- Some states, including California and Texas, are making changes to state-level legislation.

Despite this outpouring of activity, permitting reform in the U.S. hasn't had an easy path. As in Canada, permitting reform brings up the thorny question of states' rights vs. federal jurisdiction and how to manage cooperative federalism. Politics has also played a role; the two political parties have been unable to agree on how to craft solutions that favour their own pet projects without providing what they perceive as undue advantage for the other project types.

Note: The term "**permitting**" is used a little differently in Canada and the U.S.

In the U.S., "permitting reform" refers to all project authorization processes, especially environmental assessment and approval under NEPA. In Canada, "permitting" refers mainly to post-approval authorization of specific activities (see section 4e).

PROBLEM 1

Jurisdictional duplication and insufficient coordination

Problem 1: Jurisdictional duplication and insufficient coordination

Most major projects that fall under the *IA Act* require both federal and provincial approval to proceed.[4] However, there is currently very little cooperation and coordination across the two orders of government. As a result, there are often two different but simultaneous assessments that need to be conducted of the same project. This means that:

PROPONENTS must prepare two different impact assessment reports, often with key differences in methodology

GOVERNMENTS fail to benefit from potential efficiencies around information gathering and use of expertise, may establish requirements or deadlines that are incompatible, and risk creating conditions or requirements that are misaligned.

AFFECTED STAKEHOLDERS AND INDIGENOUS GROUPS may face twice the number of meetings to attend, documents to scrutinize, information requests to respond to and review processes to participate in.

This duplication increases time, cost and burden for all participants. However, there is no evidence that better outcomes are achieved. Duplication and lack of coordination do not result in a better understanding of impacts, more robust mitigations or conditions or better decision-making.

Processes and activities need to be better harmonized across the orders of government across all parts of the IA process. The principle also applies to other regulatory processes that involve multiple government agencies, such as permitting. These are not the focus of this report.

Constitutionality of the *IA Act*

A number of provincial governments have argued that the federal government has overstepped its bounds with the *Impact Assessment Act*. A reference case was brought to the Supreme Court, led by the Government of Alberta, which argued that the federal government does not have authority over projects where the activity is fully within provincial jurisdiction.

The Supreme Court is expected to issue its decision soon.

This report does not attempt to provide recommendations for how responsibility for assessment and project approval should be apportioned. This is for the Supreme Court to decide. Rather, this report provides suggestions for how to increase cooperation such that assessments—no matter how responsibility is assigned—move forward more efficiently and with increased clarity.

4 There are thousands of generally small projects that take place on federal lands or federally protected areas that are assessed under the *IA Act* and that are not subject to provincial assessment. This report instead focuses on those major projects that fall under the federal Physical Activities Regulations, a.k.a. the "Project List." These include mines, pipelines, fossil fuel-powered electricity generation facilities, nuclear facilities, oil sands mines, etc. and generally require provincial as well as federal approval.

SOLUTION 1A

One project, one assessment process

The best solution for the problem of duplication and lack of federal/provincial coordination is to have only one assessment process used for any given project assessment.

One way to reach this goal is through **substitution**. Substitution means that one order of government conducts the assessment on behalf of both, with each order of government making its own decision at the end. Substitution is the most efficient and parsimonious version of cooperation as it virtually eliminates duplication for all parties—governments, proponents, stakeholders, Indigenous groups and regulators.

The *IA Act* allows for substitution agreements under which a province conducts the assessment in a way that meets the legislative requirements of both the federal and provincial governments. So far, B.C. is the only province that has signed a substitution agreement. Since the implementation of the *IA Act* in 2019, four projects have been assigned to the B.C. under substitution, including Cedar LNG which progressed to an approval decision in just under 3.5 years.

No other province has yet signed a substitution agreement. It may be that some provinces are holding off until the Supreme Court decides on the constitutionality of the Act. However, responsibility doesn't just lie with the federal government on this one. Both sides have to want to play ball.

However, responsibility doesn't just lie with the federal government on this one. Both sides have to want to play ball.

An interesting alternative possibility—not explicitly provided for in the Act but theoretically possible—is substitution in the other direction, whereby the province allows the federal government to lead the assessment process, but reserves its own decision-making at the end. For provinces with fewer resources to conduct assessments, there could be gains in efficiency as they could devolve some of their work to the federal government. Presumably, in addition to agreement over process among the two orders of government, this approach would require a legislative amendment at the provincial level. The question is whether there would be political appetite for it.

Substitution isn't the only possible approach to "one project, one assessment process." **Delegation** is also possible. Delegation means that one order of government turns over specific activities to the other order of government while still maintaining responsibility for the overall process. Unlike substitution, delegation would not fully eliminate duplication, but duplication could be substantially reduced. While present in theory, it doesn't appear delegation has yet occurred to any substantial degree under the *IA Act*.

Finally, another alternative was proposed by the **Attorney General of B.C.** in the province's factum to the Supreme Court.[5] Under this approach, the province takes the lead on intra-provincial projects and conducts the full assessment (as well as makes the decision to approve). The federal government is able to set conditions to address adverse effect in areas of their jurisdiction but does not conduct a parallel assessment of all potential impacts. The inverse would also hold: for projects that are clearly federal (e.g., ports, interprovincial or international undertakings) the federal government would conduct the assessment and make the decision to approve, and the province's role would be limited to setting conditions for adverse effect in areas of their jurisdiction. This approach is not supported under the current *IA Act*, but could become viable if the Act is ruled unconstitutional or if the federal government wishes to change its approach.

[5] https://www.scc-csc.ca/WebDocuments-DocumentsWeb/40195/FM110_Intervener_Attorney-General-of-British-Columbia.pdf

Proponents caught in the middle

The problem of duplication causing extra work can't be fixed by proponents simply working to whichever order of government has the more "stringent" standard. The processes used by federal and provincial governments often have key methodological differences that require a different approach and a different report, not just a less/more comprehensive one. Discussions with proponents and the consultants who conduct assessments identified examples of substantial methodological differences, including:

- The geographic area that must be used as the local or regional study area/boundaries
- Which Indigenous groups, local communities or stakeholder groups are to be considered in terms of impacts
- Whether planned projects in the study region are assessed as part of the baseline conditions or should instead be considered as cumulative effects
- The scope of potential impacts to be examined–the topics themselves, but also the prescribed approach to assessment
- What modelling approaches must used
- How "significance" is determined

This lack of alignment adds time and cost to a process that already takes many years and costs the proponent tens to hundreds of millions of dollars.

SOLUTION 1B

Improve federal/provincial/territorial coordination and cooperation

Even when the objective of "one project, one process" is not met, there is ample room for increased cooperation and coordinated action between the provincial and federal governments. Cooperation and coordination can:

- Reduce process redundancies
- Minimize the engagement burden on all participants
- Minimize conflicting requirements for proponents
- Ensure both orders of government have access to the same information to inform decision-making
- Maximize the benefit of expertise that is held at either the provincial or federal level

Conversely, a lack of coordination results in redundancies, contradictions and conflicts, excessive burden on all parties, additional cost and longer timelines.

Given these positives, it is hard to understand why fulsome cooperation would not take place. However, a review of cooperation agreements between the federal and provincial governments reveals that in practice, the degree of cooperation is extremely low.

The federal government and B.C. have signed an "Impact Assessment Cooperation Agreement Between Canada and British Columbia"[6] that describes in detail how the two orders of government will work together during different phases of an assessment when substitution does not occur. The agreement defines over 60 elements around which the provincial and federal governments will align or cooperate, as shown in the Appendix. These include aligning timelines, coordinating information requirements, compiling combined comments, coordinating timing of decisions, jointly approaching engagement with Indigenous groups and stakeholders, sharing information with one another, aligning conditions, and coordinating monitoring and verification activities. This agreement represents a template for fulsome cooperation.

60

Federal agreement with B.C.
Over 60 elements of cooperation

(see Appendix)

5–10

Federal agreements with AB, QC, ON
5-10 elements of cooperation

In stark contrast to this are the cooperation agreements signed with Ontario, Quebec and Alberta for specific projects proceeding under the *IA Act* (also shown in the Appendix). These cooperation agreements outline between 5-10 elements around which the two orders of government will cooperate, and the wording is usually extremely vague and implies optionality – "will aim to coordinate," "will attempt to harmonize," "may align milestones and activities."

Better coordination and cooperation is clearly possible and definitely needed.

SOLUTION 1C

Create whole-of-government coordination... that extends to proponents

A number of countries have identified that overlapping, siloed and complex regulatory systems are a problem and have taken or are taking steps to fix the problem. Their rationale is not only to improve efficiency, but to increase competitiveness as projects/capital are attracted to jurisdictions that offer a clear and coordinated approach.

In the U.S., the Federal Permitting Improvement Steering Council (FPISC) exists as an independent agency that coordinates federal government authorizations and permitting for large-scale infrastructure projects, including those in the renewable energy, coastal restoration, broadband, and electricity transmission sectors. This Biden administration views this coordination as a way of "advancing the administration's goal to build innovative and transformative once-in-a-generation infrastructure."[7]

[6] https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/canada-british-columbia-impact-assessment-cooperation/canada-bc-cooperation-agreement.html

[7] https://www.permits.performance.gov/about/federal-permitting-improvement-steering-council-fpisc-leadership

The FPISC coordinates the activities of over 20 different federal agencies, including:

Department of Agriculture	Bureau of Reclamation	Federal Energy Regulatory Commission
US Forest Service	National Parks Service	Nuclear Regulatory Commission
Army Corps of Engineers	Bureau of Ocean Energy Management	Department of Homeland Security
Department of Commerce	Department of Energy	Department of Housing and Urban Development
Department of the Interior	Department of Transportation	Advisory Council on Historic Preservation
U.S. Fish and Wildlife Service	Department of Defense	Office of Management and Budget
Bureau of Land Management	Environmental Protection Agency	Council on Environmental Quality

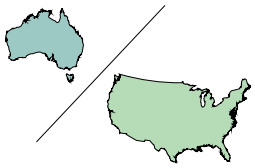
Similarly, Australia's Major Projects Facilitation Agency (MPFA) helps projects that meet an economic investment threshold to navigate the Australian Government approvals process. The agency provides a single entry point for Australian Government regulatory approvals and helps coordinate regulatory processes across agencies and across state and territory governments.

Within Canada, the Impact Assessment Agency of Canada (IAAC, or "the Agency") has taken over some of the functions of the former (and now essentially defunct) Major Projects Management Office (MPMO). However, IAAC's role doesn't extend to assisting with post-consent permitting approvals, doesn't involve coordination of federal and provincial activities, and doesn't apply to projects that don't require an impact assessment under the *IA Act*.

To remain competitive with the U.S., Australia and other jurisdictions that provide this function, Canada needs to re-establish a single, independent agency that will:

- Support proponents in clearly understanding their obligations and applicable processes, and help prepare them to submit a successful application[8]
- Work with all federal agencies involved in any aspect of the project authorization process to make their processes more coordinated and efficient, and to get over the "cultural" differences that exist among departments
- Coordinate with provincial and territorial agencies involved in project authorization
- Coordinate Indigenous participation, inclusion and involvement—both for proponents and within government

This recommendation aligns closely with recommendations proposed by the Business Council of Alberta.[9]



COORDINATING BODY FOR MAJOR PROJECTS

Australia Major Projects Facilitation Agency (MPFA)
U.S.A. Federal Permitting Improvement Steering Committee (FPISC)

[8] A note about "successful applications." Observers sometimes raise concerns that some jurisdictions appear to approve almost all projects that pass through the assessment process, and that this indicates insufficient scrutiny or rubber-stamping of project approvals. This is not the case. In fact, the high approval rate reflects a success of the system. Collaborative work behind-the-scenes between the regulator and potential project proponents helps weed out projects that are unlikely to successfully complete an application process. This means that only relatively strong projects complete the full process and require a formal decision.

[9] Business Council of Alberta. (2023) *Future Unbuilt: Transforming Canada's Regulatory Systems to Achieve Environmental, Economic, and Indigenous Partnership Goals*

PROBLEM 2

Low confidence in the process of federal decision-making

Problem 2: Low confidence in the process of federal decision-making

The current federal IA process suffers from the perception that Ministerial decision-making is fickle, mutable and can be influenced by short-term political considerations.

Some observers have raised concerns that the ultimate decision for project approval could be motivated by short-term political concerns (either of the Environment Minister, or of the government more broadly). Others are apprehensive that the goalposts for approval could move during the assessment, removing certainty of process. Finally, there is the potential for flip-flopping decisions if there is a change of government.

These concerns have not yet been borne out under the *IA Act*, but then again, there hasn't been much opportunity as only one project (Cedar LNG) has reached the decision stage. Examples of this behaviour under the previous environmental assessment regime—in particular around Northern Gateway and Energy East — have given enough fodder to make this concern valid and not just a theoretical possibility.

This environment of political uncertainty and low confidence in the process has led to potential proponents shying away from submitting project applications under the Act. Some proponents have chosen not to proceed with a project; some are ensuring that their project is structured in a way that doesn't trigger federal assessment criteria; and some have chosen to instead pursue projects in other jurisdictions such as the U.S., Mexico or Australia. Although these kinds of proponent decisions are made behind closed doors, our discussions with economic and industry associations have confirmed that this is not only happening, but is common.

As a result, projects and their associated economic opportunities are lost. This includes, potentially, the loss of some projects that would be considered important for the energy transition. Canada's reputation as reliable supplier of the goods the world needs is damaged with potential buyers, project developers and investors.

SOLUTION 2A

Make decisions about "dealbreakers" early and make the decisions stick

A decision about what is or is not in the public interest should be made by our elected leaders. That is key to our democracy. But to the extent possible, a public interest decision should be made early, not at the end of the long, expensive and resource-intensive IA process.

There are some aspects of a proposed project that are knowable early on and represent potential "dealbreakers" with respect to public interest. These include, for example:

- The type of project (e.g., oil pipeline, uranium mine, offshore wind project)
- The general location of the project (e.g., inside the Great Bear Rainforest or in a marine protected area)
- The scale of expected GHG emissions

Decisions about these dealbreakers should be made by the end of the Planning phase. If they are not acceptable, that is the time for the government to let the proponent know that the project as proposed cannot move forward. This was done by Minister Guilbeault with respect to GHG emissions and Suncor's Base Mine

Extension Project. A letter was sent to Suncor with a clear indication that the project was incompatible with what the government would consider to be national interest.[10] And it is better for everyone—proponent, host communities, partners, Indigenous groups—to know this earlier rather than later.

What is equally important is that determinations about the public interest need to stick. In other words, if these major dealbreakers haven't been rejected by the end of the Planning phase, they shouldn't be used at the end of the assessment as the reason for rejecting the project.

Agreeing up front that the broad parameters of the project are acceptable helps avoid the problem of a proposed project becoming a political football.

SOLUTION 2B

Three ministers to decide, not one

In establishing the IAA, the government explicitly broadened the purposes of impact assessment for project approval. The process is no longer just about finding ways to avoid or mitigate environmental damage. The Act now explicitly attempts to balance economic positives, environmental and social risks, energy transition imperatives and a broad range of other factors in order to best serve the public interest.

Given these broad purposes, it is not appropriate to have the decision to approve or reject a proposed project made only by the Minister of the Environment. That is too narrow a lens. Rather, the decision should be made by three members of Cabinet: the Minister of the Environment, the Minister of Finance and the Minister in charge of the category of project being reviewed—usually but not always the Minister of Energy and Natural Resources. This would align the governance of the Act with the stated purposes of the Act.

There is precedent for this approach. B.C., for example, uses two Ministers to make the decision: the Minister of the Environment plus the Minister responsible for the type of project.

This approach has several advantages. First, including Ministers from these other departments means that decision-making about public interest serves the multiple objectives of the current approach to IA. Second, it broadens accountability. And perhaps most importantly, it means that decision is far less subject to the political agenda of a single Minister.

MINISTER IN CHARGE OF DIFFERENT PROJECT TYPES

Category of project under the IAA Physical Activity Regulations	Minister in charge
Mines and Metal Mills	Energy and Natural Resources
Nuclear facilities	Energy and Natural Resources
Oil, gas and other fossil fuels	Energy and Natural Resources
Electrical Transmission Lines and Pipelines	Energy and Natural Resources
Renewable Energy	Energy and Natural Resources
Water Projects	Energy and Natural Resources
Transport	Transport
Defence	National Defence
National parks and protected areas	ECCC
Hazardous Waste	ECCC

[10] Unfortunately, this letter did not come at the end of the Planning phase, but 10 months later, after Suncor had moved ahead into preparing its Impact Statement. While the timing in this instance is not something to emulate, the concept remains appropriate.

SOLUTION 2C

Enhance independence of the regulator and review panels

Regulatory best practice requires a regulator to be independent and insulated from politically-motivated decision-making.[11,12] These attributes enhance public trust and bolster confidence in decision-making.

The direction of travel is decent on this one. However, there are several additional steps that could be taken to bolster the perception of the IA regulatory process as independent, unbiased, evidence-based and apolitical.

First, good regulatory process needs to be built on complementary *policy* on energy and emissions, as discussed under Problem 3.[13] Policy development is the appropriate way to have elected government influence the regulator's review process. It is transparent, consistent and predictable; and it assures that the regulators' decision-making is tied to written public direction rather than political rhetoric.

Regulatory best practice requires a regulator to be independent and insulated from politically-motivated decision-making. These attributes enhance public trust and bolster confidence in decision-making.

Second, regulatory decisions need to rest on strong technical expertise within the regulator. The IAA is classified as an environmental regulator; but its mandate has expanded such that it is truly more of a multi-factor "impact assessment body." This means that expertise is required not only in environmental (and health and social) outcomes, but also in the technical and engineering aspects needed to adequately assess the energy, mining and infrastructure projects that the Agency is now responsible for. This will help minimize risk of public regulatory failure—an outcome that leads to reputational damage and withdrawal of trust from the regulator, as well as the consequences borne by those harmed.

The need for expertise and independence also extends to review panel members. The government notes that panel members must have "knowledge, experience and expertise relative to a project and its potential effects" and "be free from bias or conflicts of interest related to the project."[14] As the list of potential panel members is refreshed over time, these attributes must remain at the fore.

And finally, the regulator and review panel should provide their conclusions and recommendations, and not merely a report on impacts. This helps ensure that these bodies aren't turned into just "facilitators of hearings and note takers."[15]

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11 Levi-Faur D. (2017) "Regulatory Excellence via Multiple Forms of Expertise." In: *Achieving Regulatory Excellence*. C. Coglianese, editor. The Brookings Institution

12 Holborn G and Taylor K. (2019) *Understanding Regulatory Independence*. Ivey Energy Policy and Management Centre

13 Cleland M. (2016) *Public Authorities and Energy Decision Processes: Building Public Confidence*. University of Ottawa

14 https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/basics-of-impact-assessments.html#boia11

15 Doelle M. (2018). *Panel Reviews Under the Federal Impact Assessment Act*. https://blogs.dal.ca/melaw/2018/03/04/panel-reviews-under-the-proposed-canadian-impact-assessment-act-ciaa/

PROBLEM 3

Policy decisions devolved onto the project approval process that should be addressed through other governmental processes

Problem 3: Policy decisions devolved onto the project approval process that should be addressed through other governmental processes

Many important issues are brought forward during the IA process, including climate change, land use and ecosystem integrity and Indigenous rights. It is entirely appropriate for governments to consider these issues, as government holds responsibility for their protection.

However, most of these problems are not fixable at the level of impact assessment. They are complex challenges that require policy approaches and the combined efforts of different orders of government, including Indigenous governments. But for the most part, clear and coordinated policy is lacking in these areas.

Trying to use Impact Assessment to fix these issues results in both poor solutions to those problems and a project review process that devolves onto a proponent the responsibility to solve things that are beyond their capacity to resolve and are far larger than any one project. The result is "a project IA system that is over-burdened with issues and expectations that it is not sufficiently designed to address, resulting in increased conflict, delayed decisions, and only superficial treatment of the most pressing issues facing society including climate change, biodiversity loss, cumulative impacts and human rights issues."[16]

What is needed instead is for the impact assessment process to be "embedded as part of a nested and integrated system of policy, plan, program and project assessment, evaluation, and decision-making."[17] Devolving these policy issues onto impact assessment sets it up to fail.

Indigenous groups and impact assessment

A critical feature of successful project development—and a key to unlocking an efficient, effective and fair IA process—is ensuring that the concerns and the aspirations of Indigenous peoples are appropriately addressed and that rights and title are upheld.

Project development impacts Indigenous peoples in a complex variety of ways. Major development projects often take place near or on lands to which Indigenous groups hold rights, title and/or traditional use. Indigenous groups in the area often bear the brunt of adverse impacts, while the benefits may accrue to others. In some cases, Indigenous groups are the project proponent or hold an equity share. And there is still uncertainty over how the project approval process intersects with Canada's implementation of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) and the right to free, prior and informed consent (FPIC) and the recommendations of the Truth and Reconciliation Commission.

Finding the right path isn't easy or quick. This report doesn't attempt to provide solutions, but does recognize its importance. We also recognize the excellent work being done in this area by organizations such as the First Nations Major Project Coalition and the First Nations Climate Initiative.

[16] Noble B. (2020) "Transforming IA from the outside in: capacity and levers for strategic assessment." *Impact Assessment and Project Appraisal.* 38(2):122-5

[17] Ibid

SOLUTION 3A

Create federal policy to clarify energy development and GHG emissions

GHG emissions aren't the only issue an impact assessment looks at but they are a huge part of the conversation and a major factor in opposition to some projects.

There are a rapidly increasing number of federal and provincial government regulations and policies that place boundaries on GHG emissions, especially—but not limited to—hydrocarbon projects. These include the Output-Based Pricing System, the Clean Fuel Regulations, the proposed Clean Electricity Regulations, proposed oil and gas emissions caps, methane regulations for upstream oil and gas, Alberta's TIER program, B.C.'s Net-Zero New Industry Policy, B.C.'s Energy Action Framework and others. Under the IAA, proposed projects are also required to provide a credible plan for how they will achieve net zero by 2050.

However, project proponents considering submitting a project under the federal impact assessment system don't have a clear sense of whether their project will be rejected as not being in the public interest on the basis of GHG emissions—even though the project would have to comply with all applicable regulations. This uncertainty is coupled with a belief that federal government has a bias against hydrocarbon energy projects and will use the IA process to pick them off one at a time.[18]

What would help is a clear and transparent policy at the federal level on the role of hydrocarbon projects in Canada's energy future.

What would help is a clear and transparent policy at the federal level on the role of hydrocarbon projects in Canada's energy future. Such a policy would help government and project proponents understand the direction of travel for future development, provide clarity to the Agency and the Minister in making decisions under the IA process, and also ensure the IA process is appropriately focused.

An example of clear policy on energy development comes from the U.K. Since 2011, the U.K. government has produced National Policy Statements (NPS) that set out the government's objectives for the development of infrastructure in a particular sector. In 2023 the government published a NPS on Energy, as well as separate policies for Fossil Fuels, Renewable Energy, Oil and Gas Supply and Storage, Electricity Networks and Nuclear Power.[19] Each NPS clearly states the government's position on what infrastructure is needed and desirable in the context of energy security, decarbonization and sustainable development. It also provides guidance on critical elements that must be assessed during the project approval processes. This may be an approach to emulate.

B.C.'s proposed Energy Action Framework may eventually serve the same purpose, although the framework hasn't been published yet so it is a question of wait and see. Even so, since federal approval is required for LNG projects, lack of a parallel federal policy is an important gap.

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[18] Source: author's interviews with key informed sources

[19] UK Department for Energy Security and Net Zero. (2023) Overarching National Policy Statement for Energy (EN-1).

SOLUTION 3B

Establish effective management of land, resources and cumulative effects

One of the major objections that Indigenous groups and other local interests have when new projects come into an area is that the new project is being added on top of many decades of unaddressed legacy effects, and/or is contributing to cumulative impacts resulting in "death by a thousand cuts." These concerns are well-founded but ill-served by the impact assessment process.

When an impact assessment is conducted at the federal, provincial or territorial level, there is almost always a requirement for it to contain a (relatively short) section on cumulative effects. The cumulative effects section provides information on how the predicted effects of the project may combine with other existing or planned activities. In the context of decision-making about project approval, this is important information—even though most of the time it is highly uncertain.

Although the impact assessment process may help identify the existence or nature of cumulative effects, it is the wrong tool with which to address or manage them—much to the frustration of those impacted.

Although the impact assessment process may help identify the existence or nature of cumulative effects, it is the wrong tool with which to address or manage them—much to the frustration of those impacted. What is needed instead is "higher-order decision-making that embraces land-use planning and strategic assessment at regional scales, enabling better and more efficient decision-making at project-specific stages."[20] A similar sentiment has been echoed by the Canadian Council of Ministers of the Environment.[21]

To be clear, the type of land and resource management being called for is different than area-based conservation and protection efforts such as the "30x30" global biodiversity target. Instead, it is a process of understanding and managing existing cumulative and legacy impacts in the context of planning for future development—as with Alberta's Land Use Regional Planning, B.C.'s Cumulative Effects Framework or Saskatchewan's Great Sandhills Regional Environmental Study. And for the most part, the primary responsibility lies with provincial, territorial or regional governments.

Land and resource management planning is a huge challenge. But without a proactive, planning-based approach, the impact assessment process will continue to be used poorly: charged with fixing a problem it is not equipped for, failing to rectify the problem of cumulative effects itself, and frustrating the affected parties.[22] Conversely, having this foundation would allow the project approval process to be more effective and more streamlined.

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[20] Council of Canadian Academies (2019) *Greater Than the Sum of Its Parts: Toward Integrated Natural Resource Management in Canada: The Expert Panel on the State of Knowledge and Practice of Integrated Approaches to Natural Resource Management in Canada*

[21] Canadian Council of Ministers of the Environment (2021) *Key Elements to Guide Governance for Cumulative Effects Assessment, Monitoring and Management*

[22] Kennett, S. (1999) *Towards a new paradigm for cumulative effects management.* Canadian Institute of Resources Law

SOLUTION 3C

Increase use of regional assessments and strategic assessments

Regional and strategic assessments are one approach to land and resource management that take place under the direction of the federal government as part of the *IA Act*. They are a proactive way to address future development in areas where federally-led impact assessment is anticipated to occur, especially where cumulative and/or legacy effects are anticipated to be a problem.[23] For this reason, the idea of regional assessments has been strongly endorsed by the Canadian Council of Ministers for the Environment as well as by Canada's Expert Panel for the Review of Environmental Assessment Processes.[24,25]

As noted by the Expert Panel, one important function of regional assessment is to "inform project assessments in that region and streamline project assessment by reducing timelines and efforts. It could also make the project assessment process more predictable for proponents by setting regional development objectives and thresholds, collecting ecological baseline data and identifying potential valued components."

Four regional assessments are currently in progress, led by IAAC: one for the Ring of Fire in Ontario, one for offshore wind development in Nova Scotia, another for offshore wind development in Newfoundland and Labrador, and one for the St. Lawrence River area.

This is a very welcome development. However, to be useful the regional assessment must provide information that will inform future decision making around how development can or should unfold. It cannot merely be an assessment of how historical activities have led to the current status. *Table 1* presents a list of critical outputs that a regional assessment would need to help proponents, government agencies and host communities make rapid, effective and useful decisions about future proposed activities. **If a regional assessment fails to produce any of these outputs, its effectiveness in streamlining project-level assessment will be limited.**

Explainer: Regional and Strategic Assessments

Regional and strategic assessments do not look at a specific project; they look at the potential for impacts from all activities within a particular context, even before a specific project application is submitted. This enables a high-level perspective to inform project-level decision-making later.

Regional assessments examine a specific geographic area.

Strategic assessments focus on a specific topic – a government policy or plan; or a topic such as caribou or small modular reactors.

The ability for the federal government to conduct regional and strategic assessments has been built into the *IA Act*.

[23] Blakley, J, Noble, B, et al. (2020) *Lessons Learned, Best Practices and Critical Gaps in Regional Environmental Assessment: A Synthesis of Canadian and International Literature*. Prepared for the Social Sciences and Humanities Research Council of Canada and the Impact Assessment Agency of Canada

[24] Canadian Council of Ministers of the Environment. (2009) *Regional Strategic Assessment in Canada: Principles and Guidance*.

[25] Expert Panel for the Review of Environmental Assessment Processes. (2017) *Building Common Ground: A New Vision for Impact Assessment in Canada. The Final Report of the Expert Panel for the Review of Environmental Assessment Processes*

TABLE 1: CRITICAL OUTPUTS FROM A REGIONAL ASSESSMENT

Information relevant to understanding the current context	A description of environmental and human "baseline" conditions
	List of current and historic activities, features and projects that contribute to impacts and risks in the region. Planned and foreseeable development in the region
	Identification of groups impacted by changes in the region and how they are impacted
	List of environmental and social sensitivities, risks and impacted features
	List of the legal, regulatory and policy frameworks applicable to development in the region
Information to guide management of cumulative effects	Key ecological and socioeconomic components, values and issues that should be considered in associated regulatory and planning processes
	Issues of highest risk or concern and opportunities for building resilience
	Identification of key multisectoral stakeholders to be involved in management of cumulative effects
	Recommendations for how governmental and multi-organizational efforts should address cumulative and legacy effects
	Recommendations on future data requirements and data gaps to support understanding of future change
	Identification of potential planning objectives, preferred development scenarios, and possible development controls
Information to guide future development and project-level assessments	Thresholds for classes of reviewable projects/activity specific to that area
	An identification of key stakeholders and an overview of their interests and concerns with regards to current conditions and future development
	Specific conditions and prohibitions that future projects must meet (for example, no development should happen within 200 meters of this lake, or no additional activity during caribou breeding season)
	List of issues that are a priority to assess in future project-specific IAs and issues that require less attention (given work already done in the regional assessment)
	Standard mitigations for any projects coming into the area
	List of recommended indicators for monitoring (with information on who, how, when, etc. as well as thresholds or triggers for action)
	Thresholds that should be used in project-specific impact assessments to identify unacceptable or significant adverse impacts

SOLUTION 3D

Off-ramping

Off-ramping is an outlier in this section as it isn't a broad policy approach to issues management. However, it is a way to help resolve the problem of projects being shunted through the IAA process that are better addressed through other governmental processes.

Under the off-ramping process, a proposed project that falls under the designated projects list is determined *not* to require a full federal assessment under the Act. Off-ramping happens very early, after the Agency receives and reviews the Initial Project Description from the proponent.

When a project is off-ramped from the IAA process, it doesn't mean that its potential impacts are not evaluated or managed. Rather, the decision to off-ramp is made after determining that other existing processes at the federal, provincial, territorial or regional level are sufficient to manage the risks of the project and deal with anticipated impacts. These other processes include legislative and regulatory frameworks, mitigation measures and commitments such as permitting, regulation of specific activities (such as emissions, noise or water withdrawals), regional planning, inclusion in an area or sector plan, provincial impact assessment processes, etc. In many cases, these other policy and regulatory processes represent more appropriate homes for the issues than federal impact assessment under the Act.

To date, off-ramping has happened at least four times under the *IA Act*.

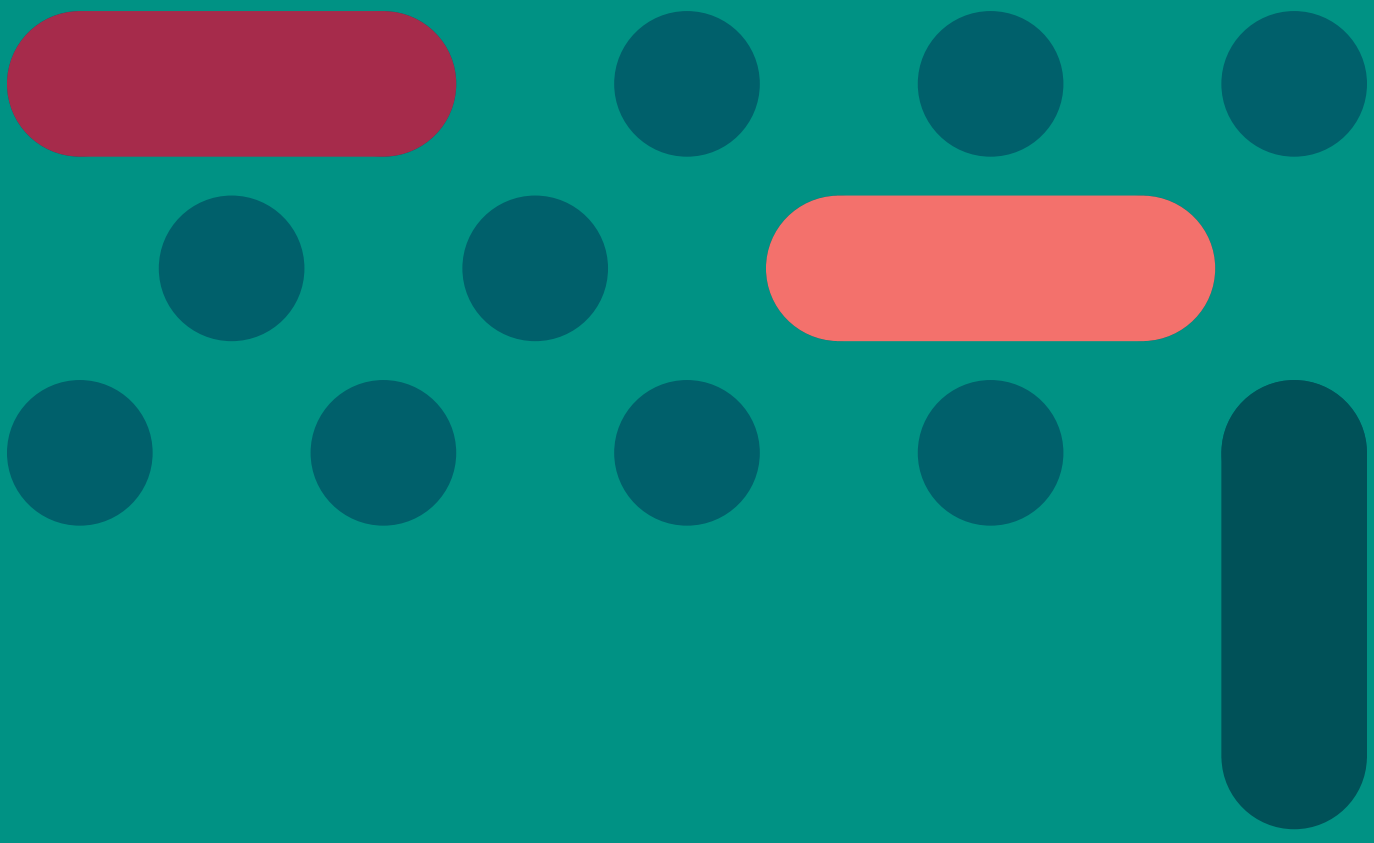
The continued use of off-ramping is a way to increase efficiency, because it allows for the most parsimonious and appropriate processes to be applied to solve a specific problem rather than the full meal deal of a federal assessment under the *IA Act*.

The continued use of off-ramping is a way to increase efficiency, because it allows for the most parsimonious and appropriate processes to be applied to solve a specific problem.

We recommend that the federal government, in conjunction with the provinces and territories, undertake a rigorous review of regulatory and other actions that could contribute to increased responsible off-ramping of projects from the federal IA process.

PROBLEM 4

Overly long process and slipping timelines



Problem 4: Overly long process and slipping timelines

The project approval process needs to be transparent, robust, inclusive, fair and evidence-based—so that what gets built, gets built right. However, to be effective the process must also be **timely** and **efficient**.

Timeliness and efficiency don't only benefit proponents and investors, they also benefit host communities and Indigenous groups who live with uncertainty until a decision has been made; taxpayers who foot the bill for the process; and government personnel who have many competing demands on their time.

There are legitimate concerns that project approval and permitting processes in Canada take too long, not just under the *IA Act* but under other review processes as well.

This concern isn't limited to Canada. In the U.S. the argument has been made that the length and bureaucracy of the regulatory and permitting process is frustrating to many and has the potential to impede national and state visions of meeting clean energy targets.[26,27] And results from an international survey conducted in 2022 found that about three-quarters of respondent countries' EA/IA systems have simplification efforts underway or planned.[28]

Some solutions are presented in this report, both under this problem and under Problem 5, Overly Large Scope. In addition, the solution presented as 1c—to improve whole-of-government coordination and better prepare proponents—will also result in more efficiency across regulatory processes.

However, these solutions alone are not likely to be sufficient. In particular, it is difficult for outsiders to understand where there are administrative or bureaucratic inefficiencies. We recognize and support the extensive effort that has been initiated by the highest levels of federal government to understand and address this problem.

The length of time under IAA

The Canada West Foundation conducted a review in 2019 of project review timelines under the *Canadian Environmental Assessment Act* of 2012.[29] That review found that on average it took almost 3.5 years for a project to either receive approval or be terminated, with some projects taking over 10 years.

More recently, CWF published a report that analyzed the progress of projects under the *Impact Assessment Act*.[30] The report found that as of April 2023, more than three-and-a-half years after the IAA came into effect, all projects progressing under assessment by the Impact Assessment Agency of Canada were still in Phase 1 or 2 of the four-phase process.

[26] Klein E. (2023) What the Hell Happened to the California of the '50s and '60s? *New York Times*, June 18, 2023

[27] Sud R, Patnaik S. (2022) *How does permitting for clean energy infrastructure work?* Brookings Institution

[28] Fischer T, Fonseca A, Gessler G, et al. (2023) "Simplification of environmental and other impact assessments – results from an international online survey." *Impact Assessment and Project Appraisal*, 2023. 41:3, 181-189

[29] Orenstein M. (2018) *The Fate of Projects: A review of outcomes from the federal EA approvals process*. Canada West Foundation

[30] Orenstein M. (2023) *Federal Impact Assessment Under Review: Measuring Progress on Projects and Timelines*. Canada West Foundation

SOLUTION 4A

Expedite reviews for projects of national importance

A number of countries, including the U.S., Australia and the U.K., have raised the idea of fast-tracking or expediting review for projects of national importance. Within Canada, Ministers Freeland and Wilkinson both made statements in the last year that fast-tracking is needed for energy and mining projects to enable a rapid and successful energy transition for Canada and its allies.[31,32]

This idea holds broad appeal, as slow project review times around the world have been identified as a critical impediment in building sufficient infrastructure to support a clean energy transition. However, this idea comes with two challenges. The first challenge is gaining consensus on what constitutes a project of national importance. The second is figuring out how to expedite these projects.

Defining national importance

There is no single best definition of what constitutes national importance. It is a judgment that is based on both values and context. *Table 2* presents the criteria used or proposed by Australia, the U.K. and the U.S. Although the approach varies substantially across these countries, they all:

- Use size or cost as a minimum threshold
- Dovetail with considerations of what is in the strategic interest of the country
- Explicitly or in practice focus on energy and energy-adjacent projects
- Are intended to unlock additional support for the project approval process

Within Canada, nationally-important projects could include those critical for energy transition and energy security; but the development of any definition of national importance should also consider whether or how to include other factors important to Canada such as national security, Arctic sovereignty, critical trade infrastructure,[33] regional development and Indigenous economic reconciliation.[34]

TABLE 2: APPROACHES TAKEN IN DIFFERENT COUNTRIES TO DEFINE PROJECTS OF NATIONAL IMPORTANCE

AUSTRALIA (FEDERAL)	**U.K.**	**U.S.**	
"Major project status"[35]	**"Nationally Significant Infrastructure Projects"[36]**	**Biden administration's recommendations[37]**	**Proposed bill:** *Building American Energy Security Act of 2023*[38]
Projects over AUD $50 million that are of "strategic significance" and contribute to: • Strategic priorities • Economic growth • Employment • Regional Australia	Large-scale developments relating to: • Energy • Transport • Water • Waste	• Critical electric transmission • Renewable energy projects on federal lands • Domestic critical minerals • Hydrogen and carbon dioxide pipelines and storage infrastructure • Clean energy deployment on brownfield and contaminated sites	High-priority energy infrastructure projects among critical minerals, renewables, fossil fuels, transmission, nuclear, CCUS Criteria for selection include: • Consumer cost reduction • Reliability • Emission reduction • Promoting energy trade with allies

31 https://financialpost.com/commodities/energy/canada-will-fast-track-energy-and-mining-projects-important-to-allies-freeland

32 https://www.northernontariobusiness.com/industry-news/mining/federal-natural-resources-minister-looks-to-speed-up-canadian-critical-minerals-production-6009521

33 Law J and Dade C. (2022) *From Shovel Ready to Shovel Worthy: The Path to a National Trade Infrastructure Plan for the Next Generation of Economic Growth.* Canada West Foundation

34 The Business Council of Canada has proposed broad a set of criteria for national importance: projects that enhance global energy security, reduce global GHGs, expand the electrical grid, produce low-carbon fuels, improve access to materials for the energy transition or advance economic success for Indigenous peoples. See Hyder G. *Accelerating major project approvals gives Canada a competitive advantage*. Letter to Janice Charette, Clerk of the Privy Council, May 8, 2023

35 https://www.industry.gov.au/major-projects-and-procurement/major-projects-facilitation-agency

36 https://researchbriefings.files.parliament.uk/documents/SN06881/SN06881.pdf

37 Biden-Harris Administration Outlines Priorities for Building America's Energy Infrastructure Faster, Safer, and Cleaner. https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/10/fact-sheet-biden-harris-administration-outlines-priorities-for-building-americas-energy-infrastructure-faster-safer-and-cleaner/

38 *Building American Energy Security Act of 2023* – https://www.energy.senate.gov/services/files/3B223C58-3777-4371-B680-49619A88059D

Expediting project review and approval

Expediting a project is intended to increase efficiency and improve timeliness of full project approval. Unfortunately, even for projects that have been defined as nationally important, there isn't a magic wand or simple approach to reducing timelines. In fact, every recommendation in this report ultimately contributes to reduced timelines.

There are, however, some principles that are common across the countries listed in *Table 2*.

1. The designation of national importance clearly conveys the government's intention. This backing creates an atmosphere of "all hands on deck" within government and signals that an attitude and cultural shift may be required by different agencies, as well as additional resources devoted.
2. Project review needs to focus on issues of highest importance and risk. It shouldn't be "distracted" by relatively unimportant issues or by things that can be taken care of by government outside the project approval process.
3. Under the designation, better cross-agency coordination is used to increase efficiency and align requirements. As an example, the U.K.'s Nationally Significant Infrastructure Projects scheme was able cut in half the time it took to achieve development consent.
4. Additional hand-holding may be offered to proponents of the nationally important project to help them understand and navigate their obligations.
5. In some cases, time limitations may be established for legal challenges and length of judicial review.

And finally, two risks to be aware of:

A. The designation of national importance doesn't release the proponent from any environmental or social obligations. The project still needs to be built well and the government still has an obligation to hold the project and its own review to the highest standards.

B. An expedited process for some projects shouldn't result in failed timelines for non-expedited projects.

SOLUTION 4B

Also, improve timelines for all projects

Fast-tracking may seem like (and indeed may be) a good idea, but leads to questions of procedural fairness for those projects that are not fast-tracked, many or most of which are also in some way in the public interest.

Once solutions are found for how to help projects of national importance proceed more rapidly through the IA system, these principles should be applied to all projects to the extent possible.

SOLUTION 4C

Stop devolving responsibility onto the proponent's clock

There are supposedly strict time limits associated with each of the four phases of the federal impact assessment process. However, these stated time limits have proven to be exceedingly misleading.

Although the Planning phase is supposed to be 180 days—six months—**in actuality it has taken projects an average of 332 days to complete the Planning phase, with a range of 127 to 693 days**.[39,40] Around 80 per cent of projects surpassed the 180-day mark and this percentage has gotten worse over time, not better.

FIGURE 1: TIME SPENT IN PLANNING PHASE (180 DAY LIMIT)

169 **"Agency" days (average)**

\+ 162 **"Stopped clock" days (average)**

332 **Days (average – range of 0 to 693)**

The reason for this discrepancy is "stopped-clock" time. The Agency (IAAC) consistently met a service standard of 180 days for its own hands-on time with the project application. But substantial additional time was required in most cases that was considered to be "off the clock."

Some of the stopped-clock time was likely unavoidable (for example, time was needed in some instances for provincial coordination and the pandemic also caused work slowdowns for some government and proponent activities). However, it appears that much of that time relates to the proponent requesting a clock stoppage so that it could respond to additional requests for information by IAAC or other government agencies.

To solve this problem, the Agency needs to be responsible for ensuring that all activities are completed within the stated timeline with very limited exceptions.

- Requests for additional information should be minimized. The degree of information required should be aligned with the nature of a Planning phase and not the full assessment.
- Additional work should be undertaken with the proponent before the clock even starts so that the proponent comes into the process fully prepared for this and all subsequent stages (see solution 1c).

[39] See analysis in Orenstein M. (2023) *Federal Impact Assessment Under Review: Measuring Progress on Projects and Timelines*. Canada West Foundation

[40] It was only possible to analyze outcomes from Planning phase, as no projects proceeding under the Agency have completed any of the subsequent phases.

SOLUTION 4D

Allow improved technologies to be added without slowing the process

Under a wide range of federal and provincial authorization processes, it would be helpful to allow proponents to introduce technology upgrades with a minimum of delay to their application.

It serves the public interest for projects to use up-to-date technologies that represent improvements over previous technologies. Newer technologies may be more energy efficient, produce lower emissions or less waste, be quieter, have a smaller footprint or be more effective in some other way that matters to stakeholders. Because the project authorization process is often very lengthy—in some cases exceeding 10 years—it means that by the time the end of the process is reached, the technologies being proposed can be out of date or no longer the best option.

However, there are disincentives within many regulatory processes to adapt the project design to incorporate new technologies as they come along. Why? Because it may require a lengthy delay or may trigger a project to go to the back of the line for applications.

Federal and provincial governments should review their regulatory authorization processes to ensure that they allow for flexibility around technology upgrades without penalty of time slowdown during the regulatory approval process.

SOLUTION 4E

Improve the timeliness of post-approval permitting

It isn't just the impact assessment process itself that affects regulatory efficiency and timeliness, but also all the other permitting processes that are needed to authorize a project. As noted by the Mining Association of Canada, "Whether and how soon a project can be built is determined by the aggregate of all assessment and permitting requirements."[41]

Permitting refers to authorizations that a project must receive from federal, provincial/territorial and municipal agencies before undertaking specific activities that involve vegetation removal, wildlife, fish and fish habitat, water use or discharge, and noise or air pollution. For example, permits may be required from:

- The Department of Fisheries and Oceans Canada for in-water works that impact fish and fish habitat
- Environment and Climate Change Canada for activities on federal lands where species at risk are present
- Provincial ministries of transportation to cross provincial highways
- Provincial energy and environmental regulators for activities related to drilling or water use
- Municipalities for permits related to construction and excavation activities

For large projects, and especially linear projects that cross multiple provinces and regional jurisdictions, the permitting requirements are extensive. For example, the Trans Mountain project required 1,186 B.C. provincial permits. Although the project received federal approval in 2016, the permitting process is still ongoing.

[41] Mining Association of Canada. (2022) *Project Permitting in Canada and the Mining Industry*. November 16, 2022.

There are three problems with the permitting process that contribute to regulatory inefficiency: poor coordination and inconsistent approaches; sequencing; and cultural disconnect.

There are three problems with the permitting process that contribute to regulatory inefficiency.

The first is poor coordination and inconsistent approaches across different orders of government and among different government agencies. This is a process problem that has been noted previously in Infrastructure Canada's Infrastructure Sectoral Regulatory Review Roadmap.[42]

A second problem is with sequencing. Federal permitting currently happens only after a favourable environmental assessment decision has been made. IAAC has been examining the extent to which federal permitting can happen concurrently with the impact assessment process. The Agency has identified several types of permits for which the timelines could be aligned. However, this is not the case for all permit types and does not extend to provinces or municipalities. In addition, proponents are often reluctant to start the permitting process, which may involve detailed and costly engineering design work, until they are certain that the project will be approved.

The final problem is a cultural disconnect between project approval under impact assessment and project authorization via permitting. Although a positive project approval decision may have been issued by the Minister, there is no guarantee that permits will be issued for the project. Clearly, a project needs to meet the environmental standards enshrined in permitting—otherwise it runs counter to the public interest. However, in some cases permitting appears to be used as a process to thwart otherwise-approved project development based on departmental values or that of a different order of government. This tactic has been deemed unconstitutional by the Supreme Court.[43] Once the project is approved, the question is no longer "if" but rather "how" the project will be executed.

At the federal level, authorizations under the *Fisheries Act* have been cited as exceptionally delayed and difficult to obtain. Recent amendments to the *Migratory Birds Act*, by contrast, are cited as an example of how government agencies can modernize to improve service standards and regulatory certainty.

Fixing the efficiency and timeliness of permitting is complex and detailed. But it is key to unlocking competitive regulatory reform. Even if everything about the *IA Act* were fixed, if permitting delays are not sufficiently addressed, gains in of timing and efficiency overall would be minimal.

As with much else in the report, this problem is shared by multiple jurisdictions across the world—many of whom see it as impeding their net-zero transition goals. While every country's approach will be different, what other jurisdictions are doing points to the fact that where there's a will, there's a way.

For example, energy ministers in the European Union established a temporary framework in 2022 to accelerate the permit-granting process.[44] Elements include setting a maximum deadline of three months for granting permits for some types of energy infrastructure; and agreeing that production of renewable energy will be presumed to be in the overriding public interest, which will allow those projects to benefit from a simplified assessment process. Similarly, in 2023 the European Commission established the Net Zero Industry Act, which includes CCUS as one of eight key technologies. The Act requires each EU country to establish a "one stop shop" to coordinate permitting, sets detailed timelines for permitting procedures, and gives priority status to "strategic" projects.[45] The actions taken by the EU align with the recommendations in this report, in particular those under 1c, 3a, 4a, 4e and 5a.

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[42] Infrastructure Canada. (2019) *Infrastructure Sectoral Regulatory Review Roadmap*.

[43] http://www.thecourt.ca/scc-dismisses-bc-governments-appeal-and-secures-legal-win-for-trans-mountain/

[44] Council of the European Union. (2022) *EU to Speed Up Process for Renewable Energy Projects*. Nov. 24, 2022.

[45] International Energy Agency. (2023) *Net Zero Industry Act: CCUS*.

PROBLEM 5

Overly large scope

Problem 5: Overly large scope

When environmental assessment first started, it focused on impacts to a limited set of environmental outcomes. Since that time, the scope of impact assessment has grown to encompass a much broader range of environmental, social, health and economic issues, dealt with in much greater depth.

Overall, this is a positive; it is reasonable for decisionmakers and society at large to be apprised of the full range of ways that a project affects the environment and people.[46]

However, it has a downside. Most impact assessments for major projects have become unwieldy. Trans Mountain's project application was over 20,000 pages, and the application for Port Metro Vancouver's Roberts Bank Terminal expansion was similar.

At these lengths, decision-making may not be helped and is frequently hindered.[47] Large amounts of irrelevant information are included, hampering the ability of reviewers to appropriately process the most important information. Analysis is sectioned off, losing any integrated, holistic view of what is going on. The review process becomes bulky and time-consuming, and almost impossible for an interested party other than the reviewing agency. And importantly, there is no evidence that it improves either decision-making or how the project is implemented.

A number of factors have led to this outcome. One is a fear of potential legal challenges.[48] Another is the need to placate all participants who have an interest, even if the issue won't influence decision-making—the "everything under the sun" approach.[49] A third is that the agency tasked with defining the scope doesn't have a good understanding of the ways in which a project is unique and may present risk, vs. what is "box standard." And finally, for the agency in charge of making the final scoping decision, it may be less risky to overscope than to be challenged on why something isn't included.

Ultimately, better decision-making rests on information that is both reliable and relevant. And this also serves the objective of building a more efficient and effective impact assessment process.

SOLUTION 5A

Scope to fit the risk profile

Impact assessments should answer the most important questions about a project. They shouldn't attempt to answer every possible question about the project.

But it can be difficult for impact assessment agencies (across all orders of government) to know where to draw the line—especially when there is interest or pressure from a member of the public, interested stakeholder or other governmental agency.

Issues should be scoped in where risk is higher due to the nature of the project, the nature of the environmental or social context, for those aspects that are new or unknown, or where the consequence is potentially severe. This is known as taking a risk-based approach, and IAAC is currently examining how to incorporate it into scoping for federal assessments.

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46 This growth also parallels improvements in other regulations that govern industrial activities, such as occupational health and safety regulations, waste management regulations, impact benefit agreements, etc.

47 Fonseca A and Rivera Fernandez G. (2020) "Reviewers' perceptions of the volume of information provided in environmental impact statements: The case for refocusing attention on what is relevant." *Journal of Cleaner Production*, vol. 251.

48 Fernandez G., Brito L., Fonseca A. (2018) "Does size matter? An evaluation of length and proportion of information in environmental impact statements." *Environmental Impact Assessment Review* 73, 114e121.

49 Ross W, Morrison-Saunders A and Marshall R. (2006) "Common sense in environmental impact assessment: it is not as common as it should be." *Impact Assessment and Project Appraisal*, 24(1), 3-22

Conversely, scope should be limited for:

- Topics that have been adequately examined and managed in regional assessments
- Issues that are managed via broad policy frameworks on land use, resource use, cumulative effects, etc.
- Activities or impacts that are regulated through law (labour code, noise ordinances)
- Issues where impacts and mitigations are well-understood and easily applied (see Solution 5b)
- Activities that will be dealt with in detail during permitting (water crossings, etc.)

As a general principle, if inclusion of the topic could affect the decision[50] or the required mitigations, it is important to include. If it is highly unlikely to affect the decision or any mitigations/conditions, then it is a "nice to know" but inessential and a good candidate for scoping out at an early stage. **Scoping needs to focus on what really matters.**

The Planning phase is intended as the point at which decisions about scope are made. This is useful, but must be balanced against the inclination to do a full mini-assessment during the Planning phase to make sure the scope is determined correctly (see Solution 5c).

A short rant on why scoping often fails

One of the reasons behind the push for ever-increasing amounts of information is that the way impact assessments are commonly structured doesn't actually answer the questions of affected parties.

What people in host communities want to know is "What will happen to my community and quality of life? How will it change? Will my family be better or worse off?" Few people pose the question "How will this project affect hydrology and hydrogeology in the region? What can you tell me about significant effects on wetland and riparian environments?" However, impact assessments have been set up to provide a clear answer to the latter, and not to the former. As a result, additional rounds of questions are posed that still fail to turn up useful answers.

Fixing this problem requires deep change to the practice of impact assessment. Within Canada, novel approaches have been pioneered by the Mackenzie Valley Review Board, highly informed by the organization's strong ties to Indigenous Government Organizations.[51]

Understanding this problem may provide an additional key to help federal and provincial assessment agencies scope appropriately. Rather than just adding to the existing scope or passing along an Information Request to the proponent, the agency should consider the "question behind the question" to determine the best way to address it.

SOLUTION 5B

Leverage past knowledge to right-size assessments and achieve better environmental outcomes

Over the past several decades, a great deal of knowledge has been assembled about how to manage many of the adverse impacts that can arise from industrial projects. This information is a treasure trove. It has the potential to both improve regulatory efficiency and deliver better environmental outcomes. However, it is not currently being used to best effect.

[50] The decision could be the Agency or Minister's decision; or it could be decision-making by an Indigenous government, host community or the proponent itself.

[51] For an explanation of how the Review Board approaches environmental assessment, see: Mackenzie Valley Environmental Impact Review Board. (2020) *Evolving Environmental Impact Assessments in the Mackenzie Valley and Beyond*.

Best effect means that this information would be pulled together and used to develop a set of standard mitigations for common impacts and circumstances. Although every proposed project is unique, there are many impacts that tend to be similar across a wide range of project types and settings as well as corresponding mitigations that tend to be effective in most circumstances. This assembled information can be used in several ways:

- For some issues, it can become a code of practice: standard mitigations that should always be applied to minimize adverse outcomes and enhance co-benefits.
- For other issues, it can represent a menu of effective ways to mitigate that can be adapted as needed.
- Most importantly, with standard mitigations doing some heavy lifting, the scope of the assessment can be tailored and made more parsimonious. Issues that are addressed by standard or code-of-practice mitigations do not need to be investigated or assessed to the same extent as issues that are novel, pose more risk or where the potential mitigations do not have the same level of evidence for effectiveness.

The benefits of this approach are:

- Project proponents have advance information about what will be required of them
- Reviewers save time and have a more robust review
- The assessment scope is more focused on high-risk topics
- Better environmental outcomes are achieved, which is in the public interest

IAAC has already started work to develop a list of mitigations that can be used in this way. This is needed. Right now, this information is scattered and not used systematically by any party. For example, ECCC and IAAC have produced guidance for effective mitigations on topics such as migratory birds,[52] agriculture[53] and health, social and economic effects[54] but this information is almost impossible to find on the website and does not appear to be used systematically to inform scope or approach. This limits its utility for practitioners, proponents, stakeholders and the regulators themselves.

SOLUTION 5C

Appropriate size for IPD and DPD

One of the specific activities that proponents have cited as problematic is the production of the Initial Project Description (IPD) and the Detailed Project Description (DPD). These documents are prepared by the proponent during the Planning phase and are intended to do three things:

- Support the Agency/Minister's determination of whether a federal impact assessment is required
- Supply enough information about the project that participants (the Agency, other government agencies, Indigenous groups, the public, etc.) can identify issues that may be of concern and that they believe may merit inclusion in the assessment
- For the DPD, respond to the issues raised by engagement

The problem is that the volume of information that is required to be produced in the Planning phase is misaligned with the scale of these purposes. It has led to the Planning phase being termed "the assessment before the assessment, that isn't called an assessment." The proponent's need to respond to requests for additional information has been responsible for a lot of the clock stoppages and time slippages described under Solution 4c.

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[52] https://www.canada.ca/en/environment-climate-change/services/migratory-bird-permits/faq-migratory-birds-regulations-2022.html

[53] https://iaac-aeic.gc.ca/050/evaluations/document/132903

[54] Asia Pacific Foundation for Climate and Health. (2023) *Mitigation and Enhancement Measures for Health, Social & Economic Effects*. Prepared for the Impact Assessment Agency of Canada.

Much of this relates to the requirement for the proponent to respond to each of the issues raised by participants. Here, for example, are the questions/issues raised relating to Accidents and Malfunctions for the Upper Beaver gold mine project (four of a total of 149 questions/issues to be answered in the DPD):

Accidents and Malfunctions
Need for information on how the Proponent will prevent accidents and malfunctions associated with construction and operation of project components in light of the existing historic mine infrastructure
Potential effects—including effects on human health and to surface water—of accidents or malfunctions—including spills of hazardous substances or uncontrolled release of pollutants to the environment from transportation of hazardous materials, and failures of project components including the open pit, tailings storage facility, pond liners, and dams—and potential for residual effects following an accident or malfunction
Need for information on emergency response plans and procedures based on potential accidents and malfunctions
Need for information about plans for communication with local residents in cases of accidents and malfunctions, including translation into local Indigenous languages

And here is the proponent's response to the last of these four questions:

> *"Being prepared to respond to all forms of emergencies remains a key element of the Agnico Eagle health and safety program. Each of our mining operations has its own Emergency Response Plan and has appropriately trained personnel.*
>
> *Agnico Eagle will establish appropriate, practical emergency response plans and procedures for the Project prior to construction, that meet Corporate requirements, as well as any regulatory needs. Development of appropriate environmental management plans are one of the anticipated mitigation measures that will be discussed in the IS for malfunctions and accidents, if an IA is required.*
>
> *Environmental and health and safety impacts are managed through our Risk Management and Monitoring System. Activities that can have environmental impacts are identified and assessed. Relevant control measures are implemented, maintained and verified. Emergency response plans are developed and tested. Every mine and exploration project reports environmental incidents into our internal online database and tracking system. Each operation has a dedicated environmental department that ensures environmental impacts and incidents are managed according to the approved and applicable procedure."*

There is nothing wrong with the questions that were raised. They are good questions and should be thoroughly addressed during the assessment. But they should not be thoroughly addressed in the Planning phase as part of the DPD. At that point, it should just be Agency coming back with "Noted, answer will be required as part of the assessment." Alternatively, if the proponent or Agency thinks that an issue should not be carried forward to the assessment, this would be the time to justify that.

There may also be some bloat happening in the project description itself, which commonly runs upwards of 75 pages.

To better tailor the IPD and DPD so that they are fit for purpose, we recommend the Agency work with a panel of impact assessment practitioners. This would bring several advantages. IA practitioners have generally worked on a wide variety of project types in diverse settings, and understand the type of information required about a project, and what issues and impacts tend to be most important. Importantly, this group also understands the practical limits of information gathering in the IA context. And finally, they are well placed to identify where in assessment process is most appropriate to address specific tiers of issues.

Fundamentally, the Planning phase is supposed to be a brief information gathering exercise and a springboard for the later assessment, not the assessment itself.

CONCLUSION

We have a lot to be proud of. And we have a lot of work left to do.

Many aspects of Canada's approval system for major projects are world-leading. The process is rigorous, inclusive and protective of the environment. However, as demonstrated in this report, improvements are still needed in terms of efficiency, coordination and predictability of process.

Other countries, including many of Canada's major competitors, are overhauling their own regulatory systems to improve efficiency and remain economically competitive in a time of rapid global energy transition. It is critical for Canada to do the same, both to remain competitive ourselves and to meet federal and provincial targets for decarbonization.

As Canadian governments work to improve to their regulatory processes, we hope that there will be appetite for fully addressing the root causes of inefficiency and uncertainty. Minor tweaks are unlikely to be sufficient. What is promising, however, is that many different organizations—including the Canada West Foundation, the Business Council of Canada[55], the Business Council of Alberta[56], Electricity Canada[57] and others—have identified problems and solutions that are aligned. This charts a strong path forward for improvement.

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[55] Annesley J, Campbell D, Golshan A and Greenspon E. (2023) *Project of the Century: A Blueprint for Growing Canada's Clean Electricity Supply* – and Fast. Business Council of Canada

[56] Business Council of Alberta. (2023) *Future Unbuilt: Transforming Canada's Regulatory Systems to Achieve Environmental, Economic, and Indigenous Partnership Goals*

[57] Electricity Canada. (2022) *Build Things Faster: Barriers to accelerating the build-out of electricity infrastructure in Canada*

APPENDIX: IMPACT ASSESSMENT COOPERATION ELEMENTS – B.C., ALBERTA, QUEBEC AND ONTARIO*

	Elements contained in the cooperation agreement between Canada and British Columbia	Elements included in cooperation agreements with provinces for specific projects		
		Alberta Suncor Base Mine Extension Project	**Quebec** Sorel Tracy Port Project	**Ontario** Northern Road Link Project
Collaborating with Indigenous peoples	Coordinate communication, cooperation and collaboration with Indigenous peoples throughout impact assessments	Will aim to coordinate		Align and coordinate
	Ensure compliance with treaty obligations			
Providing early notification to the other order of government	Early notification to begin planning			
	Early notification of planned engagement with Indigenous peoples			
	Early notification of a regional assessment			
Cooperation during early engagement (Planning phase)	Establish a joint early engagement process			
	Coordinate key deliverables and activities, specifically:			
	• Consolidate requirements for Initial Project Description			
	• Coordinate public engagement	Will aim to coordinate	Will attempt to harmonize	Will participate in joint meetings
	• Coordinate a joint public comment period on the IPD			Will share information
	• Coordinate identification of Indigenous people and timing and means of engagement			
	• Coordinate engagement with Indigenous peoples			Will share information
	• Coordinate engagement with local governments and fed/provincial authorities			Will participate in joint meetings
	• Prepare a single document that sets out comments			
	Harmonize timelines during this phase			
Coordinated impact assessments after planning phase	Harmonize timelines for planning and for the impact assessment and establish a schedule of steps	May align milestones and activities		
	Coordinate timing of required decisions throughout the IA process			Align and coordinate where possible
	Establish a joint technical working group			
	Coordinate Public Participation, Indigenous Engagement and Partnership, and Permitting plans			Will participate in joint meetings
	Coordinate the development and implementation of planning of the assessment process	GOC considered AB requirements when developing its guidelines for the proponent		Where possible
	Coordinate the development of requirements for information that a project proponent must provide, with the goal of setting out joint requirements to the extent possible, and otherwise aligning requirements	May coordinate meetings with subject matter experts		Common review factors identified
	Coordinate public engagement on the proponent's information and on the assessment report	Will aim to coordinate	Will attempt to harmonize	Will participate in joint meetings
	Jointly prepare a single document that meets the requirements of the impact assessment reports	No, but they may cooperate in reviewing information		Yes – at least for required proponent documentation
Joint review panels	Where applicable, establish a joint review panel	Will explore	n/a	n/a
	Coordination around: (i) activities preceding the appointment of the joint review panel including provisions for: (ii) the appointment of members (iii) the establishment of a secretariat (iv) the joint review panel's terms of reference (v) consultation and engagement of Indigenous peoples (vi) any financial assistance to be provided to participants (vii) timelines for submitting the joint review panel report (viii) the decision-making process		n/a	n/a
	Fed/province to discuss the IA report prepared by the panel prior to final decisions being made		n/a	n/a

Table continues on next page

	Elements contained in the cooperation agreement between Canada and British Columbia	Elements included in cooperation agreements with provinces for specific projects		
		Alberta Suncor Base Mine Extension Project	**Quebec** Sorel Tracy Port Project	**Ontario** Northern Road Link Project
Coordination of potential conditions	Jointly review potential conditions to minimize duplication and regulatory burden and to align reporting and notification requirements, terminology and definitions and deadlines			
	Seek feedback from one another on conditions	IAAC and the AER may consult with each other	IAAC will share info on potential conditions with province	IAAC will consult with provincial Ministries
	Work to ensure that their respective potential conditions provide similar requirements with respect to: (i) reporting (ii) notification (iii) deadlines with respect to obligations set out in conditions			
	Establish a process to develop and review potential conditions			
	Ensure that a decision statement contain similar descriptions of the applicable project			
Coordination of Decision-Making Phase	Keep each other informed regarding the timing of the respective decisions, and coordinate the announcement of decisions		Yes	
Post-Decision Activities	Coordinate post-decision activities, including follow-up and compliance verification and enforcement activities			
	Discuss the potential for the federal Minister to designate officials of the Government of British Columbia as enforcement officers			
	Jointly consider the use of Indigenous and community-based monitoring bodies			
	Work together to review any proposed changes to an approved project			
	Coordinate the timing of decisions in respect of the amendments and extensions			
Information sharing	Develop a plan to identify opportunities to streamline the collection and public dissemination of information			
	Work together with Indigenous peoples with respect to the sharing and protection of Indigenous knowledge			
	Share information and establish appropriate information-sharing processes during the IA process	AER can access the federal government's public record if it wants info		
Participant Funding	Coordinate funding for participation			
Policy and Guidance Development	Share information and collaborate, where possible, on best practices related to the conduct of impact assessments			
	Work toward developing guidelines that cover the impact assessment requirements of both Canada and BC			
General Provisions	A working committee will be established to oversee implementation of the agreement and evaluate the efficiency and effectiveness of the cooperative impact assessments			
	Meet every five years to review progress and discuss potential amendments to this agreement			

* This wording is paraphrased. Please see the original document for full wording.

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This report was written by Marla Orenstein, Director, Natural Resources Centre. Production of reports at Canada West Foundation is a team effort and the thanks of the author go to the staff whose contributions enhanced the quality of the report and brought the text to life on the page.

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Acknowledgement

This report would not have been possible without the generous contribution of time and expertise of many people. The author would like to thank all those who assisted with their critical thoughts and ideas.

Cite as:
Orenstein, Marla. (2023). Competitive Canada: Recommendations to improve federal assessment for major projects. Canada West Foundation.

 | ISBN 978-1-77867-008-4 | September 2023

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