

## Fixing Canada's Major Project Approval Processes

Canada used to be a place where we got things done.

Our economy, and the good, well-paying jobs it creates, depends on our ability to develop natural resources, build big projects, and send our valuable goods to international markets.

But creating those jobs and building those projects requires billions in capital investment. And over the past decade, not only has that investment been flat, much of it has left Canada.

A big part of the reason for this is Canada's slow, unclear, and unnecessarily bureaucratic (and politicized) processes for approving and permitting major projects.

Simply put: It can't take fifteen years to build a new mine.

Canada has massive resource wealth and strategic advantages we should be capitalizing on. We have a highly educated and capable workforce. And our trading partners want what we can provide.

We need to get back to doing what we do best—getting big projects built. For that, we need a re-imagined regulatory system that encourages investment and growth. That system needs to be faster and more efficient. It can't have the federal government and provinces tripping over each other. It can't be subject to political interference. It needs to respect Indigenous economic agency. And it needs to do all that while still safeguarding the environment and reflecting community concerns.

But even a redesigned or overhauled system for reviewing major projects can fall prey to the same pitfalls that have made our past review regimes ineffective and slow.

If we can design a review system that avoids these all-too-common pitfalls, the result will be thousands of new jobs, better family incomes, and renewed economic strength.

To fix major project approval processes, Canada must:

- Rebuild a world-leading major project review system

And it must do everything it can to ensure that this rebuilt system avoids past pitfalls. That means it must:

- Shorten project review timelines and adjust regulatory risk tolerance
- Rein in increasingly expanding and unpredictable review scope
- Achieve true federal and provincial review cooperation
- End the bureaucratic disruption of narrow construction windows
- Reduce repetitive and inapplicable stakeholder interventions
- Improve federal departments' internal coordination
- Solve for procedural “death by a thousand cuts”
- Improve and streamline Indigenous participation in project reviews

## **Rebuild a world-leading major project review system**

Introduced through Bill C-69, our existing major project review system is not working. Projects are mired in ever-expanding bureaucratic review and red tape; political interference; endless legal challenges; interprovincial squabbles; interdepartmental inefficiencies; and duplicative processes.

And that's just for the major project review process. If a project actually gets approved, the same list of problems happens all over again at the permitting stage.

Simply put, Canada's current review system is designed to find reasons for government to say "no." We need a system that finds reasons to say "yes," and gets shovels in the ground. Quickly.

To do this, the federal review process needs to be impartial, proportional, trusted, efficient, and predictable. If we can get that right, it will help stop capital from moving elsewhere and bring home economic prosperity and thousands of well-paying jobs.

Right now, we're not even close to this ideal.

To build an ideal system, a redesigned major project review process needs to be guided by the following elements:

### **Recommendations:**

- Consistently state policy preferences about which types of projects, if built responsibly, will be in the public interest—even before a project review is underway.
- Limit federal assessments, by law and in spirit, to projects and subject matters within the federal government's jurisdiction.
- Remove a minister's power to designate a project for federal review by fiat.
- Decisions about whether to approve a project after a review should be made by an independent regulator, not by politicians at the end of a drawn-out process.
- Provide clarity from regulators on what information they need from proponents at each stage of a review—and do not overstep these boundaries or require oddly-specific details early in a project review process.
- Focus assessments on project-specific, unique, and material risks—not on low-risk activities with a history of successful mitigation. Regulators should adopt a trust-but-verify approach for low-risk activities.
- Advance reconciliation by fully including impacted Indigenous Peoples in reviews. Remove barriers to full participation; and provide full clarity on the roles of government, proponents, and Indigenous Peoples at a review's onset.
- Provide strong leadership over reviews from a single lead agency. This agency should be the single window of communication to proponents, and be responsible for keeping all other involved departments on schedule and acting within their limited scope.
- Align or substitute federal reviews, when applicable, with provincial review processes.
- Communicate confidence in the regulatory process by publicly championing any approved project as being best-in-class.

## **Shorten project review timelines and adjust regulatory risk tolerance**

Time is money. For businesses to green-light a new project, they need to know how long the government review process will take, and when they can expect to get shovels in the ground. If that process takes too long, the investment either won't happen, or it'll happen someplace else.

As it stands today, projects take too long to review and permit. A country serious about attracting investment cannot take more than 15 years to get a new mine approved and operating.

Long legislated review timelines are only part of the problem. Another issue is when regulators pile on so many requirements that a business cannot possibly meet its deadlines, forcing it to request an extension.

Finally, project reviews have expanded to fit the time available. Simple projects should require short and simple reviews. But government agencies are not scaling review timelines according to the actual risks and complexity of a project.

Canada has been building and regulating major projects for decades. We know how to do this. We know what the risks are and how they can be avoided. We need to better use what we've learned to reduce the length and scope of reviews, not complicate them and slow them down.

### **Recommendations:**

- Shorten maximum review process timelines to, when possible, a proponent's capital allocation decision timeframe—including for large and small project reviews.
- Scale maximum review and permitting timelines with a project's complexity, risk level, and novelty. Less risky, complex, and well-understood projects should have shorter timelines.
- Avoid forcing a proponent to request timeline extensions by prohibiting lead agencies and permitting bodies from assigning last-minute review requirements to proponents.
- Prohibit lead agencies and other departments from extending/stopping the clock on project review or permitting timelines, including during the post-review decision-making stage (except in the most exceptional circumstances).
- When review or permit timelines extend beyond their legislated limit, require review/permitting bodies to publicly publish a 'Reasons for Timeline Delay' document, which includes how those delays will be avoided in future.
- Ensure that review requirements are reasonable enough that they can be completed by a proponent at a reasonable cost and effort within the prescribed maximum timelines.
- Limit review- and permit agency-required follow-up information requests for proponents to the earliest portions of timebound review stages.
- Require lead project review agencies to more appropriately scope project assessments to focus their resources on the most material, project-specific risks, and not on standard, well-understood risks with a history of successful mitigation.
- Require lead agencies to use a 'trust-but-verify' assessment and auditing model for standard, well-understood, easily-mitigated risks tied to proven industry best practices or existing regulatory requirements.

## **Rein in increasingly expanding and unpredictable review scope**

Any company wanting to start up an expensive major project in Canada needs to know what the rules are. They need to know exactly what the project review process looks like, the order in which things happen, and how long each stage will take.

Unfortunately, not much of that is clear today. Federal regulators provide very little certainty about what their reviews require. They often step outside the bounds of how they're supposed to conduct a review, and they've been gradually imposing more and more requirements on projects that successfully complete reviews.

The bottom line is this: project reviews are ballooning in size, scope, and complexity; review requirements are unpredictable; and bureaucratic delays are piling up. What happens then? Investment goes elsewhere and good job opportunities are lost.

This trend holds true across a wide range of projects, regulators and review processes. It starts before the review has even begun. And it keeps going well after the project has been approved. If it even gets that far.

If Canada is going to attract investment and create the good, well-paying jobs for workers, we need to ensure our regulatory reviews are predictable and properly scoped.

### **Recommendations:**

- Prevent the Canada Energy Regulator (CER) from doing project assessment activities during the stage where it reviews the project application for completeness.
- Provide proponents with on-request rapid access to an adjudicator to assess whether a regulator is following the proper steps and procedures—and to act when breaches occur.
- Simplify and reduce the number of conditions attached to project certificates. One condition should equal one requirement; and conditions should not be used to add review requirements that should have taken place earlier.
- Make sure the review timeline for pre-construction conditions lines up with project construction windows. Do not allow third-party involvement in this stage to impact construction from proceeding according to plan.

## Achieve true federal and provincial review cooperation

The federal and provincial governments often share responsibility for regulatory reviews and permitting of major projects. This can work well, but only if all levels of government are on the same page, the process is clear, and there's no political interference between different levels of government.

Unfortunately, that's the exception more than the rule.

Competing, conflicting, or overlapping federal and provincial project reviews create uncertainty, increase costs, and discourage investment. Projects can end up in situations where each level of government that approves the project makes their approval conditional on different (and sometimes overlapping or contradicting) sets of requirements.

Canada needs to achieve the ideal of “one project, one window, one review,” where governments work together to align or substitute their respective processes as much as possible. At the very least, they need to stay in their own lanes and coordinate project reviews to avoid duplicating efforts and wasting time because their political objectives are at odds.

### **Recommendations:**

- Exercise federal paramountcy powers and seek legal resolution at the earliest opportunity if provincial and/or municipal permitting bodies frustrate federal review timelines.
- When both the federal and a provincial government have shared jurisdiction over project reviews, ensure that only one review takes place, whether by substituting one process for the other, or through joint agreement. This process should be timebound with no decision-making extensions.

## **End the bureaucratic disruption of narrow construction windows**

Canada's rich natural environment is worth protecting. For this reason, Canadian law places restrictions on when major project construction can take place—to avoid disrupting animals' migratory, nesting, and spawning seasons; and/or when endangered species are least at risk.

These measures are important. But if companies are only able to work during certain time windows, then government officials need to make sure that all departments are working together, and that regulatory interference or delays don't cause those windows to be missed. A missed window adds months, if not years, to construction timelines.

On top of that, overzealous application of the letter of the law can lead government officials to demand perfection from companies in addressing environmental disruption, instead of accepting a genuine, though imperfect, effort to mitigate impacts. Even a singular, minor infraction can result in a compliance officer shutting down construction on an entire project.

To be clear, this is not an excuse for companies to be lax. But if a company misses a single bird's nest while screening for environmental impacts, there needs to be an appropriate balancing of the costs and benefits of shutting down the project to correct the error.

With the right oversight and a rebalancing of stringency, compliance officers and permitting bodies can work in a much more timely, reasonable, and coordinated manner and help ensure construction windows are not needlessly missed.

### **Recommendations:**

- Prohibit on-site inspectors from stopping construction on an entire project unless there's evidence of project-wide negligence that can't be mitigated within existing environmental protection plans. Only allow localized stop-work orders for minor infractions.
- Federal acts governing permitting, such as the *Migratory Birds Convention Act* and others protecting wildlife, should **(1)** protect species, not individual specimens; and **(2)** enable habitat offset projects to ensure no net habitat loss.
- Create a body that oversees and coordinates major project construction permitting. It would set service standards and timelines for all permitting bodies; reduce duplicative Indigenous consultation; and work with a proponent to expedite permitting requirements before a project review is finished.

## Reduce repetitive and inapplicable stakeholder interventions

The federal government's assessment and permitting processes allow the public to participate in and comment on proposed major projects. This participation is critically important for getting the buy-in needed to get projects built, especially from communities directly affected.

But since Bill C-69 (the *Impact Assessment Act*) came into effect, there are almost no restrictions on who can comment and provide input on a proposed major project. And this problem affects many federal agencies responsible for reviewing projects—including for agencies reviewing projects that don't meet the criteria to be reviewed under C-69.

Some individuals and groups are taking advantage of this, using the lack of rules to slow down and (eventually) kill projects by drowning the approval process in bureaucratic red tape.

Businesses are spending too much time addressing recurring and minute public concerns. This drives up project review costs, increases regulatory timelines, grows the bureaucracy, and dissuades investment and jobs in Canada.

It doesn't have to be this way.

With common sense parameters around who can participate and comment on reviews; and reducing repetitive comments that proponents are required to respond to, project reviews and permitting can be streamlined.

### Recommendations:

- Re-introduce the concept of “standing” to limit public information requests during environmental assessments.
- Limit superfluous stakeholder interventions during project reviews and permitting processes by: consolidating similar stakeholder input; and reducing the burden on proponents to respond to stakeholders that aren’t directly impacted by a project.
- Project review and permitting agencies should work with proponents to proactively evaluate and filter intervenors’ requests so that proponents aren’t forced to answer duplicative requests or requests that are addressed by adhering to existing laws.

## Improve federal departments' internal coordination

Many government departments play a role in reviewing and permitting major projects. These include lead reviewing agencies like the Impact Assessment Agency, the Canada Energy Regulator, and the Canadian Nuclear Safety Commission; as well as other departments that assist them, like the Department of Fisheries and Oceans, Transport Canada, among others. For a smooth regulatory process from start to finish, all departments need to align towards a common goal.

In recent years, however, internal departmental coordination has not been working as well as it should.

A lack of alignment and coordination between departments has created duplication, undermining the authority of the agency in charge and its ability to shepherd along efficient review processes. This places an unreasonable burden on Indigenous rightsholders who end up being contacted by multiple agencies on the same issue, but at different times and with different expectations.

Furthermore, the lack of coordination means that a single department can become hyper-fixated on mitigating a niche or second-order risk; have different regulatory standards from one office or region to another; or even fail to stick to assessing information within their area of expertise. This increases red tape for companies and impacts the ability of a lead agency to enforce its timelines.

### **Recommendations:**

- Empower lead review agencies to set and enforce a review's scope and strict timeline requirements for all federal departments involved. Update MOUs between lead agencies and other departments accordingly.
- Ground all review requirements and information requests to proponents in pre-established written requirements (legislation, regulation, directives, or bulletins). Proponents should be able to quickly appeal the validity of out-of-scope requests.
- Conduct a performance audit of DFO regional offices to make sure they all adhere to the same predictable permitting standards; and establish the top performing office as the minimum standard for all others.
- Improve review quality and speed across DFO regional offices by redeploying staff as needed to offices where project review demands are high; and create a pool of qualified professionals available for contract work when permitting processes require extra staff.

## **Solve for procedural “death by a thousand cuts”**

Canada's major project approval processes often involve multiple departments and agencies, all of which conduct their own separate processes as part of the overall assessment. For the overall process to go smoothly, each department needs to coordinate with the others, respect timelines, and align to the goal of getting good projects approved quickly.

Unfortunately, this is not the case today.

A single point of failure in an overarching process can be hard to pinpoint, because there usually isn't one. More often, small issues and delays occur across multiple departments. They tend to:

- accumulate, undermining the efficiency of the entire review and construction process;
- interfere with key construction timeline pinch points; and
- cause unpredictability and poor collaboration across agencies.

Solving these challenges requires better mechanisms for internal and external critique of processes; and creating government-industry partnerships to address bureaucratic roadblocks.

### **Recommendations:**

- Require the Treasury Board Secretariat to study ongoing project reviews and report to parliament and offer recommendations to solve the ways that small regulatory pain points impact whole-of-process regulatory efficiency.
- Set up a permanent, industry-led Major Project Partnership Council to meet quarterly and address regulatory inefficiency. Include regulatory experts in government, business, labour, and Indigenous groups.

## **Improve and streamline Indigenous participation in project reviews**

Major projects, especially in resource development, can't be built without Indigenous consultation and full economic participation. Businesses, government and Indigenous Peoples all need to work together if projects are going to succeed. But for that to happen, government responsibilities, processes, and engagement efforts with Indigenous communities need to be genuine and clear.

The problem is that none of these things are clear right now. That's especially true with federal government consultation. Every government department involved in major projects conducts its own consultations, leading to heavy overlap and inefficiency, and creating delays in moving projects forward. On top of that, the quality of government engagement varies significantly depending on the department doing the consultations. That creates uncertainty for businesses, since they can't be sure that government consultations would stand up to a court challenge.

When it comes to economic participation, businesses should play a leading role. But governments can help by making sure Indigenous businesses and communities have adequate access to capital and the capacity training needed to maximize their economic benefit.

### **Recommendations:**

- Provide project proponents with Indigenous consultation guidance that includes:
  - common guidance by project type
  - clear limits on consultation requirements
  - maps identifying Indigenous Peoples to consult
  - consultation expectations scaled by proximity of an Indigenous community
  - harmonized federal and provincial requirements
  - protections from legal challenges to the use of this guidance
- Co-develop with Indigenous Peoples a clear and broadly-accepted definition and approach to free, prior and informed consent.
- Clarify how the Crown discharges its duty to consult and accommodate, including how the Crown can leverage pre-existing relationships between Indigenous Peoples and proponents, while drawing clear distinction between the Crown's rights-based consultations and a proponent's benefit-sharing negotiations.
- Establish a centralized Indigenous Consultation Office to consolidate all Crown consultation. It should adopt a Crown-Indigenous nation-to-nation ambassador role and establish the scope and adequacy of all federal consultations.
- Compensate proponents for all losses incurred by the Crown's failure to adequately consult.
- Maintain the Indigenous Loan Guarantee Program to allow Indigenous Peoples to participate in project developments or equity partnerships.
- Alongside industry, co-fund capacity training to promote Indigenous expertise in project participation and the assessment of benefits and impacts.