



# IAA 101:

## A Guide to Public Participation in *Impact Assessment Act* Processes



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## **Disclaimer**

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# Introduction

## Welcome

*IAA 101: A Guide to Public Participation in Impact Assessment Act Processes* has been prepared by the Environmental Planning and Assessment Caucus of the Canadian Environmental Network. It is designed to help the public navigate assessment and determination processes carried out under Canada's *Impact Assessment Act* ("the Act").

## Spotlight on Impact Assessments

Although this guide touches on all of the key assessment and determination processes carried out under the Act, its main focus is on the assessments of individual projects (known as "impact assessments" or "IAs").

As defined and structured by the Act, impact assessment is a planning tool designed to inform decisions about projects, programs and activities that affect the environment. Federal

impact assessments focus on how proposed activities may benefit or harm environmental, socioeconomic and human health matters that fall under the Government of Canada's control.

Other assessment processes touched on in this guide are regional assessments, strategic assessments, and environmental assessments of projects that occur on federal lands.

## Distinction between public participation and Indigenous engagement

Opportunities for public participation under the Act differ from Indigenous consultation, engagement, and partnership. Indigenous sovereignty and jurisdiction have existed since time immemorial and continue to this day.

Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of the Indigenous peoples of Canada, which gives rise to Crown obligations to consult and accommodate where Crown actions may infringe those rights. Additionally,



Indigenous peoples' rights are recognized by many international instruments. For example, the *United Nations Declaration on the Rights of Indigenous Peoples* recognizes a number of Indigenous rights that are relevant to impact assessment. It also requires that states like Canada consult and cooperate in good faith with Indigenous peoples in order to obtain their free, prior and informed consent before approving any projects that might affect their territories. Because of Indigenous peoples' unique rights and the resulting obligations they place on Crown governments, Indigenous consultation is distinct from public participation.

In practice, public participation opportunities

offered to the general public can overlap or intersect with more specialized opportunities for Indigenous engagement and consultation. For these reasons, some information and guidance presented throughout this guide may be helpful to Indigenous individuals, community groups, and organizations seeking support to navigate the federal process. However, due to Indigenous peoples' unique rights and decision-making authority, the public participation opportunities explained in this guide do not reflect the spectrum or depth of consultation and cooperation that Crown authorities must offer Indigenous peoples. [Chapter 4](#) discusses Indigenous rights, knowledge, and engagement in impact assessments in more detail.

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## What You Will Find in this Guide

We invite you to read this guide from start to finish or choose a specific chapter that might be most relevant as you engage in impact assessment.

Here's a snapshot of what you will find in this guide:

- ▶ **Chapter 2: “What Is Impact Assessment?”** introduces the history of federal assessment processes in Canada and explains how the purpose and objectives of impact assessments are characterized under the Act.

- ▶ **Chapter 3: “Why Participate in an Impact Assessment?”** discusses the value of public participation, whether you are participating to support or oppose a proposed project, learning more about it, expressing concerns, providing information that can help mitigate the negative impacts, or helping ensure that both the positive and negative impacts of the project are understood and distributed fairly.

- ▶ **Chapter 4: “Indigenous Engagement”** identifies and explains some of the key provisions of the Act that affect Indigenous engagement and partnership in federal assessment processes, including

requirements addressing the inclusion and consideration of Indigenous knowledge.

- ▶ **Chapter 5: “Key Players”** explains the roles and responsibilities of the key administrators, participants, and decision-makers that shape the impact assessment processes, including the Impact Assessment Agency of Canada, the federal Minister of Environment and Climate Change, the Governor in Council, and others.
- ▶ **Chapter 6: “How Projects Are Designated for Impact Assessment”** explains what kinds of activities trigger the impact assessment process and how members of the public can ask the federal Minister of Environment and Climate Change to require federal assessments of projects that do not automatically trigger the federal process.
- ▶ **Chapter 7: “Before Assessments Begin”** explains the value of learning more about prospective projects and getting ready for active engagement before the start of an assessment.
- ▶ **Chapter 8: “Participating in the Planning Phase”** explains how the first phase of the assessment process works and identifies opportunities for public participation.

- ▶ **Chapter 9: “How to Decide Your Focus”** provides guidance for individuals and community groups starting out in the process in order to determine where best to focus their time, energy, and capacity.
- ▶ **Chapter 10: “Subject-Matter Experts”** describes the different roles of subject-matter experts and provides tips for finding qualified assistance that may help you participate more effectively in an impact assessment.
- ▶ **Chapter 11: “Participating in the Assessment”** explains how the second and third phases of the process work and identifies opportunities for public participation as these phases unfold.
- ▶ **Chapter 12: “Maximizing Your Participation”** offers general guidance and recommendations designed to help you maximize your participation in a federal impact assessment.
- ▶ **Chapter 13: “How Decisions Are Made”** explains how the fourth phase of the process works and the factors that drive final decision making by the federal Minister of Environment and Climate Change and the Governor in Council.

▶ **Chapter 14: “Taking It to Court”**

provides an overview of judicial review, what decisions may be subject to legal challenge, who may apply for a judicial review, and the basic steps in the process. This chapter is for informational purposes only and does not constitute legal advice.

▶ **Chapter 15: “After the Assessment”**

explains the role of follow-up, monitoring, and compliance and enforcement activities after assessments have been conducted and proposed activities are approved. It identifies opportunities for public engagement in this crucial but under-appreciated part of the process.

▶ **Chapter 16: “Regional Assessments”**

describes the nature and purpose of regional assessments under the Act, which are different from project-specific assessments. This chapter also explains how members of the public can ask the Minister of Environment and Climate Change to initiate regional assessments and describes the public participation opportunities that can be expected throughout such a process.

▶ **Chapter 17: “Strategic Assessments”**

explains what they are, when they might be useful, and what a good process may look like. It also provides tips for requesting strategic assessments and how to maximize your participation during this type of process.

▶ **Chapter 18: “Section 82 Assessment for Projects on Federal Lands”**

outlines the environmental review process that is carried out for hundreds of projects each year that are proposed on federal lands but do not trigger impact assessments under the Act.

# What Is Impact Assessment?

## Introduction

Almost every country has a process for assessing the environmental impacts of proposed projects and activities before they can move forward. Canada was an early adopter, establishing its first assessment rules in 1973.

**Terminology Tip:** Internationally, the term “environmental impact assessment” (EIA) is most commonly used. The preferred term in Canadian provinces is “environmental assessment” (EA). The *Impact Assessment Act* uses the term “impact assessment” to reflect the fact that assessments under it consider environmental, social, economic, and health effects and impacts to Indigenous peoples and their rights. This guide uses the term impact assessment throughout.

When properly done, impact assessments are forward-looking planning tools designed to help government decision makers, Indigenous authorities and rights holders, and members of the public know the environmental and socio-economic outcomes of proposed activities before moving ahead. Impact assessments can also help us understand how to monitor and evaluate the accuracy of effects predictions on approved activities, make adjustments as needed, and enhance the scientific and technical knowledge that can be applied to future assessments of similar activities.

In Canada, impact assessments are used to consider the potential consequences of developments such as coal power plants, nuclear power plants, oil and gas pipelines and processing facilities offshore oil rigs, mines, hydroelectric dams and water reservoirs, transmission lines, and highways.

The *Impact Assessment Act* is Canada's fifth assessment regime. In the 1970s, increased public interest in environmental issues led to Canada's federal Cabinet adopting a policy to conduct environmental assessments of federal decisions.<sup>1</sup> In 1984, this commitment was formalized as the Environmental Assessment and Review Process Guidelines Order (EARPGO). In 1992, Canada's first environmental assessment legislation was introduced, the *Canadian Environmental Assessment Act* (CEAA), which came into force in 1995. In 2012, CEAA was repealed and replaced by the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

CEAA 2012 governed federal environmental assessment processes until August 2019, when the *Impact Assessment Act* came into force. The terminology shift that took us from a Canadian "environmental assessment" law to an "impact assessment" law reflects an evolving understanding that assessments should not focus exclusively on biophysical changes to the environment but should assess a broader spectrum of impacts that affect community wellbeing. Socioeconomic, cultural, and human health effects were assessed to some degree under CEAA and CEAA 2012, but the *Impact Assessment Act* goes a step further by expanding the scope of the impacts considered in impact assessment processes while maintaining the focus of decisions on areas of federal responsibility.

Most proposed activities do not require a full federal impact assessment. Under the *Impact Assessment Act*, around ten to twelve projects trigger an impact assessment each year. In addition to these, the *Impact Assessment Act* requires minor environmental assessments of projects that occur on federal lands and outside Canada. Additionally, some projects that do not require federal impact assessments are assessed by provincial and territorial governments, and Indigenous peoples may undertake their own assessments of projects in their territories. Federal assessment processes are linked to the powers and responsibilities that Canada's constitution assigns specifically to the federal government.

## Spotlight on Sustainability

While the purpose of the *Impact Assessment Act* is to prevent or mitigate significant adverse effects within federal jurisdiction,<sup>2</sup> impact assessments consider a broader range of environmental and socioeconomic factors. These factors help decision makers understand whether projects will contribute to sustainability, which the *Impact Assessment Act* defines as "the ability to protect the environment, contribute to the social and economic wellbeing of the people of Canada and preserve their health in a manner that benefits present and future generations."

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1 Alberta Law Foundation, *Environmental Assessment & the Canadian Constitution: Substitution and Equivalency* (2014) at page 9, [online](#).

2 *Impact Assessment Act*, SC 2019, c 28 at section 1 and section 6(1).


The *Impact Assessment Act* also mandates the Government of Canada, the federal Minister of Environment and Climate Change, and all federal authorities to exercise their powers under the Act in a way that fosters sustainability, respects the rights of Indigenous peoples, accounts for Indigenous knowledge and cumulative effects, applies the precautionary principle, and promotes cooperation with provincial and Indigenous jurisdictions.

## Impact Assessment under the *Impact Assessment Act*

### What are impact assessments?

Impact assessments apply to specific projects and activities. Each impact assessment is designed to identify the potential effects of a proposed project or activity early on in its design stage and identify ways to avoid or minimise the likely and significant adverse effects within federal jurisdiction.

Under the *Impact Assessment Act*, the activities that require assessments are called “designated projects.” Projects are designated if they appear on a “Project List” that is set out in the *Physical Activities Regulations*. Additionally, Canada’s Minister of Environment and Climate Change can choose to require impact assessments of certain proposed activities even when those activities are not described in the Project List.

 **Engagement Tip:** As you engage in impact assessments, it can be helpful to keep the final assessment decision in mind. The decision is based on the extent to which any adverse federal effects are significant and whether those effects are justified. The justification must be based on the assessment report and three factors:

- a) the impact that the project’s effects may have on any Indigenous group and any adverse impact that those effects may have on the rights of the Indigenous peoples of Canada;
- b) the extent to which the project’s effects contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; and
- c) the extent to which the project’s effects contribute to sustainability.

It’s important to remind project proponents and governmental authorities that we can do better than approving or disapproving projects by simply minimizing or justifying the harms they cause—instead, we can strive to identify and support the kinds of activities that will protect Indigenous peoples’ rights and wellbeing, contribute to Canada’s ability to meet its environmental obligations and its climate commitments, and foster sustainability.



## The Five Phases of an Impact Assessment

Impact assessments carried out under the *Impact Assessment Act* have five phases:

- i) the Planning Phase;
- ii) the Impact Statement Phase;
- iii) the Impact Assessment Phase;
- iv) the Decision-making Phase; and,
- v) the Post-decision Phase.

More information on each of these phases is included within this toolkit: [Chapter 8](#) of this guide explains the Planning Phase and identifies key opportunities for public participation; [Chapter 10](#) does the same for the Impact Statement and Impact Assessment phases;

the Decision-making Phase is addressed in [Chapter 13](#); and the Post-decision phase is addressed in [Chapter 15](#).

## Impact assessments take numerous impacts and other factors into account

Impact assessments carried out under the *Impact Assessment Act* will be conducted either by the Impact Assessment Agency of Canada or by independent review panels that are constituted specifically for the purpose. Regardless of whether an impact assessment is carried out by the Agency or a review panel, the *Impact Assessment Act* requires that an extensive list of impacts and other factors be taken into account during the assessment process.

## FACTORS TO BE CONSIDERED

The factors that must be considered in impact assessments are listed in section 22 of the Act. They include:

- a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including
  - i) the effects of malfunctions or accidents that may occur in connection with the designated project,
  - ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and
  - iii) the result of any interaction between those effects;
- b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;


- c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- d) the purpose of and need for the designated project;
- e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;
- f) any alternatives to the project that are technically and economically feasible and are directly related to the designated project;
- g) Indigenous knowledge provided with respect to the designated project;
- h) the extent to which the designated project contributes to sustainability;
- i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
- j) any change to the designated project that may be caused by the environment;
- k) the requirements of the follow-up program in respect of the designated project;
- l) considerations related to Indigenous cultures raised with respect to the designated project;
- m) community knowledge provided with respect to the designated project;
- n) comments received from the public;
- o) comments from a jurisdiction that are received in the course of consultations conducted under section 21;<sup>3</sup>
- p) any relevant assessment referred to in section 92, 93, or 95;<sup>4</sup>
- q) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
- r) any study or plan that is conducted or prepared by a jurisdiction—or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2—that is in respect of a region related to the designated project and that has been provided with respect to the project;<sup>5</sup>
- s) the intersection of sex and gender with other identity factors; and
- t) any other matter relevant to the impact assessment that the Agency requires to be taken into account.

3 The reference to jurisdictions consulted under section 21 refers generally to governmental authorities, agencies, or bodies that would be consulted due to having specific powers, duties, or functions related to the assessment of the environmental effects of a designated project.

4 The assessments referred to here are regional assessments and strategic assessments. For more information about these assessment processes, see Chapter 16 and Chapter 17 of this guide.

5 Under section 2 of the Act, the word “jurisdiction” is defined as referring to any of the governmental authorities, agencies, or bodies listed as part of the definition.





**Engagement Tip:** At various stages throughout an impact assessment, members of the public will have opportunities to ensure that all of the *Impact Assessment Act*'s “section 22” factors are being taken into account as needed. Key opportunities are highlighted and discussed in later chapters of this guide.

## Impact assessment decisions focus on “adverse effects within federal jurisdiction”

Assessments carried out under the *Impact Assessment Act* are designed to give federal decision-makers the information they need to determine whether there are likely significant adverse federal effects of a project, and if so, whether they are justified in the public interest.

“Adverse effects within federal jurisdiction” are defined in section 2 of the *Impact Assessment Act*. They include:

- ▶ non-negligible adverse changes to fish and fish habitat, aquatic species, migratory birds or other components of the environment listed in Schedule 3 of the Act;
- ▶ non-negligible adverse changes to the environment that occur on federal lands;
- ▶ non-negligible adverse changes to the marine environment that occur outside Canada and are caused by pollution;

- ▶ non-negligible adverse changes to trans-boundary waters that are caused by pollution;
- ▶ non-negligible adverse impacts on Indigenous peoples’ physical and cultural heritage, use of lands and resources for traditional purposes, or structures, sites, or things that are of special significance, when such impacts result from changes to the environment;
- ▶ non-negligible adverse changes to the health, social, or economic conditions of Indigenous peoples of Canada; and
- ▶ the non-negligible adverse changes to the environment or to health, social or economic conditions of any activity that is carried out on federal lands or is a federal work or undertaking.

“Non-negligible” is not defined under the *Impact Assessment Act* and does not have a common legal definition. “Effects” is defined as “changes to the environment or to health, social or economic conditions and the positive


and negative consequences of these changes.”

The final decision determines whether the anticipated significant adverse effects within areas of federal jurisdiction are in the public interest.

What constitutes “the public interest” in this context? Section 63 of the *Impact Assessment Act* lists three factors that a decision-maker must consider when deciding whether the likely and significant adverse federal effects could be justified in the public interest. Those factors are:

- a) the impact that the effects that are likely to be caused by the carrying out of that project may have on any Indigenous group and any adverse impact that those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- b) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; and
- c) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to sustainability.

Following impact assessments, decision makers must determine, after taking into account mitigation measures, whether the project is likely to cause any significant adverse effects within federal jurisdiction, and if so, the extent to which those effects are significant. They then must decide whether any significant adverse federal effects are justified in the public interest. The public interest determination must be based on the assessment report and the three considerations listed above.

 **Engagement Tip:** When communicating with federal agencies or authorities during an impact assessment, it is helpful to focus your questions, comments, and concerns on issues that relate to “adverse effects within federal jurisdiction”, as these are the effects that the Government of Canada has the authority to address.



# Why Participate in an Impact Assessment?

Impact assessment is the best available tool for having a say about decisions that may affect you or the things that matter to you. It asks the basic questions: what will the project's impacts be, should they be allowed, and if so, under what conditions? As a planning tool, impact assessment looks at different ways to design projects to best achieve desired results. The public, particularly in local communities, plays an important role in determining what those desired results are and whether and how a project aligns with them.

People participate in impact assessments for a variety of reasons: to support a project, to voice concerns, to learn, to help ensure that a project's negative impacts can be avoided or minimised, and to enhance the benefits and make sure they are fairly distributed. Impact assessments can also be a helpful tool in building a broader narrative about important issues. Each of these reasons is explored below.

## Participating to Support, Oppose or Share Concerns About a Project

Because a decision under the *Impact Assessment Act* can stop a project from proceeding, a simple reason to participate is to voice one's support or opposition to it. Basic support can take the form of a simple letter to the Impact Assessment Agency of Canada or to a review panel saying, "I support this project," or a more detailed submission outlining the reasons why the project should go ahead.

Opposition may be expressed just as simply, although opponents face an uphill battle—virtually every federal assessment since the 1970s has resulted in an approval. While that fact may be discouraging, there are a number of reasons to participate even though the odds seem stacked against you.

Participants may also not fall into binary "support" or "oppose" camps. Public participation helps proponents and decision makers

understand the local and regional environment, as well as community contexts and needs. It also helps ensure that the information being relied on is comprehensive and credible. Participants may want to learn more about the project and make sure that their concerns are taken into account. Impact assessment is the best tool we have for avoiding or minimizing projects' impacts and enhancing their benefits, and public participation is critical for ensuring that happens.

## Participating to oppose a project

- ▶ **To get information before decision makers.** Assessment authorities—the Impact Assessment Agency of Canada or a review panel—rely on information submitted to them by the proponent, federal expert departments, independent experts, Indigenous peoples, provincial and municipal governments, and the public. Proponents provide the bulk of the information and may have a vested interest in downplaying a project's impacts and bolstering its benefits. Public participation is critical for ensuring information is comprehensive and accurate.
- ▶ **To build broader public opposition.** Information submitted in an impact assessment is made public, and so critiquing a proponent's studies and submitting additional information can help inform and support broader public pushback against the project or its potential effects.

## THE PROSPERITY AND NEW PROSPERITY MINES:

In 2010, the federal government rejected the Prosperity Gold-Copper Mine Project in British Columbia after a review panel appointed under the *Canadian Environmental Assessment Act* concluded that the mine would “result in significant adverse environmental effects on fish and fish habitat, on navigation, on the current use of lands and resources for traditional purposes by First Nations and on cultural heritage, and on certain potential or established Aboriginal rights or title...” as well as “significant adverse cumulative effect on grizzly bears in the South Chilcotin region and on fish and fish habitat.” The project would have destroyed Teztan Biny (also known as Fish Lake), which is important trout habitat and of great cultural importance to the Tsilhqot'in First Nation.

The following year, the proponent Taseko Mines Ltd. submitted a new proposal for what it called the New Prosperity Mine, which it claimed would avoid harming Teztan Biny. The federal government appointed another review panel, which reviewed the project under the *Canadian Environmental Assessment Act, 2012*. The panel concluded that despite the design changes, the mine was likely to result in several significant adverse effects, including effects to water quality and fish habitat in Teztan Biny. The federal government once again rejected the project. Taseko challenged that rejection in Federal Court, which dismissed Taseko's application for judicial review. The Federal Court of Appeal dismissed Taseko's appeal, and the Supreme Court of Canada dismissed Taseko's application for a final appeal to it.

Many participants choose to play both the ‘inside’ and ‘outside’ games by participating in assessments while waging public campaigns aimed at government decision makers, investors, and other key players. In the environmental assessment of the Energy East pipeline project, participants and their allies successfully campaigned to hit the reset button due to conflicts of interest among panel members. As a result of mounting public pressure, the new panel considerably expanded the scope of climate information to include upstream and downstream emissions, and the proponent ultimately withdrew its application.<sup>6</sup>

► **To lay the foundation for a lawsuit.**

Participants, not just parties, may apply to a court to judicially review an impact assessment decision. Typically, courts will only consider the evidence that was before the decision maker, so it is important to get that information into the assessment. Additionally, to apply for a judicial review an applicant must show that they have an interest in the outcome, and participating in the assessment is a good way to do that.

► **To play out the clock.** Impact assessments can take anywhere from two to five years for Agency-led assessments, and even longer for panel reviews. Often, proponents do not make final investment

decisions until after the assessment, and markets and other influencing factors can change considerably in the years between entering and exiting an assessment. Governments may also change, bringing in new policy direction that does not align with the project. The environmental assessment of the Northern Gateway pipeline project was approved by the federal government, but First Nations and environmental groups had the decision overturned in the Federal Court of Appeal. By the time the court rendered its decision, an election had occurred, and newly-elected Prime Minister Trudeau rejected the project in 2016.<sup>7</sup>

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*In the environmental assessment of the Energy East pipeline project, participants and their allies successfully campaigned to hit the reset button due to conflicts of interest among panel members. As a result of mounting public pressure, the new panel considerably expanded the scope of climate information to include upstream and downstream emissions, and the proponent ultimately withdrew its application.*

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6 CTV News, “Timeline: TransCanada’s controversial Energy East pipeline” (2017), [online](#).


7 West Coast Environmental Law, “Enbridge Northern Gateway Project,” [online](#).

- **To get decision makers to agree with your concerns.** Governments can be under intense pressure to ensure projects proceed, even if those projects don't align with their policy priorities. Public participation in assessments can provide governments with the information they need and allow them to credibly cite public concerns with the project as the basis for a "no" decision.

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*The environmental assessment of the Northern Gateway pipeline project was approved by the federal government, but First Nations and environmental groups had the decision overturned in the Federal Court of Appeal.*

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 **Engagement Tip:** Be mindful of the final decision. Under the *Impact Assessment Act*, the decision is not whether or not to approve the project. The decision is twofold; 1) whether the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report are likely to be, to some extent, significant and, if so, the extent to which those effects are significant; and 2) whether those effects are justified in the public interest. The justification determination must consider three factors:

- a) the impact that the project's effects may have on any Indigenous group and any adverse impact that those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, 1982;
- b) the extent to which the project's effects will contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change; and
- c) the extent to which the project's effects may contribute to sustainability.

As noted in **Chapter 2**, federal effects are defined as:

- changes to fish and fish habitat, aquatic species, and migratory birds;
- changes to the environment that would occur on federal lands, interprovincially, or internationally;
- impacts on the physical and cultural heritage, use of lands and resources for traditional purposes, or structures, sites, or things that are of special significance to Indigenous peoples of Canada (when such impacts result from changes to the environment); and,
- changes to the health, social, or economic conditions of Indigenous peoples of Canada.

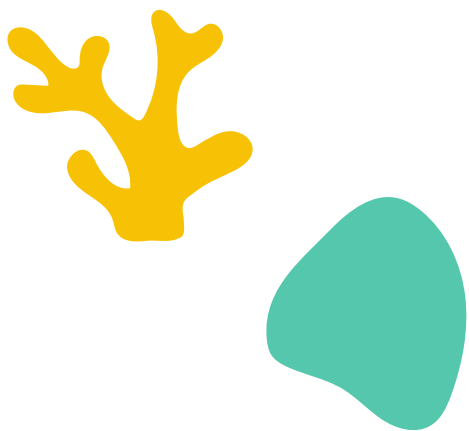
**Participation may be more effective if it shows that the project's benefits do not justify its federal effects.** For example, you may wish to provide evidence that the adverse federal effects are so significant they cannot be outweighed by its benefits or show that they undermine sustainability and impede our ability to meet our environmental obligations and climate commitments. There are more engagement tips in **Chapter 12**.



# Participating for Learning

Do not be intimidated by a lack of knowledge of the project or process. Impact assessments are used to inform decisions, but they can also be an excellent opportunity for the public to become informed about projects, their potential impacts, and their benefits. They can also be a rich source of information about the surrounding environment, local economies, and communities.

But learning is not a one-way street—the public can also have important knowledge, experience, and expertise to offer. In fact, mutual learning is one of the pillars of “next generation” impact assessment.<sup>8</sup> For example, impact assessments must consider positive and negative social effects, and the different ways that projects affect people depending on things such as their sex, gender, race, and other identity factors. The public is key to understanding those effects.



## Why participate for the purpose of learning?

- ▶ **To learn about a project and its components.** Impact assessment can be a helpful source of information about projects. The *Impact Assessment Act* establishes the [Canadian Impact Assessment Registry](#), and requires the Impact Assessment Agency of Canada to post information relevant to impact assessments on the Registry, including proponents’ project descriptions.
- ▶ **To learn about a project’s risks and impacts.** For members of communities close to a project, or people concerned about issues such as climate change, biodiversity loss or Indigenous rights and authority, impact assessments can be the best source of information about a project’s implications and what those effects mean for them and their neighbours. The Registry must include impact statements, comments received, expert evidence, and impact assessment reports.
- ▶ **To learn about a project’s benefits.** Projects usually offer benefits to local communities and economies, and impact assessment can be a good place to learn what those benefits might be (and to make sure they are accessible and fairly distributed).

8 Anna Johnston, *Federal Environmental Assessment Reform Summit* (West Coast Environmental Law, 2016), [online](#).

- ▶ **To share knowledge, experience, and expertise.** Individual members of the public, and community, faith, environmental, recreation and other groups hold rich and important information about the local natural and human environment. They often have insights into how a particular project may affect the receiving environment and local people—impacts which may not be understood by proponents and their consultants.

## Participating to Minimise or Avoid Harmful Effects

Participants are not always staunchly opposed to or in favour of projects. For many, it is too early to know whether a project's effects will outweigh its benefits—after all, gathering and analysing information in order to better understand a project's consequences is what impact assessments are supposed to do. Others may not wish to get in the way of the jobs and the potential benefits a project is expected to provide, but participation can help make sure that those benefits do not come at an unnecessary cost to the environment, communities, or public health.

### Why participate to minimise or avoid unwanted effects?

- ▶ **To raise concerns, bring to light new information, or refute the proponent's information.** As noted above, proponents

may have an incentive to downplay their projects' adverse effects, and they and their consultants are not always best-placed to understand the receiving environment, local communities, and location-specific effects. A participant can support a project in principle but wish to help ensure that decision makers have the information they need when imposing conditions around when, where and how projects can be carried out.

- ▶ **To explore ways to reduce or avoid environmental effects.** As a planning tool, impact assessment looks at the different ways—or “alternative means” in the language of the *Impact Assessment Act*—of carrying out projects. Alternative means can relate to technology, location (of the whole project or parts of it), duration, timing, and scale. For example, a mine might be designed to be underground rather than open pit, locate its tailings away from fish habitat, and be a fly-in operation rather than build a new road that could fragment wildlife habitat. In some cases, particularly for public utility projects, alternatives can be to the entire project, such as building new wind or tidal energy facilities rather than a large hydroelectric dam. Participating in assessments can inform decisions as to which options best protect the environment.

- ▶ **To avoid unintended socioeconomic consequences.** Similarly, different project designs will affect communities differently.



The *Impact Assessment Act* requires assessments to consider socioeconomic effects, including “the intersection of sex and gender with other identity factors.” What does that mean? While projects may bring local benefits (including jobs), those benefits may have unanticipated consequences, which can be borne unevenly. For example, if workers are brought in from elsewhere and housed in the community, housing prices may skyrocket, making women, Indigenous and other racialized people, people with disabilities and other populations vulnerable to housing insecurity. Shorter-lived projects can provide welcome injections into local economies only to contribute to boom-and-bust cycles when proponents eventually pull out. Participating in impact assessments can help identify safeguards against these impacts, and other unwanted or unwarranted effects.

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*In some cases, particularly for public utility projects, alternatives can be to the entire project, such as building new wind or tidal energy facilities rather than a large hydroelectric dam.*

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## Participating to Enhance a Project’s Benefits

Projects’ purported benefits are not always what they are cracked up to be and may not materialise at all. Proponents may not be looking out for the best interest of communities, or even know what those interests are. As a result, participation in impact assessment is critical for ensuring that projects work for the public and especially the communities they are in or near.

### Why participate to enhance projects’ benefits?

- ▶ **To ensure proponents’ claims are accurate.** Assessments must take a close look at proponents’ information about a project’s benefits and consider additional information from the public and other participants. While good proponents want local communities and economies to thrive, it is not unheard of for participants’ analysis to reveal that benefits claims are based on spurious or hidden assumptions or are otherwise overblown. Participants can draw from their local knowledge (e.g., of local skilled labour availability) or hire socioeconomic experts to help verify exactly what benefits to expect.
- ▶ **To help ensure that benefits go to local communities.** Most high-paying, quality jobs require skilled workers, and local communities often do not have enough

skilled workers to meet demand. Rather than bring in workers from elsewhere, proponents can be required to provide skills training in order to enable more of the local population to access good jobs. This is particularly true for women, racialized and other people traditionally left out of the skilled job market. Participants play an important watchdog role in making sure that benefits are fairly distributed to communities instead of being syphoned off elsewhere.

- ▶ **To help ensure the benefits are fairly distributed.** Not everyone has equitable access to project benefits, and these are not always distributed in a way that is commensurate with the distribution of impacts. Participating in impact assessments can help ensure that those who stand to lose the most (for example, through loss of access to hunting or fishing sites) also stand to gain the most (for example, by ensuring that workers have access to childcare or gender-specific changing and restroom facilities).

- ▶ **To help ensure the benefits last.** No community wants to go through a boom-and-bust cycle. While proponents may have an incentive to maximise production, it may be in communities' best interest to lower production and lengthen the life-span of a project to ensure that the jobs last for longer. Participating in impact assessments can help authorities better understand the mid- and long-term consequences and risks associated with projects and determine what is the most desirable pace and scale of the project for local economic sustainability.

In the environmental assessment of the Voisey's Bay mine, participants were generally supportive of the job opportunities, but expressed a desire to ensure that the project and the jobs would last for at least 20–25 years. Additionally, participants expressed a desire to ensure that women—particularly Indigenous women—have equitable access to the jobs. As a result, the review panel recommended measures to ensure women's access to the benefits and that if need be, production be lowered so as to lengthen the overall project lifespan.<sup>9</sup>

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9 Joint Environmental Assessment Panel, *Voisey's Bay Mine and Mill Environmental Assessment Panel Report*, [online](#).

# Indigenous Peoples' Inclusion in IA

The *Impact Assessment Act* introduced important changes to federal environmental assessment law, increasing Indigenous rights protection compared to previous assessment legislation. For example, the *Impact Assessment Act* includes commitments to recognize and respect the rights of Indigenous peoples throughout the preamble,<sup>10</sup> obligations to promote cooperation with Indigenous peoples and the consideration of Indigenous knowledge as purposes of the Act,<sup>11</sup> and recognitions that Indigenous (Aboriginal and Treaty) rights are critical impact assessment 'factors' to be considered in the review of projects,<sup>12</sup> and to inform Ministerial determinations.<sup>13</sup>

This chapter sets out how the Act contemplates the inclusion of Indigenous communities and their knowledge in impact assessment and also what barriers exist to Indigenous

communities' inclusion and decision-making authority. We also include this chapter so that non-Indigenous groups participating in IAs can better understand the unique role of Indigenous peoples in IA.

## What is Indigenous Knowledge?

The *Impact Assessment Act* requires impact assessments to consider Indigenous knowledge.<sup>14</sup> This means Indigenous knowledge must be included in all stages of impact assessment, from the scoping of the project through to follow-up monitoring programs should the project be approved. Both the impact assessment authority and the proponent have obligations to ensure its inclusion.

10 *Impact Assessment Act*, preamble.

11 *Impact Assessment Act*, sections 6(1)(e), (f), (g), and (j).

12 *Impact Assessment Act*, section 22(1)(c).

13 *Impact Assessment Act*, section 63(d).

14 *Impact Assessment Act*, sections 6(1)(j) and 22(1)(g).



In understanding what constitutes Indigenous knowledge, the following definitions provide some insight and guidance:

- ▶ The *Impact Assessment Act* definition is “the Indigenous knowledge of the Indigenous peoples of Canada.” However, as some Indigenous organizations have remarked, “of Canada” should be dropped from the definition, as it fails to recognize Indigenous peoples as their own nations, with distinct, autonomous cultures since time immemorial.<sup>15</sup>
- ▶ The Agency’s [Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions](#) provides a more expansive understanding of the phrase, recognizing Indigenous knowledge as a “distinct knowledge system” that is “community specific and place-based,” and is defined and collected by the protocols and procedures of each Nation or community.
- ▶ The Indigenous Advisory Committee to the Agency similarly recommends that Indigenous knowledge be understood and recognized as a knowledge system that is dynamic and continues to evolve over time and is collectively held and verified.<sup>16</sup>

As we discuss below, the necessary and overdue inclusion of Indigenous knowledge in impact assessment means there must be accompanying opportunities throughout the process to ensure Indigenous knowledge holders can participate.

## What Protections Are in Place to Safeguard Indigenous Knowledge Shared During the Assessment?

There is a long history of extractive research within Indigenous communities in Canada, often enriching academics and corporations but providing few benefits to those who supply the data. This work is led by settler researchers, academic agencies, funding bodies, and government institutions. Ethical principles and guidelines that set out how Indigenous knowledge ought to be used, owned, accessed, or controlled are a necessary response to this problem, to give Indigenous communities control of how engagement is undertaken in their territories.

The *Impact Assessment Act* states that any Indigenous knowledge provided in confidence to the Minister, Agency, a review panel, or a

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15 In [comments](#) to the Agency, the Friends of the Attawapiskat River and Omushkegowuk Women’s Water Council remark on the use of the phrase “Indigenous peoples of Canada,” at page 20.


16 Impact Assessment Agency of Canada, “Principles for the development of the Indigenous Knowledge Policy Framework”, [online](#).

regional or strategic assessment committee must be kept confidential. In other words, assessment authorities are prohibited from sharing confidential Indigenous knowledge without the knowledge-holder's consent. Agency **guidance on the protection of confidential Indigenous knowledge** describes how confidentiality agreements and undertakings will help ensure the protection of confidential Indigenous knowledge.

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*Any Indigenous knowledge provided in confidence to the Minister, Agency, a review panel, or a regional or strategic assessment committee must be kept confidential.*

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 **Engagement Tip:** Several resources exist for Indigenous communities seeking guidance on protecting Indigenous knowledge. This guidance is equally important to those engaging with Indigenous communities, such as non-profits, looking to ensure consent-based approaches. This includes:

- ▷ Policy guidance from the Agency's *Indigenous Advisory Committee* includes guidance on the **protection and confidentiality of Indigenous knowledge**, underscoring the importance of consent-based processes and preventing unauthorized disclosures.

The Committee has also developed a **model collaboration agreement** for use by an Indigenous community with the Agency. It states that a "Collaboration Agreement clearly defines how Indigenous and Crown parties will work together to ensure that project impacts are assessed to their satisfaction. An Agreement may relate to a specific project or apply to all projects within a region. While no two agreements

will be the same, the principles outlined in this document should be considered in the co-development of all Collaboration Agreements."

- ▷ Guidance produced by the Agency also includes their policy **Guidance: Indigenous Knowledge under the Impact Assessment Act** and **Guidance: Protecting Confidential Indigenous Knowledge under the Impact Assessment Act**.

### **The First Nations Principles of Ownership, Control, Access and Possession (OCAP)**

affirm the self-determination of Indigenous peoples throughout, in this context, research processes — from the conceptualization of a research project through to collecting, sharing, and using that data. The principles also recognize that consent is required not only from an individual who might participate in a research project but also at a community level, recognizing that knowledge is often collectively held within Indigenous communities.

## What Are Indigenous-led Impact Assessments?

Indigenous-led impact assessments have increased in prominence in recent years and often occur external to federal impact assessment legislation. Indigenous-led impact assessments are distinct from Crown-led assessments and come as a response to decades of environmental assessment processes that failed to provide meaningful opportunities for Indigenous peoples to be heard and did not recognize their inherent rights and authority in decision making.

While there are many approaches and community-specific strategies to Indigenous-led impact assessments, they generally include having a process which is designed, conducted, and decided by Indigenous parties, one in which culture, language, and way of life are central values that are protected and reinforced as part of that review process.<sup>17</sup>

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*Indigenous-led impact assessments have increased in prominence in recent years.*

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While no examples yet exist in practice, the *Impact Assessment Act* has provisions for recognizing Indigenous-led assessments, including:

► **Opportunities enabled by regulation, recognizing Indigenous jurisdictions:**

If authorized by regulation, Indigenous nations can enter into an agreement with the Minister that would allow them to be recognized as “jurisdictions” within the *Impact Assessment Act*, and thus be authorized to exercise certain powers, duties, and functions under the Act. Unfortunately, to date, no regulation defining Indigenous jurisdiction has yet been made, nor a clear deadline set for doing so.

Based on the advice of the IAAC’s Circle of Experts,<sup>18</sup> a few examples as to the types of groups or Indigenous assemblies that would qualify as ‘jurisdictions’ could be a

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17 To read more about Indigenous-led IAs, visit the Gwich’in Council’s [report](#), *Impact Assessment in the Arctic - Emerging Practices of Indigenous-led Review* (2018), and the 2023 [report](#) by Sankey et al. *Operationalizing Indigenous Impact Assessment*.


18 Impact Assessment Agency of Canada, *Indigenous Co-Administration Agreements Discussion Paper* (July 2024), [online](#).



regional body, tribal council, corporation, or national government. The powers of this ‘jurisdiction’ could include having their Indigenous-led assessment substituted for a federal one, jointly establishing a review panel for a cooperative project-level assessment, and entering into an agreement to establish a committee to conduct a regional assessment.

It should be noted that not all Indigenous authorities need to wait for the *Indigenous Cooperation Agreement Regulations* to be made in order to be recognized as jurisdictions under the *Impact Assessment Act*. The Act defines “jurisdiction” as including bodies established under land-claims agreements that have powers, duties or functions in relation to an assessment of a designated project, as well as Indigenous governing bodies that have powers, duties or functions in relation to an assessment of a designated project under a land claim agreement, a different federal law, or a provincial law. For example, First Nations in British Columbia that are “participating Indigenous nations” in an assessment under the 2018 [Environmental Assessment Act](#)<sup>19</sup> would qualify as a “jurisdiction” under the *Impact Assessment Act*.

► **Substituting impact assessment with an Indigenous-led process:** ‘Jurisdictions’ recognized by regulation could be eligible to substitute the federal IA process with one based on Indigenous traditions and processes.<sup>20</sup> However, this ‘substitution’ mechanism in the *Impact Assessment Act* is effectively unusable by virtue of the lack of regulation allowing for the designation of Indigenous governing bodies as jurisdictions, as discussed above.

 **Engagement Tip:** As noted in [Chapter 11](#), the Agency [provides funding](#) for Indigenous engagement in impact assessments and regional and strategic assessments. In addition to this funding to support engagement in assessments under the *Impact Assessment Act*, the Agency also operates an [Indigenous Capacity Support Program](#), which provides funding to Indigenous communities and organizations outside of specific assessments in order to help increase Indigenous peoples’ capacity in relation to impact assessment. More information on the Program can be found in the Agency’s [National Program Guidelines](#).

<sup>19</sup> Environmental Assessment Act, Statutes of British Columbia, 2018, c 51.

<sup>20</sup> *Impact Assessment Act*, section 31(1).

# Does the *Impact Assessment Act* Enable the Participation of Indigenous Peoples?

Barriers to participation can include a lack of funding to participate and the imposition of proponent-driven timelines (see [Chapter 7](#) and [Chapter 9](#) where we discuss impact assessment timelines in more detail). As a result, the capacity for meaningful participation and the inclusion of Indigenous knowledge can be greatly diminished should a comment period begin when an Indigenous community does not have the requisite capacity to participate.

As Indigenous communities have repeatedly shared with impact assessment decision makers and project proponents, impact assessment processes must take account of Indigenous communities' ability to meaningfully participate prior to comment periods being announced and deadlines imposed. Several factors can influence levels of engagement and the ability to participate, including:

- ▶ **Consultation fatigue** — Many Indigenous communities are faced with participating in not one, but dozens of assessments for which their engagement is sought in order to fulfill the Crown's duty to consult. This

can overwhelm the ability of a community — often with limited staff — to meaningfully participate.<sup>21</sup>

- ▶ **Mourning the loss of a community member** — Mourning the death of a community member often results in the closure of offices and cancellation of events in a community, in respect for the family.
- ▶ **Pre-existing crises** — Declarations of a state of emergency are an unfortunate and lived reality for many Indigenous communities. These crises, whether from [youth suicide](#) or prolonged [boil water advisories](#), can mean Indigenous communities do not have the capacity to participate in IA consultations nor follow their own consultation protocols.
- ▶ **Closures for hunting or seasonal events** — Hunting seasons that are tied to specific times of the years (i.e. moose hunting in the fall or goose hunting in the late winter), as well as seasonal events (i.e. like spring break-up, when rivers thaw and ice builds up that may require the [evacuation](#) of communities) means community members and staff may not be present to participate in an impact assessment.

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21 As Chief Elizabeth Kataquapit from Fort Albany First Nation recently [commented](#) in response to the splitting of the Ring of Fire project into many, smaller IA projects: “Not only does this project-splitting limit adequate consideration of overall impacts on the lands, waters, natural resources, communities, climate and Indigenous rights, etc., but it significantly increases the regulatory and consultation burden on small communities with limited capacity.”





## WHAT IS ‘MEANINGFUL’ ENGAGEMENT?

As the courts have recognized, for participation to be ‘meaningful’ there must be sufficient notice to enable an Indigenous community to understand the nature, extent and import of plans, an ability to respond to them systematically and meaningfully, an opportunity to make submissions, reasonable resources for professional support to make their submissions, and principled responses to their legitimate concerns.

A lack of meaningful engagement results in an inadequate consultation process, which contradicts the Crown’s constitutional duty to consult. It also deprives impact assessment decision makers of critically valuable information on the related Indigenous, social and environmental values and interests associated with the project proposal. Moving ahead with decision making without first ensuring communities have the requisite background knowledge and ability to respond does not protect Indigenous rights, which the Act supports, nor ensure equal involvement and engagement in the process.

# Key Players

There are many different players in an impact assessment. Understanding who those parties are and their unique roles and responsibilities can help you navigate assessments and maximize effective engagement. This chapter outlines who the key players are, their main functions, and when and how participants may wish to interact with them.

## Minister

The Minister of Environment and Climate Change is the main authority over the *Impact Assessment Act*. While the Impact Assessment Agency of Canada (the Agency) is responsible for most administrative functions relating to impact assessments (see below), it answers to the Minister, who is the primary decision-maker and is ultimately responsible for the administration of the Act.

The Minister's main duties include:

- ▶ Designating projects for impact assessment that are not already designated through regulations. (see [Chapter 6](#)).

- ▶ Notifying a proponent before an assessment begins that a designated project would cause unacceptable environmental effects within federal jurisdiction and is therefore unlikely to be approved.
- ▶ Approving substitutions (see [Chapter 13](#)).
- ▶ Deciding whether to refer an impact assessment to a review panel and if so, appointing panel members (see [Chapter 13](#)).
- ▶ Cooperating with other jurisdictions.
- ▶ Consulting Indigenous peoples.
- ▶ Establishing rosters of persons who are eligible to be appointed as review panel members (see [Chapter 13](#)).
- ▶ Launching regional and strategic assessments, deciding whether those are to be conducted by the Agency or committees, and establishing regional and strategic assessment committees (see [Chapter 16](#) and [Chapter 17](#)).
- ▶ Making regulations respecting what information proponents must provide in impact

assessments, the processes and time limits of impact assessments, participant funding programs, the Impact Assessment Registry, and excluding projects from impact assessment.

- ▶ For all projects except those regulated by the Canada Energy Regulator, Canadian Nuclear Safety Commission, and offshore energy regulators, making final decisions about:
  - whether the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report are likely to be, to some extent, significant and, if so, the extent to which those effects are significant; and
  - whether those significant adverse federal effects are justified in the public interest (see [Chapter 13](#)).
- ▶ Establishing and amending conditions of approval.
- ▶ Issuing detailed reasons for decision.

For projects that are regulated by the Canada Energy Regulator, Canadian Nuclear Safety Commission and offshore energy regulators, the Minister must consult the Minister of Natural Resources when establishing conditions of approval. The Minister is not permitted to amend conditions of approval for projects regulated by the Canada Energy Regulator, Canadian Nuclear Safety Commission, and offshore energy regulators.

## Governor in Council

The Governor in Council has roles and responsibilities under the *Impact Assessment Act* that are considered to be outside of the sole purview of the Minister of Environment and Climate Change. Essentially, the Governor in Council refers to the Governor General acting on the advice of the federal cabinet (all federal ministers). That advice and any cabinet deliberations that inform the advice may be subject to cabinet confidentiality, meaning government is not required to make them public.

The Governor in Council's main responsibility under the *Impact Assessment Act* is to make the final decision about the significance of any adverse federal effects and whether those effects are in the public interest for projects regulated by the Canada Energy Regulator, Canadian Nuclear Safety Commission, and offshore energy regulators.

The Governor in Council is also responsible for extending time limits for assessment reports and the final decision when recommended by the Minister, and for making the [Physical Activities Regulations](#) designating projects for impact assessment, as well as various other regulations respecting the administration of the Act.





# Assessment Authorities

## Impact Assessment Agency of Canada

The Agency holds most of the responsibility for administering impact assessments. The Agency assists and advises the Minister but is separate from the Department of Environment and Climate Change Canada. While the Agency is not an independent entity, it does operate at arms length from the Minister and the Department. For example, the Agency should follow Departmental policy, and the Minister may ask the Agency for information, advice, or to reconsider recommendations, but the Minister cannot direct the Agency or any Agency staff regarding reports, decisions, orders, or recommendations.

The Agency's primary responsibilities include:

- ▶ Conducting the planning phase, including determining whether an impact assessment is required, engaging Indigenous peoples and offering opportunities for meaningful public participation, determining the scope of the assessment, and issuing the notice of commencement, including the tailored impact statement guidelines and public participation and Indigenous engagement plans (see [Chapter 8](#)).

- ▶ Overseeing assessments that are not substituted or conducted by review panels, including asking proponents and experts for information, consulting Indigenous peoples, ensuring that the public is provided with opportunities to meaningfully participate, reviewing information (including public comments and expert advice), writing assessment reports, and recommending conditions of approval (see [Chapter 11](#)).
- ▶ Providing secretariat support to review panels, which may include setting up public participation and Indigenous engagement opportunities such as hearings and comment periods, reviewing comments received, asking proponents for more information on behalf of panel members, seeing expert advice, and helping panel members draft reports (see [Chapter 11](#)).
- ▶ Suspending time limits where permitted under the [Information and Management of Time Limits Regulations](#), for example, if project designs change enough that additional information is needed.
- ▶ Conducting regional and strategic assessments and providing secretariat support to committees appointed to conduct regional and strategic assessments.

- ▶ Providing participant and Indigenous funding.
- ▶ Drafting regulations and developing policies and guidance for implementing the *Impact Assessment Act*.
- ▶ Overseeing the Impact Assessment Registry and posting project information, public comments, and other materials.
- ▶ Establishing research and advisory bodies and monitoring committees.
- ▶ Designating enforcement officers.

The Agency consists of a head office in Ottawa and regional offices in Halifax, St. John's, Quebec City, Toronto, Edmonton, and Vancouver. Their contact information can be found [here](#). Head office staff focus more on policy development and overall implementation of the *Impact Assessment Act*, while regional staff are responsible for individual assessments (including regional and location-specific strategic assessments).

## Federal regulatory authorities

Three categories of project are federally regulated, in addition to being subject to federal impact assessment. Projects such as interprovincial and international transmission lines and pipelines are regulated by the Canada Energy Regulator; nuclear projects are regulated by the Canadian Nuclear Safety Commission; and offshore energy projects are regulated by the Canada-Newfoundland and Labrador

Offshore Energy Regulator and the Canada-Nova Scotia Offshore Energy Regulator.

If an impact assessment results in an approval, the Canada Energy Regulator and Canadian Nuclear Safety Commission become what is known as “lifecycle regulators” of the projects they are mandated to regulate, meaning that they become responsible for monitoring and follow-up, including ensuring that proponents comply with conditions of approval.

When projects that are regulated by the Canada Energy Regulator and Canadian Nuclear Safety Commission require impact assessments, the federal regulator takes on a supporting role in the assessment. For starters, assessments of these federally regulated projects are automatically assessed by a review panel (see [Chapter 11](#)). The Minister must establish separate rosters of persons who are commissioners with the Canada Energy Regulator and members of the Canadian Nuclear Safety Commission and appoint a minimum of one member from the special federal-regulator rosters. Review panel members from special rosters of regulators cannot constitute a majority of panel members. The Minister must consult the federal regulators when appointing panel members from the special rosters and setting the terms of reference for these panels.

Example: a new 150 km natural gas pipeline from Alberta to British Columbia meets the definition of “designated project” and requires an impact assessment. The Minister must refer the project to a review panel and appoint at least one member to the panel from the special roster of Canada Energy Regulatory commissioners, on the advice of the Lead Commissioner. Panels must have at least three members and panel members from the Canada Energy Regulator cannot constitute a majority of panel members.

Example: a new nuclear waste disposal facility meets the definition of “designated project” and requires an impact assessment. The Minister must refer the project to a review panel and appoint at least one member to the panel from the special roster of Canadian Nuclear Safety Commission commissioners, on the advice of the President of the Commission. Panels must have at least three members and members from the Canadian Nuclear Safety Commission cannot constitute a majority of panel members.

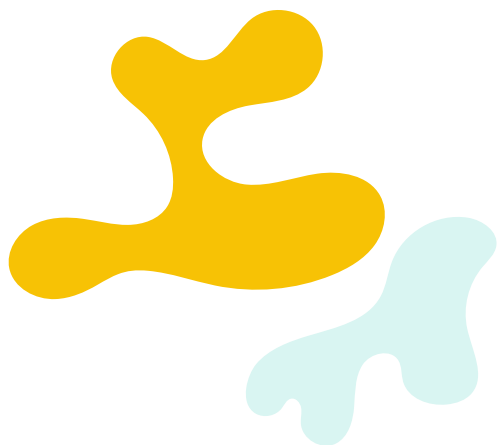
## Review panels

For projects not regulated by federal lifecycle regulators, the Minister may also refer impact assessments to review panels. In those cases, review panels become responsible for overseeing assessments, including asking proponents and experts for information, consulting Indigenous peoples, ensuring that the public is provided with opportunities to meaningfully participate, reviewing information (including public comments and expert advice), writing assessment reports, and making recommendations (see [Chapter 11](#)).

The Minister appoints review panel members from a roster. Typically, panels have between three and five members, although panels may also have seven members. Panel members must act in an unbiased manner and be free from any conflict of interest. Panel members must also have either knowledge or experience of the type of effects that the designated project is anticipated to have or of the interests and concerns of Indigenous peoples that may be relevant to the assessment.

## Provincial authorities

Given the shared responsibility for the environment, some proposed projects require assessment at both the federal and provincial level. Under the *Impact Assessment Act*, the Agency is required to offer to consult and cooperate with other jurisdictions; however, there is no obligation for a province to accept the offer.



Provincial authorities may choose to coordinate their assessment process with the federal impact assessment process, jointly appoint review panels with the federal Minister, request that the federal government substitute a provincial assessment for a federal one, or conduct their own processes independent of the federal assessment.

Coordination with provinces can include reducing duplication of information requirements, providing expert evidence and advice, or aligning processes. When provincial and federal ministers jointly appoint review panels, they negotiate the terms of reference and mandates of panels, and the provinces may contribute secretariat support. Provinces and the federal government often work to align the timing of decision-making; however, the decisions remain separate.

In British Columbia, the federal and provincial governments have an agreement that the federal Minister will substitute BC assessments for federal ones in most cases. Exceptions will be for federally regulated projects such as inter-provincial pipelines regulated by the Canada Energy Regulator and any projects for which the federal and provincial ministers decide to appoint a joint review panel.

## Indigenous authorities

Indigenous peoples in Canada have inherent laws and jurisdiction over their territories, in addition to constitutionally recognized rights and title. Increasingly, Indigenous peoples in Canada are choosing to exercise their authority by conducting their own environmental impact assessments of projects that are proposed in their territories. Additionally, the Act allows the Minister to enter into agreements with Indigenous nations to recognize them as jurisdictions for the purposes of impact assessment, which would allow the Minister to substitute Indigenous-led assessments for federal ones. The Minister may also delegate portions of assessments to Indigenous peoples.

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*Indigenous peoples in Canada have inherent laws and jurisdiction over their territories in addition to constitutionally recognized rights and title.*

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# Proponent

Proponents are the main driver of impact assessments. Indeed, Canada's impact assessment model is known as a proponent-led assessment process due to the fact that proponents either commission or conduct the bulk of the assessment studies and hold the pen on the main analyses. Under the *Impact Assessment Act*, the proponent writes what is known as the impact statement, the main body of evidence and analysis on which the Agency and review panels use to base their reports (see [Chapter 11](#)). Proponents may also consult with Indigenous peoples, engage the public, communicate with federal expert departments and regulators, speak with the Agency, and work with provincial authorities outside of the federal assessment process.

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*Proponents play a critical role in designing projects that reduce or minimise harms, enhance or maximize benefits, and ensure the equitable distribution of the positive and negative consequences of development.*

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While the proponent-led model is often criticized for being too proponent-driven, proponents play a critical role in designing projects that reduce or minimise harms, enhance or maximize benefits, and ensure the equitable distribution of the positive and negative consequences of development. For example,

proponents can work with authorities and communities to locate project components away from areas where they may contaminate water or cause air pollution. Proponents can also seek ways to ensure that local communities are hired into stable, good-paying jobs, and enter into benefit-sharing agreements with Indigenous peoples. Of course, proponents tend to wield a disproportionate amount of power and resources, which is why most members of the public prefer to engage through the Impact Assessment Agency of Canada, which can help ensure transparency and accountability in dialogue and processes.

## Federal Expert Departments

The Act requires all federal authorities to make any relevant expert information or knowledge available to the Agency upon request. Federal authorities with relevant expertise may be from various ministries and departments, such as Fisheries and Oceans Canada, Environment and Climate Change Canada, Natural Resources Canada, Health Canada, Women and Gender Equality Canada, Transport Canada, Employment and Social Development Canada, and Indigenous Services Canada. See [Chapter 10](#) for more information on their duties and functions.



## INDIGENOUS PEOPLES

In addition to exercising their jurisdictional authority over projects, Indigenous peoples may engage in impact assessments as participants and as the holders of Aboriginal and treaty rights recognized by the Canadian Constitution and international instruments such as the *United Nations Declaration on the Rights of Indigenous Peoples*, which recognizes Indigenous peoples' right to self-determination, to grant or withhold consent, and to participate in state decision making. Indigenous peoples may also choose not to engage in federal impact assessments as a means of exercising those rights.

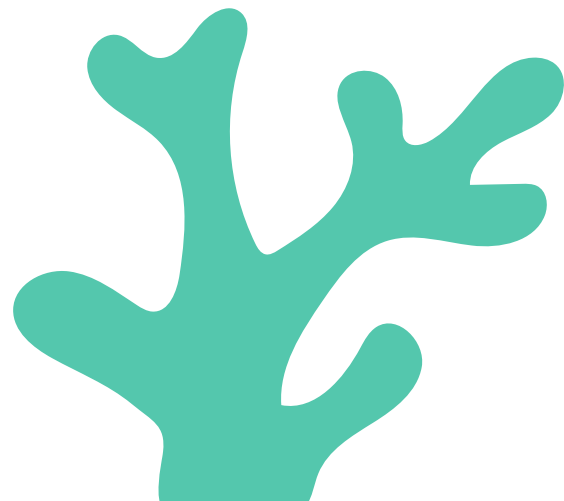
The federal and provincial governments have a fiduciary duty to consult and accommodate Indigenous peoples prior to allowing industrial and natural resources projects, for example, that may impact Indigenous peoples' rights. Impact assessment can be a key part of that consultation process, and the *Impact Assessment Act* explicitly

requires assessments and decision makers to consider impacts on Indigenous groups and the rights of Indigenous peoples, as well as Indigenous knowledge that is relevant to the assessment. As a result, while Indigenous peoples may participate in public participation opportunities, assessment authorities must engage Indigenous peoples in additional ways beyond those offered to the general public. In addition, Indigenous engagement should occur in a manner and at times that work for Indigenous communities. Indigenous peoples may also be engaged in direct dialogue with proponents before, during, or after impact assessments in order to discuss issues such as benefit-sharing and protection of Indigenous rights and territories. For more information on Indigenous engagement in impact assessment, see [Chapter 4](#).

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*The Act requires all federal authorities to make any relevant expert information or knowledge available to the Agency.*

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## Public Participants

The public plays a critical role in impact assessments, a reality that is reflected in the *Impact Assessment Act*. The Act requires assessment authorities to offer opportunities to meaningfully participate in the planning phase and the assessment and requires assessments to consider any community knowledge that the public may provide. Participants may request additional information from proponents or authorities, provide their own expert evidence or the evidence of experts that they retain, challenge the evidence of other parties (such as the proponent), bring key issues and concerns to light, and hold authorities and decision makers accountable. How and why the public may participate is explored in greater detail throughout this toolkit.

## Independent Experts

Non-governmental experts may participate in impact assessments in their own right or may be retained by members of the public to provide their subject-matter knowledge. Independent experts can provide important peer review of information submitted by proponents, governments and other parties, and can help fill information gaps with their own data and analyses. Participant funding offered by the Impact Assessment Agency of Canada may be used to retain independent expert advice and reports (see [Chapter 10](#) for more information).


## Local Governments

Finally, local governments often participate in impact assessments in order to ensure that the interests of their citizens and governments are considered in federal decisions. Local governments are not recognized by the Canadian Constitution; rather, they are granted their powers and duties through provincial laws, meaning that they do not enjoy the same legal rights as provincial governments or Indigenous peoples and authorities, although they may carry influence with decision makers.

# How Projects Are Designated for Impact Assessment


Many people who are new to impact assessment processes are surprised to learn that impact assessments are not required for all proposed projects that touch on areas of federal jurisdiction. When the *Impact Assessment Act* was enacted, the federal government stated that it only intended to assess projects likely to have the most significant effects. As a result, only a handful of assessments are triggered each year for a federal impact assessment, leaving thousands of projects to be assessed by other regimes, including provincial environmental assessments, regulatory permitting processes, and assessments of projects on federal lands.

Under the Act, proposed projects are “designated” for impact assessment in one of two ways: by regulation or by ministerial designation. Not every designated project will require a full impact assessment: for some, the process will begin and end with the Planning Phase.

 **Terminology Tip:** Within the *Impact Assessment Act*, proposed projects that trigger the impact assessment process are called “physical activities”. In practice, the defined term “designated project” is used more commonly by the Impact Assessment Agency of Canada, project proponents, and others involved in assessing project proposals.

The *Impact Assessment Act* adopts a “project list” approach, meaning that regulations under the Act list the kinds of projects that trigger the impact assessment process. Those regulations are the ***Physical Activities Regulations***, and their contents are commonly referred to as “the Project List.”

In this regulation, activities are listed in a range of topic areas, including mining, nuclear energy, oil and gas, transportation, and water. Projects may be listed based on their longevity, location, size, or capacity.

 **Tip:** If you’ve gotten wind of a potential project in your area and you want to know if it will trigger the impact assessment process, start by reviewing the listed activities in Schedule 2 of the *Physical Activities Regulations* to see if the project matches the description of any activities on that list. This won’t answer your question completely, but it’s an important first step.

You can also learn more about ongoing impact assessments or comment opportunities on projects near you by using the Impact Assessment Agency of Canada’s [Interactive Assessment Map](#).


A proposed project that matches the description of an activity listed in the *Physical Activities Regulations* is known as a “designated project.” A designated project described in the *Physical Activities Regulations* will trigger the impact assessment process, but triggering the process does not necessarily mean that a full impact assessment will be required.

Designated projects described in the *Physical Activities Regulations* trigger the Planning Phase of the impact assessment process. During that phase, the Impact Assessment Agency will decide on a case-by-case basis if a full impact assessment is required for the specific project.

## Designation by the Minister of Environment and Climate Change Canada

For proposed projects that are not reflected in the *Physical Activities Regulations*, members of the public can ask the Minister of Environment and Climate Change Canada to designate the project so that it enters the impact assessment process. Designation by the Minister is commonly referred to as “ministerial designation.”

The Minister’s ability to designate projects that are not described in the *Physical Activities Regulations* comes from subsection 9(1) of the *Impact Assessment Act*, which gives the Minister discretionary power to designate projects on the Minister’s own initiative or on request.

 **Terminology Tip:** A discretionary power is a power that the Minister can use but is not required to use. The Minister has the discretion (the freedom of choice) to use the power in any given case.

The Minister can only exercise the discretionary designation power under the *Impact Assessment Act* if one of the following requirements is met:

- ▶ the Minister is of the opinion that carrying out the proposed project may cause adverse effects within federal jurisdiction, or
- ▶ the Minister is of the opinion that carrying out the proposed project may cause adverse direct or incidental effects.

If the Minister is of the opinion that carrying out the proposed project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, the Minister may also consider the following when deciding whether to make a discretionary designation order:

- a) public concerns related to the adverse effects within federal jurisdiction—or the direct or incidental adverse effects—that may be caused by the carrying out of the physical activity;
- b) the adverse impacts that the physical activity may have on the rights of the Indigenous peoples of Canada—including Indigenous women—recognized and affirmed by section 35 of the *Constitution Act, 1982*;

- c) any relevant assessment referred to in section 92, 93 or 95;<sup>22</sup>
- d) whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction—and the direct or incidental adverse effects—that may be caused by the carrying out of the physical activity; and
- e) any other factor that the Minister considers relevant.


In general, amendments to the *Impact Assessment Act* that took effect in 2024 suggest that the Minister should be cautious about using the discretionary designation power if a provincial or territorial assessment process would assess the proposed project's anticipated effects within federal jurisdiction. This is part of a broader effort to demonstrate that the *Impact Assessment Act* can promote cooperation between the federal government and provincial and territorial governments and avoid federal oversteps into areas of provincial jurisdiction.

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22 The assessments referred to here are regional assessments and strategic assessments. For more information about these assessment processes, see Chapter 16 and Chapter 17.

Additionally, the Minister cannot use the discretionary designation power if work on the proposed project has substantially begun or if a federal authority has already exercised a power or performed a duty or function that could permit the proposed project to be carried out, such as issuing an authorization the *Fisheries Act* or another law.


When members of the public, environmental organizations, Indigenous communities, and others make designation requests, the writers must “make a case” for designation by explaining how a proposed project could cause adverse effects within federal jurisdiction or direct or incidental adverse effects. [Operational guidance](#) by the Impact Assessment Agency of Canada suggests that writers should take a systematic approach and address several factors that could inform the Minister’s decision. These include factors such as whether the proposed project is near the threshold for an activity listed in the *Physical Activities Regulations*, and whether the project’s potential adverse effects within federal jurisdiction will be assessed by another process or jurisdiction (for example, through federal permitting or a provincial environmental assessment process).

 **Terminology Tips:** The word “adverse” is not defined in the *Impact Assessment Act*, but the phrase “adverse effect” can be understood to mean an effect that is harmful or unwelcome.

Effects that are recognized as “adverse effects within federal jurisdiction” are listed in section 2 of the *Impact Assessment Act* and are described in **Chapter 2** of this guide. They include non-negligible adverse changes to fish and fish habitat, aquatic species, and migratory birds; non-negligible adverse changes to the marine environment or transboundary waters caused by pollution; and non-negligible adverse changes that affect Indigenous peoples, as well as non-negligible adverse changes to the environment or to health, social or economic conditions from activities that are located on federal lands or are a federal work or undertaking.

The phrase “direct or incidental adverse effects” is defined in section 2 of the *Impact Assessment Act*. In essence, direct and incidental adverse effects are non-negligible adverse effects that happen as a result of federal powers or responsibilities being exercised to permit or finance a project.



 **Tips:** If you are thinking of writing a ministerial designation request, start by reading this **Operational Guide** by the Impact Assessment Agency of Canada.


While the Minister may consider direct and incidental adverse effects, your best strategy is to emphasize the project's potential to cause significant adverse effects within federal jurisdiction. For example, if you are worried about a proposed mine contaminating drinking water and the mine will also pose a risk to fish, emphasize that fisheries risk so the Minister knows there is a strong federal hook and will be less inclined to rely on provincial assessment processes.

You may also find it helpful to review examples of letters that others have submitted in the past. Letters requesting ministerial designation under subsection 9(1) are public documents and are typically published online in the Canadian Impact Assessment Registry soon after they are submitted. That said, keep in mind that the *Impact Assessment Act* was amended in 2024 and some of the factors related to the Minister's designation power were changed at that time, so designation requests made before those changes will likely speak to factors that do not apply in the same way in the current version of the Act.

If the prospect of writing a ministerial designation request seems too daunting, consider connecting with a local environmental law organization to see if they can help.

After a ministerial designation request has been submitted, the Minister must respond with a decision within 90 days, and their response must explain the reasons for the decision. During this time, the requester—who may be an individual, community group, or Indigenous nation or community—may want to amplify their request (i.e., in the media or on social media) or call on the public to show support. A designation request not only serves as an opportunity to raise awareness about a proposed project but is also an opportunity for members of the public to demonstrate why it would be in the public interest to require an impact assessment.

Work by the Impact Assessment Agency of Canada will inform the Minister's decision. After a ministerial designation request has been submitted, the Agency may connect with the project proponent, Indigenous peoples, and the public to gather more information about the proposed project and assess the concerns and issues that have been raised. Ultimately, the Agency will prepare an analysis report containing the Agency's own opinion as to whether an impact assessment should be required. The Agency's recommendation is not binding on the Minister, but you can expect the Minister to take it into account and give it significant weight.

 **Tip:** A factor that can weigh heavily in the analysis by the Impact Assessment Agency of Canada and the decision by the Minister is whether the environmental impacts of the proposed project will be addressed by another process, such as through federal permitting or a provincial environmental assessment process.

Ministerial designation requests are often made when a proposed project triggers a provincial environmental assessment and members of the public fear that the provincial process will not address their concerns. To make a persuasive case for ministerial designation in such circumstances, be as specific and clear as you can about the shortcomings in the provincial process, explaining why the provincial process may not adequately consider adverse effects within federal jurisdiction and why there is a corresponding need for a federal impact assessment.

Legal support can be especially useful in circumstances like this, so consider connecting with a local environmental law organization to see if they can help.

In 2018, a corporation operating a pulp mill in Nova Scotia triggered the provincial environmental assessment process when it proposed a major modification to its existing facility. The proposed modification was a new effluent treatment facility designed to replace the mill's existing facility, which for decades had been using a local harbour and connected watercourses to treat its effluent discharge. The harbour in question was highly significant to local Mi'kmaq, and the mill's pollution of the water and effects on the neighbouring Mi'kmaq community is one of Nova Scotia's most notorious examples of environmental racism.

The proposed Replacement Effluent Treatment Facility Project envisioned discharging treated effluent into the Northumberland Strait, and the proposal generated a massive public response expressing concern and opposition. According to an analysis report published by the Impact Assessment Agency in December 2019, the Agency received more than 3,200 letters and emails requesting federal designation of the proposed project. Submissions were made by Mi'kmaq communities and governance organizations in Nova Scotia and Prince Edward Island, Canadian senators, members of Prince Edward Island's Legislative Assembly, a Nova Scotian mayor, fisheries organizations, environmental organizations, local businesses, and many concerned individuals.

In response, many individuals, groups, and First Nations wrote to the Minister requesting that the project be designated for an impact assessment. The designation requests included concerns about potential impacts on Mi'kmaq

rights and interests, including impacts on health, fisheries, and asserted and established rights. Submissions also included concerns about harm to benthic and marine ecosystems in the Northumberland Strait and associated impacts on Maritime fisheries. Additionally, there were concerns that the Government of Nova Scotia was in a conflict of interest, given its historical and ongoing financial support of the mill.

Mi'kmaw communities, fisheries associations, environmental organizations, and community groups spanning New Brunswick, Nova Scotia, and Prince Edward Island mobilized to voice their opposition to the project. An enormous “land and sea” rally held in the summer of 2018 brought thousands of people together in boats and on land and provided a striking illustration of solidarity between Indigenous and non-Indigenous fishers across the Maritimes who opposed the potential risks to the Northumberland Strait.

Although designation requests were made under the *Canadian Environmental Assessment Act, 2012* before the *Impact Assessment Act* came into force, the Agency ultimately considered the requests and prepared its analysis under subsection 9(1) of the *Impact Assessment Act*. In December 2019, the Agency released a report concluding that federal designation of the proposed project was not necessary, and the Minister subsequently refused the designation requests.

## Lessons Learned

Although the ministerial designation requests were unsuccessful in this case, the massive mobilization may have contributed to a series of decisions by Nova Scotia's Minister of Environment

to require enhanced environmental assessment processes. In March 2019, the provincial Minister required the proponent to prepare a Focus Report for the proposed project, and in December 2019, the Minister required the proponent to prepare an Environmental Assessment Report. Both requirements represented additional work going over and above the proponent's initial preparation of an Environmental Assessment Registration Document. Ultimately, the proponent withdrew the proposed project from the environmental assessment process.

This experience suggests that even if public advocacy for ministerial designation under the *Impact Assessment Act* is unsuccessful, mobilizing to express concerns about the adequacy of the provincial process may motivate decision makers to make the provincial process as meaningful and effective as possible.



# Before Assessments Begin

There is a growing consensus that the earlier the public is engaged in project planning and impact assessment, the more likely it is that final decisions will reflect public concerns and foster sustainability. The *Impact Assessment Act* attempts to implement earlier engagement through the planning phase, but as discussed in [Chapter 8](#), this part of the process is only six months long, which significantly curtails opportunities for meaningful dialogue and input.

Additionally, once the formal process begins, the mandatory timelines can make it difficult to learn about the process and strategize. To help prepare and maximize your participation, it is useful to start preparing for the assessment even before it has begun. If you hear about a potential project that may require an impact assessment, this chapter will help to get ready to hit the ground running before the assessment begins.

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*The earlier the public is engaged, the more likely it is that decisions will reflect their concerns and foster sustainability.*

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## Why Engage Early, Before Assessments Begin?

[Chapter 3](#) outlines some of the main reasons why people may decide to become engaged in an impact assessment, including to support or oppose a project, to learn and share information, to help minimise or avoid harmful effects, or to enhance its benefits. Each of these reasons is enhanced by engaging early before processes begin.

### Why participate early?

- ▶ **To inform project design.** As discussed in [Chapter 2](#), impact assessment is a planning tool intended not just to inform decisions about whether projects proceed, but

where they and their components should be located, how they should be designed and their pace and scale. Ideally, impact assessments help ensure that projects have the consent of Indigenous peoples, foster sustainability, and provide benefits to those most impacted.

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*Impact assessment is a planning tool intended to inform project decisions like where, when, and how they occur.*

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► **To inform assessment scope and process.**

The short, rigid timelines of the planning phase also make it difficult to meaningfully engage the public on things such as key issues to focus on, what information is required, and who should provide that information. Engaging with authorities before the process formally begins can create more time to discuss key issues and plan the assessment.

► **To learn about the processes and prepare for the assessment.** Participants have described the planning phase of impact assessments as a sprint, with little opportunity to get one's bearings, let alone thoroughly prepare. Learning about the project and the assessment process before the planning phase begins can help participants hit the ground running.

Proponents often prefer to make key design decisions early on in project planning and approval processes, meaning that opportunities to influence project design are greater the earlier they occur. Because impact assessments have rigid timelines, proponents may feel the need to wait to enter the process until they have embarked on detailed project planning, which means the public has less ability to influence decisions during the assessment. Engaging in dialogue with proponents and authorities before impact assessments begin can better ensure that project design reflects environmental and community needs. As the United Nations Environment Programme notes, "If the public is invited to participate only after the potential alternatives have been considered and narrowed, then the public is being notified, as opposed to engaged."<sup>23</sup>

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*Participants have described the planning phase of impact assessments as a sprint, with little opportunity to get one's bearings.*

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23 United Nations Environment Programme, *Environmental Rule of Law: First Global Report (2019)*, [online](#).

► **To build trust.** Engaging early can help build trust, reduce conflict, and foster good relationships among proponents, the public, Indigenous peoples, and authorities. Relationship building can also help participants share information and resources. For example, civil society groups may wish to form coalitions and divide responsibility for focusing on key issues among them, rather than have each group attempt to address all concerns. Indigenous and non-Indigenous groups may want to explore whether they have similar interests that each can support and draw on, and participants may want to determine whether local governments can help bring key issues to light in the assessment. Exploring such relationships and beginning preparations before the start of an assessment means more time to focus on the issues when the clock starts ticking.

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*Engaging early can help build trust, reduce conflict, and foster good relationships*

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## Tips for Early Engagement

Because impact assessments start when proponents submit initial project descriptions (see [Chapter 8](#)), you may not hear about projects until the planning phase is already underway. If you do learn about a potential project ahead of time, or if you request that a project be designated (see [Chapter 6](#)), you can use the time before the proponent submits its initial project description to ready yourself so that once the assessment is underway, you are prepared. Similarly, if the planning phase has begun and the proponent or another jurisdiction requests that the clock be stopped, you can use that pause to do any of these recommended actions.

1. **Reach out to the Agency.** As noted in [Chapter 5](#) the Impact Assessment Agency of Canada has regional offices that are responsible for overseeing impact assessments, including public engagement. It is the job of Agency staff to help you understand and navigate processes, and they can give you information about how impact assessments work and how you can become engaged. If they have information about a project, they may also be able to share that, too, although they are not required to do so before the formal process begins. You can find the relevant regional office on the [Agency's website](#).



2. **Familiarize yourself with the impact assessment process and any provincial processes.** You've come to the right place! This guide is designed to help participants navigate the federal impact assessment process. Its authors, the Environmental Planning and Assessment Caucus of the Canadian Environmental Network, may be available to further help community, Indigenous and civil society groups prepare through in-person or online workshops. You can find out more at [rcen.ca](http://rcen.ca) or by emailing [outreach@rcen.ca](mailto:outreach@rcen.ca).

The Impact Assessment Agency of Canada also has an [e-learning course on the Impact Assessment Act](#) to help people, including participants, understand the process. Its website also [summarizes](#) that basic information, and you may want to browse the [Canadian Impact Assessment Registry](#) to get a sense of what information is on it, what different participants say, and how to navigate it.

You may also wish to check out the *Impact Assessment Act* itself, as well as the various [policy and guidance](#) documents the Impact Assessment Agency of Canada has published, in case you need to refer to them during the assessment.

**The Environmental Planning and Assessment Caucus' [webpage](#) has links to various provincial assessment authorities that may be a helpful starting place in learning more about provincial processes.**

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*The Impact Assessment Agency of Canada has an [e-learning course on the Impact Assessment Act](#) to help people, including participants, understand the process.*

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3. **Reach out to environmental groups for support.** The *Impact Assessment Act* is designed to apply only to large projects with the greatest potential for adverse impacts in areas of federal jurisdiction (see [Chapter 6](#)). Local, regional, or national environmental and conservation organizations with impact assessment experience may be interested in getting involved with the project and participating in the assessment. Even if organizations you reach out to are not planning to participate, they may have someone on staff who can explain the process, give tips on how to maximize your effectiveness, or even help you strategize.

Additionally, some environmental law nonprofits have programs to support impact assessment participants or are able to suggest legal or subject-matter experts in your region. You can reach out to [West Coast Environmental Law](#) for help in British Columbia, the [Environmental Law Centre](#) in Alberta, the [Canadian Environmental Law Association](#) in Ontario, the [Centre québécois du droit de l'environnement](#) in Quebec, [East Coast Environmental](#)

Law in Atlantic Canada, and Ecojustice in multiple provinces for support and information.

4. **Learn about the project and the receiving environment.** Depending on how early on you learn about the project, the proponent may not be able or willing to share much information about project specifics. That said, projects of the same type often share common characteristics such as typical ways to carry the project out and commonly occurring issues, and the proponent may be able to share basic information it is considering. The time before the planning phase begins can be a good opportunity to familiarize yourself with potential issues of concern, as well as possible environmental issues (such as possible interactions with species at risk, important water bodies, etc.) so that when the planning phase begins, you have identified some issues to look out for. If key issues do emerge, you may even wish to begin researching subject-matter experts and environmental and conservation organizations that specialize in those areas.

5. **Insist on transparency.** Any pre-planning phase engagement that the proponent might undertake is not subject to the requirements of the *Impact Assessment Act*, meaning that information exchanged between the proponent, the Impact Assessment Agency of Canada, and the public does not have to be published on the Registry. Nonetheless, you can still ask the Agency to be involved in discussions with the proponent, such as by hosting informal meetings and summarizing those discussions. Transparency and accurate reporting on any engagement that occurs prior to the formal process is important for building trust as well as to ensure that project design decisions and scoping decisions in the assessment accurately reflect public concerns and knowledge.

# The Planning Phase

The Planning Phase is the first of five phases of an impact assessment conducted under the *Impact Assessment Act*.

The Planning Phase has at least three core purposes:

- ▶ It is the phase in which the Impact Assessment Agency of Canada decides if a proposed project requires a full impact assessment;
- ▶ It encourages proponents to build on or change their initial project ideas, taking into account questions asked, concerns raised, and information shared by members of the public, Indigenous communities, and government bodies; and
- ▶ If the Agency decides that a full impact assessment is required, it is an opportunity to tailor the assessment according to the circumstances and according to the needs of Indigenous peoples and other members of the public.

Designated projects that are described in Canada's *Physical Activities Regulations* trigger the impact assessment process but do not necessarily require a full impact assessment. It is up to the Agency to decide—on the basis of information gathered during the Planning Phase—if a full impact assessment is required.

## Overview of the Planning Phase

The Act sets a 180-day timeline for the Planning Phase. The Agency may extend that timeline by up to 90 days at the request of another jurisdiction to allow it to cooperate with that jurisdiction, or it may suspend the timeline for any length of time at the request of a proponent. Neither the Agency nor the Minister has the power to extend or suspend the 180-day timeline for any other reason. As a result, be prepared to have many documents to review within a short timeframe.

The impact assessment process is triggered when a proponent submits an Initial Project Description to the Agency, describing the project the proponent proposes to carry out. The information provided in the Initial Project Description must conform to information requirements set out in Canada's [\*\*\*Information and Management of Time Limits Regulations\*\*\*](#).

When the Agency receives an Initial Project Description from a proponent, it will review the document to determine whether the description contains all of the required information. If satisfied, the Agency will publish the document on the Canadian Impact Assessment Registry.

The 180-day timeline for the Planning Phase starts from the date the Agency publishes the Initial Project Description.

The Agency must provide an opportunity for meaningful public participation in the Planning Phase. After the Agency publishes the Initial Project Description on its Registry, it will invite comments on the Initial Project Description. Typically, these comment periods last three weeks.

The Agency then prepares a **Summary of Issues** that includes issues raised by the public, Indigenous peoples, federal, provincial and Indigenous authorities, and other participants. It must give the Summary of Issues to the proponent and post a copy of it on the Registry.

## HEADS UP

An Initial Project Description may describe a proponent's vision for a project, though the proponent may not yet know exactly how it plans to carry out the project. One of the purposes of the Planning Phase is to identify specific issues and details that the proponent needs to address so that a complete impact assessment can be conducted.

Next, the proponent must provide the Agency with a **Notice** that explains how it intends to address the issues raised in the Summary of Issues. The Agency may also require the proponent to prepare a **Detailed Project Description** or an amended Notice if it decides it needs further information from the proponent.

After the Agency receives the proponent's Notice, it will consider the information and plans provided by the proponent, along with the results of public engagement, Indigenous engagement and consultation, and any input provided by relevant government bodies. The Agency will then decide if a full impact assessment is required. There is no comment period on the Agency's determination as to whether a full impact assessment is required. The comment period on the Initial Project Description, which aims to identify the key issues to include in the Summary of Issues, is the only formal opportunity to weigh in on whether a full impact assessment is required.

## TIP

The public comment period on an Initial Project Description provides two key opportunities:

1. to advocate for an impact assessment of the designated project; and
2. to advocate for alternatives to the project and alternative means of carrying out the project that should be considered in the assessment.

## Initial Project Description

When you prepare comments on an Initial Project Description, ask yourself what additional information you would like the proponent to provide in its Notice so that the proponent's plans can be understood more clearly. For example, are there alternatives to the project or alternative means of carrying it out that the proponent has not included in the Initial Project Description? Are proposed alternatives missing key information?

Commenting on the Initial Project Description is also an opportunity to recommend that the proponent alter the project it has proposed. For example, you may feel that the proponent should use certain methods or technologies that could

make the project safer and less harmful to the environment, or you may feel that proposed facilities should be redesigned or relocated so that sensitive ecological areas will not be disturbed.

At this stage, ask yourself if there is any information you can provide to help the proponent and the Agency understand the local area and community better so that they can plan and assess accordingly. Local knowledge can play a big role in preventing or mitigating adverse effects.


## Anticipating the Proponent's Notice

If the proponent's Notice shows that it can address the issues without an impact assessment, the Agency is likely to determine that a full impact assessment is not required. Therefore, if you want the project to go through a full impact assessment, it may be helpful to make the case that an impact assessment is the only or best means of addressing the issues. For example, if there may be alternative means of carrying out the project that could better avoid or reduce potential adverse federal effects within areas of federal jurisdiction, you could argue that an impact assessment is the best opportunity to identify and evaluate those options.

If the Agency decides that a full impact assessment is required, it must develop guidelines and plans to structure the assessment process as it moves forward. These documents are included in a Notice of Commencement that the Agency must provide to the proponent. Two key documents

that the Agency must include in the Notice of Commencement are draft **Tailored Impact Statement Guidelines** for the proponent and **Public Participation Plan** that describes how members of the public will be engaged going forward. The other documents included in the Notice of Commencement are a [Cooperation](#)

Plan, a Permitting Plan, and an Indigenous Engagement and Partnership Plan. These documents are all based on templates that can be found on the Agency's website.

 **Tip:** Typically, the Agency only provides a 21-day window for public comment on an Initial Project Description. Since the Agency can only extend or suspend the Planning Phase timelines at the request of the proponent or another jurisdiction, consider reaching out to the proponent or another jurisdiction (such as a province, if there may be opportunities for provincial cooperation in the assessment) to advocate for an extended timeline if you feel it is warranted.

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*Be prepared to have many documents to review within a short timeframe.*

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When deciding whether a full impact assessment is required, the Agency must consider:

- the Initial Project Description, and the proponent's Notice;
- the adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the designated project;
- any adverse impact that the designated project may have on the rights of Indigenous peoples;
- any comments received from the public and from any jurisdiction or Indigenous group;
- any relevant regional or strategic assessment;
- any relevant regional study or plan by another jurisdiction that has been provided to the Agency;
- whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the designated project; and
- any other factor that the Agency considers relevant.



 **Tip:** When the Agency drafts a Public Participation Plan for an impact assessment, the Agency will consider concerns that have been raised and requests that have been made by individuals, community groups, and organizations involved in earlier stages of the Planning Phase.

The window for public comment that opens once the Agency decides a full impact assessment is required is more than an opportunity to comment on the project description itself—it is also an opportunity to tell the Agency how you think the public should be engaged in the assessment process. Consider requesting in-person dialogue sessions and public hearings and sharing the ways you would like in-person sessions to occur.

The Agency typically provides a 30-day window for public commentary on the documents included in the Notice of Commencement.

After the 30-day window for public comment on draft Tailored Impact Statement Guidelines closes, the Agency will have 40 days left in the 180-day Planning Phase timeline to finalize those guidelines and other plans that the *Impact Assessment Act* requires, including the Public Participation Plan, and invite internal review.

The 180-day Planning Phase timeline ends with the Agency publishing the Notice of Commencement on the Registry.

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*Two key documents that the Agency must include in the Notice of Commencement are draft Tailored Impact Statement Guidelines for the proponent and Public Participation Plan that describes how members of the public will be engaged going forward.*

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## Summary of Public Participation Opportunities During the Planning Phase

There are two significant opportunities for public participation during the Planning Phase:

- ▶ the window for public comment on the proponent's Initial Project Description and input into the Summary of Issues (which is also the only opportunity to formally comment on whether a full impact assessment is required); and,
- ▶ the window for public comment on the draft documents to be included in the Notice of Commencement.

The first public comment window is typically 21 days, while the second is typically 30 days.



# Making Good Use of Public Participation Opportunities

## Engaging with an initial project description

Impact assessment processes have internal logic and language that have developed over decades of assessment practice in Canada. These may be unfamiliar to members of the public who do not regularly engage with such processes. Getting to know some of the terminology can help you navigate the process more effectively.

An important element of the internal logic and language of impact assessments is the concept of valued components. In impact assessment processes, valued components are entities, ecosystems, ecosystem services, and states of being that are recognized as having value and requiring protection from adverse effects that proposed projects may cause. The “value” of valued components can be ecological and can also be value assigned by humans for cultural, health, recreational, socioeconomic, or spiritual reasons.

Some examples of valued components commonly addressed in impact assessments include:

- air quality;
- acoustic environment (i.e., what sounds are present in a space and how those sounds affect human and wildlife inhabitants);
- climate;
- groundwater and surface water;
- human health;
- local services and infrastructure (i.e., what roads, dwellings, water supplies, and other forms of human infrastructure are present in a space);
- wetland environments; and,
- wildlife and wildlife habitats.

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*The questions you ask and concerns you raise may ultimately be incorporated into Tailored Impact Statement Guidelines.*

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When you delve into an Initial Project Description, be aware that the questions you ask and concerns you raise may ultimately be incorporated into Tailored Impact Statement Guidelines in the form of requirements to describe potential impacts on specific valued components. For example, a member of the public may express a concern along these lines: *I'm concerned that regular blasting at the mine will affect my sleep and my sense of tranquility and wellbeing at home.* The Tailored Impact Statement Guidelines—which identify the information that proponents need to provide and the issues they need to address—may reflect this public concern by requiring the proponent to prepare studies showing how much noise will be generated by the project, how far that noise will be transmitted, and how that noise might affect the health and wellbeing of people living near the project site.

## Engaging with Tailored Impact Statement Guidelines

The Tailored Impact Statement Guidelines that the Agency develops for impact assessments are crucial because they tell proponents what information is needed to enable the Agency to fully understand and assess the potential impacts of projects that have been proposed.

The opportunities to comment on a proponent's Initial Project Description and on the draft Tailored Impact Statement Guidelines are often your first and best opportunities


to identify things you value that could be affected negatively by a proposed project. When you review draft Tailored Impact Statement Guidelines, look to see if the questions you asked and concerns you raised about the Initial Project Description are captured by the guidelines. If your concerns have not been addressed, you can ask the Agency to include additional requirements in the guidelines.

These examples of Tailored Impact Statement Guidelines can give you a sense of what to expect:

[Tailored Impact Statement Guidelines for Marten Falls Community Access Road Project \(Ontario\).](#)

[Tailored Impact Statement Guidelines for Value Chain Solutions—Heartland Complex Expansion Project \(Alberta\).](#)

[Tailored Impact Statement Guidelines for Wasamac Gold Mine Project \(Québec\).](#)



## Telling the Agency how you think the public should be engaged in the impact assessment process

The window for public comment that opens once the Agency publishes a proponent's Initial Project Description is an opportunity for you to start telling the Agency how you think the public should be engaged in the impact assessment process if a full assessment is required. Public comments that the Agency receives during this time will inform the development of the draft Public Participation Plan.

Public participation in impact assessment processes has a dual purpose of sharing information with the public and gathering information from the public. Sharing information with the public helps to make the process transparent and helps ensure that interested members of the public are fully informed about project proposals and assessment processes. Gathering information from the public helps ensure that the Agency has the strongest possible foundation of information when it conducts impact assessments and develops recommendations for decision makers.

Circulating and gathering information through the Canadian Impact Assessment Registry, social media, information sessions, informal meetings, invitations to make written

submissions, focus groups, open houses, technical meetings, and workshops are forms of public engagement that the Agency has been using for decades. Both in-person and virtual engagement opportunities may be used.

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*Public participation in impact assessment processes has a dual purpose of sharing information with the public and gathering information from the public.*

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As you consider the kinds of public engagement that should be carried out in an impact assessment, ask yourself what would help to make the process most accessible for you and other members of your community. What would prevent people from participating, and how can the Agency overcome these barriers? Will community members struggle to engage virtually due to poor internet reliability? Are English or French the first languages of most members of your community, or will community members need project information translated into other languages? Are special measures needed to ensure that diverse demographics (for example, women, girls, and gender-diverse persons) can feel their voices

are important and that they can participate safely and comfortably? What about elderly community members, racialized community members, youth, or other demographics that may have distinctive needs? How should public participation opportunities be timed so that they do not conflict with fishing or harvesting seasons, or other cultural or economic activities that community members need to prioritize?

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*Ask yourself what would help to make the process most accessible for you and other members of your community.*

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**Raising engagement needs early can help to ensure that the Agency offers public participation opportunities that are inclusive and equitable throughout the impact assessment process.**

## **Apply for participant funding**

Government funding is available to support public participation in impact assessments, and there is a specific funding stream to support public participation in the Planning Phase. Go to [this website](#) to learn more and access the application form.

This [Agency template for Public Participation Plans](#) will give you a sense of the form.

These examples of Public Participation Plans developed for impact assessments can give you a sense of what to expect:

[Public Participation Plan for the proposed Marten Falls Community Access Road Project](#) (Ontario).

[Public Participation Plan for the proposed Value Chain Solutions—Heartland Complex Expansion Project](#) (Alberta).

[Public Participation Plan for the proposed Wasamac Gold Mine Project](#) (Québec).

## **Additional Resources**

Impact Assessment Agency of Canada, [“Framework: Public Participation Under the Impact Assessment Act”](#)

Impact Assessment Agency of Canada, [“Guidance: Public Participation under the Impact Assessment Act”](#)

Impact Assessment Agency of Canada, [“Overview: Public Participation Plan”](#)

Impact Assessment Agency of Canada, [“Impact Assessment Process Overview—Phase 1: Planning”](#)



# How to Decide Your Focus

Focusing is an important strategy in impact assessments, both for participants and for the assessment itself. Focusing your participation on one or two key issues can better allow you to pay attention to those issues without becoming overburdened and overstretched. Similarly, focusing participation on key issues can help ensure that sufficient attention is paid to the most relevant information.

While it is natural to want to ensure that no adverse effects go unnoticed, decades of environmental assessment experience has shown that longer and more complex assessments do not necessarily lead to better outcomes. In fact, proponents sometimes bury information about highly relevant and significant impacts among details about more minor impacts.

The *Impact Assessment Act* is designed to focus assessments on the most relevant issues while acknowledging that those issues may be related to environmental, social, economic, or health effects, or impacts on Indigenous rights and culture. Identifying the most relevant issues and deciding which to focus on can

help make your participation more impactful and manageable. This chapter provides guidance for individuals and community groups that are starting out in the impact assessment process and looking to determine where best to focus their time, energy, and capacity.

## Evaluating your Position and Capacity

Since you clearly can't consider everything about a potential project, how do you decide what your focus will be? The following questions can help you decide on your level of involvement and focus:

### What is your ultimate objective?

People participate in impact assessments for a variety of reasons, including to support or oppose a project, to learn, to help ensure that a project's impacts can be avoided or minimised, to enhance the benefits, and to make sure the benefits are fairly distributed.

Deciding on your overall objective may help you identify potential issues on which to focus. For example, a streamkeepers' group with a diverse membership may not be opposed in principle to a local mine but may have concerns about its potential adverse aquatic and fisheries impacts. Speaking with biologists and hydrologists could help the group better understand the risks that the mine poses and therefore what issue(s) to focus on.

Conversely, a local environmental group opposed to a project that it believes will have unacceptable impacts on species at risk may feel that the federal decision makers are more likely to be swayed by economic than by biodiversity concerns and may choose to focus on the proponent's stated benefits of the project.

For example, in the environmental assessment of the Site C dam, the Peace Valley Environment Association focused on BC Hydro's stated need for the dam and hired an economist with relevant expertise to prepare a report challenging the stated need for Site C. Because it was concerned about other impacts, including those on agriculture, the Peace Valley Environment Association collaborated with other groups to make sure that their other concerns were being addressed.

## What is your experience level?

When deciding upon your focus, it is helpful to consider your level of experience.

### Previous experience

If you have participated in environmental assessments before, there may be recommendations you have made and knowledge gained on other projects that could provide a starting point for your comments on this project. Likewise, you may know a person or organisation with expertise on similar types of projects, knowledge of the local environment or experience in impact assessments who could share their information with you.

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*When deciding on your focus, it may help to identify issues you are already familiar with.*

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### First timer

If this is your first time being involved in an impact assessment, you will want to be cautious about managing your time and expectations regarding your ability to participate. It may also be helpful to reach out to other groups that are participating and understand their focuses. Impact assessment documents can be thousands, even tens of thousands, of pages long, and participants are often surprised by the amount of time it takes to review, reflect on, and comment on relevant documents. It can also take time to learn to

navigate the process and maximise the effectiveness of your participation.

When deciding on your focus, it may help to identify issues you are already familiar with, and that you can get help with from people or organisations you know. While it may be tempting to take on many issues, time, financial and capacity constraints may make it prudent to focus only on one or two topics and to understand them thoroughly. For example, if you are concerned about climate change, you could focus your participation either on effects of climate change on the project or on the project's greenhouse gas emissions, instead of both.

## How much capacity do you have?

Impact assessment is a multi-phased process. While in some instances you may be involved at the start of an impact assessment, you can also choose to get involved once the assessment has already begun. Note, however, that a key purpose of the Planning Phase is to determine the scope of the assessment, including what factors to consider. Participating in the Planning Phase (see [Chapter 8](#)) can help ensure that the issue or issues of concern to you are on the table from the outset.

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*Participating in the Planning Phase (see [Chapter 8](#)) can help ensure that the issue or issues of concern to you are on the table from the outset.*

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Understanding your capacity as a group will likely determine how much or how little time you will have to engage with the process. Once you have determined your capacity and decided how best to maximize your engagement, you may wish to comment on the draft participation plan during the planning phase. Doing so will help ensure that there are participation opportunities that reflect your capacity to participate. Within your group, it is helpful to coordinate a 'point person' who will receive notifications from the Impact Assessment Agency of Canada when comment periods open or funding is available. Likewise, it can be helpful to decide on a person who will be responsible for making sure your comments get to the Agency on time.

It is also helpful to consider the expertise within your group. Are some individuals more interested in certain topics than others? You may find you have more ability to review the impact assessment documents and provide recommendations on improvements when it fits within your area of interest or expertise.

Maximizing your participation (see [Chapter 12](#)) includes the opportunity to seek capacity funding to help cover your costs or those of your experts. If internal capacity is an issue, you may wish to also request funding to hire someone to help coordinate your participation. Coordination assistance can be particularly helpful if you are collaborating with other participants, when there is often more of a need for meetings, strategizing, and document review.

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*Coordination assistance can be particularly helpful if you are collaborating with other participants, when there is often more of a need for meetings, strategizing, and document review.*

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## Narrowing in on Key Issues

Section 22 of the *Impact Assessment Act* lists a number of factors that must be considered in every assessment, such as an assessment of alternatives to the project and the cumulative effects associated with the project. These factors are intended to ensure that assessments look at all relevant effects and issues. At the same time, the final decision must focus on the significance of any effects defined section 2 of the Act as “adverse effects within federal jurisdiction.”

Ultimately, the final public interest determination must be about the significance of these effects and whether they are justified in the public interest. Accordingly, it will be important to ensure that the impact assessment’s predictions about these potential effects are based on the best available information. It will also be important to ensure that any claims about whether those effects are justified are accurate.

Additionally, the Agency must determine the scope of factors that will be considered. Not every factor may receive the same depth of focus, but each factor listed in section 22 should appear in the Tailored Impact Statement Guidelines given to proponents and discussed by the proponent in the impact statement.

The *Impact Assessment Act* defines adverse federal effects as:

- a) a non-negligible adverse change to the following components of the environment that are within the legislative authority of Parliament:
  - i) fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*,
  - ii) aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*,
  - iii) migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and
  - iv) any other component of the environment that is set out in Schedule 3;
- b) a non-negligible adverse change to the environment that would occur on federal lands;
- c) a non-negligible adverse change to the marine environment that is caused by pollution and that would occur outside Canada;
- d) a non-negligible adverse change — that is caused by pollution — to boundary waters or international waters, as those terms are defined in subsection 2(1) of the *Canada Water Act*, or to interprovincial waters;
- e) with respect to the Indigenous peoples of Canada, a non-negligible adverse impact — occurring in Canada and resulting from any change to the environment — on
  - i) physical and cultural heritage,
  - ii) the current use of lands and resources for traditional purposes, or
  - iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
- f) a non-negligible adverse change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and
- g) a non-negligible adverse change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3.



Not every factor will be equally relevant in and among assessments—for example, climate change is highly relevant to impact assessments of liquefied natural gas facilities but may be less relevant to an underground metal mine. It is also not defined as an adverse federal effect, meaning that while climate change considerations should be considered in assessments, they cannot drive final decisions. A mine’s tailings pond, on the other hand, might present different risks to fish and fish habitat than would a railway or highway project. The Planning Phase is meant to determine what are the particular issues related to each factor in a specific case and how thoroughly the issues and factors need to be examined.

Reviewing the full list of section 22 factors may help spark ideas about your areas of interest and those topics that you are more interested in studying and commenting on. If you are still wondering what to focus on, here are some tips to help you out.

1. **Speak with experts.** Scientists, Indigenous knowledge holders, health authorities, economists, and others with expertise often participate in impact assessments. These subject-matter experts (see [Chapter 10](#)) can help identify potential issues that require attention.
2. **Consult local and regional groups.** Environmental, conservation, community, and other grassroots and regional groups

may have knowledge of the project, similar types of projects, or issues relevant to the local and regional environment that could be helpful when deciding what to focus on. In addition to searching online and in social media, you may find information about local groups by browsing the Agency’s [Registry](#) for projects in your area, and then browsing the comments received during those assessments. Groups that have participated in environmental or impact assessments in your region may be particularly helpful in identifying key issues.

3. **Review similar projects.** You can browse the Agency’s Registry for projects of a similar type, projects in your region, and projects in different regions but with similar receiving environments (for example, wetlands). Participants’ comments and the final reports of those assessments can be particularly helpful in illustrating potentially significant effects and issues of concern that may also be relevant in your assessment.

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*Not every factor may receive the same depth of focus.*

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# Collaborative Participation

It can be very helpful to coordinate with other individuals, non-profits, Indigenous communities, and grassroots groups that are also involved in the impact assessment of the project.

Collaborative participation can not only help in dividing up the work in reviewing impact assessment documents and navigating the process, but it can also assist with capacity, as the expertise or abilities of one group may augment those of another. Importantly, coordinating with other participants can help identify the most relevant issues and those issues can then be divided so that they are being addressed comprehensively without duplicating effort.

For instance, if other groups are most concerned about impacts to endangered species or emissions to water, perhaps considering the socioeconomic impacts (i.e. quality of jobs and positive benefits to your community) is a gap you could fill.

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*It can be very helpful to coordinate with other individuals, non-profits, Indigenous communities, and grassroots groups that are also involved in the impact assessment of the project.*

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# Subject-Matter Experts

Subject-matter experts play an important role in impact assessment. They can help identify key socioeconomic and environmental values and potential risks to those values, determine which studies are needed and how those studies should be conducted, prepare and peer-review documents, and advise on the final assessment report.

Experts may work for proponents, government departments and agencies, or Indigenous nations and organizations, or be retained by participants. Participants often seek out expert assistance to help with things such as reviewing documents and preparing submissions on important issues. Funding from the Impact Assessment Agency of Canada may be used to retain subject-matter experts.

In this chapter, we describe the different roles of subject-matter experts and provide tips for finding experts who may help you participate more effectively in an impact assessment.

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*Participants often seek out expert assistance to help with things such as reviewing documents and preparing submissions on important issues.*

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## Subject-Matter Expert Roles

### Proponent experts and consultants

Impact assessments under the *Impact Assessment Act* are a proponent-led process, meaning that proponents have primary responsibility for conducting the assessment. Proponents submit the assessment (called an impact statement) to the Agency or a review panel, who then review the impact statement, engage Indigenous peoples, consider public comments and the advice of federal expert departments, and produce an impact assessment report.

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*Proponents have primary responsibility for conducting the assessment.*

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The practical implication of the proponent-led process is that proponents' information is authoritative unless it is discredited (such as by federal, Indigenous or independent experts). Proponents may retain their own in-house experts or hire external consultants. Typically, subject-matter experts must be registered with professional associations that require members to abide by professional standards, such as the Association of Professional Biology in British Columbia. Expert consultants operate within the terms of reference provided to them by their client (the proponent), meaning that the studies they produce may or may not reflect the public's priorities. As a result, the participation of non-proponent experts is essential.

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*Proponents' information is authoritative unless it is discredited*

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## Government experts

The *Impact Assessment Act* requires every federal authority with specialist or expert information or knowledge that is relevant to an impact assessment to make that information or knowledge available at the request of the Agency, review panels, or, in the case of substituted assessments, the provincial or Indigenous assessment authority.<sup>24</sup> The Act also requires those authorities to act “in a manner that fosters sustainability, respects the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, takes into account Indigenous knowledge, considers the cumulative effects of physical activities, applies the precautionary principle and promotes cooperation among jurisdictions and with the Indigenous peoples of Canada.”<sup>25</sup>

There are different definitions of the precautionary principle. The Act does not define the principle, but a common articulation of it can be found in the 1992 Rio Declaration,<sup>26</sup> which states: “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>27</sup> In other words, federal experts should advise on the level of

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<sup>24</sup> *Impact Assessment Act*, sections 13, 23, 85 and 100.


<sup>25</sup> *Impact Assessment Act*, section 6(2).

<sup>26</sup> *Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I).

<sup>27</sup> *Ibid*, Principle 15.

certainty regarding whether the project may cause serious or irreversible damage to the environment.

They must also consider the cumulative effects that are likely to occur in connection with a designated project. Together, these requirements mean that the Agency, review panels, and provincial and Indigenous authorities for substituted assessments may seek the expertise and knowledge of federal experts working for departments such as Fisheries and Oceans Canada, Environment and Climate Change Canada, Health Canada and Transport Canada. If the assessment authority makes such a request, the experts must provide their information and knowledge, and must do so in a manner that fosters sustainability, advances reconciliation and respects Indigenous rights, considers cumulative effects, and applies the precautionary principle.

 **Tip:** Federal experts may be deeply involved and provide invaluable advice, or their comments may miss important information. Often the degree of their involvement depends on the process, and in particular whether the assessment authority simply asks for written comments or establishes ongoing dialogue with the proponent, experts, Indigenous peoples, and key non-Indigenous participants, such as through working groups. To help ensure the deep engagement of federal experts, participants may want to ask for working groups to be established early in the planning phase and to be used throughout the assessment.

## Indigenous technicians, knowledge-holders and other experts

The *Impact Assessment Act* requires assessments to consider Indigenous knowledge, which it defines as the “knowledge of the Indigenous peoples of Canada.”<sup>28</sup> At the request of Indigenous knowledge-holders, any knowledge they provide must be kept confidential by the assessment authority, unless the knowledge is publicly available, disclosing it “is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings,” or disclosing it is authorized in prescribed circumstances.<sup>29</sup>

For more on the inclusion of Indigenous knowledge in impact assessments, see the Agency’s

<sup>28</sup> *Impact Assessment Act*, sections 2 and 22(1)(g).

<sup>29</sup> *Impact Assessment Act*, section 119.

guidance on [Indigenous knowledge under the \*Impact Assessment Act\*](#) and its guidance respecting [protecting confidential Indigenous knowledge](#).

In addition to knowledge and other expertise held by Indigenous peoples, Indigenous nations, governments, and organizations often employ technical staff who are subject-matter experts and who participate in impact assessments, including through working groups. Indigenous nations and governments may also retain subject-matter experts for impact assessments. Funding for such expertise may be provided by proponents through negotiated agreements, as well as by the Agency through its [Participant Funding Program](#).

The Act allows the Agency to delegate any part of an impact assessment to any person, body or jurisdiction.<sup>30</sup> Through this power, the Agency may delegate certain studies to Indigenous nations, governments or peoples, such as community health and wellbeing studies, socioeconomic studies, studies respecting impacts on Indigenous rights, and studies respecting environmental effects.

## Community knowledge-holders

The *Impact Assessment Act* also requires assessments to consider community knowledge,<sup>31</sup> though it does not define what community knowledge means. Typically,

community knowledge is understood as the knowledge of members of local communities respecting the local environment and local socioeconomic conditions. For example, a member of a community that will be affected by a project may have expert knowledge of fish and wildlife populations that, if provided, would have to be considered.

## Experts retained by public participants


Public participants frequently retain independent experts to provide expert advice and comments at key stages at the assessment. Common subject-matter experts include:

- Biologists
- Economists
- Hydrologists
- Soil scientists
- Geologists
- Agronomists
- Engineers
- Sociologists
- Ecologists
- Planners
- Lawyers

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<sup>30</sup> *Impact Assessment Act*, section 29.

<sup>31</sup> *Impact Assessment Act*, section 22(1)(m).

 **Engagement Tip:** Things that subject-matter experts can help participants with include:

**Planning Phase** (see [Chapter 8](#)):

- ▷ Identify key issues to focus on in the impact assessment;
- ▷ Identify studies, scopes and methodologies to be included in the tailored impact statement guidelines; and
- ▷ Review the draft tailored impact statement guidelines and advise on any corrections that should be made, such as removing irrelevant information, including relevant information, and specifying or adjusting directions respecting studies.

**Impact Statement Phase** (see [Chapter 11](#)):

- ▷ Conduct independent studies; and
- ▷ Identify and review existing information.

**Impact Assessment Phase** (see [Chapter 11](#)):

- ▷ Review the impact statement; and
- ▷ Provide the assessment authority (e.g., Agency or review panel) with an expert opinion in writing, orally, or both.

**Review and Decision Phases**

(see [Chapter 13](#)):

- ▷ Review the impact assessment report and advise on any issues and suggested corrections; and
- ▷ Advise on any potential conditions of approval.

**Follow-up and Monitoring** (see [Chapter 15](#)):

- ▷ Review follow-up and monitoring results;
- ▷ Conduct independent monitoring; and
- ▷ Advise on adaptive management or other follow-up actions.

The Agency provides participant funding for different stages of assessments, which may be used to retain independent experts. Its [guidance on its participant funding program](#) states that funding amounts are determined based “on a variety of criteria, such as number and length of meetings/sessions involved; complexity of health, social, economic and environmental conditions in the region; and complexity and length of documents participants must review.” It is not guaranteed that the Agency will provide sufficient funds to cover the costs of retaining subject-matter

experts for all activities for which a participant may seek assistance. Some experts offer their services at subsidized rates but participants may also need to raise funds from other sources to cover the expert fees.

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*The Agency provides participant funding for different stages of assessments, which may be used to retain independent experts.*

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## TIPS FOR FINDING SUBJECT-MATTER EXPERTS

Finding a subject-matter expert who specializes in the area on which you wish to focus (see [Chapter 9](#)) and who you believe will help you maximize the effectiveness of your participation can be daunting. Here are some ways of helping you identify potential candidates:

- ▶ **Seek advice from trusted non-profit organizations.** Often, non-profits work with or employ physical and social science experts, and will be able to provide the names of subject-matter experts who may be able to help. You may know organizations to reach out to, and you can browse the [Impact Assessment Agency Registry](#) to discover whether any organizations have commented on the assessment to date. If they have and it seems that their comments align with your concerns, they may be able and willing to help.
- ▶ **Browse through past similar projects and projects in the same area on the Registry.** Similar types of projects and projects in the same or similar environments may pose similar risks, and looking through comments received in those assessments can reveal experts who have provided relevant advice in the past, or nonprofits who may be able to give advice.

- ▶ **Research relevant departments at local universities.** There may be professors working in your focus area who can advise on others in the field who may be suitable to help in the assessment.
- ▶ **Connect with relevant professional associations,** which often have lists of members and their areas of interest.
- ▶ **Connect with local governments,** which often have access to local experts.



# Participating in the Assessment

Public participation in the Impact Statement and Impact Assessment phases of an impact assessment differs from earlier forms of engagement in the process.

## The Impact Statement Phase

In the Impact Statement Phase, the proponent gathers information about its proposed project, in keeping with the Tailored Impact Statement Guidelines established during the Planning Phase. Information gathering typically requires the proponent to commission detailed project designs, technical research, and field studies. The proponent has up to three years to gather information and provide an Impact Statement, but the Agency can extend the three-year timeline at the proponent's request.

As the proponent carries out its work, it is expected to follow the Public Participation Plan and Indigenous Engagement and Partnership Plan that were established during the Planning Phase.

Here are three examples of Public Participation Plans established for impact assessments:

[Public Participation Plan for the proposed Marten Falls Community Access Road Project](#) (Ontario).

[Public Participation Plan for the proposed Value Chain Solutions—Heartland Complex Expansion Project](#) (Alberta).


[Public Participation Plan for the proposed Wasamac Gold Mine Project](#) (Québec).

Public participation during the Impact Statement Phase will depend on the Public Participation Plan published in the Notice of Commencement. Typical points of focus include:

- ▶ increasing public awareness of the proposed project;
- ▶ increasing public knowledge about the impact assessment process to facilitate meaningful participation; and,
- ▶ seeking public input on the Impact Statement submitted by the proponent.

The *Impact Assessment Act* does not require the Agency to provide opportunities for public comment on the Impact Statements that proponents submit, but Agency guidance states that opportunities for public comment will be provided as part of its regular practice,<sup>32</sup> and all of the example Public Participation Plans listed above include plans to seek public input on Impact Statements.

This practice should be encouraged, as it not only helps to foster meaningful public participation in impact assessments but also gives the Agency valuable public assistance in determining whether proponents have provided all information required by their Tailored Impact Statement Guidelines.

 **Engagement Tip:** If the Agency has committed to seeking public input on the Impact Statement submitted by the proponent, use this opportunity to evaluate whether the proponent fulfilled the requirements of their Tailored Impact Statement Guidelines. Is any information unsupported or incomplete? Did the proponent fail to address something that the Guidelines require them to address?

The Agency can require the proponent to submit additional information if it is not satisfied that the requirements set out in the Tailored Impact Statement Guidelines have been met. Your participation at this stage is an important opportunity to make sure that all relevant information is gathered and given to the Agency before the clock starts ticking in the Impact Assessment Phase.

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32 Impact Assessment Agency of Canada, *Guidance: Public Participation under the Impact Assessment Act* (2021), online. In this guidance, the Agency states that public comments will be invited on Impact Statements and will “be used to assist the Agency in determining if the information in the Impact Statement allows the Agency to prepare the draft Impact Assessment Report”.



## The Impact Assessment Phase

The Impact Assessment Phase begins once the Agency has posted a notice on its registry that it is satisfied that the Impact Statement meets the requirements of the Tailored Impact Statement Guidelines. In the Impact Assessment Phase, either the Agency or an appointed review panel will use information provided by the proponent to assess the likely impacts of the proposed project and prepare an Impact Assessment Report.

As in the Impact Statement Phase, public participation during the Impact Assessment Phase should follow the Public Participation Plan that was established during the Planning Phase. Public participation opportunities may differ depending on whether the Impact Assessment phase is carried out by the Agency or a review panel.

### Impact assessment by the Agency

The Agency's main duties in the Impact Assessment Phase are to:

1. Offer to consult and cooperate with any other jurisdiction that is also conducting an assessment of the designated project;
2. Engage federal authorities that are in possession of specialist or expert information or knowledge;
3. Analyse the impact statement;
4. Offer public participation and Indigenous engagement opportunities in accordance with the Public Participation Plan and Indigenous Engagement and Partnership Plan;
5. Engage with the proponent to seek additional information or clarifications;
6. Prepare a draft Impact Assessment Report and draft conditions of approval and publish those for public comment; and
7. Provide a final Impact Assessment Report, proposed conditions of approval, and a report of Indigenous consultation to the Minister of Environment and Climate Change.

The Agency must produce its report, along with the proposed conditions and consultation report, within 300 days unless:

- ▶ it establishes a longer timeline in order to cooperate with another jurisdiction that is conducting an assessment of the project, or to take into account circumstances that are specific to the project; or
- ▶ it establishes a shorter timeline for any reason it considers appropriate.<sup>33</sup>

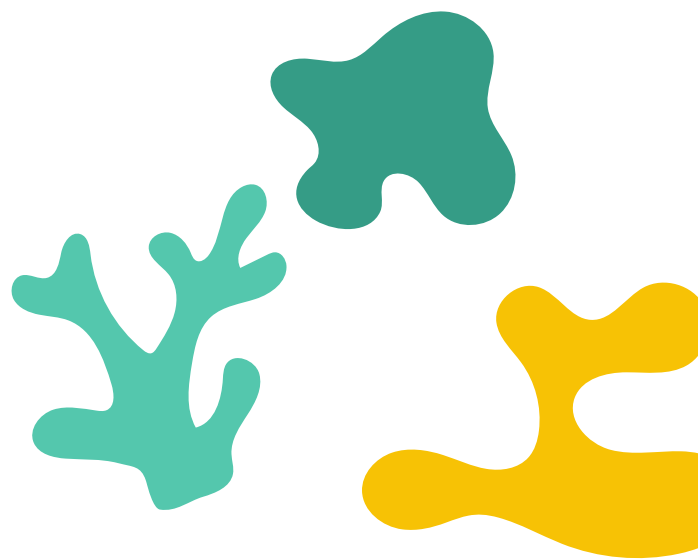
The *Impact Assessment Act* requires the Agency to ensure that the public has an opportunity to participate in an impact assessment.<sup>34</sup> When an Impact Assessment Phase is carried out, the Agency should at minimum ensure that all records relevant to the impact assessment are posted online in the [Canadian Impact Assessment Registry](#) so that the public can stay up to date on what has been provided to the Agency and how the process is going. Additional public participation opportunities may include outreach by the Agency to continue raising public awareness of the proposed project and the impact assessment process.

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*The Impact Assessment Act requires the Agency to ensure that the public has an opportunity to participate in an impact assessment.*

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The Act requires the Agency to publish a draft Impact Assessment Report and invite public comments on it before the report is finalized.<sup>35</sup> This requirement creates an important opportunity for members of the public to have their say on the analysis, conclusions, and recommendations presented in the Agency's report.




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33 *Impact Assessment Act*, section 28(5).

34 *Impact Assessment Act*, section 27.

35 *Impact Assessment Act*, section 28(1).

 **Engagement Tip:** Section 22 of the *Impact Assessment Act* lists 20 factors that the Agency must take into account when conducting an impact assessment and preparing an Impact Assessment Report. These “section 22 factors” are described in **Chapter 2** of this guide.

Additionally, section 63 of the Act requires the Minister of Environment or Climate Change or Governor in Council, as the case may be, to consider three factors when deciding whether any significant adverse effects of the project within federal jurisdiction are in the public interest:

- a) the impact that the effects that are likely to be caused by the carrying out of that project may have on any Indigenous group and any adverse impact that those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- b) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; and
- c) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to sustainability.

Public comments on a draft Impact Assessment Report by the Agency can provide feedback on whether the Agency has properly considered the factors listed under sections 22 and 63. The *Impact Assessment Act* does not require the Agency to provide recommendations to decision makers, but the Agency nonetheless should be drawing conclusions, especially respecting the section 63 decision making factors, in its Impact Assessment Report. If the Agency has not addressed certain factors in its report, you can send written submissions directly to the Minister on how those factors should be considered in the public-interest decision.



## Impact Assessment by a Review Panel

When an Impact Assessment Phase is carried out by a review panel, it will follow the Public Participation Plan established during the Planning Phase, just as in an impact assessment carried out by the Agency.

Review panels have similar duties as the Agency during an impact assessment, but there are two key differences in the public participation opportunities that the *Impact Assessment Act* requires for impact assessments carried out by the Agency versus those carried out by review panels.

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*The Act requires a review panel to hold at least one public hearing before the Impact Assessment Phase concludes.*

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The first key difference is that the Act requires a review panel to hold at least one public hearing before the Impact Assessment Phase concludes.<sup>36</sup> Participating in a public hearing gives members of the public an important opportunity to speak face-to-face with members of the review panel and have their voices heard.

The second key difference is that review panels are not required to publish draft Impact

Assessment Reports and invite public comments on them before reports are finalized. This means that members of the public will not have a specific window of opportunity to provide feedback on a review panel's treatment of the section 22 or section 63 factors before the panel submits its Impact Assessment Report to the Minister.

 **Engagement Tip:** Since members of the public will not have an opportunity to provide feedback on a draft of a review panel's Impact Assessment Report before it is submitted to the Minister, it is important that you share your thoughts and concerns through other public participation opportunities available during the impact assessment.

You can make written submissions to the review panel and apply to participate in the public hearing, using these opportunities to raise questions and concerns about how the project will:

- ▶ change environmental, health, social, or economic conditions in your area,
- ▶ contribute to sustainability,
- ▶ help or hinder the Government of Canada's ability to meet its environmental obligations and climate change commitments, or
- ▶ interact with any of the other factors listed in sections 22 and 63 of the *Impact Assessment Act*.

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<sup>36</sup> *Impact Assessment Act*, section 51(1)(c).

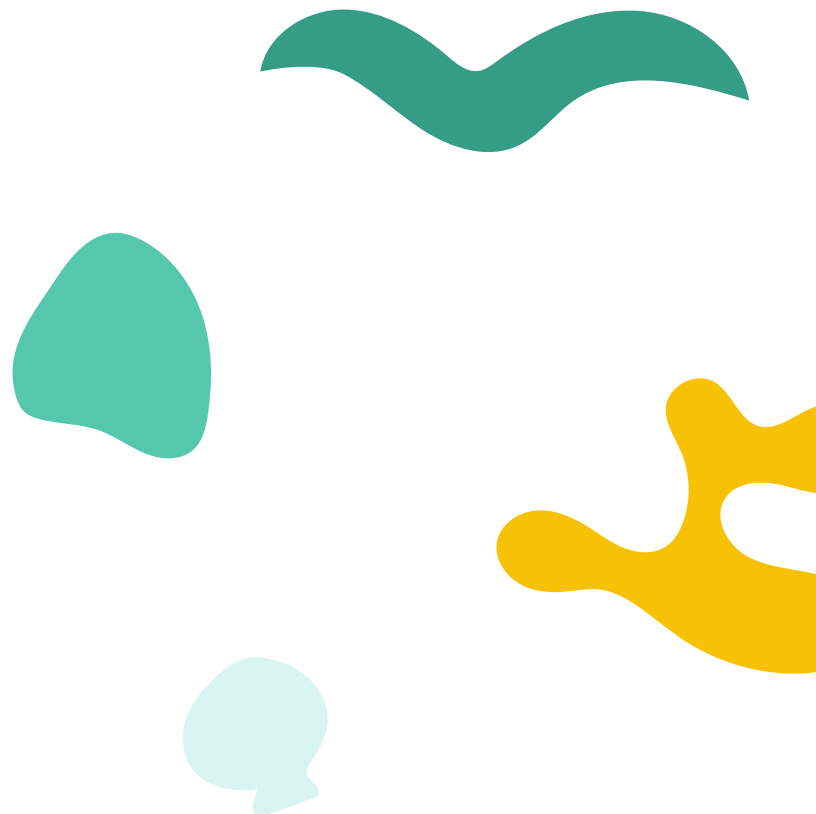
# Additional Resources

Impact Assessment Agency of Canada,  
[“Framework: Public Participation Under the  
Impact Assessment Act”](#)

Impact Assessment Agency of Canada,  
[“Guidance: Public Participation under the  
Impact Assessment Act”](#)

Impact Assessment Agency of  
Canada, [“Impact Assessment Process  
Overview—Phase 2: Impact Statement”](#)

Impact Assessment Agency of  
Canada, [“Impact Assessment Process  
Overview—Phase 3: Impact Assessment”](#)



# Maximising Your Participation

This chapter discusses how to maximise the effectiveness of your participation throughout the entire impact assessment process. There are opportunities throughout the process for meaningful public participation, but finding effective ways to engage in the process is not always easy.



## The Four Key Objectives of Public Participation under the *Impact Assessment Act*

The Impact Assessment Agency of Canada characterizes public participation under the Act as having four key objectives, which are to:


- ▶ inform,
- ▶ consult,
- ▶ involve, or
- ▶ collaborate.<sup>37</sup>

The International Association for Public Participation (IAP2) spectrum of public participation includes a fifth objective, which is to empower.

<sup>37</sup> Impact Assessment Agency of Canada, *Guidance: Public Participation under the Impact Assessment Act* (2021), online.

## Opportunities that aim to inform

Opportunities that aim to inform are designed to share relevant information with the public so that members of the public can access information about proposed projects and understand how to participate in the process.

 **Engagement Tip:** To maximise the benefit of public participation opportunities that are designed to inform about proposed projects or the impact assessment process as a whole, consider whether you will need support to help you make the best of the information provided to you.

Impact assessments typically generate an enormous amount of information, and reviewing all the information can be difficult and even overwhelming.

Much of the information is scientific or technical and may require specific expertise to be fully understood. Drawing on the expertise of subject-matter experts can make it easier for members of the public to review and understand key information provided in documents such as Initial Project Descriptions, Detailed Project Descriptions, Impact Statements, and Impact Assessment Reports.

Some community groups are able to access subject-matter experts within their networks, whether through volunteer call-outs, tapping into neighbours' expertise, or working with

advocacy organizations that keep lists of subject-matter experts who are willing to assist community groups on a volunteer basis or for a reduced fee. Some community groups and advocacy organizations hire their own consultants to review scientific and technical documents and report on how well they address their clients' concerns.

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*Drawing on the expertise of subject-matter experts can make it easier for members of the public to review and understand key information.*


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If you are part of a community group or have a network of community contacts who are participating in the process, a useful tool for reviewing a mass of information is to divide and conquer. Consider dividing the work amongst yourselves so that certain people will focus on specific issue areas and share their findings with the network as a whole. It can be much more efficient and less time consuming than having each person try to review all of the material and can allow allied participants to review and comment on materials more comprehensively.

## Opportunities that aim to consult

Opportunities that aim to consult are designed to enable you to raise questions, highlight issues of concern, and comment on specific questions such as the scope of the assessment, the valued components that should be addressed, the “section 22 factors” that must be taken into account in the Impact Assessment Report, and the “section 63 factors” that must be taken into account when final decisions are made.

Windows for public comment are important public consultation opportunities, as are any in-person participation events such as the public hearings that are required when impact assessments are carried out by review panels. In addition to raising questions and highlighting issues of concern during these opportunities, you can also recommend mitigation measures—including terms, conditions, or community benefit requirements—that should be established if a proposed project is allowed to proceed.

 **Engagement Tip:** Windows for public comment are offered at specific stages of the impact assessment process, and each will be designed to address questions that arise at that specific stage.

Where possible, tailor your comments to the specific questions that are being addressed at each stage. This will make it easier for the Agency or review panel to recognize the relevance of your comments and will increase the likelihood that your comments will be taken into account.

## Opportunities that aim to involve

The Agency describes opportunities that aim to involve as opportunities that may include “dialogue with interested parties.”<sup>38</sup> Opportunities for involvement will likely intersect with opportunities that aim to inform or consult, and they may reflect a greater focus on speaking with those who stand to be most impacted by a proposed project or who may experience impacts differently from others due to identity factors such as age, gender, racial identity, or socioeconomic status.


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38 Impact Assessment Agency of Canada, *Guidance: Public Participation under the Impact Assessment Act* (2021), online.

## Opportunities that aim to collaborate

The Agency describes opportunities that aim to collaborate as including “active interaction and partnership.”<sup>39</sup> Opportunities for collaboration of this kind are rare in impact assessments, although they are possible, even under the Act’s legislated timelines. Collaboration can take many forms and may occur only in select steps or processes.

For example, the Agency may appoint a working group comprised of Indigenous knowledge holders, scientific experts, the proponent, and federal regulatory authorities to come to consensus on the studies and methodologies that should be prescribed in the Tailored Impact Statement Guidelines.

 **Engagement Tip:** If you believe that you or your community should have opportunities for greater involvement in an impact assessment process, raise this with the Agency as early as possible—ideally during the Planning Phase while the Public Participation Plan is being developed.

The development of the Public Participation Plan during the Planning Phase is your first and best opportunity to advocate for the robust engagement measures you would like to see.

The Agency could also collaborate with local, Indigenous, provincial, and federal health authorities in the preparation of the Impact Assessment Report chapter on health impacts, or collaborate with an Indigenous group by delegating to it the assessment of impacts on that group and on Indigenous rights. Whatever the form collaboration takes, a key characteristic of it is that collaboration entails a partnership between the assessment authority and the participant, with consensus as the goal.

## Opportunities that aim to empower

Public participation that empowers puts decision making in the hands of the public. Empowerment through delegated decision making under the *Impact Assessment Act* is highly unlikely, although strictly speaking not impossible. For example, the Agency could seek votes on a particular decision, such as the issuance of the Tailored Impact Statement Guidelines or the Public Participation Plan. It should be noted, however, that decision making by ballot or vote may not be as effective or feasible as more collaborative approaches, such as collaboration towards consensus through deliberative dialogue.

39 Impact Assessment Agency of Canada, *Guidance: Public Participation under the Impact Assessment Act* (2021), online.



# Tips and Strategies for Maximising Your Participation

## Apply for participant funding

Government funding is available to support public participation in impact assessments, and there are specific funding streams available to support public participation in the Planning Phase and the Impact Assessment Phase of an assessment. You can learn more about the Participant Funding Program on the Agency's website.

Members of the public, Indigenous peoples, and non-profits may apply for participant funding. To be eligible, participants must show how their participation will add value and provide relevant knowledge or expertise to the assessment. Additionally, participants must meet at least one of the following criteria:

1. Have a direct local interest in the assessment;
2. Possess relevant community or Indigenous knowledge;
3. Possess expert information relevant to potential impacts; or
4. Possess an interest in a project's potential impacts on treaty lands, settlement lands or traditional territories, or related claims and rights.

If you do apply, be sure to demonstrate each of the first two criteria (how you will add value and provide relevant knowledge or expertise) as well as at least one of the criteria in the bullets above.

Importantly, participant funding can be used to hire third-party experts, such as subject-matter experts who can help you review and understand scientific, technical, and legal information provided during the impact assessment process, and lawyers who can help you strategize and prepare submissions and questions for the proponent's team. If you do not meet criteria 1, 2 or 4 and wish to hire a subject-matter expert with Agency funding, it may help to have already identified the subject-matter expert in advance and have them help you with the application to highlight the expert information you plan to bring into the assessment.

You can find current funding opportunities on the [Participant Funding Program webpage](#). When an impact assessment begins, the Impact Assessment Agency will add the proposed project to the [Canadian Impact Assessment Registry](#) and create a landing page that members of the public can use to access information about the process and apply for participant funding. Click the "Participant Funding" button to access eligibility information, guidance, and application forms.

## INDIGENOUS FUNDING OPPORTUNITIES

There are separate funding streams for public and Indigenous participants in recognition of the fact that impact assessments are a tool for consulting Indigenous peoples, which gives rise to certain duties and responsibilities on behalf of the Crown. Additionally, the Agency's [Indigenous Capacity Support Program](#) provides funding to Indigenous communities and organizations outside of specific assessments to help enhance Indigenous peoples' capacity to engage meaningfully in project, regional, and strategic assessments.

## Focus your time and effort

Impact assessments involve thousands, sometimes tens of thousands, of pages of information on dozens of issues. The Act sets out numerous mandatory factors that must be considered in impact assessments, and the Tailored Impact Statement Guidelines—the document that lists the information and studies that proponents must provide—alone average over 150 pages. In addition to proponents' Impact Statements (the main basis for the impact assessment), federal regulatory authorities, local and provincial authorities, Indigenous authorities, and public and Indigenous participants also submit studies and analysis that are often detailed and thorough.

Because of both the sheer volume of information and its often technical nature, focusing your participation on a small number of issues

of most importance to you can help provide deeper analysis and information on those issues while avoiding becoming overwhelmed. Once issues of concern have been identified, consider collaborating with other groups that have the same concerns so you can divide up the issues and share strategies and information rather than taking it all on yourself.

## Play an “outside game”

Participating in impact assessments can be an excellent opportunity to enhance the evidentiary basis of decisions and ensure that potential impacts, benefits, risks, and uncertainties have been carefully considered. However, decisions about whether to allow a project's effects to occur is ultimately a political one made by elected officials. While those decisions must be based on impact assessment reports and three public interest factors listed in section of 63 of the Act, decision makers will inevitably be influenced by outside factors. It can therefore be helpful to have a strategy for mobilizing the public and putting pressure on the government to decide in your favour, especially if your goal is to stop a project.

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*Focusing your participation on a small number of issues of most importance to you can help provide deeper analysis and information*

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## Be prepared to fundraise

While Agency funding can provide a helpful boost, the actual cost of participating in an impact assessment can far exceed the maximum amounts of participant funding provided, especially if you plan to hire experts or engage in advocacy activities—such as those listed above—beyond the formal assessment process. Fundraising events can be great ways to bring attention to an issue while securing additional funding.

## Additional Resources

Impact Assessment Agency of Canada,  
“[Framework: Public Participation Under the Impact Assessment Act](#)”

Impact Assessment Agency of Canada,  
“[Guidance: Public Participation under the Impact Assessment Act](#)”

Environmental Protection Agency, “[Public Participation Guide: Selecting the Right Level of Public Participation](#)”

## SEEK ADVICE FROM PUBLIC INTEREST LEGAL GROUPS

It can be difficult for members of the public who are unfamiliar with *Impact Assessment Act* processes to know what questions and comments are most relevant at any given stage of an impact assessment. Consider connecting with environmental advocacy groups for guidance or applying for participant funding to support a legal consultant.

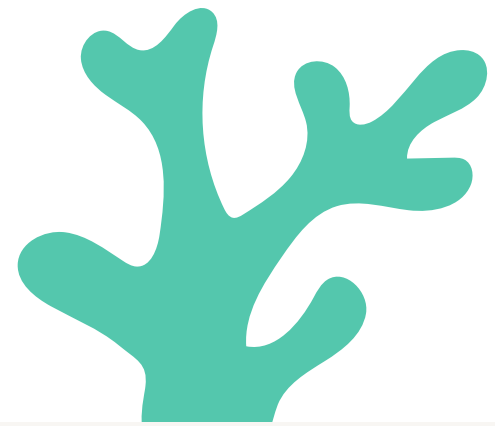
You can reach out to [West Coast Environmental Law](#) for help in British Columbia, the [Environmental Law Centre](#) in Alberta, the [Canadian Environmental Law Association](#) in Ontario, the [Centre québécois du droit de l’environnement](#) in Quebec, [East Coast Environmental Law](#) in Atlantic Canada, and [Ecojustice](#) in multiple provinces for support and information.

## PADDLE FOR THE PEACE

From 2005 to 2018, the Peace Valley Environment Association, West Moberly First Nation, and Prophet River First Nation organized and hosted a “Paddle for the Peace”—an annual paddle down a segment of the Peace River in northeast British Columbia to raise money and awareness around the Site C Dam. While Site C was ultimately approved, the annual Paddle for the Peace was an important opportunity to foster relationships, build support and awareness, and re-energize and motivate opponents to the dam project.

# How Decisions Are Made under the *Impact Assessment Act*

The Decision-Making Phase is the fourth of five phases of an impact assessment conducted under the *Impact Assessment Act*. Its purpose is to determine, after taking into account mitigation measures, whether a designated project is likely to cause any significant adverse effects within federal jurisdiction and significant direct or incidental adverse effects, and whether those effects are in the public interest.



## WHAT DO THEY MEAN?

The phrases “adverse effects within federal jurisdiction” and “direct or incidental adverse effects” have specific meanings that are set out in the *Impact Assessment Act* in section 2.

Adverse effects within federal jurisdiction means:<sup>40</sup>

- ▶ non-negligible adverse changes to fish and fish habitat, aquatic species, migratory birds, or other components of the environment listed in Schedule 3 of the Act;
- ▶ non-negligible adverse changes to the environment that would occur on federal lands;

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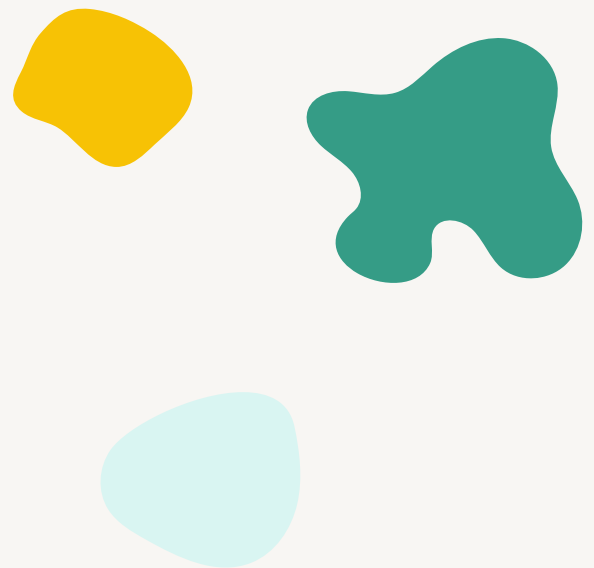
<sup>40</sup> *Impact Assessment Act*, section 2.

- ▶ non-negligible adverse changes to the marine environment that occur outside Canada and are caused by pollution;
- ▶ non-negligible adverse changes to transboundary waters that are caused by pollution;
- ▶ non-negligible adverse impacts on Indigenous peoples' physical and cultural heritage, use of lands and resources for traditional purposes, or structures, sites, or things that are of special significance, when such impacts result from changes to the environment;
- ▶ non-negligible adverse changes to the health, social, or economic conditions of Indigenous peoples of Canada; and
- ▶ for activities that are located on federal lands or are a federal work or undertaking, non-negligible adverse changes to the environment or to health, social or economic conditions.

Direct or incidental adverse effects means “non-negligible adverse effects that are directly linked or necessarily incidental to a federal authority’s exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority’s provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part.”<sup>41</sup>

For more information about the Decision-Making Phase, you can consult the Agency’s [Practitioner’s Guide to Federal Impact Assessment](#). This guide is a living document that will be updated to reflect legislative changes.

There are other important decisions made under the *Impact Assessment Act* related to whether projects will undergo impact assessments, can be assessed using a substituted assessment process, are on federal lands or outside of Canada and will cause significant adverse environmental effects, and also on regional and strategic assessments.



<sup>41</sup> *Impact Assessment Act*, section 2.

# Decisions to Require a Designated Project to Undergo an Impact Assessment

The first major decision under the Act is whether a proposed project will be required to undergo an impact assessment.

As discussed in [Chapter 8](#), after a proponent has submitted its Initial Project Description, followed by a response to the Summary of Issues raised during engagement, the Agency must decide if an impact assessment is required.<sup>42</sup>



When deciding whether an impact assessment is required, the Agency must take into account several factors that are set out in the *Impact Assessment Act*:<sup>43</sup>

- ▶ the Initial Project Description, the proponent's response to the Summary of Issues and, if a Detailed Project Description was requested by the Agency, that Detailed Project Description;
- ▶ the adverse effects within federal jurisdiction or direct or incidental adverse effects that the designated project may cause;
- ▶ any adverse impact that the designated project may have on the rights of Indigenous peoples;
- ▶ any comments received from the public and from any jurisdiction or Indigenous group;
- ▶ any relevant regional assessment or strategic assessment;
- ▶ any relevant regional study or plan by another jurisdiction that has been provided to the Agency;
- ▶ whether other federal, provincial or Indigenous regimes would be able to address the potential adverse effects within federal jurisdiction and direct or incidental adverse effects; and
- ▶ any other factor that the Agency considers relevant.

<sup>42</sup> *Impact Assessment Act*, section 16(1).

<sup>43</sup> *Impact Assessment Act*, section 16(2).



While the Agency must consider a range of factors listed above, it can only require an impact assessment if it is satisfied that the designated project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects.<sup>44</sup>


The Agency must post a notice of its decision and reasons (a **Notice of Impact Assessment Decision with Reasons**) on the Registry.<sup>45</sup> If the Agency decides that an impact assessment of a designated project is required, and the Minister does not approve a substitution under section 31 of the *Impact Assessment Act*, the Agency must post a notice of its decision and any other documents prescribed by regulations, on the Registry.<sup>46</sup>

If one of the two following situations arises

- ▶ a federal authority advises the Minister that it will not be exercising a power that must be exercised for the project to be carried out; or
- ▶ the Minister is of the opinion that “it is clear” that the designated project would cause unacceptable environmental effects within federal jurisdiction,

then the Minister must provide the proponent with written notice that they have been so advised or are of that opinion. The Minister

must provide the proponent with this notice before the Agency provides the proponent with the Notice of Impact Assessment Decision with Reasons.<sup>47</sup>

 **Engagement Tip:** It is important to engage early by commenting on a proponent’s project description because the Agency will consider those comments when it decides whether to require a proponent to undergo an impact assessment.

Comments made about the project should include input about potential adverse effects from the project, or other factors that the Agency will consider as part of its decision making.

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<sup>44</sup> *Impact Assessment Act*, section 16(2.1).

<sup>45</sup> *Impact Assessment Act*, section 16(3).

<sup>46</sup> *Impact Assessment Act*, section 18(1)(b).

<sup>47</sup> *Impact Assessment Act*, section 17(1).

# Decision to Allow a Substitution of a Provincial or Territorial Assessment for an Impact Assessment

Related to the decision to require an impact assessment is the decision to allow a substitution. This means that another process will be used to assess the effects of the designated project instead of an impact assessment under the *Impact Assessment Act*.

Any of the following jurisdictions can request a substitution within the time limits provided in the Act if they have powers, duties, or functions related to assessing the effects of the designated project:

- ▶ a provincial government,
- ▶ any agency or body created by a provincial legislature that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project,
- ▶ any body established under a land claim agreement that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project,

- ▶ an Indigenous governing body established under a land claim agreement, a federal law, or a provincial law that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project, or
- ▶ an Indigenous governing body that has entered into an agreement to be authorized as a “jurisdiction” pursuant to potential future Indigenous co-administration regulations.<sup>48</sup>

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*Substitution is when another process is used to assess a project instead of a federal impact assessment.*

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When the Minister receives a request for substitution, the Agency must post the request on the Registry and provide a 30-day public commentary period.<sup>49</sup> The Minister must consider these comments before making a decision.<sup>50</sup> The Agency must post the final decision and the reasons for that decision on the Registry.<sup>51</sup>

The Minister has discretion to approve a substitution where a jurisdiction has requested one if the Minister is of the opinion that the substitution would be “appropriate” and is satisfied that the conditions set out in section 33

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<sup>48</sup> *Impact Assessment Act*, sections 2 and 114(1)(e).

<sup>49</sup> *Impact Assessment Act*, section 31(2).

<sup>50</sup> *Impact Assessment Act*, section 31(3).

<sup>51</sup> *Impact Assessment Act*, section 31(4).

of the *Impact Assessment Act* are met.<sup>52</sup>  
The Minister *cannot* approve a substitution if:

- ▶ the impact assessment is referred to a review panel, or
- ▶ the designated project includes activities regulated under the *Canada Oil and Gas Operations Act*, *The Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, or the *Canada Transportation Act*.<sup>53</sup>

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*The Minister may substitute another assessment for a federal one if certain conditions are met.*

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💡 **Did you know?** The conditions that must be met in order for the Minister to approve a substitution can be found at section 33 of the *Impact Assessment Act*. One of the conditions is that in the substituted assessment process, the public will be given an opportunity to participate meaningfully and provide comments on a draft report.

## Decision to Refer a Designated Project to a Review Panel

Within 45 days after a Notice of Commencement is posted on the Registry, the Minister may refer a project undergoing an impact assessment to a review panel (see [Chapter 11](#) for more information).<sup>54</sup>

The Minister may refer a designated project to a review panel if, in their opinion, it is in the public interest. The Agency must post a decision by the Minister to refer a project to a review panel on its Registry, including reasons for the decision.


Some designated projects must be referred to a review panel, which is a process described by the Agency as an Integrated Impact Assessment. Some Integrated Impact Assessment processes are guided by Memoranda of Understanding. See the [Memorandum of Understanding on Integrated Impact Assessments Under the \*Impact Assessment Act\* Between The Impact Assessment Agency of Canada and The Canadian Nuclear Safety Commission](#) and the [Memorandum of Understanding Concerning Integrated Impact Assessments under the \*Impact Assessment Act\* Between the Impact Assessment Agency of Canada and the Canada Energy Regulator](#).

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<sup>52</sup> *Impact Assessment Act*, section 31(1).

<sup>53</sup> *Impact Assessment Act*, section 32.

<sup>54</sup> *Impact Assessment Act*, section 36(1).

 **Terminology Tip:** A review panel is a group of people with special knowledge or expertise relevant to the project being assessed. The review panel, which is meant to be independent and free of bias or conflict of interest, is appointed by the Minister to conduct the impact assessment, which includes collecting information, gathering evidence through public hearings and other participation opportunities, and preparing an Impact Assessment Report.

## Decision after Impact Assessment Report Is Completed

After considering a report from an impact assessment or a substituted assessment process, the Minister must make a decision about potential adverse effects using a two-stage process.

First, the Minister must determine whether the adverse effects within federal jurisdiction and the direct or incidental adverse effects are likely, to some extent, to be significant.<sup>55</sup> In making this determination, the Minister must take into account the implementation

of mitigation measures they consider appropriate.

Second, if the Minister determines that any effects are likely to be significant, they must determine whether the significant effects are justified in the public interest.<sup>56</sup> In making this determination, the Minister must consider the set of factors in section 63 of the *Impact Assessment Act*.

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*The final decision under the Impact Assessment Act has two steps: the significance of the adverse federal effects, and whether they are justified.*

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Instead of making a determination about a project's adverse effects, the Minister may instead refer the decision-making to the Governor in Council.<sup>57</sup> In that case, the Governor in Council must make a decision about the adverse effects in the same manner, using the same two-step approach as the Minister.<sup>58</sup>

If a report results from a review panel (or the Agency acting in cases where a review panel was terminated), the Minister *must* refer the matter to the Governor in Council.<sup>59</sup> If the

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<sup>55</sup> *Impact Assessment Act*, section 60(1)(a).

<sup>56</sup> *Impact Assessment Act*, section 60(1)(b).

<sup>57</sup> *Impact Assessment Act*, section 60(1.1).


<sup>58</sup> *Impact Assessment Act*, section 61.

<sup>59</sup> *Impact Assessment Act*, section 61(1).

Minister makes a referral to the Governor in Council, a notice of that decision with reasons must be posted on the Registry.<sup>60</sup>

In the second part of the decision-making process, the Minister or Governor in Council must consider the factors in section 63 to determine whether the potential significant adverse effects are in the public interest. Those factors are as follows:

- a) the impacts that the effects, which are likely to be caused, may have on any Indigenous group and any adverse impact those effects may have on rights of Indigenous peoples;
- b) the extent to which the effects, which are likely to be caused, contribute to the Government of Canada's ability to meet its environmental obligations and climate change commitments; and
- c) the extent to which the effects, which are likely to be caused, contribute to sustainability.<sup>61</sup>

 **Engagement Tip:** It may be helpful to frame your oral or written submissions within the context of the factors set out in section 63 of the *Impact Assessment Act*. For example, you could identify how a designated project may or may not contribute to sustainability.

Before the Minister or Governor in Council makes a determination they must be satisfied that the Crown's duty to consult and accommodate, as required by section 35 of the *Constitution Act, 1982*, has been fulfilled.

Based on the determination by the Minister or Governor in Council, the Minister must establish any condition they consider appropriate in relation to the adverse effects, or direct or incidental adverse effects.<sup>62</sup>

The Minister must issue a decision statement to the proponent of the designated project informing them of the decision made by the Minister or Governor in Council, including reasons for the decision and any conditions imposed.<sup>63</sup> The decision must be posted on the Registry.<sup>64</sup>

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*The Minister must establish any condition they consider appropriate in relation to the adverse effects, or direct or incidental adverse effects.*

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<sup>60</sup> *Impact Assessment Act*, section 60(2).

<sup>61</sup> *Impact Assessment Act*, section 63.

<sup>62</sup> *Impact Assessment Act*, section 64.

<sup>63</sup> *Impact Assessment Act*, section 65(1).

<sup>64</sup> *Impact Assessment Act*, sections 65(3) and 66.

## RECAP: WHO MAKES DECISIONS ABOUT A DESIGNATED PROJECT?

The following are responsible for making decisions under the *Impact Assessment Act*:

The Impact Assessment Agency of Canada is responsible for making decisions about:

- ▶ whether a designated project must undergo an impact assessment.

The federal Minister of Environment and Climate Change is responsible for making decisions about:

- ▶ whether a substituted process may be used in place of an impact assessment;
- ▶ whether a designated project will be referred to a review panel because it is the opinion of the Minister that doing so is in the public interest;

- ▶ whether a designated project that undergoes an impact assessment or substituted process will have adverse effects that are likely and to some extent significant, and, if so, whether those significant adverse effects are justified in the public interest.

The federal Governor in Council (i.e. Cabinet) is responsible for making decisions about:

- ▶ whether a designated project that undergoes an impact assessment or substituted process (where referred by the Minister) or a project assessed by a review panel will have adverse effects that are likely and to some extent significant, and, if so, whether those significant adverse effects are justified in the public interest.

## Decisions about Projects Carried out on Federal Lands or Outside Canada


As discussed in [Chapter 18](#), an authority must not carry out a project on federal lands or outside of Canada, or exercise a power under any federal law or provide financial assistance that would permit that project to be carried out on federal lands or that will occur outside of Canada, unless the authority determines:<sup>65</sup>

- a) the project is not likely to cause significant adverse environmental effects; or
- b) the project is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances.

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<sup>65</sup> *Impact Assessment Act*, sections 82 and 83.




 **Terminology Tip:** An authority may be a Minister of the Crown, an agency of the federal government or a federal Crown corporation, a federal department, or another body that is set out in Schedule 1 or Schedule 4 of the *Impact Assessment Act*.<sup>66</sup>

An authority is required to consider the following factors in their federal land determinations:

- a) any adverse impact that the project may have on the rights of the Indigenous peoples of Canada;
- b) Indigenous knowledge provided with respect to the project;
- c) community knowledge provided with respect to the project;
- d) comments received from the public during a public comment period; and
- e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.

A federal authority is not required to consider the first two factors if the project will occur outside of Canada.<sup>67</sup>

The Minister may use an order to designate a physical activity or class of physical activities that, in the Minister's opinion, may cause significant adverse environmental effects, or to exclude a class of projects that will cause only insignificant adverse environmental effects.<sup>68</sup> Any project that is part of a class of projects that is listed in the Order as causing only insignificant adverse environmental effects would not require an assessment of environmental effects.<sup>69</sup>

 **Engagement Tip:** Before making a determination about a project on federal lands or a project occurring outside of Canada, an authority must post a notice launching a public comment period about the proposed project. Comments should be related to whether the project will cause significant adverse environmental effects.

Environmental effects are defined for these assessments as changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social, or economic conditions.”<sup>70</sup>

<sup>66</sup> See the full definition in the *Impact Assessment Act*, sections 2 and 81.

<sup>67</sup> *Impact Assessment Act*, section 84(2).

<sup>68</sup> *Impact Assessment Act*, sections 87 and 88.

<sup>69</sup> *Impact Assessment Act*, section 88(2).

<sup>70</sup> *Impact Assessment Act*, section 81.

If the Minister intends to make such a designation, the Agency must post notice of that decision onto the Registry and provide a 30-day public commentary period. The Minister must consider these comments in deciding whether to make the designation.<sup>71</sup>

When a federal authority determines a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, it will refer the matter to the Governor in Council, which must decide whether the effects are justified.<sup>72</sup>

## Decisions after a Regional or Strategic Assessment

As discussed in [Chapter 16](#) and [Chapter 17](#), under the Act, there is no obligation to conduct a regional assessment or strategic assessment. The Minister may use a regional assessment or strategic assessment to create regulations that exempt certain physical activities—those being offshore wind and offshore exploratory oil and gas drilling projects—from project-level impact assessments. This decision-making power is at the Minister’s discretion.

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71 *Impact Assessment Act*, section 89.

72 *Impact Assessment Act*, section 90.


# Taking it to Court

Ideally, inclusive and evidence-based impact assessment results in decisions that are generally accepted, even if some people would have preferred a different result. However, there may be instances where individuals or organizations seek to challenge the decisions made under the *Impact Assessment Act*. They may do so by applying to a court for judicial review of the decision or decisions in question. This chapter provides an overview of judicial review, what decisions may be subject to legal challenge, who may apply for a judicial review, and the basic process steps. It should be noted that this chapter is for informational purposes only and does not constitute legal advice. Anyone considering challenging a federal impact assessment decision in court should seek independent legal advice. For a list of public interest environmental law organizations in Canada, see [Chapter 6](#).

## What Is Judicial Review?

Judicial review is the process through which courts can review administrative decisions in Canada, including those made under the Act, to ensure decisions are fair, reasonable, and lawful. Depending on what kind of decision is being challenged and who has made the decision, a judicial review may look at whether the decision was made in accordance with the law, was reasonable, or procedurally fair. The level of procedural fairness owed to participants is highly contextual and depends on the provisions of the law in question and the nature of the rights at stake. Procedural fairness issues may include:

- ▶ The right to be heard
- ▶ The right to reasons that include justification for the decision in question
- ▶ The right to relevant information

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- ▶ The right to enough time to review and respond to information, and to prepare and put forward one's case
  - ▶ The right to decision making that is fair and impartial (i.e., unbiased)

## What Decisions May Be Subject to Judicial Review?

On considering an application for judicial review, a court will first look at whether the decision is reviewable. Impact assessments under the IAA include a wide range of decisions, including:

- ▶ The Minister of Environment and Climate Change's decision as to whether to designate a project for impact assessment
- ▶ The Agency's decision as to whether an impact assessment of a designated project is required
- ▶ The Agency's issuance of the Tailored Impact Statement Guidelines, public participation plan, Indigenous engagement and partnership plan, permitting plan, and cooperation plan
- ▶ The Minister's decision as to whether to appoint a review panel
- ▶ The Minister's decision as to whether to substitute another jurisdiction's assessment or other activities for the federal one
- ▶ The Agency's decision as to whether to delegate any part of the assessment to another person or body
- ▶ The Minister or Governor in Council's determination (as the case may be) as to:
  - whether the adverse effects within federal jurisdiction—and the direct or incidental adverse effects—that are indicated in the report are likely to be, to some extent, significant and, if so, the extent to which those effects are significant, and
  - whether the project's significant federal effects are justified in the public interest
- ▶ The Minister's decision about what conditions to impose on the project.

It should be noted that in [Gitxaala Nation v. Canada](#), the Federal Court of Appeal held that a review panel's final report was not judicially reviewable because no decisions had been

made in the report about legal or practical interests. Instead, the Court reviewed the Governor in Council's decision, which was based on the report. Courts have also suggested that interim decisions such as those respecting the scope of assessment and process to be followed may not be challenged until there has been a final decision. As of 2023, the question of whether impact assessment reports and interim decisions are judicially reviewable has not been decided by the Supreme Court of Canada, meaning that there is some uncertainty regarding the reviewability of these decisions.

## Who May Apply for Judicial Review?

Any person with a right, an interest in, or who is affected by an impact assessment decision may seek a judicial review. Typically, people and groups who have participated in an assessment will be granted standing to bring a judicial review of an assessment decision. Courts also have discretion to allow individuals and groups to bring applications for judicial review on the basis that they have public interest standing, meaning they have a 'real stake or genuine interest' in the matter even though they did not participate in the decision. However, public interest standing is not a legal right.

In [Forest Ethics Advocacy Association v. Canada \(National Energy Board\)](#), the Federal Court of Appeal held that Forest Ethics Advocacy Association did not have the right to seek judicial review of decisions made by the National Energy Board during an environmental assessment of a proposed pipeline. The organization had not made submissions to the Board or otherwise participated in the decision-making process, and therefore was ruled as not directly affected by the decisions. In other words, courts are more likely to allow people to apply for judicial review of impact assessment decisions if those people have participated in the assessment or will be directly affected by the decision.

## What Remedies Are Available on Judicial Review?

A court's first decision in a judicial review is to decide whether to allow, dismiss, or partially allow the judicial review. A court may dismiss an application for judicial review for a number of reasons. These include finding that the applicant does not have standing to bring the application, that the decision(s) in question were correct, or that the decision(s) were reasonable.

A court may also only partially allow a judicial review, which happens when the court finds in favour of some but not all of the applicant's

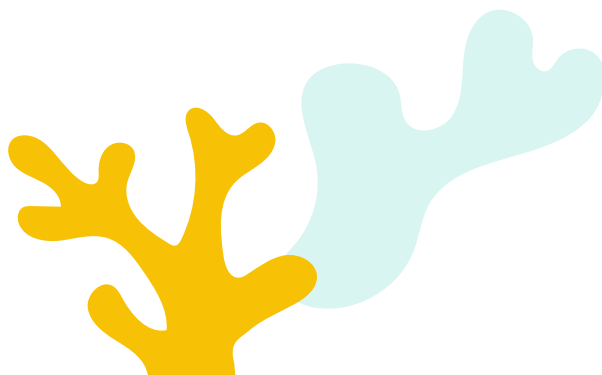
arguments. For example, a person might seek a judicial review of a Minister's final decision to approve the project's effects on the basis that the Minister breached their duty of procedural fairness and that the decision was unreasonable because it failed to consider relevant information, provide adequate reasons, or give justification for the decision. The reviewing court would only partially allow the application if it agreed with only one, but not both, of these arguments.

In [Forbid Roads Over Green Spaces v. Canada](#), the Federal Court allowed in part a judicial review of the Minister's decision to not designate the Bradford Bypass highway project upon request by Forbid Roads Over Green Spaces. In spring 2021, the group requested that the project be designated, which the Minister refused. Later that fall, they submitted a second request with additional information, and the Minister refused to designate the project a second time. The Federal Court found that the applicants' procedural fairness rights were not breached, but that the Minister failed to provide sufficient reasons in his response to make the decision transparent and intelligible. Specifically, the decision did not clearly demonstrate that the new information provided in the second designation request had been considered. As a result, the Court declared the decision unreasonable.

If the court allows a judicial review in part or in full, it will typically send the decision back to the decision maker for reconsideration or order the decision maker to do what it has unlawfully failed or refused to do. However, a court may also decline to send the matter back to the decision maker, such as when it sees no useful purpose of sending the matter back, or where doing so may cause undue delay or unfairness to the parties. It may also decline to grant a remedy, such as where the issues have become moot (for example, if a proponent has withdrawn the project).

Specifically, section 18 of the *Federal Courts Act* states that the Court has jurisdiction:

- a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and
- b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.





An injunction stops an action from proceeding, either until the case is resolved or permanently. Injunctions may be preventative (preventing an action from happening) or mandatory (requiring an action to be taken). For example, the Federal Court may issue an injunction prohibiting federal officials from issuing further authorizations until a judicial review decision is issued.

Certiorari is the most common remedy on judicial review and means to quash a decision. When a court invalidates an administrative decision, it may send the matter back to the decision maker to reconsider the decision, send the matter to a new decision maker, or refuse to send the matter back for reconsideration.

Prohibition is used to stop decision makers from doing something that exceeds their jurisdiction. For example, a court may prohibit the Minister from issuing a conditional approval of a project until the underlying error has been resolved.

Mandamus is commonly used along with certiorari. It is a direction made by a court to a lower court or administrative decision maker to compel an authority to perform its duties. For example, an order of mandamus may require a decision maker to consider relevant information or perform a duty they are bound to perform, such as issue a permit they are legally required to issue.

Quo warranto is Latin for “by what warrant.” It is a rarely used remedy that requires decision makers to show what legal right they have for holding a public office.

In judicial reviews, declaratory relief is a court judgement that clarifies the law. For example, a court could issue a declaratory order that defines the scope of a decision maker’s legal authority or clarifies how a certain part of a law should be interpreted. It is used to determine the rights of parties rather than the facts of the case and is generally issued to settle a legal controversy or question.

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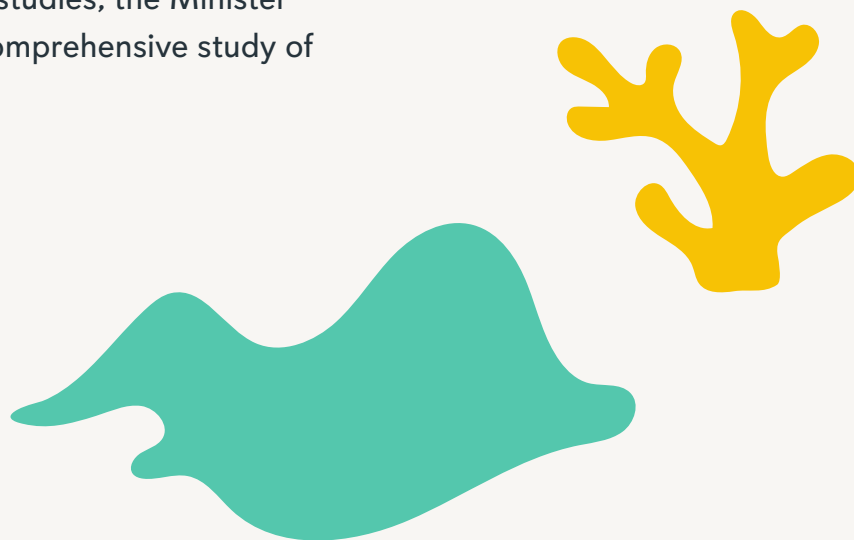
*In judicial reviews, declaratory relief is a court judgement that clarifies the law.*

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In [MiningWatch Canada v. Canada \(Fisheries and Oceans\)](#), the Supreme Court of Canada considered whether the Minister of Fisheries and Oceans erred in deciding that the environmental assessment of the Red Chris copper and gold mine in BC should proceed by way of a screening-level assessment rather than a comprehensive study. Under the *Canadian Environmental Assessment Act* (CEAA), which was in force until 2012, screening assessments were the least intensive form of environmental assessment and generally reserved for smaller projects with less significant effects. Projects that were described in regulations—including copper and gold mines and mills as large as the Red Chris mine—had to undergo a more rigorous comprehensive study. However, the Minister decided that the “project” for the purposes of the assessment was not the mine and mill, but rather only the tailings pond, and therefore that the project only needed a screening-level assessment.

The Supreme Court of Canada disagreed. It held that it was not up to the Minister to “scope out” components of the project to avoid a comprehensive study. Because the project proposed by Red Chris included the mine and mill, and because the regulations required metal mines and mills to undergo comprehensive studies, the Minister should have conducted a comprehensive study of the Red Chris mine.

However, the Court decided not to issue a remedy, only a declaration that the Minister had erred. It could have ordered that the project undergo a comprehensive study as required under CEAA but found that would prejudice the proponent—who was not responsible for the error—due to the additional costs and delay. The Court also considered the fact that the mine had undergone a provincial assessment, as well as claims by the applicant MiningWatch Canada that its interest in the case was limited to the legal precedent, not proprietary or pecuniary. As a result of these factors, and while the Court agreed that a comprehensive study should have occurred, the Court allowed the flawed assessment to stand.



## Key Steps and Considerations

The Federal Court of Canada [website](#) sets out the steps to follow when filing an application for judicial review and contains the necessary forms. The [Federal Courts Rules](#) sets out the rules governing judicial review.

A judicial review begins when a party or parties (applicants) apply to the court seeking leave for judicial review of an administrative decision. The respondent in a judicial review of a decision under the *Impact Assessment Act* will be the Attorney General of Canada.

Applications must be made within 30 days of when the decision was first communicated, although a Federal Court judge may extend that timeline.

Before the Federal Court of Canada hears the judicial review, it must first be satisfied that there is sufficient merit to the argument to allow the case to proceed to a hearing, based on the written evidence filed by the applicant. If leave is granted, a date is set for the Court to hear the judicial review. The Court decides whether the respondent's decision was unreasonable, incorrect, procedurally unfair, or made in error, and whether a remedy should be ordered.

Typically, courts will only consider the evidence that was before the decision maker and will not consider new evidence. Evidence in judicial review hearings is typically presented

in written form (for example, via affidavits sworn or affirmed before a lawyer, commissioner, or notary). The judge may make their decision at the conclusion of the hearing, or more commonly may reserve judgement and provide a written one at a later date.

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*Applications must be made within 30 days of when the decision was first communicated, although a Federal Court judge may extend that timeline.*

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Appeals of judicial reviews by the Federal Court may be sought at the Federal Court of Appeal and appeals of Federal Court of Appeal decisions may be sought at the Supreme Court of Canada.

# After the Assessment

Good impact assessment does not end with project approval or even construction but rather continues in the form of follow-up program and potential enforcement to ensure proponents comply with the conditions in the Minister's decision statement. This stage of an impact assessment is critical if we are to manage and respond to uncertainty about a project's impacts and ensure continued oversight of the project and its effects.

Despite the importance of the follow-up program to verify the accuracy of the impact assessment and the effectiveness of mitigation measures, what happens post-decision typically gets less attention than the other phases of the impact assessment process. For example, public engagement is most concentrated before a decision is made about whether a project's federal effects are in the public interest.

If a project is approved, the Minister issues a decision statement to the proponent that includes enforceable conditions with which the proponent must comply. The conditions include, among other things, the implementation of mitigation measures and a follow-up program. The Agency is responsible for verifying the proponent's compliance with conditions in the decision statement as it proceeds with the construction and operation of the project. An overview of the Agency's compliance and enforcement role is provided later in this document.





## Follow-up Programs

Follow-up programs are a well-recognized component of good impact assessment practice<sup>73</sup> that allow us to verify the accuracy of the predictions about a project's effects made during the impact assessment and the effectiveness of mitigation measures. Follow-up programs promote improvements to a project's mitigation measures and enable learning that supports improvement to future impact assessment processes.

### Follow-up programs allow us to:

- ▶ Monitor and record changes to the environment or other valued components based on identified factors
- ▶ Change and adapt monitoring programs and mitigation measures based on observations and re-evaluation of outcomes
- ▶ Enable learning to support improvements to impact assessment processes.

## Adaptive Management Plans

Adaptive management is a planned and systematic process to reduce uncertainty around predicted project effects or the effectiveness of mitigation measures, and to ensure timely and meaningful actions are taken to manage environmental, health, social, or economic effects. Where appropriate, an adaptive management plan supplements a follow-up program by providing an additional process to manage uncertainty and effects. The process involves testing hypotheses to actively learn about the system being managed and planning the various steps that will be taken in the event of adverse outcomes. The process of adaptive management is iterative and includes six steps: Assess, Design, Implement, Monitor, Evaluate, and Adjust (see Figure 1 on next page).

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73 Fitzpatrick, P., and B. Williams, *Building the system: Follow-up, monitoring & adaptive management* (2020), The University of Winnipeg; Winnipeg, MB, [online](#).

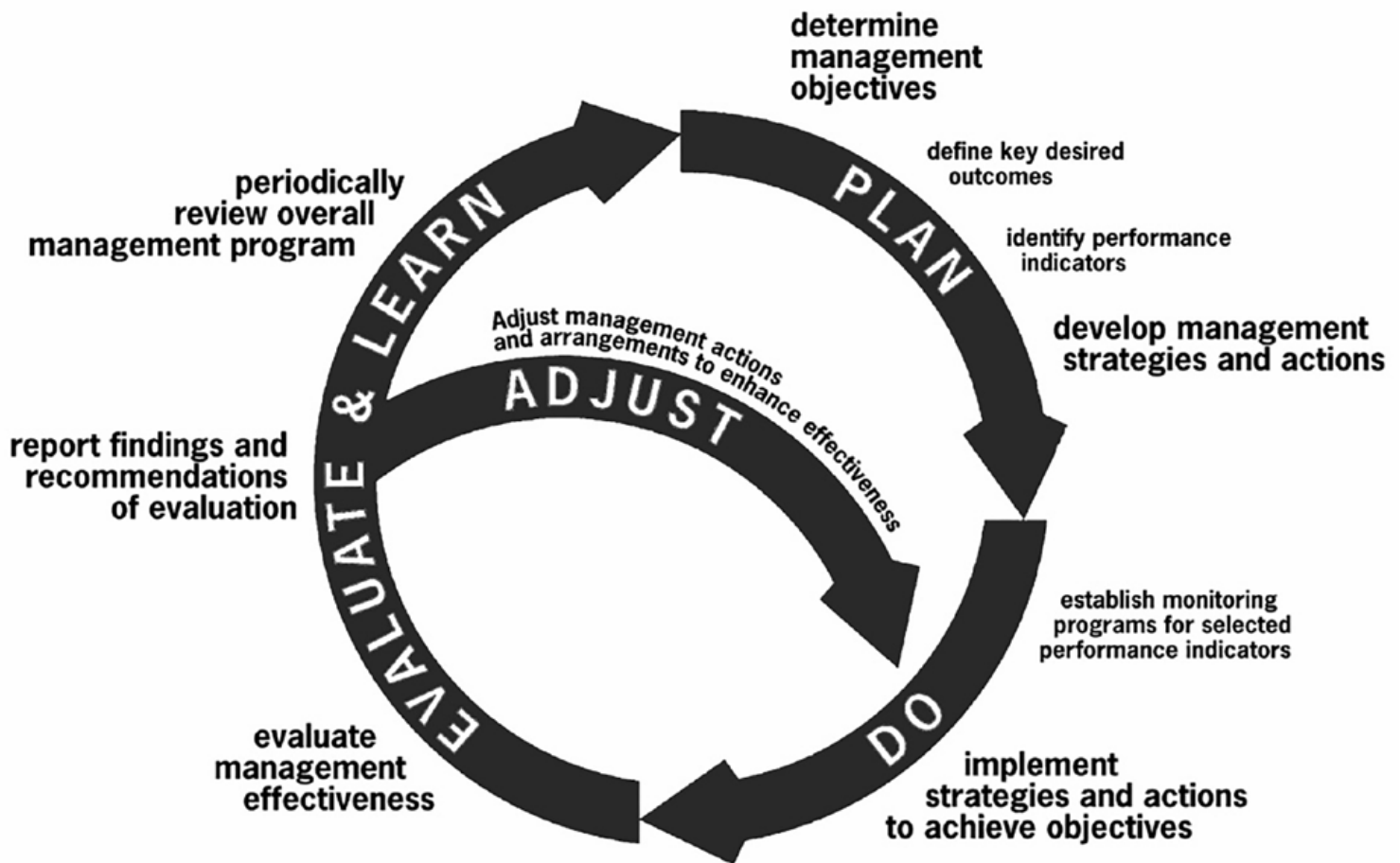


Figure 1. Adaptive management cycle<sup>74</sup>

The process of adaptive management is<sup>75</sup>:

- ▶ **Iterative**, with decisions being reviewed and reassessed on a regular basis
- ▶ **On-going**, with examination on-going so that findings are reflected in subsequent implementations
- ▶ **Reliant on systematic monitoring** including robust record keeping and information gathering
- ▶ **Based on feedback and learning**, with processes for incorporating outcomes including those where communities are involved both in the design and implementation of programming

74 Jones, G., "Is the management plan achieving its objectives?" in Worboys, G., De Lacy, T., & Lockwood, M. (eds), *Protected Area Management. Principles and Practices* (Second Edition, Oxford University Press, 2005) at pages 555–567.

75 Fitzpatrick, P., and B. Williams, *Building the system: Follow-up, monitoring & adaptive management* (2020), The University of Winnipeg: Winnipeg, MB, at page 3, [online](#).




## Basis for Follow-up Program within the Act

References to follow-up programs can be found throughout the *Impact Assessment Act* and within the assessment process. For instance, one of the purposes of the Act is “to encourage improvements to impact assessments through the use of follow-up programs,” with “follow-up program” being defined as “any program that verifies the accuracy of the impact assessment of a designated project and determines the effectiveness of any mitigation measures”.<sup>76</sup> The requirements of a follow-up program also must inform impact assessments conducted by the Agency or a review panel as part of the “section 22” factors.<sup>77</sup> Furthermore, any decision statement issued by the Minister to approve a project must include a requirement to implement a follow-up program and if appropriate, an adaptive management plan.<sup>78</sup>

Similar intentions are reflected in the statutory purposes of the Agency, which has a responsibility to monitor the quality of impact assessments.<sup>79</sup> In awarding participant funding, the

Agency is also obligated to provide funding to facilitate the participation of the public in the design or implementation of a follow-up program.<sup>80</sup> The Agency must also post to the Registry a description of a project’s follow-up program’s results and post any records relating to follow-up program’s design and implementation.<sup>81</sup>

 **Engagement Tip:** During the impact assessment process, you will likely become familiar with the [Registry](#) page for your project of interest.

Following a decision by the Minister or Governor in Council that a project’s federal effects are in the public interest, the proponent is obligated through the conditions in its decision statement to submit annual reports, plans, and implementation schedules to the Agency.

Information about the follow-up program, including its design and the implementation of any mitigation measures, are required components of a project’s file that must be posted and maintained on the Registry once the project gets underway.<sup>82</sup>

<sup>76</sup> *Impact Assessment Act*, sections 2 and 6(1)(n).

<sup>77</sup> *Impact Assessment Act*, section 22(1)(k).

<sup>78</sup> *Impact Assessment Act*, section 64(4)(b).

<sup>79</sup> *Impact Assessment Act*, section 155(g).

<sup>80</sup> *Impact Assessment Act*, section 75(1)(a)(b).

<sup>81</sup> *Impact Assessment Act*, sections 105(2)(e) and 106(3)(d).

<sup>82</sup> *Impact Assessment Act*, section 106(3)(d)(e).

# Agency-Established Monitoring Committee

In order to promote and monitor the quality of impact assessments, the Agency has the authority to establish monitoring committees for matters related to the implementation of follow-up programs and adaptive management plans.<sup>83</sup>

Monitoring committees are distinct from the requirements for proponent-led monitoring that might have been imposed as a condition of approval in the decision statement. They provide an additional tool for oversight and guidance—for instance, in coordinating a proponent’s follow-up program. The Agency determines whether a project requires an Agency-established monitoring committee on a project-by-project basis.

 **Engagement Tip:** Anyone who stands to be affected by an approved project (for instance, an Indigenous group, a member of the public, or a community group) can make a written request asking to the Agency to set up a monitoring committee.<sup>84</sup>

The Agency’s decision to establish a monitoring committee will be made public once the Minister has made their public interest decision.

A number of criteria will inform whether a monitoring committee is warranted, which you will want to set out in making your request.<sup>85</sup>

- ▷ The extent of effects on federal jurisdiction, (see **Chapter 12** for a further discussion of this phrase and its meaning), including those that are direct or incidental to the project
- ▷ Public concern about those effects, and a need to address project-related public concern
- ▷ Whether the committee is necessary as an accommodation measure for Indigenous rights holders
- ▷ Whether there are environmentally sensitive lands or waters, or important biodiversity, cultural, or heritage areas
- ▷ Whether the nature of the project requires specific types of monitoring, warranting more careful oversight (for example, are the proposed mitigation measures new or unproven)
- ▷ Whether there remains uncertainty about the severity of effects on valued components

<sup>83</sup> *Impact Assessment Act*, section 156(2)(e).

<sup>84</sup> Impact Assessment Agency of Canada, “Operational Guidance: Framework for determining whether a Monitoring Committee is warranted for a Designated Project under the Canadian Environmental Assessment Act 2012 and under the *Impact Assessment Act*,” [online](#).

<sup>85</sup> *Ibid.*

# Compliance and Enforcement

The Agency is responsible for promoting compliance and preventing non-compliance with the *Impact Assessment Act*, including any decision statements issued by the Minister. The Act prohibits the proponent of a designated project from doing any act or thing connected to carrying out a project unless the Agency determines that an impact assessment is not required or the proponent complies with conditions of a decision statement.

The Act does allow the proponent to carry out works in connection with a designated project provided that it is done for the purpose of providing information the Agency needs to prepare for a possible impact assessment or for the proponent to conduct an impact assessment. Enforcement officers at the Agency are designated under the *Impact Assessment Act*. While their powers are set out in the Act, their activities are guided by the [Compliance Promotion and Enforcement Policy for Designated Projects Subject to the \*Impact Assessment Act\*](#) (the Policy). The Policy defines compliance and enforcement as:

“Compliance” means the state of conformity with the *Impact Assessment Act*. The Agency’s role in ensuring compliance is through two types of activities: promotion and enforcement. Measures to promote compliance include offering education and training opportunities, doing outreach, providing information, and

consulting and engaging interest holders and proponents whose designated projects are subject to the Act.

“Enforcement” means the verification of compliance with the *Impact Assessment Act*, to compel compliance or respond to alleged or potential contraventions. Enforcement measures include inspections, investigations, and enforcement actions, such as notices of non-compliance, orders, injunctions, and prosecutions.


Enforcement officers verify compliance with and enforce the Act and any conditions included in decision statements. To do so, they carry out on-site and off-site inspections. When an alleged violation is found, an enforcement officer may issue an enforcement measure or open an investigation. Enforcement measures include notices of non-compliance, orders, or injunctions. In determining the appropriate enforcement response, an enforcement officer will consider the nature of the alleged violation, the effectiveness in achieving the desired result, and consistency in enforcement. More information can be found in the Policy.



# What to do if you suspect a violation of the Act?

The public has a role to play in both compliance and enforcement. In addition to their own inspections and information gathering, the Agency’s enforcement officers can carry

out inspections to verify potential violations based on information received from the public. If you suspect non-compliance with the *Impact Assessment Act*, you can email [enforcement-applicationdelaloi@iaac-aeic.gc.ca](mailto:enforcement-applicationdelaloi@iaac-aeic.gc.ca).

 **Engagement Tip:** If you suspect or wish to report a suspected violation of the *Impact Assessment Act*, you can email [iaac.compliance-conformite.aeic@canada.ca](mailto:iaac.compliance-conformite.aeic@canada.ca) or [enforcement-applicationdelaloi@iaac-aeic.gc.ca](mailto:enforcement-applicationdelaloi@iaac-aeic.gc.ca).

- ▷ When you submit the complaint, try to provide the following information:
- ▷ What is the project, proponent and location?
- ▷ What is the nature of the alleged contravention?
- ▷ What is the harm or potential harm that could result?
- ▷ Is this a first time occurrence or repeat?
- ▷ Do you request that your identity remain confidential?

In advance of making a complaint, making a record can be helpful. This does not need to be onerous and you can make a basic ‘pollution log’<sup>86</sup> that makes note of the date of the event, what you observed and any adverse effects.

Date	Start/End Time	Description of Event	Effects	Records
m/d/y	Timestamp	How did you come to witness the event?	What was the nature of the impact?	Photographs? Correspondence?

If an enforcement action must be taken against a proponent to respond to a contravention, the enforcement measure—such as the notice of non-compliance, order, court action, or fine—is posted on the [Agency’s website](#).

86 Adapted from Estrin, D., and Swaigen, J., *Environment on Trial: A Handbook of Ontario Environmental Law* (1st Edition 1974).

# Regional Assessments

In addition to project-level impact assessment, the *Impact Assessment Act* provides for two other types of assessment processes. These processes are focused on higher-level project impacts: regional assessments and strategic assessments. Regional assessments will be addressed in this chapter while strategic assessments will be discussed in [Chapter 17](#).


A regional assessment is a flexible tool that can be used to assess the effects of existing or future physical activities carried out in a defined study area, including activities occurring entirely or partially on federal lands or activities occurring on lands entirely outside of federal lands. Regional assessments are useful for assessing impacts that cannot be assessed on an individual project basis, such as cumulative effects, and can inform future impact assessments or other decision-making processes.

## What Does a Regional Assessment Look Like?

There is no mandatory trigger for a regional assessment that is analogous to the list in the *Physical Activities Regulations*. (as discussed in [Chapter 6](#)). They only take place at the discretion of the Minister of Environment and Climate Change. The *Impact Assessment Act* does not address why, how, or when a regional assessment is used and currently there is no specific public policy addressing regional assessments.

💡 **Did you know?** The Agency is creating a policy to guide regional assessments. Presently, there is a [draft Policy Framework for Regional Assessment under the \*Impact Assessment Act\*](#).

When a regional assessment is designated, the Minister can decide to have either the Agency or a committee conduct the regional assessment. The Minister *must* establish terms of reference for the Agency or committee.<sup>87</sup> Additionally, the Minister *may* enter into an agreement or arrangement with any jurisdiction (defined in the Act) for the joint establishment of a committee to conduct a regional assessment in cases where effects of existing or future activities do not occur exclusively on federal lands.<sup>88</sup>

 **Terminology Tip:** The “terms of reference” is an important document because it sets out the purpose and structure of a regional assessment, including its scope, objectives, factors or components to be assessed, geographic boundaries, and possible outputs. It may also dictate the features of the regional assessment process (for example, how public engagement and Indigenous engagement and consultation should be undertaken).

Where the Minister enters into an agreement with another jurisdiction to conduct a regional assessment, the agreement will dictate the specific features of that arrangement.

During a regional assessment, the committee or Agency will need to identify, consider, or assess various valued components and impacts in the study area. (for a discussion of valued components, see [Chapter 8](#)). This work may include:

- ▶ identifying previous information, studies, and resources related to the valued components,
- ▶ identifying gaps with knowledge or information,
- ▶ engaging and consulting with Indigenous groups,
- ▶ engaging with the public and other interested parties,
- ▶ establishing advisory groups,
- ▶ workshopping its findings and draft reports, or
- ▶ creating technical components like geographic information systems.

The Agency or committee may release an interim report during a regional assessment. The interim report would summarize the process to date, highlight early findings, make preliminary recommendations, or even present initial decisions made by the Agency or committee.

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<sup>87</sup> *Impact Assessment Act*, section 96.

<sup>88</sup> *Impact Assessment Act*, section 93(1).



**Example:** In the two regional assessments of offshore wind in Newfoundland and Labrador and Nova Scotia, the regional assessment committees were required to produce interim reports part-way through the process. The committees used that opportunity to communicate early scoping decisions they had made, to summarize public feedback to date, and to provide preliminary recommendations, some of which could be immediately acted upon.

After a regional assessment has been completed, the committee or Agency must produce a final report to the Minister.<sup>89</sup>

The final report is produced by the Agency or committee for the Minister. It sets out how Indigenous knowledge was considered and used,<sup>90</sup> and will typically contain a summary of the process and findings.

As a best practice, the report should identify input given by knowledge holders, subject-matter experts and the public and explain how it was used. While not a requirement of the *Impact Assessment Act*, the report should also demonstrate how the input was used, detail any analysis or assessment that the Agency or committee completed, and contain outcomes and recommendations that were identified through the process. These have been requirements in terms of reference for regional assessments.

After the Minister receives the final report, they may use the final report as they see fit. They may accept some or all of the findings and recommendations. The Minister may also decide to create a follow-up program for the regional assessment (as discussed in [Chapter 15](#)).

**💡 Did you know?** The Minister can use a regional assessment to create regulations

that exempt certain classes of activities from requiring future project-level impact assessments. Currently, two kinds of classes can be exempted: offshore exploratory oil and gas projects or offshore wind projects.<sup>91</sup> In order for these two kinds of activities to qualify for the exemption, they must meet the conditions set out in the specific regulation. The regulation can only apply to activities inside the region that was assessed through the regional assessment.

Following the first regional assessment conducted under the *Impact Assessment Act*, the Minister created the [Regulations Respecting Excluded Physical Activities \(Newfoundland and Labrador Offshore Exploratory Wells\)](#), which exempted all offshore exploratory oil and gas drilling from requiring project-level impact assessments within the regional assessment study area.

<sup>89</sup> *Impact Assessment Act*, section 102(1).

<sup>90</sup> *Impact Assessment Act*, section 102(2).

<sup>91</sup> *Impact Assessment Act*, sections 112(1)(a.2) and 112.1, and *Physical Activities Regulations*, section 2(2).

Generally, a regional assessment process can look similar to a project-level impact assessment process (see Figure 2).



**Figure 2: Overview of how a regional assessment process could look.**

You can find more information about the rules that govern regional assessments at sections 92 to 94 and sections 96 to 103 of the *Impact Assessment Act*, and an overview of regional assessments in the Agency’s [fact sheet on regional assessments](#).

# How Can You Request a Regional Assessment?

Anyone (including an individual, group or organization) can request a regional assessment.<sup>92</sup> A request to designate a regional assessment should be in writing and sent to the Minister. The Agency should be sent a copy of the designation request because it will provide advice to the Minister about the request.

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*Anyone can request a regional assessment.*

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When the Agency reviews a designation request for a regional assessment and prepares its advice to the Minister, it may seek out more information from Indigenous peoples, the public or the original requester.

When reviewing the request, the Agency considers factors such as:<sup>93</sup>

- ▶ How could the regional assessment inform future impact assessment decisions?
- ▶ Are potential effects in federal jurisdiction in the region, including cumulative effects?

- ▶ Are there opportunities to collaborate with other jurisdictions in the region?
- ▶ Are there potential effects, including cumulative effects, on the rights of Indigenous people in the region?
- ▶ Has there been considerable public interest related to development or cumulative effects in the region?
- ▶ Is there an existing or planned initiative that addresses the issues raised?
- ▶ Does the Agency might have information from other areas of work such as project-level impact assessments?
- ▶ Are there resources available to conduct the regional assessment?

If you want to request a regional assessment, consider reviewing the Agency's [Operational Guide: Requesting a Regional or Strategic Assessment under the \*Impact Assessment Act\*](#).

The Minister must respond to any request for a regional assessment designation within 90 days, with the decision posted onto the Registry.

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<sup>92</sup> *Impact Assessment Act*, section 97(1).

<sup>93</sup> Impact Assessment Agency of Canada, "Operational Guide: Requesting a Regional or Strategic Assessment under the *Impact Assessment Act*", [online](#).

**Engagement Tip:** There can be more than one regional assessment request for the same region. For example, three different groups requested a regional assessment in the Ring of Fire area in northern Ontario. The Minister made the designation.

Other individuals or organizations can assist your designation request by sending letters of support to the Minister and Agency. Such support may demonstrate that there is considerable public interest related to development or cumulative effects in the region, which are factors that the Agency considers as part of its recommendation to the Minister.

The *Impact Assessment Act* requires that the public be provided with an opportunity to participate meaningfully during a regional assessment.<sup>94</sup> Since the terms of reference for each regional assessment will describe these participation opportunities, they may vary between regional assessments.

## Providing input during the early planning of a regional assessment

The Agency may provide opportunities for the public to engage during the early planning of a regional assessment. This could be an opportunity to show support for, or opposition to, the designation of a regional assessment, or to provide early input into how a regional assessment might look.

In 2020, the Mohawk Council of Kahnawà:ke requested a regional assessment of the St. Lawrence River area.<sup>95</sup> It had three supporting letters, including from the Grand Council of the Wakan-Aki Nation and from the Montreal Port Authority. In response, the Minister directed the Agency to undertake further analysis and to engage with other parties to explore the option of designating the regional assessment, including to discuss the nature, scope, objectives, and outcomes of the possible regional assessment.<sup>96</sup>

<sup>94</sup> *Impact Assessment Act*, section 99.

<sup>95</sup> Mohawk Council of Kahnawà:ke, “Letter to Minister of Environment and Climate Change Canada” (2020), [online](#).

<sup>96</sup> Honourable Jonathan Wilkinson, “Minister’s Response to Mohawk Council of Kahnawà:ke” (2020), [online](#).

## Providing comments on the draft terms of reference and agreement

When the draft terms of reference and a draft agreement are created, the Agency may provide a public comment period. This is likely the final opportunity to provide input into how the regional assessment will be carried out. You can also use this opportunity to nominate or indicate strong candidates that the Agency should consider recommending to the Minister for a position on a regional assessment committee.

## Participating in advisory groups:

All the regional assessments conducted or proposed to date have had or will have one or more advisory groups to assist the Agency or committee with its work. These groups provide advice and input about select topics, which may be identified in the regional assessment terms of reference. The Agency or committee will dictate the specific work that each advisory group does.

There are no formal requirements to apply to be part of an advisory group, although you will typically need to indicate the knowledge, technical information, or scientific expertise that you will bring.

For the two regional assessments of offshore wind in Newfoundland and Labrador and Nova Scotia, the final terms of reference required the establishment of three advisory groups: Indigenous Knowledge, Scientific Information and Community Knowledge, and Fisheries and Other Ocean Uses. In that process, the Committee was required to make a public call for interest to identify potential candidates for the advisory groups. To help facilitate that process, the Agency launched a preliminary call for interest. A call for interest in an advisory group will be posted on the Registry.

## Making submissions during the regional assessment process:


The Agency or committee may create one or more plans that will detail possible participation opportunities. These opportunities may include having a meeting with the Agency or committee, participating in workshops, providing written comments on draft materials, submitting resources as part of a literature review, or responding to a survey. The types and amounts of public participation activities will vary between each regional assessment.

During the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador, the regional assessment committee met with groups and individuals and held workshops, during which participants were able to provide oral submissions. Additionally, the committee received written submissions, reports, and other materials throughout the process.

## Providing comments on the draft regional assessment report:

Once the Agency or committee has completed its substantive work, it will produce a draft report which will be available to the public for comments.

Regardless of how you want to participate, you can request participant funding from the Agency. The Agency must make participant funding available during every regional assessment.<sup>97</sup> The Agency will normally post a participant funding application onto the Registry when participant funding is available for a regional assessment process (for more information on participant funding and tips for applying, see [Chapter 12](#)).

 **Engagement Tip:** You do not have to wait for one of the “formal” comment periods described above. You can provide commentary or input at *any* time during the planning of a regional assessment or during a regional assessment process after it has begun.

Any input or comments that you want to make should go either to the Agency, if the regional assessment has not begun, or to the Agency or committee (whichever is conducting the regional assessment) after the process has begun. All input and comments that the Agency or committee uses when conducting the regional assessment must be posted on the Registry.<sup>98</sup>

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<sup>97</sup> *Impact Assessment Act*, section 75(1)(c).

<sup>98</sup> *Impact Assessment Act*, section 98.



# Strategic Assessments

Unlike project-level impact assessment, which focuses on individual projects, strategic assessment is a tool for assessing government policies, plans, and programs. To allow for transparent and participatory strategic assessments, as well as to help address broader policy matters, section 95 of the *Impact Assessment Act* authorizes the Minister of Environment and Climate Change to initiate strategic assessments of:

- a) any proposed or existing Government of Canada policy, plan, or program relevant to conducting impact assessments; and
- b) any issue that is relevant for impact assessments of designated projects or classes of designated projects.

Any person may request a strategic assessment and the Minister must respond to requests with reasons.

In addition to strategic assessments under the Act, the Government of Canada has a [Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals](#) that requires strategic environmental assessments of all policies, plans and programs that may result in important environmental effects and that require approval by a minister or Cabinet. However, those strategic assessments are conducted internally, with no public participation or disclosure of the results. Periodic audits by the Commissioner of the Environment and Sustainable Development are the main opportunity for members of the public to understand to what extent strategic assessments are being applied. Strategic assessments carried out under the Act are more transparent and participatory.

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*Any person may request a strategic assessment.*

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The Act does not prescribe objectives or outcomes of strategic assessments, although it does state that project-level assessments must consider any strategic assessments conducted under the Act.

However, the Agency has published a [Fact Sheet](#) and a [Policy Framework for Strategic Assessment under the \*Impact Assessment Act\*](#), which outline what they deem to be strategic assessments, what these types of assessments can do, and how they will be conducted. The Fact Sheet states that a strategic assessment will consider “options for addressing issues through proposed actions, such as “ways to develop, refine or implement relevant policies, plans or programs.”

## When Might a Strategic Assessment Be Helpful?

Under the Act, strategic assessments can either be conducted for proposed or existing federal policies, plans or programs, or of any issues. In any case, the policy, plan, program, or issue must be relevant to project-level assessment. For example, if the government were considering a policy or program to support or encourage a particular type of project designated for assessment in the [Physical Activities Regulations](#), the Minister could order a strategic assessment of that policy or program to help inform project-level impact assessments.

In 2022, the federal government released its [Canadian Critical Minerals Strategy](#), which sets out Canada’s proposed approach to critical mineral development, including mining. A strategic assessment of critical minerals mines could identify things such as what are likely future critical minerals needs within Canada and globally, what are possible scenarios in which Canadian critical minerals mines help meet those needs, what are the likely impacts and benefits of those scenarios, and in which regions and at what pace and scale could critical mineral mining be pursued to maximize benefits (such as jobs to Canadians) while avoiding and minimizing impacts?

Similarly, the Minister could order a strategic assessment of issues that commonly occur in a certain area or among projects of a certain type and which have been difficult to address on a project-by-project basis. For example, the Minister could order a strategic assessment of cumulative aquatic and fisheries effects within a watershed and how to better address cumulative effects on fisheries in impact assessments of designated projects.


The [Strategic Assessment of Climate Change \(SACC\)](#) was intended to provide guidance on how to better assess greenhouse gas emissions in impact assessment. While it was conducted before the present legislation came into force, it has been incorporated as a strategic assessment under the Act. However, the SACC process was widely criticized, particularly for its lack of meaningful public participation or Indigenous engagement. It also failed to identify or evaluate different approaches to assessing climate in project assessment, which could have recommended the best approach. [This blog](#) outlines what the SACC could have done better.

## What Does a Good Strategic Assessment Look Like?

The Act does not prescribe a process to be followed for strategic assessments. It simply states that the Minister may appoint a committee or ask the Agency to conduct the assessment and establish terms of reference. The committee or Agency must take into account scientific evidence and Indigenous knowledge, make information publicly available, and ensure that the public has an opportunity to participate meaningfully in the assessment.

The Agency's [Fact Sheet](#) and [Policy Framework for Strategic Assessment under the Impact Assessment Act](#) describe the basic steps intended for strategic assessments from initiation to final report:

1. The Minister decides to conduct a strategic assessment, based on a request from the public, a recommendation from the Agency, or the Minister's view that it is appropriate to conduct a strategic assessment. In any case, it is likely that the Minister would seek the advice of the Agency on a decision as to whether to initiate a strategic assessment. The Policy Framework states that advice from the Agency will consider whether:
  - the policy, plan, program or issue is relevant to conducting impact assessments;
  - the strategic assessment could inform or improve the efficiency and effectiveness of impact assessments under the Act;
  - the policy, plan, program or issue is related to an area of federal jurisdiction;
  - the strategic assessment could help address an issue requiring strategic-level direction, action or decision making;
  - the strategic assessment could help address adverse effects, cumulative impacts within federal jurisdiction, or impacts to the rights of Indigenous peoples;

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- there is public interest related to the policy, plan, program or issue; and
  - an existing or planned initiative would achieve the desired outcomes.
2. The Agency engages the public, Indigenous peoples, and other jurisdictions on how to plan the strategic assessment and identifies further opportunities and approaches for participation and engagement. When planning a strategic assessment, the Agency may seek input on:
    - the assessment's scope;
    - assessment objectives and desired outcomes; and
    - how to conduct the assessment, including governance (including whether to appoint a committee, and whether and how to cooperate with other jurisdictions or federal departments) and how participation should occur.
  3. Draft terms of reference are issued for public comment.
  4. The Minister issues the final terms of reference and either establishes a committee or authorizes the Agency to conduct the strategic assessment.
  5. The committee or the Agency conducts the strategic assessment according to the terms of reference. Funding will be available to support Indigenous engagement and public participation in strategic assessments, which the Policy Framework states will occur at “key stages,” although those key stages are not identified. Relevant information will be posted to the Registry.
  6. The committee or the Agency issues a draft strategic assessment report for public comment, though it is unclear how long this comment period will be.
  7. The committee or the Agency submits a final strategic assessment report to the Minister.

## Tips for requesting a strategic assessment

1. Consult the Agency's [Operational Guide: Requesting a Regional or Strategic Assessment under the \*Impact Assessment Act\*](#).
2. Requests should be sent to the Minister at [ec.minister-ministre.ec@canada.ca](mailto:ec.minister-ministre.ec@canada.ca), with a copy to the Agency at [information@iaac-aeic.gc.ca](mailto:information@iaac-aeic.gc.ca).
3. Describe how the policy, plan, program, or issue in question:
  - i) Relates to impact assessments of designated projects or classes of projects; and
  - ii) Relates to areas of federal jurisdiction, such as fisheries, aquatic species, migratory birds, federal lands, inter-jurisdictional effects, environmental effects affecting Indigenous peoples, or changes to the health, social, or economic conditions of Indigenous peoples.
4. Be sure to explain the value of a strategic assessment to impact assessment by making clear links between the policy, plan, program, or issue in question and impact assessment. In addition, identify the problem or gaps that the strategic assessment would fix or fill and describe why a strategic assessment would be the best means of fixing the problem or filling the gap.
5. It may help to seek a meeting with the Agency, any relevant federal departments, provincial governments, and Indigenous nations and organizations prior to submitting a request to help you understand the issues, gather support, and strengthen the request.

## TIPS FOR ENSURING A SUCCESSFUL STRATEGIC ASSESSMENT

1. During the planning phase, consider what objectives the strategic assessment should have and what would be the most useful outcomes. Include these in your submission. Clearly defined objectives help focus the assessment and enable more meaningful participation.
2. During the planning phase, ask the Minister and Agency to establish advisory groups comprised of Indigenous knowledge holders and community members, the public, civil society groups, and independent experts. Advisory groups have been used in other assessments, such as the regional assessments of offshore wind development in [Nova Scotia](#) and [Newfoundland and Labrador](#). Advisory groups provide an opportunity for deeper and more meaningful dialogue between assessment authorities, government and non-government experts, and community members.
3. To date, regional assessment timelines have been short (about 18 months), which makes meaningful dialogue and rigorous information gathering difficult. This often results in condensed comment periods that may occur in inconvenient times, such as over holidays. Consider advocating for a timeline of at least 24–30 months, which would allow greater flexibility and more meaningful public participation and Indigenous engagement.
4. Consider recommending committee members if you know of any individuals with relevant knowledge and expertise. Knowledge and expertise can be related to the subject matter or to process, such as impact assessment expertise, experience with designing and implementing deliberative dialogues, or Indigenous knowledge.
5. During the assessment, advocate for in-person dialogue sessions and comment periods of at least two months. Watch for comment periods that fall over holidays and ask for extensions where necessary.
6. Consider retaining independent experts (see [Chapter 10](#)) to help you identify key issues, prepare submissions, and review other evidence. Funding from the Agency should be able to help pay for subject-matter expert fees.





# Section 82 Assessments for Projects on Federal Lands

Project-level impact assessments are perhaps the best-known type of assessment, but the most common type of projects subject to review under the *Impact Assessment Act* are ones that occur on federal lands. As of December 2024, 1,096 assessments for ‘projects on federal lands’ were underway, in comparison to the 52 project-level assessments in progress.<sup>99</sup> Despite their numbers, environmental assessments for projects on federal land are frequently critiqued for lacking transparency and meaningfulness.<sup>100</sup>

## Process for Assessing ‘Projects on Federal Lands’

### What is reviewed?

Section 82 of the Act requires an environmental assessment before a project on federal lands can proceed. The assessment must determine whether the carrying out of the project is likely to cause significant adverse environmental effects.<sup>101</sup> While the term *significant adverse environmental effects* is not defined in the Act, five factors must be considered before the determination can be made:

<sup>99</sup> Using the Impact Assessment Agency’s [Registry](#), you can browse projects by type (whether or not it is on federal lands) and by status (where is it in the process).

<sup>100</sup> See the Expert Panel Report [Building Common Ground: A New Vision for Impact Assessment in Canada](#) at page 57; Kebaowek First Nation [Submission on Review of the Canadian \*Impact Assessment Act\* Regulations Designating Physical Activities](#) (2024) at Recommendation 5.

<sup>101</sup> An analogous provision existed under section 67 of predecessor environmental assessment legislation, the *Canadian Environmental Assessment Act, 2012*.

1. Any adverse impact that the project may have on Indigenous rights;
2. Indigenous knowledge about the project;
3. Community knowledge about the project;
4. Comments received from the public;<sup>102</sup> and
5. Mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.<sup>103</sup>

The decision maker (referred to in the *Impact Assessment Act* as the ‘authority’) must do two things prior to making a decision:

1. Post a notice on the Registry that it intends to make a determination; and
2. Hold a minimum 30-day assessment period within which public comments are invited.<sup>104</sup>

## Who decides?

Another attribute that sets environmental assessments of projects on federal lands apart from other project assessments is the authority vested with making the decision. In addition to the federal authorities that can decide project assessments (see [Chapter 12](#) for more details on decision-making), for environmental assessments of projects on federal lands there can be:

- ▶ **Multiple authorities:** In instances where more than one authority must make an assessment for a project on federal lands (for example, Parks Canada in addition to the Canada Energy Regulator), authorities are encouraged to work together and create one posting on the Registry, providing the public with a single window approach.
- ▶ **Authorities who are also the project proponent:** The Act allows those who have overall control and responsibility for the project to be the assessment’s decider.<sup>105</sup>

<sup>102</sup> *Impact Assessment Act*, section 86(1).

<sup>103</sup> *Impact Assessment Act*, section 84(1).

<sup>104</sup> *Impact Assessment Act*, section 86.

<sup>105</sup> Impact Assessment Agency of Canada, *Projects on federal lands and outside Canada: Guidance document on Sections 81 to 91 of the Impact Assessment Act*, [online](#).

## PARTICIPANT FUNDING

Unlike project impact assessments, it is unlikely that there will be participant funding to facilitate participation in the minimum 30-day review of projects on federal lands.

In some instances, the assessment of the project occurring on federal lands may be reviewed as part of a broader licensing or assessment matter. In those instances, you could inquire with the decisionmaker to see if participant funding will be made available.

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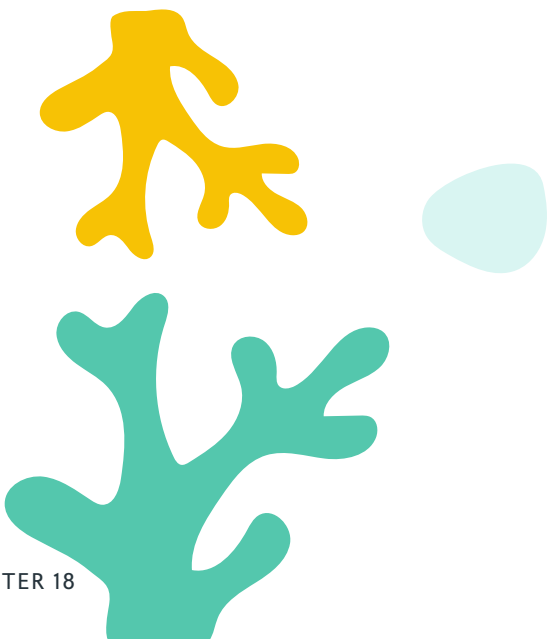
*Section 82 of the Act requires an environmental assessment before a project on federal lands can proceed.*

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## What Does it Look Like in Practice?

Other than the required minimum 30-day assessment period and the five factors to assess, the process accompanying projects on federal lands is absent from the Act. As such, the process in determining whether a project is likely to cause significant adverse environmental effects is left to the discretion of the decision maker, although the Agency has published guidance to help authorities in this process (see [Chapter 7](#)).

In many instances, the authority deciding assessments for projects on federal lands does not publish how they considered the above five factors, nor upon what information they based their decision. Frequently, the information that is publicly available on the Registry does not represent the extent of information in the assessment file. This impedes the availability of publicly available information and the transparency of decision making for assessments of projects on federal lands.



## Examples of Publicly Available Information of Assessments of Projects on Federal Lands

Project Summary	Outcome
Nuclear proponent Canadian Nuclear Laboratories (CNL) sought approval from Atomic Energy of Canada (AECL) to store low level radioactive wastes at their waste management facility, located on approximately 4.2 ha of previously disturbed land in Chalk River, Ontario.	<ul style="list-style-type: none"> <li>▶ No public notice for comment was posted</li> <li>▶ No supporting documents was posted to the <a href="#">Registry</a> (including intent to make a determination)</li> <li>▶ <a href="#">The Decision</a> was made by proponent, CNL, on behalf of the federal authority, AECL</li> <li>▶ The Decision was one paragraph in length, with no detailed reasons provided in support of finding ‘no significant adverse environmental effects’</li> <li>▶ No details were provided regarding mitigation measures which would be used to manage ‘potential environmental effects’</li> </ul>
A pipeline company applied to the Canada Energy Regulator (CER) to construct and operate a pipeline near Fernie, British Columbia. A segment of the pipeline would cross federal lands.	<ul style="list-style-type: none"> <li>▶ The CER posted a <a href="#">description</a> of the project and notice inviting <a href="#">public comments</a></li> <li>▶ While the Commission’s <a href="#">decision</a> found there was not likely to be significant adverse effects to federal land, they did note the potential for impacts to valued components, including soil, water, fish, wildlife, and air quality</li> <li>▶ Conditions were imposed as part of the application to minimise the potential environmental effects</li> </ul>

