

Bill C-69: Hang Out a Shingle for HIA (R)evolution

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Non-renewable resource developments impact health through many pathways. Extractive industries can shape sociocultural environmental exposures, modify the quality and quantity of available ecosystem services, and shift the logic and reasoning of behaviour across the life course. As such, health has been part of the framing language justifying impact assessments since the *National Environmental Policy Act of 1969* [NEPA], which called for developments to “stimulate the health and welfare of man” (NEPA, Sec. 2 42 USC § 4321). Similarly, both the *Canadian Environmental Assessment Act 2012* and its predecessor the *Canadian Environmental Assessment Act 1992* set out as their purpose to promote decision-making that “protects the environment and human health,” by taking into account environmental effects of projects, including impacts on “health and socio-economic conditions” (S.C. 2012, c. 19 s. 52, s. 4(2), 5(1)(c)(i); S.C. 1992, c. 37, s. 4(1), 2(1)(b)(i)). While many impacts may be positive, providing opportunities like employment and income, systematic review research demonstrates extractive industries can *increase* health inequities by exacerbating poverty (Gamou et al., 2015). Roelofs (2016) explains this by arguing that, more often than not, “existing resources that support health—access to basic nutrition, economic livelihood, clean water, and traditional medicines—are undermined by the extraction of oil [and other non-renewable resources]” (p. 433).

Recently, the Canadian government set out to reform the federal environmental assessment (EA) system and “restore the public’s trust and confidence” (Expert Panel, 2017, p. 1). Over the course of national consultations from August 15, 2016 to March 31, 2017, a slate of public health advocates¹ developed a written submission urging the Minister of Environment and Climate Change to “[i]ntegrate Health Impact Assessment as a core component of federal EA processes” (“Health Organizations and Health Professionals Submission,” 2016, p. 8). According to Lock (2000), health impact assessment (HIA) is “a structured method for assessing and improving the *health* consequences of projects and policies in the non-health sector” (p. 1395). The proposed legislation emerging from the national consultations, as passed by the House of Commons to go to the Senate, was Bill C-69 - *An Act to Enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* (or the *Impact Assessment Act*) (Bill C-69, 2018). This proposed legislation received numerous amendments, was given Royal Assent, and passed into law on June 21, 2019. The following analysis relates to the text of Bill C-69 prior to amendments made by the Senate received on June 6, 2019, reflecting materials available on May 2, 2019. Further analysis of the text of the finalized legislation will be forthcoming, as part of a larger research

¹ Signatories on the submission spanned over 30 organizations and 150 individuals, including the Canadian Public Health Association, Public Health Physicians of Canada, and the Health Caucus of the Canadian Environmental Network.

project – Sustainability and Prevention through Health Impact Assessment (SaPHIA), funded by the Canadian Institutes for Health Research.

Bill C-69 stated that impact assessments must “take into account ... (a) the changes to the environment or to health, social, or economic conditions and the positive or negative consequences of these changes” (s 22(1)(a)) and “ensure that the public is provided with an opportunity to participate meaningfully” (s 27). The purpose of the proposed *Impact Assessment Act* aimed:

(a) To foster sustainability, [and] (b) to protect the components of the environment, and the health, social and economic conditions ... from adverse effects caused by a designated project ... (d) [doing so] in a careful and precautionary manner (s 6(1)(a)(b)(d)).

Despite these stated intentions, Bill C-69 does not explain how to evaluate potential health impacts and trade-offs, though several measures *do* present some indirect opportunities for HIA. In many ways, these provisions represent a significant departure from the *Canadian Environmental Assessment Act 2012*, with the current federal government aiming for “a better way forward” (Expert Panel, 2017, p. 1).

According to the Lancet-University of Oslo Commission on Global Governance for Health, the socio-economic and geo-political root causes of health inequities can be traced to five shortcomings in the regulation of transnational actors like extractive industries. These shortcomings include “democratic deficit[,] weak accountability mechanisms[,] institutional stickiness[,] inadequate policy space for health[, and] missing or nascent institutions” (Ottersen et al., 2014, p. 631). To chart a better way forward, the *Impact Assessment Act* must address these institutional dysfunctions. As such, removal of the “interested party” requirement (S.C. 2012 c. 19 s. 52, s 2) will address *democratic deficit*; introduction of a new “planning phase” (Bill C-69, 2018, s 10-15) will address *weak accountability mechanisms*; the “public interest,” determination (Bill C-69, 2018, s 63) will address *institutional stickiness*; “expert committees (s 157(1)) will address *inadequate policy space for health*; and “regional impact assessment” (s 92-94) will address *missing or nascent institutions*.

Democratic deficit refers to insufficient participation by under-represented stakeholders like “civil society, health experts, and marginalised groups” (Ottersen et al., 2014, p. 631). The *Impact Assessment Act* empowers authorities to “establish processes ... to engage with the public” (Bill C-29, 2018, s 74) and to “establish a participant funding program” (s 75). These measures reverse the so-called *interested party requirement* controversially introduced by the Conservative government in the *Canadian Environmental Assessment Act 2012* (Gibson, 2012), which set out that authorities need only provide opportunities to participate in public hearings if “the person is directly affected by the carrying out of the designated project” (S.C. 2012 c. 19 s. 52, s 2).

Weak accountability mechanisms refers to a lack of transparency and inability to enforce regulation of powerful actors (Ottersen et al., 2014). This shortcoming might be partially addressed through the *Impact Assessment Act* by requiring a new 180-day planning phase for authorities to consult with stakeholders and summarizing these consultations for proponents (Bill C-69, 2018, s 12, s 14(1)). Proponents will then be required to prepare information on how they plan to address each issue raised (s 15(1)). Under the previous legislation, proponents were

required to submit full descriptions of their projects prior to screening (S.C. 2012 c. 19 s. 52, s 8(1)), requiring an up-front investment that precluded meaningful incorporation of environmental, health, social, economic, or other concerns early on (Gibson, 2012). As Doelle (2018) points out, the provisions for scoping have been expanded in section 22 of the *Impact Assessment Act* compared to section 19 of the *Canadian Environmental Assessment Act, 2012* to include such factors as Indigenous traditional knowledge and culture, and sex, gender, and other identity factors (Bill C-69, 2018, s 22(1)(a-t)). Transparency and accountability will be further enhanced by requirements to post information on a publicly available internet website about the scope of impact assessments, the scientific information used to evaluate projects, the decision statements issued to proponents, and the results of monitoring and follow-up (Bill C-29, 2018, s 65, 105(1-2)).

Institutional stickiness refers to regulatory processes maintaining entrenched power relations, inflexibility, and resistance to reform (Ottersen et al., 2014). Provisions in Bill C-69 for determining the “public interest” (Bill C-69, 2018, s 63) might address this shortcoming in a markedly different way than simply avoiding “significant adverse environmental effects” (S.C. 2012 c. 19 s. 52, s 52). The *Canadian Environmental Assessment Act 2012* required decision-makers to determine if there were significant adverse environmental effects “whether those effects are justified in the circumstances” (S.C. 2012 c. 19 s. 52, s 52(2)). In contrast, the *Impact Assessment Act* sets out five factors, namely, whether a proposal (i) poses adverse effects under federal jurisdiction, (ii) poses adverse effects that hinder Canada’s ability to meet its environmental and/or climate change obligations, (iii) poses adverse effect that impinge on Indigenous groups or the rights of Indigenous peoples, (iv) implements mitigation measures as deemed appropriate, and the extent to which a proposal (v) contributes to sustainability (Bill C-69, s 63(a-e)). Importantly for the inclusion of HIA, the definition of sustainability set out in the legislation is “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations” (s 2).

Inadequate policy space for health refers to a lack of intersectoral collaboration between industries and public health authorities (Ottersen et al., 2014). This shortcoming might be addressed by new procedures for the establishment of “expert committees” to consider “scientific, environmental, health, social or economic issues” for impact assessments and regional impact assessments in the *Impact Assessment Act* (Bill C-69, 2018, s 157(1)).

Missing or nascent institutions refers to a lack of intersectoral instruments and institutions for promoting population health (Ottersen et al., 2014), which might be addressed through provisions in Bill C-69 enabling new procedures for managing cumulative effects in regions, since regions, and not projects, are where the interested and affected populations live. Regional assessment would enable authorities to strike committees to consider long term objectives and the cumulative impacts of multiple projects (Bill C-69, 2018, s 92-94), with health authorities like Health Canada and the Public Health Agency of Canada, and/or provincial, regional, Indigenous, or other organizations participating. This function was not addressed by the *Canadian Environmental Assessment Act 2012* (Gibson, 2012).

In conclusion, the research literature shows that addressing *democratic deficit* by involving stakeholders in environmentally-based decision-making can improve the overall quality of decisions, provide a social license, and reduce conflict over the long term (Beierle, 2002). The creation of a new planning phase in the *Impact Assessment Act* and additional measures to

address *weak accountability mechanisms* provides a means of ensuring stakeholder concerns are dealt with early in the process by responsible proponents, as one of a number of mechanisms to help ensure “transparency, accountability, and having a wide scope [as] crucial to achieving the promise of ‘tangible results’ from large projects” through HIAs (Vohra et al., 2010, p. 1464). By laying out Indigenous rights, climate change obligations, and sustainability as part of the public interest determination, Bill C-69 holds the potential to address *institutional stickiness* as a determinant of health inequity by removing the onus of project-based decision-making, and “seek[ing] synergistic opportunities to meet the proponent’s goals while also delivering broader benefits to the community and the natural environment” (Weaver et al., 2008, p. 93). Addressing *inadequate policy space for health* through inclusion of health professionals as part of expert committees could support dedicated resources for population health, such that:

[t]he expertise and local knowledge of health impact assessment practitioners could focus on engaging the communities that may be affected, characterizing the local situation, and applying the evidence (Mindell & Joffe, 2003, p. 109).

Through the development of a forum for regional impact assessment to address *missing or nascent institutions*, the *Impact Assessment Act* could further incorporate broader geographical determinants of socio-ecological health. Extractive industry projects successfully approved in such a context provide opportunities for “enhanced proponent reputation or environmental profile” – in addition to other benefits, which are systematically underreported in the research literature (Morrison-Saunders et al., 2015, p. 111).

The proposed *Impact Assessment Act* provides a number of opportunities for expanding consideration of health and conducting HIA to combat health inequity under a new federal impact assessment framework. Despite the protracted controversy surrounding Bill C-69, evidence to support these provisions should encourage HIA advocates and industry proponents alike. There are multiple factors and many moving parts. In addition to enabling legislation, realizing opportunities in the *Impact Assessment Act* to ameliorate the root causes of health inequities through impact assessments will require the support of the private sector, communities, governments, scientists, and others to *hang out a shingle* and work to support HIA *(r)evolution*.

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