

Inter-agency collaboration in Canada: implementing a new IA process¹

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Abstract

The Government of Canada recently conducted a review of the environmental and regulatory system to develop new processes that are robust, holistic, incorporate science, protect the environment, respect the rights of Indigenous peoples, and support economic growth. As a result of this review, Canada introduced a new federal impact assessment (IA) process, resulting in changes to the environmental reviews of proposed major energy projects (e.g., oil and gas, nuclear). The Canada Energy Regulator (CER), Canadian Nuclear Safety Commission (CNSC) and Impact Assessment Agency of Canada (IAAC) undertook a proactive approach in implementing the legislative changes, while drawing on each organization's expertise in conducting IA. Considerations included collaboration across a wide geographic area with various stakeholders, new IA factors, involvement of new federal organizations and governance changes. This paper will describe our approach to implementing the new regulatory regime and explain our learnings and challenges in the early days of implementation of the new legislation.

Background

The Government of Canada undertook a review of its environmental and regulatory processes and introduced new legislation, which ultimately led to a new IA system for major energy projects and established the new CER, which replaced the National Energy Board. The intent of the new legislation was to propose improvements for major project reviews to protect Canada's environment and grow the economy. The introduction of the new *Canadian Energy Regulator Act* and *Impact Assessment Act* were addressed in the same legislative bill with similar intent.

The Government of Canada updates were designed to address some of the real and perceived issues that have been plaguing energy projects in Canada over the past decade or more. This is the story of how three similar but very distinct organizations worked together to come up with solutions to a long-standing concern: how to perform an IA of long linear infrastructure projects or nuclear projects in a way that meets the needs of government, stakeholders, Indigenous peoples and project proponents, and would rebuild public trust in the assessment and regulation of major projects in the energy sector.

The CER, CNSC and IAAC were given the challenge of merging different approaches to environmental and socio-economic assessment and implementing a new regime that integrated the regulatory requirements of the CER and CNSC into the IA process. Initially, the three Agencies were dealing with actively changing draft legislation that was not finalized until late in the process, creating a great deal of uncertainty for all involved.

¹ The views, judgements, opinions and recommendations in this paper are those of the authors alone and do not necessarily reflect those of our organizations.

Lifecycle regulators

Canada has adopted a lifecycle approach to energy regulation. Pipelines, power lines and nuclear projects are regulated from cradle to grave by independent regulators who make regulatory decisions on energy projects. These regulatory tribunals hold public hearings, including for those major projects under the *Impact Assessment Act*.

Canada's vast number of oil and gas resources mean that there are many kilometres of oil and gas pipelines across the country. The federal government, and specifically the CER, regulates about 73,000 kilometres of transmission pipelines. These can range from small diameter to large diameter pipelines that bring oil and gas to refineries, to ships, or to other pipelines in the United States. The CER also regulates about 1,400 kilometres of electrical power lines across Canada. The CER assesses the environmental effects of all international or inter-provincial pipelines and international powerlines at every phase of their lifecycle.

In a similar way, the CNSC oversees the nuclear industry and is responsible for the regulation of nuclear facilities and activities in Canada. The CNSC assesses the environmental effects of all nuclear facilities or activities at every phase of their lifecycle.

While both organizations have decision-making authority on many projects, larger "designated" projects under this new IA regime have their assessments led by the IAAC through what is called an integrated review, or integrated IA. In the case of the CER, larger projects would be pipelines over 75 km of new right-of-way in length. In the case of the CNSC, larger projects would be new nuclear power plants and long-term waste disposal facilities.

Building a new federally regulated pipeline or major nuclear facility has always required a rigorous, evidence-based environmental and human health assessment. However, the new legislative changes require even more consideration of these factors in IAs. For example, the Acts that govern these projects now require decision-makers to consider the impacts of a project on Canada's climate change commitments and on diverse groups of people.

The challenges

One of the biggest changes to the IA system was that the IAAC would be the lead central agency for assessing new large energy projects, and they would be directly supported by the two lifecycle regulators. These projects would be considered in an integrated review that would meet the requirements of the new IA legislation as well as each respective regulator's legislation.

Part of the challenge was how to implement an integrated process that is open, transparent and inclusive, while still meeting requirements for fairness required by the CER's and CNSC's quasi-judicial adjudicative tribunals. Some of the considerations included allowing for broad public and Indigenous participation, having flexible procedures that would still meet procedural fairness requirements and ensuring safety and security needs. Further, major resource industries had strong views on the legislative changes and did not want the legislation to extend regulatory approval timeframes. This posed an additional challenge to implementing this new IA process.

One challenge to this process was geography. With most federal offices housed in Ottawa and the CER in Calgary, about 3,000 km away, there was a great need for ongoing communication. This was mitigated through a combination of regular meetings in person and teleconferences.

Another challenge was trying to coordinate these integrated reviews with many other federal departments who also had legislative requirements, some of whom had little experience in IA and were being mandated to participate in impact assessments without having staff and organizational experience in this discipline. While these were expert departments in their own right, finding a way to bring them into this process was a challenging one. Several tabletop exercises, which were workshops with all implicated organizations, were held to validate combined approaches to the new legislation, seek alignment in process steps and get buy-in from senior management.

Coordination and review of guidance documents across the three organizations was a parallel but related process with its own complications. The organizations needed to create guidance documents for their respective staff and stakeholders on similar topics at the same time, but content, approvals and release dates were moving targets. Releasing consistent and transparent messaging about the new IA system was a key piece of the coordination efforts.

Initial coordination moved slowly, with each organization spending time educating each other on previous approaches, methods and considerations. This was time consuming, but necessary, to get the complete picture of each organizations' approaches to reviewing project applications and conducting assessments.

Where we landed

Ultimately, the three agencies developed a Memorandum of Understanding (MOU) to describe the framework in which integrated reviews would work. These were supported by more detailed and agency-specific annexes to describe the mechanics of working together. We melded the best practices from the three organizations into these annexes, after spending substantial time learning about each other's current practices.

The new IA processes were designed to be more inclusive and flexible for participants while remaining procedurally fair and maintaining the administrative tribunal and quasi-judicial processes required by law. This included building in key participation points for the public, Indigenous peoples and stakeholders. To meet these objectives, we included annexes to the MOU on roles and responsibilities, information sharing, the conduct of public engagement and Indigenous consultation and cost sharing. These MOUs were signed when the IA legislation came into force.

The IAAC created separate agreements with the CER and the CNSC to account for differences in the regulatory regimes, though there are many parallels between the agreements. The three organizations had a common understanding of where processes were distinct, and where divergent wording between the MOUs was acceptable. The IAAC also entered into agreements with various other federal bodies who may be required participate in potential future processes (such as Fisheries and Oceans Canada and Natural Resources Canada).

Lessons learned

We learned that it is important to have the right people in the room; in our case, it was helpful for the core group to have technical background in and experience conducting environmental and socio-economic assessments. The many years of environmental and socio-economic assessment experience, combined with regulatory experience, that each organization brought to the table was highly valued.

Change management was a crucial overarching consideration: with employees at each organization accustomed to their own processes, there were new approaches for all involved and finding a middle ground was not always possible depending on the parties' respective legislative requirements. For all agencies involved, we found it important to engage management continuously, to seek their buy-in and to identify early any challenges to implementation. They needed to be supported with timely information to provide appropriate advice for regular cross-departmental management meetings at the highest levels. Uptake and support from management was important, but timelines often made it difficult to engage them on working-level documents.

Communicating potential changes to staff internally within each organization was challenging given all the moving parts of the respective legislation. This meant we had limited time to broadly consult with colleagues and to seek consensus. Further, given the timeframe between development of the MOU and its implementation, changes in staff and roles made it difficult to share organizational knowledge on why process steps were decided upon.

Another difficulty was the level of effort required to implement operational details; working through the commitments made in practice took much more time and effort than we anticipated. In addition, the machinery of government resulted in additional steps that were not anticipated at the outset of developing the legislation.

What's next?

In line with the theme of this conference, this endeavour demonstrated how a collaborative approach to implementing a new IA regime can successfully advance us towards efficient and effective processes.

As of spring 2021, the first integrated assessment of an 800-km linear pipeline had successfully completed the initial Planning Phase of the new process. As our three organizations worked through implementing this new IA process, we recognize that there is still work to be done to ensure we can operationalize the concepts in the MOUs. This includes reviewing ongoing processes to learn from the successes and challenges and to plan ahead for the next steps in the IA process.

Immediately after coming into force of the new legislation, the MOUs provided a solid framework for describing the new process that had been developed both within our organizations and with other stakeholders. However, the details really do matter in implementing that framework. The MOUs were at a high level, so there were many operational details to be worked out on the ground in implementing the framework. For example, the MOUs did not elaborate on the roles and responsibilities for specific tasks, nor did they include detailed instructions on how to carry out certain tasks.

Ongoing work will include continuing communication between our organizations, at a staff level and at a management level, to be sure we can put processes into practice. We will need to ensure that lines of communication between our organizations are maintained on an ongoing basis, through both formal and informal channels.

One of our ongoing challenges will be continuity in the relationships that were built over this process. As staff take on different roles or move to other organizations, it will be important to document process steps so any new learnings and improvements are passed on to others. In particular, we need to ensure staff at other federal agencies are appropriately trained and ready to implement the new legislation and processes, specifically integrated reviews.

The recent legislative changes build on Canada's strong foundation of IA, and all the organizations involved have been conducting environmental and socio-economic assessments for a long time. The goal of the new Acts is to introduce new processes that are robust, incorporate science, protect the environment, respect the rights of Indigenous peoples, and support economic growth. While it remains to be seen how the agreements will be operationalized in practice, we are confident that the framework established by the MOUs provides a solid foundation for any staff involved in the IA of new projects subject to an integrated review.

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