

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

HAMLET OF CLYDE RIVER  
NAMMAUTAQ HUNTERS & TRAPPERS ORGANIZATION-CLYDE RIVER  
and JERRY NATANINE

APPELLANTS

AND:

PETROLEUM GEO-SERVICES INC. (PGS), MULTI KLIENT INVEST AS (MKI),  
TGS-NOPEC GEOPHYSICAL COMPANY ASA (TGS) and  
THE ATTORNEY GENERAL OF CANADA

RESPONDENTS

AND:

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INUVIALUIT REGIONAL CORPORATION, and CHIEFS OF ONTARIO

INTERVENERS

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**FACTUM OF THE INTERVENER, NUNAVUT TUNNGAVIK INCORPORATED**

*(Rule 42 of the Rules of the Supreme Court of Canada)*

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## PART 1 – OVERVIEW AND STATEMENT OF FACTS

1. The parties agree that the NEB decision of whether to approve the seismic survey project (“Project”) of the Respondents PGS, TGS and MKI (“Proponents”) triggered a duty to consult with, and potentially accommodate, the Appellants. It is equally beyond controversy that it is in the interests of Aboriginal peoples, proponents, the Crown, and ultimately society at large, that natural resource development application decisions satisfy the duty to consult and accommodate.

2. The challenge in the case at bar is that there is one statutory decision-maker, the NEB, but there are two federal actors, the NEB and the Crown, each with the ability to contribute to the consultation process and accommodate Aboriginal peoples in different ways. Moreover, although the legislative scheme at issue in this Appeal in no way precludes meaningful consultation and accommodation, it fails to expressly set out the respective roles of the NEB and the Crown in fulfilling the duty.

3. Fundamentally, this Appeal concerns the respective responsibilities of the NEB and the Crown in consultation and accommodation for NEB decisions that stand to adversely affect the rights of Aboriginal peoples. What must each do, and at what stage in the NEB review process, to help satisfy this constitutional obligation towards Aboriginal peoples? The Federal Court of Appeal’s inconsistent decisions in this Appeal and the companion case of *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* (“*Chippewas of the Thames*”) confirm the need for clarity on these matters. Nunavut Tunngavik Incorporated (“NTI”) offers a principled and practical approach to resolving these questions by advancing five general arguments:

- a) Where the NEB is the statutory decision-maker, it necessarily plays a direct role in consultation. Its review process may even satisfy the duty to consult. However, direct Crown consultation must supplement the NEB process where the Aboriginal group raises project-related issues, concerns, or accommodation proposals that the NEB does not or cannot address.
- b) In cases where the NEB is the statutory decision-maker and Aboriginal groups allege inadequate consultation or accommodation, the NEB must explicitly determine whether the duty has been discharged as part of its decision-making, and it must withhold approval for projects where it concludes that the duty has not been met.

- c) Where direct Crown-Aboriginal consultation must supplement the NEB review process, the Crown must engage promptly and complete its consultation *before* the NEB decides whether to approve the project.
  - d) Decision-makers and reviewing courts should only defer aspects of consultation until after the issuance of a project’s main (or only) approval where consultation to date suffices to establish *whether* a project should proceed. Furthermore, they should only defer aspects of consultation that are impractical to complete prior to project approval, and where it is realistic to expect that deferred consultation will be effective.
  - e) The Inuit request for a Strategic Environmental Assessment was a request for additional analysis to inform the consultation process and NEB decision. It was an issue for the Crown to promptly and seriously consider, and it failed to meet that obligation.
4. NTI takes no position on the facts of this Appeal.

## **PART II – QUESTIONS IN ISSUE**

5. NTI’s five general arguments all address the parties’ questions. Arguments a), c), and e) relate to Questions (b) in both the Appellants’ and Proponents’ Facta. NTI’s argument b) relates to question (a) in their Facta, while NTI’s argument d) addresses question (d) in their Facta.

## **PART III – STATEMENT OF ARGUMENT**

### **A. Role of NEB in Consultation**

6. The NEB has a direct and significant role to play in discharging the Crown’s duty to consult and accommodate. Where, as in this case, the NEB is the statutory decision-maker,<sup>1</sup> the NEB process may satisfy the duty entirely.

7. Crown-Aboriginal consultation involves gathering and understanding Aboriginal groups’ concerns about the potential adverse impacts of a proposed decision/activity on their asserted or established s. 35 rights. In the case at bar, the NEB’s function was to assess the Project’s “environmental effects”.<sup>2</sup> Under both the former and current *Canadian Environmental Assessment Act*, “environmental effects” include “current use of lands and resources for

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<sup>1</sup> Here, the NEB was the decision maker under *Canada Oil and Gas Operations Act*, RSC 1985, c. 0-7, (“COGOA”), s. 5(1)(b).

<sup>2</sup> NEB Environmental Assessment, A.R. Vol 1, Tab 1, (“NEB Environmental Assessment”), p. 12.



traditional purposes” by Aboriginal persons.<sup>3</sup> There is an overlap, potentially significant, between a project’s “environmental effects” and its potential adverse effects on s. 35 rights. Thus, an NEB environmental assessment of the kind that took place in *Clyde River* may elicit a lot of information and analysis relevant to the Crown-Aboriginal consultation process.

8. NEB environmental assessments also further the development of accommodations. The NEB requires proponents to try to engage with Aboriginal groups to develop mitigation measures aimed at reducing the project’s impacts on Aboriginal peoples. Moreover, the NEB has the authority to impose such mitigation measures as project conditions which the proponent must then fulfill.<sup>4</sup> Project mitigation measures are an important type of accommodation.

9. Thus, in assessing a project’s potential impacts on current traditional land uses and establishing project mitigation measures, the NEB review and decision-making process can play a significant role in discharging the Crown’s duty to consult and accommodate. In some cases, it may even satisfy the duty entirely. However, as noted by the Court below,<sup>5</sup> each case will depend on its own facts.

10. NTI submits that the NEB review process will satisfy the duty to consult and accommodate where it addresses all of the Aboriginal group’s concerns with the proposed project, i.e. where the NEB engages on those issues and, where required, provides reasonable accommodation. In contrast, direct Crown-Aboriginal consultation must supplement the NEB process where the Aboriginal group raises project-related issues, concerns or accommodation proposals that the NEB does not or cannot address.

11. Here are some examples of matters that the NEB may not be willing or authorized to address and that will require direct Crown-Aboriginal consultation:

- a. The NEB’s focus tends to be on current traditional land and resource uses, and its review process may lead to inadequate consultation on certain s. 35 rights or certain aspects of those rights (e.g. the economic component of Aboriginal title, or a treaty right that the Aboriginal rights-holders do not currently exercise but seek to protect).

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<sup>3</sup> *Canadian Environmental Assessment Act*, SC 1992, c. 37, s. 2(1); *Canadian Environmental Assessment Act*, SC 2012, c. 19 s. 5(1)(c).

<sup>4</sup> The NEB had these powers in the case at bar pursuant to the COGOA, ss. 5(1)(b), 5(4), 5.31(1)(b) and 5.32(a).

<sup>5</sup> Reasons for Judgment of the Federal Court of Appeal, A.R. Vol 1, Tab 6 (“FCA Reasons”) at para. 65.

- b. Strength of the rights claims is one of the two key determinants of the scope and depth of consultation and accommodation required in a particular case.<sup>6</sup> The stronger the rights claims, the deeper the duty to consult and accommodate. A major legal error in the Crown's recent approval of the Northern Gateway pipeline project was its failure to consult with Aboriginal groups about the strength of their Aboriginal rights and title claims, a matter that the NEB-led environmental assessment had not addressed.<sup>7</sup> This consultation gap was a key reason the Federal Court set aside the Governor in Council's Northern Gateway project approval.<sup>8</sup>
- c. Modern treaty rights are of course established, not asserted. However, Aboriginal peoples and the Crown may disagree about the *scope* of a particular modern treaty right. Where the Aboriginal group expresses concerns about adverse effects of a decision in relation to a dimension of a treaty right that the Crown questions or disputes, consultation on the scope of the treaty right will be essential before the decision-maker decides whether to adopt the Aboriginal group's interpretation of the right and consult and accommodate based on that interpretation.
- d. The Aboriginal group may seek relevant information that lies beyond the NEB's jurisdiction to procure. For example, in the case at bar, Inuit, including NTI, sought the completion of the first phase of a Strategic Environmental Assessment ("SEA") to better understand the potential noise impacts of the seismic survey on marine wildlife. The NEB indicated that it would have considered the results of a SEA in its decision-making "if it were available and appropriate", but that it was up to the Crown to decide whether to conduct the study.<sup>9</sup>
- e. The Aboriginal group may propose accommodation measures that the NEB lacks the jurisdiction to provide. The NEB's statutory powers essentially relate to project-specific mitigation measures. These are a common, but by no means the only, type of accommodation.<sup>10</sup> For example, an Aboriginal group may seek a cap on further

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<sup>6</sup> *Haida Nation v British Columbia (Minister of Forests)* 2004 SCC 73 ("*Haida*") at paras 43 and 44.

<sup>7</sup> *Gitxaala Nation v. Canada* 2016 FCA 187 ("*Gitxaala*") at paras 288-309.

<sup>8</sup> The Northern Gateway Project approval consisted of an Order in Council directing the NEB to issue the project certificate. That project differed from the one at bar in that the Crown was effectively the final decision-maker.

<sup>9</sup> NEB Environmental Assessment, *supra* at p. 14.

<sup>10</sup> J. Woodward, *Native Law (Looseleaf Ed)*, Vol. 1, Chapter 5, para. 2280.

development in an adjacent area, or the protection of another area of the territory from further development so as to support the ongoing exercise of meaningful harvesting rights in another part of their territory.

12. Although Canada appears to agree that direct Crown consultation may need to supplement the NEB process, it suggests that Aboriginal groups must first establish that they have raised issues beyond the NEB's jurisdiction.<sup>11</sup> This would be an unreasonable burden on Aboriginal groups, who often have little or no legal support. Moreover, it neglects potential situations where the NEB holds but chooses not to exercise jurisdiction.

13. Therefore, the Crown should promptly and seriously consider any consultation request by an Aboriginal group about issues, concerns, or accommodation proposals that the NEB appears not to be addressing. The NEB should promptly and clearly communicate whether it intends to address the matter, so as to reduce uncertainty and delays in the consultation process.<sup>12</sup>

### **B. Role of NEB in Assessing Adequacy of Consultation**

14. The Federal Court of Appeal did not rule on whether the NEB has a duty to assess the adequacy of consultation in the case at bar; in *Chippewas of the Thames*, it ruled that the NEB did not need to do so because the Crown did not participate in the NEB hearing to present its perspective.<sup>13</sup> The NEB Factum for *Chippewas of the Thames* does not clarify whether the NEB considers itself responsible for assessing adequacy of consultation as part of its decision-making.

15. The NEB should be required to assess for adequacy of consultation and accommodation as part of its decision-making whenever an Aboriginal group participating in the review process alleges that consultation remains incomplete or inadequate. It should provide this assessment explicitly and in writing. The NEB must not approve projects unless the duty has been satisfied. The basis for NTI's position is as follows.

16. The proper discharge of the duty to consult and accommodate benefits Aboriginal peoples, the Crown, proponents, and ultimately society at large by reducing legal challenges to approvals and the costs, delays, and uncertainty arising from such litigation. Assessing the

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<sup>11</sup> Canada's Factum, para. 74.

<sup>12</sup> Indeed, the NEB confirms in its Factum for *Chippewas of the Thames* (paras. 63-64) that it can ask the Crown how it proposes to address a matter raised by an Aboriginal group.

<sup>13</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2015 FCA 222 at para. 59.

adequacy of consultation and accommodation as part of decision-making helps ensure that the duty does not fall through the cracks. It is highly appropriate in cases such as this one, where the obligation to consult is potentially shared between two entities, i.e. the NEB and the Crown.

17. If one accepts the importance of assessing the adequacy of consultation and accommodation prior to decision where the duty is a potentially shared responsibility, the next question is who should conduct the assessment. NTI submits that where the NEB is the statutory decision-maker, it should assess the adequacy of consultation, for a few reasons.

18. First, the NEB has “full jurisdiction” to determine all questions of law,<sup>14</sup> which implicitly includes the authority to determine the adequacy of consultation.<sup>15</sup> Second, given the information that the NEB gathers and the analysis that it undertakes, it is well positioned to assess the adequacy of consultation and accommodation proposals. Third, it would be inefficient to assign this assessment function to the Crown and automatically implicate it in every NEB review process, even where the NEB is addressing all of the Aboriginal issues, concerns, and proposals.

19. This Court has repeatedly stated that the duty to consult and accommodate is a constitutional duty that must inform decision-making and be satisfied *prior to decision-making*.<sup>16</sup> It follows that if the NEB concludes that the duty has not been discharged, it must not approve the project. This point is obvious but also critical to avoiding unlawful approvals and reducing litigation, and thus deserves confirmation by this Court.

20. NTI also submits that where an Aboriginal group participating in the NEB process disputes the adequacy of consultation and accommodation, the NEB should be required to *explicitly* assess whether the duty has been fulfilled, with written reasons.

21. As a matter of fairness, Aboriginal groups who have argued that the duty to consult and accommodate remains unfulfilled are entitled to know that the NEB has considered their concern. Where the NEB disagrees, they are also entitled to know the basis for the NEB’s

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<sup>14</sup> *COGOA*, *supra*, s. 5.31(3). See also *National Energy Board Act*, RSC 1985, c. N-7, s. 12(2).

<sup>15</sup> This Court confirmed in *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010 SCC 43 (“*Rio Tinto*”) at para. 69 that unless the tribunal’s enabling legislation expressly states otherwise the general power to decide questions of law includes the power to decide the adequacy of consultation.

<sup>16</sup> “The duty to consult must be discharged prior to carrying out the action that could adversely affect the right”: *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44 at para. 78; see also *Haida*, *supra* at para. 67 and *Rio Tinto*, *supra* at para. 35.

conclusion. Project applicants and the Crown would no doubt also expect reasons in any case where the NEB withholds an approval due to inadequate consultation and accommodation.

22. As a practical matter, reasons do not place an unreasonable burden on the NEB, a tribunal empowered to decide all matters of law and well experienced in providing written reasons.

23. Furthermore, contrary to the Proponents' assertion at paragraph 81 of their Factum, reasons provide real, practical benefits. As this Court stated in *Baker v Canada*, "reasons... foster better decision making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out."<sup>17</sup> The process of developing reasons will promote sound assessments of the adequacy of consultation and accommodation. Where the NEB concludes that the duty was discharged, explaining why will help Aboriginal groups and their legal counsel assess the merits of that conclusion. This transparency will allow them to make more informed decisions about whether the NEB made a reviewable error, and will discourage marginal legal challenges. The same logic will benefit proponents should the NEB conclude the duty was not discharged. Reasons will also assist the court in any judicial reviews that ensue.<sup>18</sup>

24. If this Court disagrees that the NEB should provide written reasons on the adequacy of consultation and accommodation whenever an Aboriginal group has put the matter in issue, NTI's alternative submission is that they are in order whenever the duty to consult is *deep*, as in the present case. The Federal Court of Appeal's recent *Gitxaala Nation* decision emphasizes the importance of written reasons for decisions that trigger a deep duty to consult.<sup>19</sup>

### **C. Timing of NEB Review, Decision-Making, and Direct Crown Consultation**

25. As noted above, it is well-established that the duty to consult must be discharged prior to decision-making. Thus, where an Aboriginal group raises issues, concerns, or accommodation proposals in relation to the project that the NEB will not or cannot address, direct Crown consultation must occur *before* the NEB decides whether to approve a project.

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<sup>17</sup> *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para. 39. Examples of cases affirming *Baker* include *VIA Rail Canada Inc. v. National Transportation Agency* [2001] 2 FC 25 (FCA) at paras. 17-19, and *Gray v Ontario (Director, Disability Support Program)* [2002], 212 DLR (4<sup>th</sup>) 353 (ONCA) at para. 22.

<sup>18</sup> Indeed, as this Court noted in *Baker* at para. 39, "[r]easons... are invaluable if a decision is to be appealed, questioned, or considered on judicial review".

<sup>19</sup> *Gitxaala*, *supra* at para. 311.

26. Where the Crown needs to fill a gap in the NEB's consultation, it should do so promptly. Prompt engagement will allow more time for the parties to seek to resolve the issue(s) and avoid any unlawful rushing of the consultation process,<sup>20</sup> while also avoiding or reducing delays in the NEB's decision-making process. Assuming the NEB must determine the adequacy of consultation, it should postpone decision-making while any direct Crown-Aboriginal consultation remains underway, or its decision will be vulnerable to legal challenge.

#### **D. Deferral of Consultation Until After Project Approval is Issued**

27. The Court below identified future consultation on the Project as one of its reasons for concluding that there had been adequate consultation: "As the Supreme Court of Canada noted in *Taku River*... project approval is simply one step in the process by which the development moves forward."<sup>21</sup> The Federal Court of Appeal assumed that it was appropriate to defer the remaining consultation, without explaining why.

28. NTI respectfully urges this Court to acknowledge the practical significance of a project's approval (or primary approval) and require decision-makers and reviewing courts to assess whether the deferral of aspects of consultation is in fact appropriate on a case-by-case basis. This is critical to avoiding consultation and accommodation gaps, as explained below.

29. The purpose of consultation with Aboriginal groups is to inform decision-making. The consultation process allows the decision-maker to understand the Aboriginal concerns with a proposed course of action, consider options for addressing reasonable concerns, and ultimately make a decision that fairly "balance[s] societal and Aboriginal interests".<sup>22</sup>

30. Consultation is not just about finding mitigation measures and determining *how* a project should proceed. It may also raise a serious question about *whether* a project should proceed given its adverse impacts on s. 35 rights. Decision-makers must be open to the possibility that in some cases, mitigation measures may not suffice and the appropriate accommodation may be to

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<sup>20</sup> For an example of a case where the Crown was held to have rushed to decision and prematurely ended consultation, see *Homalco Indian Band v. British Columbia (Minister of Agriculture, Food & Fisheries)* 2005 BCSC 283 (BCSC) ("*Homalco*") at para. 108.

<sup>21</sup> FCA Reasons at para. 99.

<sup>22</sup> *Haida Nation, supra*, at para. 45.

*reject* a proposed project.<sup>23</sup> British Columbia courts have acknowledged this critical principle, and confirmation of this potential consultation outcome by Canada's highest Court is warranted.

31. The logical juncture for deciding *whether* a project should proceed is when deciding whether to grant its main or only approval, as any subsequent filing requirements or ancillary permit authorizations dealing with discrete matters are generally not effective opportunities for revisiting that decision.<sup>24</sup> Thus, before approving a project, the decision-maker must assess whether consultation has clarified all key matters. For example, he or she must understand the scope of the s. 35 rights at stake, as well as the severity of the project's potential impacts on those rights. Where accommodation is warranted, the decision-maker must understand how effective the accommodation measures proposed to date will likely be in reducing, offsetting, or compensating for the project's anticipated adverse effects. Just as Aboriginal groups do not get consultation for "speculative" potential adverse impacts,<sup>25</sup> decision-makers should not rely on accommodations of speculative value to conclude that consultation is complete. If any of these issues remains unclear, project approval is premature.

32. If there has been sufficient consultation to decide that a project should in fact proceed, the next question is whether the Aboriginal group has any legitimate outstanding concerns and if so, whether it is appropriate to defer consultation on those matters until after the project approval.

33. Deferral of consultations on discrete matters will at times be entirely appropriate, such as in the case of ancillary permits with limited impacts on s. 35 rights, or post-development site reclamation plans. However, consultation should only be deferred where it is impractical to address the Aboriginal concerns as part of the project approval *and* where it is realistic to expect that these concerns will be addressed at a later date (assuming the Aboriginal group meets its obligations of good faith engagement). To determine the likely effectiveness of deferred consultation, the decision-maker should consider factors such as the proponent's track record for engaging with the Aboriginal group, the extent of ongoing regulatory oversight to ensure that

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<sup>23</sup> *West Moberly First Nations v. British Columbia (Ministry of Energy, Mines and Petroleum Resources)*, 2011 BCCA 247 at para. 149 (per C.J. Finch); see also *Homalco, supra*, at para. 127.

<sup>24</sup> *Squamish Indian Band v. British Columbia (Minister of Sustainable Resource Management)*, 2004 BCSC 1320 at para. 75.

<sup>25</sup> *Rio Tinto, supra* at para. 46.

future, meaningful consultation occurs, and the availability of funding to the Aboriginal group where it reasonably requires resources to participate in additional consultation.

#### **E. Crown Consultation about the Need for a SEA**

34. NTI submits that in the case at bar, Canada had a duty to consult directly with Inuit about their April 8, 2014 SEA request.<sup>26</sup> Inuit requested prompt completion of the first stage of a SEA for the Baffin Bay area to gather better information about the Project's noise impacts on marine mammals and thereby inform the NEB decision on whether to approve the Project. Contrary to the Appellants' submission, the SEA request was not an accommodation request.<sup>27</sup> Rather, it was a request for additional analysis to inform consultations and NEB decision-making.

35. The NEB noted that it was up to "AANDC" (Aboriginal Affairs and Northern Development Canada, as it then was) to decide whether to conduct a SEA. It also stated that it would consider the results of a SEA "if it were available and appropriate."<sup>28</sup> It was therefore the Crown's responsibility to seriously and promptly consider and respond to the SEA request.

36. The June 10, 2014 response of the Minister of AANDC was too delayed and dismissed the Inuit's request out of hand.<sup>29</sup> It simply redirected the Inuit back to the NEB and rejected that Stage 1 of the SEA is needed to inform a decision on the Project, without providing reasons. The Crown thereby failed to engage meaningfully on an issue relevant to the consultation process.

#### **PARTS IV and V – COSTS AND ORDER SOUGHT**

37. NTI seeks no costs and asks that none be awarded against it.

38. As Intervener, NTI takes no position on the orders sought in this Appeal.

39. NTI maintains its request for the opportunity to make oral submissions at the hearing.

November \_\_\_\_ 2016

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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Dominique Nouvet  
Counsel for the Intervener NTI

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<sup>26</sup> A.R., Vol 4, Tab 60, pp. 948-950.

<sup>27</sup> Appellants' Factum, para. 114.

<sup>28</sup> NEB Environmental Assessment, *supra* at p. 14.

<sup>29</sup> A.R., Vol 4, Tab 63, at pp. 966-967.



**PART VI – TABLE OF AUTHORITIES**

<b>AUTHORITY</b>	Paragraph(s) Cited
<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> [1999] 2 SCR 817	23
<i>Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.</i> , 2015 FCA 222	3, 14
<i>Gitxaala Nation v. Canada</i> , 2016 FCA 187	11, 24
<i>Grey v. Ontario (Director, Disability Support Program)</i> [2002] 212 DLR (4 <sup>th</sup> ) 353 (ONCA)	23
<i>Haida Nation v British Columbia (Minister of Forests)</i> 2004 SCC 73	11, 19, 29
<i>Homalco Indian Band v. British Columbia (Minister of Agriculture, Food &amp; Fisheries)</i> 2005 BCSC 283 (BCSC)	26, 30
<i>Rio Tinto Alcan v. Carrier Sekani Tribal Council</i> , 2010 SCC 43	18, 19, 31
<i>Squamish Indian Band v. British Columbia (Minister of Sustainable Resource Management)</i> , 2004 BCSC 1320	31
<i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 44	19
<i>Via Rail Canada Inc. v. National Transportation Agency</i> [2001] 2 FC25 (FAC)	23
<i>West Moberly First Nations v. British Columbia (Minister of Energy, Mines and Petroleum Resources)</i> , 2011 BCCA 247	30
<b>TEXTS</b>	
J. Woodward, <i>Native Law (Looseleaf Ed)</i> , Vol. 1, Chapter 5, para. 2280	11

**PART VII: STATUTORY PROVISIONS**

<i>Canada Oil and Gas Operations Act</i> , RSC 1985, c. 0-7, s. 5(1)(b), 5.31(1)(b), 5.32 and 5(4).	6, 8, 18
<i>Canadian Environmental Assessment Act</i> , SC 1992, c. 37, s. 2(1)	7
<i>Canadian Environmental Assessment Act</i> , SC 2012, c. 19 s. 5(1)(c).	7
<i>National Energy Board Act</i> , RSC 1985, c. N-7 s. 12(2)	18



CANADA

CONSOLIDATION

CODIFICATION

## Canada Oil and Gas Operations Act

## Loi sur les opérations pétrolières au Canada

R.S.C., 1985, c. O-7

L.R.C. (1985), ch. O-7

Current to October 11, 2016

À jour au 11 octobre 2016

Last amended on June 19, 2016

Dernière modification le 19 juin 2016

**(b)** respecting the fees or charges, or the method of calculating the fees or charges, in respect of any of the National Energy Board's or the Minister's activities under or related to this Act or under any other Act of Parliament, that are to be paid by

**(i)** a person who makes an application for an authorization under paragraph 5(1)(b) or an application under subsection 5.1(2), or

**(ii)** the holder of an operating licence or authorization issued under section 5; and

**(c)** respecting the refund of all or part of any fee or charge referred to in paragraph (a) or (b), or the method of calculating that refund.

#### Amounts not to exceed cost

**(2)** The amounts of the fees or charges referred to in paragraph (1)(a) shall not exceed the cost of providing the services or products.

#### Amounts not to exceed cost

**(3)** The amounts of the fees or charges referred to in paragraph (1)(b) shall not exceed the cost of performing the activities under or related to this Act or under any other Act of Parliament.

2015, c. 4, s. 5.

## Licences and Authorizations

### Operating Licences and Authorization for Work

#### Licences and authorizations

**5 (1)** The National Energy Board may, on application made in the form and containing the information fixed by the National Energy Board, and made in the prescribed manner, issue

**(a)** an operating licence; and

**(b)** an authorization with respect to each work or activity proposed to be carried on.

#### Term and renewals

**(2)** An operating licence expires on the thirty-first day of March immediately after the day on which it is issued and may be renewed for successive periods not exceeding one year each.

**b)** concernant les droits ou redevances à payer par les personnes ci-après relativement aux activités exercées par l'Office national de l'énergie ou le ministre sous le régime de la présente loi ou relativement à celle-ci ou sous le régime de toute autre loi fédérale, ou leur méthode de calcul :

**(i)** la personne qui présente une demande au titre de l'alinéa 5(1)b) ou du paragraphe 5.1(2),

**(ii)** le titulaire d'un permis de travaux ou d'une autorisation visés à l'article 5;

**c)** concernant le remboursement complet ou partiel des droits ou redevances visés aux alinéas a) ou b), ou sa méthode de calcul.

#### Limite

**(2)** Le montant des droits ou redevances visés à l'alinéa (1)a) ne peut excéder les coûts de la fourniture des services ou des produits.

#### Limite

**(3)** Le montant des droits ou redevances visés à l'alinéa (1)b) ne peut excéder les coûts relatifs aux activités exercées sous le régime de la présente loi ou relativement à celle-ci ou sous le régime de toute autre loi fédérale.

2015, ch. 4, art. 5.

## Permis et autorisations

### Permis de travaux et autorisations

#### Permis et autorisations

**5 (1)** L'Office national de l'énergie peut, sur demande à lui faite, établie en la forme et contenant les renseignements fixés par lui, selon les modalités réglementaires, délivrer :

**a)** un permis de travaux;

**b)** une autorisation pour chaque activité projetée.

#### Durée et renouvellements

**(2)** Le permis de travaux est valide jusqu'au 31 mars qui suit sa délivrance. Il peut être renouvelé pour des périodes successives maximales d'un an.

### Requirements for operating licence

**(3)** An operating licence is subject to any requirements that are determined by the National Energy Board or that are prescribed and to any deposits that are prescribed.

### Requirements for authorization

**(4)** An authorization shall be subject to such approvals as the National Energy Board determines or as may be granted in accordance with the regulations and such requirements and deposits as the National Energy Board determines or as may be prescribed, including

- (a)** requirements relating to liability for loss, damage, costs or expenses;
- (b)** requirements for the carrying out of environmental programs or studies; and
- (c)** requirements for the payment of expenses incurred by the National Energy Board in approving the design, construction and operation of production facilities and production platforms as those terms are defined in the regulations.

### Suspension or revocation

**(5)** The National Energy Board may suspend or revoke an operating licence or an authorization for failure to comply with, contravention of or default in respect of

- (a)** a requirement, approval or deposit subject to which the licence or authorization was issued;
  - (a.1)** a fee or charge payable in accordance with regulations made under section 4.2;
- (b)** a requirement undertaken in a declaration referred to in subsection 5.11(1) or (2);
- (c)** subsection 5.11(3), 5.12(2), 26.1(4) or (5) or 27(1.1), (1.2) or (5); or
- (d)** any applicable regulation.

### Variation

**(6)** The terms of an operating licence or authorization may be varied under section 28.3 of the *National Energy Board Act*.

R.S., 1985, c. O-7, s. 5; R.S., 1985, c. 36 (2nd Supp.), s. 120; 1992, c. 35, s. 8; 1994, c. 10, ss. 3, 15; 2015, c. 4, s. 6.

### Timing

**5.001 (1)** If an application for an authorization under subsection 5(1) is made with respect to a work or activity proposed to be carried on in whole or in part in any area in respect of which the Minister of Indian Affairs and

### Conditions régissant les permis

**(3)** Le permis de travaux est assujéti aux conditions réglementaires ou fixées par l'Office national de l'énergie et aux cautionnements réglementaires.

### Conditions des autorisations

**(4)** L'autorisation est assujéti aux approbations, conditions et cautionnements réglementaires ou fixés par l'Office national de l'énergie, notamment les conditions relatives :

- a)** à la responsabilité en cas de perte, de dommages, de frais ou de dépenses;
- b)** à la réalisation de programmes et d'études en matière d'environnement;
- c)** au paiement des frais que l'Office national de l'énergie expose lors de l'approbation, de la conception, de la construction et de l'exploitation des installations et plates-formes de production, entendues au sens des règlements.

### Suspension ou annulation

**(5)** L'Office national de l'énergie peut suspendre ou annuler un permis de travaux ou une autorisation en cas de manquement :

- a)** aux approbations, conditions ou cautionnements auxquels ils sont assujéti;
- a.1)** à l'obligation de payer les droits ou redevances prévus par les règlements pris en vertu de l'article 4.2;
- b)** à une obligation découlant des déclarations visées aux paragraphes 5.11(1) ou (2);
- c)** aux paragraphes 5.11(3), 5.12(2), 26.1(4) ou (5) ou 27(1.1), (1.2) ou (5);
- d)** aux règlements applicables.

### Modification

**(6)** L'Office national de l'énergie peut modifier le permis de travaux ou l'autorisation conformément à l'article 28.3 de la *Loi sur l'Office national de l'énergie*.

L.R. (1985), ch. O-7, art. 5; L.R. (1985), ch. 36 (2<sup>e</sup> suppl.), art. 120; 1992, ch. 35, art. 8; 1994, ch. 10, art. 3 et 15; 2015, ch. 4, art. 6.

### Délai

**5.001 (1)** S'il est saisi d'une demande d'autorisation au titre du paragraphe 5(1) pour une activité projetée qui sera exercée en tout ou en partie dans une zone dont les ressources naturelles sont placées sous la responsabilité

## Jurisdiction and Powers of the National Energy Board

### Jurisdiction

**5.31 (1)** The National Energy Board has full and exclusive jurisdiction to inquire into, hear and determine any matter

**(a)** if it appears to the National Energy Board that any person failed to do any act, matter or thing required to be done by this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5; or

**(b)** if it appears to the National Energy Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any act, matter or thing that is prohibited, sanctioned or required to be done by this Act, any regulation, order or direction made under this Act, or an operating licence or authorization issued under section 5.

### Of its own motion

**(2)** The National Energy Board may, of its own motion, inquire into, hear and determine any matter or thing that under this Act it may inquire into, hear and determine.

### Matters of law and fact

**(3)** For the purposes of this Act, the National Energy Board has full jurisdiction to hear and determine all matters, whether of law or of fact.

2007, c. 35, s. 149.

### Mandatory orders

**5.32** The National Energy Board may

**(a)** order and require any person to do, without delay, or within or at any specified time and in any manner set by the Board, any act, matter or thing that the person is or may be required to do under this Act, any regulation, order or direction made under this Act or an operating licence or authorization issued under section 5; and

## Compétence et attributions de l'Office national de l'énergie

### Compétence

**5.31 (1)** L'Office national de l'énergie a compétence exclusive pour examiner, entendre et trancher les questions soulevées dans tous les cas où il estime :

**a)** soit qu'une personne contrevient ou a contrevenu, par un acte ou une omission, à la présente loi ou à ses règlements, à un permis de travaux ou à une autorisation octroyés aux termes de l'article 5 ou encore à ses ordonnances ou à ses instructions;

**b)** soit que les circonstances peuvent l'obliger, dans l'intérêt public, à prendre une mesure — ordonnance, instruction, sanction ou approbation — qu'en droit il est autorisé à prendre ou qui se rapporte à un acte que la présente loi ou ses règlements, un permis de travaux ou une autorisation octroyés aux termes de l'article 5 ou encore ses ordonnances ou ses instructions interdisent, sanctionnent ou imposent.

### Initiative

**(2)** L'Office national de l'énergie peut, de sa propre initiative, examiner, entendre et trancher toute question qui relève de sa compétence aux termes de la présente loi.

### Questions de droit et de fait

**(3)** Pour l'application de la présente loi, l'Office national de l'énergie a la compétence voulue pour entendre et trancher les questions de droit ou de fait.

2007, ch. 35, art. 149.

### Ordres et interdictions

**5.32** L'Office national de l'énergie peut :

**a)** enjoindre à quiconque d'accomplir sans délai ou dans le délai imparti, ou à un moment précis, et selon les modalités qu'il fixe, un acte qu'il peut imposer ou que peuvent imposer la présente loi ou ses règlements, un permis de travaux ou une autorisation octroyés aux termes de l'article 5 ou les ordonnances ou instructions qui en découlent;

**b)** interdire ou faire cesser tout acte contraire à ceux-ci.

2007, ch. 35, art. 149.

(b) prohibit the doing or continuing of any act, matter or thing that is contrary to this Act, any regulation, order or direction made under this Act or an operating licence or authorization issued under section 5.

2007, c. 35, s. 149.

### Committee's decisions and orders

**5.33** Sections 5.31 and 5.32 do not apply to any act, matter or thing required by or contrary to any decision or order of the Committee.

2007, c. 35, s. 149.

### Public hearings

**5.331** The National Energy Board may conduct a public hearing in relation to the exercise of any of its powers or the performance of any of its duties and functions under this Act.

2015, c. 4, s. 13.

### Confidentiality

**5.34** At any public hearing conducted under section 5.331 or in any proceedings with respect to Part 0.1, the National Energy Board may take any measures and make any order that it considers necessary to ensure the confidentiality of any information likely to be disclosed at the hearing or in the proceedings if the Board is satisfied that

- (a) disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the hearing or proceedings, or to prejudice the person's competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure; or
- (b) the information is financial, commercial, scientific or technical information that is confidential information supplied to the Board and
  - (i) the information has been consistently treated as confidential information by a person directly affected by the hearing or proceedings, and
  - (ii) the person's interest in confidentiality outweighs the public interest in its disclosure.

2007, c. 35, s. 149; 2015, c. 4, s. 13.

### Confidentiality – security

**5.35** At any public hearing conducted under section 5.331 or in respect of any order, or in any proceedings, with respect to Part 0.1, the National Energy Board may take any measures and make any order that it considers necessary to ensure the confidentiality of information that is likely to be disclosed at the hearing or in the proceedings or is contained in the order if the Board is satisfied that

### Décisions et arrêtés du Comité

**5.33** Les articles 5.31 et 5.32 ne s'appliquent pas aux actes qu'une décision ou un arrêté du Comité impose ou interdit.

2007, ch. 35, art. 149.

### Audiences publiques

**5.331** L'Office national de l'énergie peut tenir des audiences publiques sur tout aspect des attributions ou des activités qu'il exerce sous le régime de la présente loi.

2015, ch. 4, art. 13.

### Confidentialité

**5.34** Dans le cadre d'une audience publique tenue en vertu de l'article 5.331 ou d'une instance concernant la partie 0.1, l'Office national de l'énergie peut prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité des renseignements qui seront probablement divulgués au cours de l'audience ou de l'instance lorsqu'il est convaincu :

- a) soit que la divulgation risquerait vraisemblablement de causer des pertes ou des profits financiers appréciables aux intéressés, ou de nuire à leur compétitivité, et que le préjudice pouvant résulter de la divulgation l'emporte sur l'importance, au regard de l'intérêt public, de la divulgation;
- b) soit qu'il s'agit de renseignements financiers, commerciaux, scientifiques ou techniques de nature confidentielle obtenus par lui, traités comme tels de façon constante par les intéressés, et que l'intérêt de ces derniers à préserver la confidentialité des renseignements l'emporte sur l'importance, au regard de l'intérêt public, de leur divulgation.

2007, ch. 35, art. 149; 2015, ch. 4, art. 13.

### Confidentialité – sécurité

**5.35** Dans le cadre d'une audience publique tenue en vertu de l'article 5.331 ou d'une ordonnance ou d'une instance concernant la partie 0.1, l'Office national de l'énergie peut prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité des renseignements qui seront probablement divulgués

## Documents

### Documents

**5.37 (1)** A holder of the leave required by paragraph 4.01(1)(d) and a holder of an authorization to construct or operate a pipeline issued under paragraph 5(1)(b), or the successor or assign of either holder, shall keep, in a form and manner determined by the National Energy Board, any documents, including any records or books of account, that the Board requires and that contain information that is determined by the Board to be necessary for the administration of this Act and any regulations made under it.

### Production and inspection

**(2)** The holder of that leave and the holder of that authorization, or the successor or assign of either holder, shall produce those documents to the National Energy Board, or make them available to the Board or its designated representative, for inspection or copying at a time and under conditions set by the Board.

2007, c. 35, s. 149; 2015, c. 21, s. 42.

## Oil and Gas Administration Advisory Council

### Council established

**5.4 (1)** There is established a council, to be known as the Oil and Gas Administration Advisory Council, consisting of the following six members, namely, the Chairperson of the Canada-Nova Scotia Offshore Petroleum Board, the Chairperson of the Canada-Newfoundland and Labrador Offshore Petroleum Board, the Chairperson of the National Energy Board, a person designated jointly by the federal Ministers, a person designated by one of the Provincial Ministers and a person designated by the other Provincial Minister.

### Duty of Council

**(2)** The Council shall promote consistency and improvement in the administration of the regulatory regime in force under this Act and Part III of the Accord Acts and provide advice respecting those matters to the federal Ministers, the Provincial Ministers and the Boards referred to in subsection (1).

1992, c. 35, s. 12; 1994, c. 10, s. 6; 2012, c. 19, s. 120(E); 2014, c. 13, s. 102.

## Documents

### Tenue de documents

**5.37 (1)** Le titulaire de l'approbation exigée par l'alinéa 4.01(1)d) et le titulaire de l'autorisation délivrée aux termes de l'alinéa 5(1)b) relativement à la construction ou à l'exploitation d'un pipeline — ou l'ayant droit ou successeur de l'un ou l'autre — tiennent, selon les modalités fixées par l'Office national de l'énergie, tout document, notamment tout dossier ou tout livre de compte, que l'Office exige et qui contient tout renseignement qu'il considère utile pour l'application des dispositions de la présente loi et de ses règlements.

### Production et examen

**(2)** Le titulaire de cette approbation et le titulaire de cette autorisation — ou l'ayant droit ou successeur de l'un ou l'autre — produisent les documents auprès de l'Office national de l'énergie ou les mettent à sa disposition ou à celle de la personne désignée par l'Office à cet effet, aux moments et selon les modalités qu'il fixe, pour examen et reproduction.

2007, ch. 35, art. 149; 2015, ch. 21, art. 42.

## Conseil d'harmonisation

### Constitution

**5.4 (1)** Est constitué le Conseil d'harmonisation, composé de six membres, soit les présidents respectifs de l'Office Canada — Nouvelle-Écosse des hydrocarbures extracôtiers et de l'Office Canada — Terre-Neuve-et-Labrador des hydrocarbures extracôtiers, le président de l'Office national de l'énergie, le membre désigné par chaque ministre provincial et le membre nommé conjointement par les ministres fédéraux.

### Mission

**(2)** Il incombe au Conseil de veiller à l'harmonisation et à l'amélioration des mécanismes et de la réglementation mis en place par la présente loi et la partie III des lois de mise en œuvre et de conseiller à cet égard les ministres fédéraux et provinciaux, ainsi que les offices mentionnés au paragraphe (1).

1992, ch. 35, art. 12; 1994, ch. 10, art. 6; 2012, ch. 19, art. 120(A); 2014, ch. 13, art. 102.



## [Canadian Environmental Assessment Act, S.C. 1992, c. 37, s. 2](#)

Canada Repealed Statutes

S.C. 1992, c. 37, s. 2 | L.C. 1992, ch. 37, art. 2

[Unofficial Chapter No. C-15.2] Repealed, S.C. 2012, c. 19, s. 66, effective July 6, 2012 (SI/2012-56).

[Canada Repealed Statutes](#) > [Canadian Environmental Assessment Act](#) > [INTERPRETATION](#)

### Notice

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 REPEALED

### INTERPRETATION

#### SECTION 2.

##### *Definitions*

2. (1) In this Act,

*"Agency"*

*"Agency"* means the Canadian Environmental Assessment Agency established by section 61;

*"assessment by a review panel"*

*"assessment by a review panel"* means an environmental assessment that is conducted by a review panel established pursuant to section 33 and that includes a consideration of the factors required to be considered under subsections 16(1) and (2);

*"comprehensive study"*

*"comprehensive study"* means an environmental assessment that is conducted under section 21, and that includes a consideration of the factors required to be considered under subsections 16(1) and (2);

*"comprehensive study list"*

*"comprehensive study list"* means a list of all projects or classes of projects that have been prescribed by regulations made under paragraph 58(1)(i);

*"environment"*

*"environment"* means the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,

- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

*"environmental assessment"*

"environmental assessment" means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Act and the regulations;

*"environmental effect"*

"environmental effect" means, in respect of a project,

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act,
- (b) any effect of any change referred to in paragraph (a) on
  - (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage,
  - (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or
  - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- (c) any change to the project that may be caused by the environment,

whether any such change or effect occurs within or outside Canada;

*"exclusion list"*

"exclusion list" means a list of projects or classes of projects that have been exempted from the requirement to conduct an assessment by regulations made under paragraph 59(c) or (c.1);

*"federal authority"*

"federal authority" means

- (a) a Minister of the Crown in right of Canada,
- (b) an agency of the Government of Canada or other body established by or pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs,
- (c) any department or departmental corporation set out in Schedule I or II to the Financial Administration Act, and
- (d) any other body that is prescribed pursuant to regulations made under paragraph 59(e),

but does not include the Legislature or an agency or body of Yukon or Nunavut, the Commissioner in Council or an agency or body of the Northwest Territories, a council of the band within the meaning of the Indian Act, The Hamilton Harbour Commissioners constituted pursuant to The Hamilton Harbour Commissioners' Act, The Toronto Harbour Commissioners constituted pursuant to The Toronto Harbour Commissioners' Act, 1911, a harbour commission established pursuant to the Harbour Commissions Act, a Crown corporation within the meaning of the Financial Administration Act, a not-for-profit corporation that enters into an agreement under subsection 80(5) of the Canada Marine Act or a port authority established under that Act;

*"federal lands"*

*"federal lands"* means

- (a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut,
- (b) the following lands and areas, namely,
  - (i) the internal waters of Canada,
  - (ii) the territorial sea of Canada,
  - (iii) the exclusive economic zone of Canada, and
  - (iv) the continental shelf of Canada, and
- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and are subject to the Indian Act, and all waters on and airspace above those reserves or lands;

*"follow-up program"*

*"follow-up program"* means a program for

- (a) verifying the accuracy of the environmental assessment of a project, and
- (b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project;

*"interested party"*

*"interested party"* means, in respect of an environmental assessment, any person or body having an interest in the outcome of the environmental assessment for a purpose that is neither frivolous nor vexatious;

*"mediation"*

*"mediation"* means an environmental assessment that is conducted with the assistance of a mediator appointed pursuant to section 30 and that includes a consideration of the factors required to be considered under subsections 16(1) and (2);

*"Minister"*

"Minister" means the Minister of the Environment;

*"mitigation"*

"mitigation" means, in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

*"prescribed" Version anglaise seulement*

"prescribed" means prescribed by the regulations;

*"project"*

"project" means

(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work,  
or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b);

*"proponent"*

"proponent", in respect of a project, means the person, body, federal authority or government that proposes the project;

*"record"*

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

*"responsible authority"*

"responsible authority", in relation to a project, means a federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted;

*"Registry"*

"Registry" means the Canadian Environmental Assessment Registry established under section 55;

*"screening"*

"screening" means an environmental assessment that is conducted pursuant to section 18 and that includes a consideration of the factors set out in subsection 16(1);

*"screening report"*

"screening report" means a report that summarizes the results of a screening;

*"sustainable development"*

"sustainable development" means development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.

*Extended meaning of "administration of federal lands"*

(2) In so far as this Act applies to Crown corporations, the expression "administration of federal lands" includes the ownership or management of those lands.

*For greater certainty*

(3) For greater certainty, any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to a physical work and any activity that is prescribed or is within a class of activities that is prescribed for the purposes of the definition "project" in subsection (1) is a project for at least so long as, in relation to it, a person or body referred to in subsection 5(1) or (2), 8(1), 9(2), 9.1(2), 10(1) or 10.1(2) is considering, but has not yet taken, an action referred to in those subsections.

## Évaluation environnementale, Loi canadienne sur l', L.C. 1992, ch. 37, art. 2

Lois du Canada

L.C. 1992, ch. 37, art. 2 | S.C. 1992, c. 37, s. 2

[Chapitre non officiel no C-15.2]

Lois du Canada > Évaluation environnementale, Loi canadienne sur l', L.C. 1992, ch. 37, [Chapitre non officiel no C-15.2] > DÉFINITIONS > ARTICLE 2.

### Avis

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🚩 Version antérieure : En vigueur du 12 juil 2010 au 05 juil 2012

### DÉFINITIONS

#### ARTICLE 2.

##### *Définitions*

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

*"Agence"*

*"Agence"* L'Agence canadienne d'évaluation environnementale constituée par l'article 61.

*"autorité fédérale"*

*"autorité fédérale"*

a) Ministre fédéral;

b) agence fédérale ou organisme constitué sous le régime d'une loi fédérale et tenu de rendre compte au Parlement de ses activités par l'intermédiaire d'un ministre fédéral;

c) ministère ou établissement public mentionnés aux annexes I et II de la Loi sur la gestion des finances publiques;

d) tout autre organisme désigné par les règlements d'application de l'alinéa 59e).

Sont exclus la Législature du Yukon et celle du Nunavut, le commissaire en conseil des Territoires du Nord-Ouest et tous les organismes de ces territoires, tout conseil de bande au sens donné à "conseil de la bande" dans la Loi sur les Indiens, les commissions portuaires constituées par la Loi sur les commissions portuaires, les commissaires nommés en vertu de la Loi des commissaires du havre de Hamilton et de la Loi de 1911 concernant les commissaires du havre de Toronto, les sociétés d'État au sens de la Loi sur la gestion des finances publiques, la société sans but lucratif qui a conclu une entente en vertu du

paragraphe 80(5) de la Loi maritime du Canada et les administrations portuaires constituées sous le régime de cette loi.

*"autorité responsable"*

*"autorité responsable"* L'autorité fédérale qui, en conformité avec le paragraphe 11(1), est tenue de veiller à ce qu'il soit procédé à l'évaluation environnementale d'un projet.

*"développement durable"*

*"développement durable"* Développement qui permet de répondre aux besoins du présent sans compromettre la possibilité pour les générations futures de satisfaire les leurs.

*"document"*

*"document"* Tous éléments d'information, quels que soient leur forme et leur support, notamment correspondance, note, livre, plan, carte, dessin, diagramme, illustration ou graphique, photographie, film, microformule, enregistrement sonore, magnétoscopique ou informatisé, ou toute reproduction de ces éléments d'information.

*"effets environnementaux"*

*"effets environnementaux"* Que ce soit au Canada ou à l'étranger, les changements que la réalisation d'un projet risque de causer à l'environnement - notamment à une espèce sauvage inscrite, à son habitat essentiel ou à la résidence des individus de cette espèce, au sens du paragraphe 2(1) de la Loi sur les espèces en péril - les répercussions de ces changements soit en matière sanitaire et socioéconomique, soit sur l'usage courant de terres et de ressources à des fins traditionnelles par les autochtones, soit sur une construction, un emplacement ou une chose d'importance en matière historique, archéologique, paléontologique ou architecturale, ainsi que les changements susceptibles d'être apportés au projet du fait de l'environnement.

*"environnement"*

*"environnement"* Ensemble des conditions et des éléments naturels de la Terre, notamment:

- a) le sol, l'eau et l'air, y compris toutes les couches de l'atmosphère;
- b) toutes les matières organiques et inorganiques ainsi que les êtres vivants;
- c) les systèmes naturels en interaction qui comprennent les éléments visés aux alinéas a) et b).

*"étude approfondie"*

*"étude approfondie"* Évaluation environnementale d'un projet effectuée aux termes de l'article 21 et qui comprend la prise en compte des éléments énumérés aux paragraphes 16(1) et (2).

*"évaluation environnementale"*

*"évaluation environnementale"* Évaluation des effets environnementaux d'un projet effectuée conformément à la présente loi et aux règlements.

*"examen par une commission"*

*"examen par une commission"* Évaluation environnementale effectuée par une commission d'évaluation environnementale constituée aux termes de l'article 33 et qui comprend la prise en compte des éléments énumérés aux paragraphes 16(1) et (2).

*"examen préalable"*

*"examen préalable"* Évaluation environnementale qui, à la fois:

- a) est effectuée de la façon prévue à l'article 18;
- b) prend en compte les éléments énumérés au paragraphe 16(1).

*"liste d'étude approfondie"*

*"liste d'étude approfondie"* Liste des projets ou catégories de projets désignés par règlement aux termes de l'alinéa 58(1)i).

*"liste d'exclusion"*

*"liste d'exclusion"* Liste des projets ou catégories de projets soustraits à l'évaluation par règlement pris en vertu des alinéas 59c) ou c.1).

*"médiation"*

*"médiation"* Évaluation environnementale effectuée sous la direction d'un médiateur nommé aux termes de l'article 30 et qui comprend la prise en compte des éléments énumérés aux paragraphes 16(1) et (2).

*"mesures d'atténuation"*

*"mesures d'atténuation"* Maîtrise efficace, réduction importante ou élimination des effets environnementaux négatifs d'un projet, éventuellement assortie d'actions de rétablissement notamment par remplacement ou restauration; y est assimilée l'indemnisation des dommages causés.

*"ministre"*

*"ministre"* Le ministre de l'Environnement.

*"partie intéressée"*

*"partie intéressée"* Toute personne ou tout organisme pour qui le résultat de l'évaluation environnementale revêt un intérêt qui ne soit ni frivole ni vexatoire.

*"programme de suivi"*

*"programme de suivi"* Programme visant à permettre:

- a) de vérifier la justesse de l'évaluation environnementale d'un projet;
- b) de juger de l'efficacité des mesures d'atténuation des effets environnementaux négatifs.



*"projet"*

"projet" Réalisation - y compris l'exploitation, la modification, la désaffectation ou la fermeture - d'un ouvrage ou proposition d'exercice d'une activité concrète, non liée à un ouvrage, désignée par règlement ou faisant partie d'une catégorie d'activités concrètes désignée par règlement aux termes de l'alinéa 59b).

*"promoteur"*

"promoteur" Autorité fédérale ou gouvernement, personne physique ou morale ou tout organisme qui propose un projet.

*"rapport d'examen préalable"*

"rapport d'examen préalable" Rapport des résultats d'un examen préalable.

*"registre"*

"registre" Le registre canadien d'évaluation environnementale établi au titre de l'article 55.

*"territoire domanial"**"territoire domanial"*

- a) Les terres qui appartiennent à Sa Majesté du chef du Canada ou qu'elle a le pouvoir d'aliéner, ainsi que leurs eaux et leur espace aérien, à l'exception des terres dont le Commissaire du Yukon, celui des Territoires du Nord-Ouest ou celui du Nunavut a la gestion et la maîtrise;
- b) les eaux intérieures, la mer territoriale, la zone économique exclusive et le plateau continental du Canada;
- c) les réserves, terres cédées ou autres terres qui ont été mises de côté à l'usage et au profit d'une bande et assujetties à la Loi sur les Indiens, ainsi que leurs eaux et leur espace aérien.

*Gestion du territoire domanial*

(2) Dans l'application de la présente loi aux sociétés d'État, la mention de la gestion du territoire domanial vaut mention de l'administration du territoire domanial ou du fait d'en être propriétaire.

*Précision*

(3) Il est entendu que la réalisation - y compris l'exploitation, la modification, la désaffectation ou la fermeture - d'un ouvrage, ou l'exercice d'une activité désignée par règlement ou faisant partie d'une catégorie d'activités désignée par règlement pour l'application de la définition de "projet" au paragraphe (1), constituent un projet, au minimum, tant qu'une personne ou un organisme visés aux paragraphes 5(1) ou (2), 8(1), 9(2), 9.1(2), 10(1) ou 10.1(2) envisage mais n'a pas encore pris une mesure prévue à ces dispositions.



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## Canadian Environmental Assessment Act, 2012

## Loi canadienne sur l'évaluation environnementale (2012)

S.C. 2012, c. 19, s. 52

L.C. 2012, ch. 19, art. 52

### NOTE

[Enacted by section 52 of chapter 19 of the Statutes of Canada, 2012, in force July 6, 2012, see SI/2012-56.]

### NOTE

[Édictée par l'article 52 du chapitre 19 des Lois du Canada (2012), en vigueur le 6 juillet 2012, voir TR/2012-56.]

Current to October 11, 2016

À jour au 11 octobre 2016

Last amended on December 31, 2014

Dernière modification le 31 décembre 2014

**(c)** to promote cooperation and coordinated action between federal and provincial governments with respect to environmental assessments;

**(d)** to promote communication and cooperation with aboriginal peoples with respect to environmental assessments;

**(e)** to ensure that opportunities are provided for meaningful public participation during an environmental assessment;

**(f)** to ensure that an environmental assessment is completed in a timely manner;

**(g)** to ensure that projects, as defined in section 66, that are to be carried out on federal lands, or those that are outside Canada and that are to be carried out or financially supported by a federal authority, are considered in a careful and precautionary manner to avoid significant adverse environmental effects;

**(h)** to encourage federal authorities to take actions that promote sustainable development in order to achieve or maintain a healthy environment and a healthy economy; and

**(i)** to encourage the study of the cumulative effects of physical activities in a region and the consideration of those study results in environmental assessments.

### Mandate

**(2)** The Government of Canada, the Minister, the Agency, federal authorities and responsible authorities, in the administration of this Act, must exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.

## Environmental Effects

### Environmental effects

**5 (1)** For the purposes of this Act, the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are

**(a)** a change that may be caused 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*,

**(c)** de promouvoir la collaboration des gouvernements fédéral et provinciaux et la coordination de leurs activités en matière d'évaluation environnementale;

**(d)** de promouvoir la communication et la collaboration avec les peuples autochtones en matière d'évaluation environnementale;

**(e)** de veiller à ce que le public ait la possibilité de participer de façon significative à l'évaluation environnementale;

**(f)** de veiller à ce que l'évaluation environnementale soit menée à terme en temps opportun;

**(g)** de veiller à ce que soient étudiés avec soin et prudence, afin qu'ils n'entraînent pas d'effets environnementaux négatifs importants, les projets au sens de l'article 66 qui sont réalisés sur un territoire domanial, qu'une autorité fédérale réalise à l'étranger ou pour lesquels elle accorde une aide financière en vue de leur réalisation à l'étranger;

**(h)** d'inciter les autorités fédérales à favoriser un développement durable propice à la salubrité de l'environnement et à la santé de l'économie;

**(i)** d'encourager l'étude des effets cumulatifs d'activités concrètes dans une région et la prise en compte des résultats de cette étude dans le cadre des évaluations environnementales.

### Mission

**(2)** Pour l'application de la présente loi, le gouvernement du Canada, le ministre, l'Agence, les autorités fédérales et les autorités responsables doivent exercer leurs pouvoirs de manière à protéger l'environnement et la santé humaine et à appliquer le principe de précaution.

## Effets environnementaux

### Effets environnementaux

**5 (1)** Pour l'application de la présente loi, les effets environnementaux qui sont en cause à l'égard d'une mesure, d'une activité concrète, d'un projet désigné ou d'un projet sont les suivants :

**a)** les changements qui risquent d'être causés aux composantes ci-après de l'environnement qui relèvent de la compétence législative du Parlement :

**(i)** les poissons et leur habitat, au sens du paragraphe 2(1) de la *Loi sur les pêches*,

- (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 2;
- (b) a change that may be caused to the environment that would occur
- (i) on federal lands,
  - (ii) in a province other than the one in which the act or thing is done or where the physical activity, the designated project or the project is being carried out, or
  - (iii) outside Canada; and
- (c) with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on
- (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage,
  - (iii) the current use of lands and resources for traditional purposes, or
  - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

#### Exercise of power or performance of duty or function by federal authority

(2) However, if the carrying out of the physical activity, the designated project or the project requires a federal authority to exercise a power or perform a duty or function conferred on it under any Act of Parliament other than this Act, the following environmental effects are also to be taken into account:

- (a) a change, other than those referred to in paragraphs (1)(a) and (b), that may be caused to the environment and that is 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 the physical activity, the designated project or the project; and
- (b) an effect, other than those referred to in paragraph (1)(c), of any change referred to in paragraph (a) on

(ii) les espèces aquatiques au sens du paragraphe 2(1) de la *Loi sur les espèces en péril*,

(iii) les oiseaux migrateurs au sens du paragraphe 2(1) de la *Loi de 1994 sur la convention concernant les oiseaux migrateurs*,

(iv) toute autre composante de l'environnement mentionnée à l'annexe 2;

b) les changements qui risquent d'être causés à l'environnement, selon le cas :

(i) sur le territoire domanial,

(ii) dans une province autre que celle dans laquelle la mesure est prise, l'activité est exercée ou le projet désigné ou le projet est réalisé,

(iii) à l'étranger;

c) s'agissant des peuples autochtones, les répercussions au Canada des changements qui risquent d'être causés à l'environnement, selon le cas :

(i) en matière sanitaire et socio-économique,

(ii) sur le patrimoine naturel et le patrimoine culturel,

(iii) sur l'usage courant de terres et de ressources à des fins traditionnelles,

(iv) sur une construction, un emplacement ou une chose d'importance sur le plan historique, archéologique, paléontologique ou architectural.

#### Exercice d'attributions par une autorité fédérale

(2) Toutefois, si l'exercice de l'activité ou la réalisation du projet désigné ou du projet exige l'exercice, par une autorité fédérale, d'attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la présente loi, les effets environnementaux comprennent en outre :

a) les changements — autres que ceux visés aux alinéas (1)a) et b) — qui risquent d'être causés à l'environnement et qui sont directement liés ou nécessairement accessoires aux attributions que l'autorité fédérale doit exercer pour permettre l'exercice en tout ou en partie de l'activité ou la réalisation en tout ou en partie du projet désigné ou du projet;

b) les répercussions — autres que celles visées à l'alinéa (1)c) — des changements visés à l'alinéa a), selon le cas :



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## National Energy Board Act

## Loi sur l'Office national de l'énergie

R.S.C., 1985, c. N-7

L.R.C. (1985), ch. N-7

Current to October 11, 2016

À jour au 11 octobre 2016

Last amended on June 19, 2016

Dernière modification le 19 juin 2016

### **Powers with respect to witnesses, etc.**

**(3)** The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

### **Expeditious proceedings**

**(4)** Subject to subsections 6(2.1) and (2.2), all applications and proceedings before the Board are to be dealt with as expeditiously as the circumstances and considerations of fairness permit, but, in any case, within the time limit provided for under this Act, if there is one.

R.S., 1985, c. N-7, s. 11; 2012, c. 19, s. 74.

### **Jurisdiction**

**12 (1)** The Board has full and exclusive jurisdiction to inquire into, hear and determine any matter

**(a)** where it appears to the Board that any person has failed to do any act, matter or thing required to be done by this Act or by any regulation, certificate, licence or permit, or any order or direction made by the Board, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Act, or any such regulation, certificate, licence, permit, order or direction; or

**(b)** where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any matter, act or thing that by this Act or any such regulation, certificate, licence, permit, order or direction is prohibited, sanctioned or required to be done.

### **Inquiry**

**(1.1)** The Board may inquire into any accident involving a pipeline, abandoned pipeline, international power line or other facility the construction or operation of which is regulated by the Board and may, at the conclusion of the inquiry, make

**(a)** findings as to the cause of the accident or factors contributing to it;

**(b)** recommendations relating to the prevention of future similar accidents; or

**(c)** any decision or order that the Board can make.

### **Pouvoirs quant aux témoins**

**(3)** L'Office a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, la production et l'examen des documents, l'exécution de ses ordonnances, la visite de lieux et toutes autres questions relevant de sa compétence, les attributions d'une cour supérieure d'archives.

### **Rapidité**

**(4)** Sous réserve des paragraphes 6(2.1) et (2.2), l'Office tranche les demandes et procédures dont il est saisi le plus rapidement possible, compte tenu des circonstances et de l'équité, mais en tout état de cause dans le délai prévu sous le régime de la présente loi, le cas échéant.

L.R. (1985), ch. N-7, art. 11; 2012, ch. 19, art. 74.

### **Compétence**

**12 (1)** L'Office a compétence exclusive pour examiner, entendre et trancher les questions soulevées par tout cas où il estime :

**a)** soit qu'une personne contrevient ou a contrevenu, par un acte ou une omission, à la présente loi ou à ses règlements, ou à un certificat, une licence ou un permis qu'il a délivrés, ou encore à ses ordonnances ou instructions;

**b)** soit que les circonstances peuvent l'obliger, dans l'intérêt public, à prendre une mesure — ordonnance, instruction, autorisation, sanction ou approbation — qu'en droit il est autorisé à prendre ou qui se rapporte à un acte que la présente loi ou ses règlements, un certificat, une licence ou un permis qu'il a délivrés, ou encore ses ordonnances ou instructions interdisent, sanctionnent ou exigent.

### **Enquête**

**(1.1)** L'Office peut enquêter sur tout accident relatif à un pipeline, à un pipeline abandonné, à une ligne internationale ou à toute autre installation dont la construction ou l'exploitation est assujettie à sa réglementation, en dégager les causes et facteurs, faire des recommandations sur les moyens d'éviter que des accidents similaires ne se produisent et rendre toute décision ou ordonnance qu'il lui est loisible de rendre.

### Matters of law and fact

(2) For the purposes of this Act, the Board has full jurisdiction to hear and determine all matters, whether of law or of fact.

R.S., 1985, c. N-7, s. 12; 1990, c. 7, s. 5; 2015, c. 21, s. 5.

### Jurisdiction — Inuvialuit Settlement Region

**12.1 (1)** The Board shall, for a period of 20 years beginning on the day on which this section comes into force, be the regulator — under any law of the Legislature of the Northwest Territories that is made under paragraph 19(1)(a), (b) or (c) of the *Northwest Territories Act* — in respect of that portion of the Inuvialuit Settlement Region, as defined in section 2 of the *Canada Oil and Gas Operations Act*, that is situated in the onshore as defined in section 2 of the *Northwest Territories Act*.

### Successive periods and termination

(2) The Government of Canada and the Government of the Northwest Territories may agree that the Board shall be the regulator for successive periods of 20 years each; they may also, before the expiry of each successive period, agree to its earlier termination.

2014, c. 2, s. 18.

### Mandatory orders

**13** The Board may

(a) order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or permit, or any order or direction made or given under this Act; and

(b) forbid the doing or continuing of any act, matter or thing that is contrary to this Act or any such regulation, certificate, licence, permit, order or direction.

R.S., c. N-6, s. 12.

### Authorization regarding Board's powers, duties and functions

**14 (1)** The Chairperson may authorize one or more members, either jointly or severally, to exercise any of the Board's powers or to perform any of the Board's duties and functions under this Act, except those under subsection 45(3), sections 46, 47, 48, 52 to 54, 56, 58, 58.11, 58.14, 58.16, 58.32, 58.35, 58.37 and 129 and under Parts IV, VI, VII and IX.

### Questions de droit et de fait

(2) Pour l'application de la présente loi, l'Office a la compétence voulue pour trancher les questions de droit ou de fait.

L.R. (1985), ch. N-7, art. 12; 1990, ch. 7, art. 5; 2015, ch. 21, art. 5.

### Compétence : région désignée des Inuvialuits

**12.1 (1)** L'Office national de l'énergie agit, pendant une période de vingt ans commençant à l'entrée en vigueur du présent article, à titre d'organisme de réglementation, au titre de toute loi de la Législature des Territoires du Nord-Ouest édictée en vertu des alinéas 19(1)a), b) ou c) de la *Loi sur les Territoires du Nord-Ouest*, à l'égard de toute partie de la région désignée des Inuvialuits au sens de l'article 2 de la *Loi sur les opérations pétrolières au Canada* comprise dans la région intracôtière au sens de l'article 2 de la *Loi sur les Territoires du Nord-Ouest*.

### Prorogation et abrégement

(2) Les gouvernements du Canada et des Territoires du Nord-Ouest peuvent proroger la période prévue au paragraphe (1) à une ou plusieurs reprises. En outre, ils peuvent, avant l'expiration de chaque période supplémentaire, fixer une période plus courte.

2014, ch. 2, art. 18.

### Ordres et interdictions

**13** L'Office peut :

a) enjoindre à quiconque d'accomplir sans délai ou dans le délai imparti, ou à un moment précis, et selon les modalités qu'il fixe, un acte qu'imposent ou que peuvent imposer la présente loi ou ses règlements, ou un certificat, une licence, un permis, une ordonnance ou des instructions qui en découlent;

b) interdire ou faire cesser tout acte contraire à ceux-ci.

S.R., ch. N-6, art. 12.

### Autorisation — exercice des attributions

**14 (1)** Le président peut autoriser les membres, conjointement ou individuellement, à exercer toute attribution que la présente loi confère à l'Office, sauf celles que prévoient le paragraphe 45(3), les articles 46, 47, 48, 52 à 54, 56, 58, 58.11, 58.14, 58.16, 58.32, 58.35, 58.37 et 129 et les parties IV, VI, VII et IX.