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Transport Committee
House of Commons
Ottawa, Ontario
K1A 0A6

Committee of the Whole
Senate of Canada
Ottawa, Ontario
K1A 0A4

Delivered via e-mail

Dear Committee Member:

RE: THE NEED TO PAUSE OR FIX BILL C-5 (*ONE CANADIAN ECONOMY ACT*)

This is the submission of the Canadian Environmental Law Association (CELA) to the House of Commons Transport Committee and the Senate Committee of the Whole in relation to Bill C-5 (*One Canadian Economy Act*).[1]

CELA has carefully reviewed the proposed provisions in Part 1 (*Free Trade and Labour Mobility in Canada Act*) and Part 2 (*Building Canada Act*) of Bill C-5. For the reasons outlined below, CELA is firmly opposed to both Parts of Bill C-5 in their current form.

Accordingly, CELA recommends that Bill C-5 should be paused or withdrawn to allow Parliament to carefully reconsider this legislation and to solicit public and Indigenous input on whether the legislation should be enacted and if so, whether the current provisions are sufficiently robust, equitable, and consistent with the public interest and constitutional requirements.

In the alternative, CELA submits that the two Parts of the Bill should be split up and separately considered in the House of Commons and the Senate, particularly since they address fundamentally different matters. Assuming that there is a persuasive reason to enact Part 1 forthwith (which, in our view, is a debatable proposition), then Part 1 could continue through its current expedited schedule, while Part 2 should be held back to permit the more detailed Parliamentary and public scrutiny that it warrants in light of its extraordinary provisions and legal effect.

[1] Bill C-5 451 An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act | Projet de loi C-5 451 Loi édictant la Loi sur le libre-échange et la mobilité de la main-d'oeuvre au Canada et la Loi visant à bâtir le Canada.

In the further alternative, if the entire Bill C-5 continues to proceed through the Parliamentary process, CELA submits that the Bill must be amended to include important legal guardrails to ensure certainty, transparency, and accountability in decision-making under this unprecedented legislation. On this point, CELA strongly supports the high-priority amendments which have been developed and put forward by CELA, Ecojustice, West Coast Environmental Law, David Suzuki Foundation, and other non-governmental organizations across Canada. A copy of CELA's proposed amendments to Parts 1 and 2 of Bill C-5 is attached below as Appendix A and B to this submission.

(a) CELA Background

CELA is a public interest law clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest environmental advocates for environmental protection in the country. With funding from Legal Aid Ontario, CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives. CELA exists to ensure that low-income and disadvantaged people have access to environmental justice through the courts and tribunals.

On behalf of our clients (e.g., individuals, residents' groups, environmental organizations, and Indigenous communities), CELA lawyers have engaged in litigation, public hearings, and law reform activities which involve many of the statutes listed in Schedule 1 of the proposed *Building Canada Act* (e.g. *Impact Assessment Act, Fisheries Act, Species at Risk Act, Canadian Environmental Protection Act, 1999*, etc.). In addition, CELA frequently participates in licencing hearings for nuclear facilities held by the Canadian Nuclear Safety Commission, which is the subject of new provisions in the *Building Canada Act*. Based on our five decades of experience protecting the environment and safeguarding public health and safety, we have applied the public interest perspective of our client communities in our analysis of Parts 1 and 2 of Bill C-5.

Notably, CELA is not opposed to legislative attempts to create good green jobs or to facilitate the just transition to a sustainable low-carbon (or net-zero) future. At the same time, however, CELA advocates the rule of law, fair and democratic processes, intergenerational equity, and the need for transparency and meaningful public and Indigenous participation in environmental decision-making. This is why CELA remains highly concerned about, and strongly opposed, to Bill C-5.

(b) CELA Comments on Part 1 of Bill C-5

If enacted, Part 1 of Bill C-5 is intended to remove federal barriers to the interprovincial trade of goods and services and to improve labour mobility within Canada.

Among other things, Part 1 provides that a good or service that meets provincial or territorial requirements is considered to meet "comparable" federal requirements that pertain to the interprovincial movement of the good or provision of the service. However, there are no prescriptive definitions and insufficient criteria, or indicators in Part 1 to specify what is – or is not – "comparable" to federal requirements.

In CELA's view, this laissez-faire approach potentially sets the stage for undermining or displacing federal regulatory standards in favour of a "lowest common denominator" race to the bottom. This is particularly objectionable in the environmental context where duly passed federal requirements must, of necessity, apply consistently from coast to coast to coast in order to avoid creating "pollution havens" in which less rigorous provincial requirements may exist.

Accordingly, if Part 1 of Bill C-5 continues through the Parliamentary process, then, at the very least, a paramountcy (or conflict of laws) section should be added to Part 1 to indicate that where there is a conflict between federal requirement and a provincial or territorial requirement, the law that is more protective of the health and safety of Canadians and the environment shall apply and prevail to the extent of the inconsistency.

Similarly, CELA submits that the word "comparable" should be removed wherever it appears in Part 1 of Bill C-5 (i.e., sections 8, 9, 10, and 12), and replaced with the word "equivalent". This would be consistent with the equivalency arrangements that are currently available under section 10 of the *Canadian Environmental Protection Act, 1999* to exempt a province from an otherwise valid federal regulations if the province has an equivalent regulation.

The proposed wording of these recommended reforms to Part 1 of Bill C-5 is set out below in Appendix A. CELA commends these amendments to your respective Committees, and we trust that they will be carefully considered and acted upon by one or both Committees.

(c) CELA Comments on Part 2 of Bill C-5

If enacted, Part 2 of Bill C-5 will give the federal Cabinet virtually unfettered discretion to:

- designate any major facility, resource-based activity, or infrastructure (i.e. nuclear facilities, pipelines, mines, etc.) as so-called "national interest" projects
- automatically pre-approve these projects under federal environmental laws (i.e. *Impact Assessment Act*, *Fisheries Act*, *Species at Risk Act*, *Canadian Navigable Waters Act*, *Canadian Environmental Protection Act, 1999*, etc.) without having sufficient upfront information about the significance, frequency, magnitude, or mitigation of adverse environmental effects or cumulative effects that may be caused by such projects; and
- make regulations which exempt these projects from any applicable federal laws.

CELA is especially concerned that Part 2 of Bill C-5 empowers the federal government to add an indeterminate number of environmentally significant undertakings to the Schedule 1 list of "nation-building" projects after considering a vague set of loosely crafted "factors", such as the extent to which the candidate project can:

- strengthen Canada's autonomy, resilience and security;
- provide economic or other benefits to Canada;
- have a high likelihood of successful execution;
- advance the interests of Indigenous Peoples; and
- contribute to clean growth and to Canada's objectives with respect to climate change.

However, it appears to CELA that none of these factors are mandatory, binding, or dispositive, and that it remains open to the federal government to add a project to the Schedule 1 list even if it only meets one – or none – of these ambiguous factors. Moreover, while there must be consultation with provinces, territories, and affected Indigenous communities, Part 2 of Bill C-5 fails to expressly include any opportunities for public review/comment before a project is added to Schedule 1. In our view, this is a significant omission that must be rectified by your respective Committees in the event that Bill C-5 proceeds any further in the Parliamentary process.

CELA is further alarmed that section 21 of the *Building Canada Act* allows the Cabinet to add even more federal laws to Schedule 2 in the future for pre-approval purposes. Similarly, section 22 of the Act enables the Cabinet to exempt "one or more national interest projects" from any federal enactment that would otherwise be applicable to such projects. Incredibly, section 23 even permits the Cabinet to exempt Schedule 1 projects from the provisions of the *Building Canada Act* itself. In our view, these sections must be deleted from the *Building Canada Act*.

CELA also notes that federal statutes – such as the key environmental laws currently listed in Schedule 2 of the *Building Canada Act* – have been democratically enacted and exist for important public policy reasons (i.e. ensure public safety, human and ecosystem health, international security, etc.). Accordingly, these statutes should not be prevented by *Building Canada Act* regulations from applying to Schedule 1 projects for reasons of administrative convenience or political expediency. Moreover, the controversial existence of the broad exempting powers in sections 22 to 23 appear to be inconsistent with the claim in the Act's preamble that "the Government of Canada is committed to upholding rigorous standards with respect to environmental protection." If this statement is true, then the *Building Canada Act* should not authorize the potential exemption of "national interest" projects from federal environmental laws.

On this point, it is also clear to CELA that the preamble's environmental commitment is largely absent from the section 5(6) factors to be considered when adding national interest projects to Schedule 1. At the very least, this preamble commitment should be added to section 5(6) as follows: "Ensure that rigorous standards with respect to environmental protection will be upheld."

CELA further notes that section 19 of the *Building Canada Act* purports to oust the application of the early planning phase and other key provisions of the federal *Impact Assessment Act* (IAA). This means that while some elements of the IAA's information-gathering and decision-making may be applicable to certain national interest projects, the automatic "pre-approval" regime in Part 2 of Bill C-5 effectively eliminates the Cabinet's option of refusing to approve risky undertakings that pose significant adverse environmental effects within federal jurisdiction (e.g. the Northern Gateway pipeline).

In our view, this unjustified retreat from fully applying the IAA to the largest, most expensive, and environmentally risky types of infrastructure development and industrial resource extraction is unacceptable from a public interest perspective. It is also ironic because the federal government has previously gone to the Supreme Court of Canada to defend its jurisdiction to enact the IAA (which was subsequently amended in 2024), but now Part 2 of Bill C-5 voluntarily waives or constrains this jurisdiction, at least in part, for Schedule 1 projects.

Given these and other concerns, CELA recommends, at a minimum, that the *Building Canada Act* should be amended to:

- reframe, expand, and define the criteria or standards (not just "factors") for determining if a project is in the national interest, including an objective evaluation of the project's economic viability;
- clarify that "clean growth" includes renewable energy projects but not nuclear power or fossil fuel production facilities or infrastructure;
- recast "national interest" determinations as approval in principle for the projects rather than "deemed authorizations," subject to the proponent's compliance with, and implementation of, effective and enforceable conditions imposed under federal law;
- ensure meaningful public participation when deciding whether to add a project to Schedule 1, and during the federal approvals, licencing, and permitting processes which develop conditions for the national interest projects listed in Schedule 1;
- aside from mentioning the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) in the unenforceable preamble of Bill C-5, the legislation should firmly entrench the UNDRIP principle of "free, prior and informed consent" when Schedule 1 candidates are being considered by the minister and before they are conditionally approved under federal law;
- establish "use it or lose it" deadlines by which the "conditions document" expires or lapses if the project is not substantially commenced within the prescribed timeframe;
- require the minister to publicly conduct biannual reviews of Schedule 1 to determine if listed projects should be retained or removed;
- delete the ability of Cabinet to pass regulations which exempt national interest projects, in whole or in part, from federal laws, including the *Building Canada Act* itself;
- enable members of the public to formally request reviews of Schedule 1 or "conditions documents" where there has been a change in circumstances or new information is available; and
- include transitional provisions which specify that the *Building Canada Act* does not retroactively apply to designated projects that have already triggered the application of the *Impact Assessment Act*.

Many of these key reforms are addressed in the attached list of high-priority amendments that have been suggested by leading environmental groups throughout Canada, as reflected in Appendix B below. CELA commends these amendments to your respective Committees, and we trust that they will be carefully considered and acted upon by one or both Committees.

(d) CELA Conclusion and Recommendation

If Part 1 of Bill C- 5 is enacted, then it could potentially undermine the effectiveness and enforceability of federal requirements if a federal regulatory body opines, without sufficient guidance or direction in Part 1, that a provincial or territorial requirement is merely "comparable".

If Part 2 of Bill C-5 is enacted, then it could potentially be used to fast-track environmentally risky mega-projects across the country while undermining federal laws designed to safeguard the environment, human health, and Indigenous rights.

Accordingly, CELA recommends that Bill C-5 should either be paused, withdrawn, split up, or substantially amended in accordance with the numerous amendments which have been jointly submitted to the Committees by Canada's leading environmental organizations.

We look forward to your respective Committee's response to this recommendation, and please contact the undersigned if you have any questions or require further information about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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Encl.

APPENDIX A

CELA-Endorsed Amendments to Part 1 of Bill C-5

Part 1 – Free Trade and Labour Mobility in Canada Act

Proposed amendment number 1:
Add a new section dealing with potential conflict of laws:

Section X: Where there is a conflict between federal law and provincial or territorial law, the law that is more protective of the health and safety of Canadians and the environment shall apply.

Proposed amendment number 2:
The word “comparable” should be replaced by “equivalent” in sections 8, 9, 10 and 12.

8(1) Subject to the regulations, a good produced, used or distributed in accordance with a provincial or territorial requirement is considered to meet any ~~comparable~~ equivalent federal requirement.

9 (1) Subject to the regulations, a service provided in accordance with a provincial or territorial requirement is considered to meet any ~~comparable~~ equivalent federal requirement so long as the provincial or territorial requirement continues to apply to the service provider.

10 Subject to the regulations, a federal regulatory body must

(a) recognize an authorization to practise an occupation issued by a provincial or territorial regulatory body as ~~comparable~~ equivalent to an authorization that the federal regulatory body may issue to practise that occupation; and

12 (1) Despite any other Act of Parliament, no civil action lies against His Majesty, a servant or agent of the Crown or a federal regulatory body in respect of anything done or omitted to be done, or purported to be done or omitted to be done, in good faith in the course of applying section 8, 9 or 10 or any regulations made for the purposes of any of those sections, including anything in relation to whether provincial or territorial requirements are ~~comparable~~ equivalent to federal requirements and the recognition and issuance of authorizations to practise an occupation.

APPENDIX B

CELA-ENDORSED AMENDMENTS TO PART 2 of Bill C-5

Part 2 – Building Canada Act

PRIORITY NUMBER ONE
Delete sections 21, 22, 23(a) and (b).

PRIORITY NUMBER TWO
Clarify that the authorization "document" must satisfy existing requirements of the responsible minister(s) related to project approval and carveout the *Species at Risk Act* sections 73, 74 and 77 to ensure the project will not jeopardize the survival and recovery of an endangered species or the mitigation.

- 7(3) With respect to each authorization that is specified in it, the document is deemed to be the authorization issued under the enactment under which the authorization is required and ~~to~~ must meet all of the requirements, under any enactment, that relate to the issuance of the authorization.

AND

- Specify in Schedule 2, Part 1, Column 2 that the Act only applies to sections 1-72, 75-76, and 78-142 of the *Species at Risk Act*

PRIORITY NUMBER THREE
Introduce requirements for public participation by:

- EITHER
    - Add 8.1 The minister must
        - (a) ensure that the public is provided with an opportunity to participate meaningfully in any decision made under sections 5(1), (3), 7(1), 8(1), (2); and
        - (b) make all relevant information available to the public, including a detailed description of the project, any information received from a proponent and any other federal minister, any information received from a regulator described in sections 9(1), 10(1), 11 or 15, any comments received from the public, and any knowledge or information received from Indigenous peoples that the person providing that knowledge or information has not identified as confidential.

- IN THE ALTERNATIVE, IF GOVERNMENT WON'T GO WITH THE ABOVE: Delete Sections 5(8) and 7(7), which exempt scheduling orders and the conditions document from the application of the *Statutory Instruments Act* (and therefore make it so those documents are not subject to public review – i.e., deleting them will ensure at least a 30-day public comment period on decisions to schedule (fast-track) projects and the conditions document).

PRIORITY NUMBER FOUR

Section 5(1) is amended as follows:

5 (1) If the Governor in Council ~~is of the opinion that~~ decides, in accordance with subsection (6), that a project is in the national interest, the Governor in Council may, on the recommendation of the Minister, by order, amend Schedule 1 to add the name of the project and a ~~brief~~ detailed description of it, including the location where it is to be carried out.

Sections 5(6) and (7) are deleted and replaced with the following:

Test for National Interest Projects

5(6) No project shall be subject to an order under subsection (1) or added to Schedule 1 unless the Governor in Council considers the results of the governmental, Indigenous, and public consultations required under subsection (7) and decides, with reasons, that carrying out the project will

(a) strengthen Canada's autonomy, resilience and security;
(b) provide economic or other benefits to Canada;
(c) have a high likelihood of successful execution and represent an economically viable undertaking;
(d) advance reconciliation, protect constitutionally protected interests of Indigenous peoples, and be consistent with the United Nations Declaration of the Rights of Indigenous Peoples, including the principle of free, prior, and informed consent;
(e) contribute to clean growth and meet Canada's environmental obligations and its commitments with respect to climate change and biodiversity;
(f) ensure that rigorous standards with respect to environmental protection are upheld and complied with during the carrying out of the project to which the order relates;
(g) contribute to sustainability; and
(h) avoid or prevent significant adverse effects within federal jurisdiction.

Mandatory Consultation

5(7) Before recommending that an order be made under any of subsections (1), (3) and (4), the Minister must meaningfully consult with:

(a) any other federal minister and any provincial or territorial government that the Minister considers appropriate;
(b) Indigenous peoples whose rights recognized and affirmed by section 35 of the *Constitution Act, 1982* may be adversely affected by the carrying out of the project to which the order relates; and

(c) members of the public, including Canadian residents, non-governmental organizations, and other persons who may be interested in, or potentially affected by, the carrying out of the project to which the order relates.

A new section 5(10) is added:

Definition of Clean Growth

5(10) For the purposes of this section, "clean growth" means renewable energy sources, including solar, wind, geothermal, tidal, hydroelectric, district energy, storage, and thermal exchange, and other low- or no-carbon energy projects, but excludes nuclear power projects and fossil fuel projects and related pipeline infrastructure."

PRIORITY NUMBER FIVE

Add a new section 7(2)(d) requiring the minister to apply the mitigation hierarchy, an internationally-recognized tool for protecting biodiversity.

- 7(d) The minister must be satisfied that the conditions will ensure that all measures will be taken to first avoid effects on biodiversity, then minimize them, then restore them, and only as a final step, if necessary and possible, to offset them.

PRIORITY NUMBER SIX

Shorten the timeline in sections 5(2) and 24 to two years (could accept three years, but ideally it would be two).

- 5(2) The Governor in Council is not authorized to make an order under subsection (1) after the ~~fifth~~ second anniversary of the day on which this section comes into force.
- 24 (see priority number six below).

PRIORITY NUMBER SEVEN

Amend section 24 to make it the Commissioner of the Environment and Sustainable Development who reviews the implementation of the Act, not the minister.

- 24 Within ~~five~~ two years after the day on which this Act comes into force, the ~~Minister~~ Commissioner of the Environment and Sustainable Development must ~~complete a review of~~ examine and report on the provisions and operation of this Act, including subsection 5(2), and of the efficacy of the federal regulatory system in relation to projects that are in the national interest and ~~must cause a report on the review to be laid before each House of Parliament~~ may include in that report recommendations that it considers relevant.

PRIORITY NUMBER EIGHT

Add a new 7(9) imposing a five-year expiration date on the conditions document if a project has not been substantially started.

- 7(9) If the project has not yet been substantially started within five years of the issuance of the document under section 7(1), the document expires.