

**SUBMISSIONS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE PARLIAMENT OF CANADA
RE BILL C-39 (*BUILDING CANADA STRONG ACT*)**

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1. Introduction

These are the submissions of the Canadian Environmental Law Association (CELA) to the Parliament of Canada regarding Bill C-39, the proposed *Building Canada Strong Act*.

Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. With funding from Legal Aid Ontario (LAO), CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives.

As discussed below, CELA has participated extensively in various administrative proceedings, court cases, and law reform efforts under the *Impact Assessment Act* (“IAA”) and its predecessors (i.e. *CEAA 2012*, *CEAA 1992*, and the *EARP Guidelines Order*). In addition, CELA frequently appears in licencing hearings held by the Canadian Nuclear Safety Commission (CNSC) under the *Nuclear Safety and Control Act* (NSCA). Our casework and law reform activities have also involved other federal environmental laws (i.e. *Canadian Environmental Protection Act, 1999* (CEPA), *Fisheries Act*, *Species at Risk Act* (SARA), etc.) that Bill C-39 proposes to amend.

CELA has carefully reviewed the provisions set out in Part 1 of Bill C-39 in light of our impact assessment and regulatory experience and from the public interest perspective of our client communities.

For the following reasons, CELA is strongly opposed to key components of Part 1 of Bill C-39 because if enacted, they will significantly erode existing environmental safeguards, reduce public and Indigenous participation in federal environmental decision-making, and undermine governmental accountability.

Accordingly, CELA recommends that numerous Part 1 provisions should be deleted forthwith from Bill C-39 as the proposed legislation moves through the Parliamentary process. These specific provisions are identified and assessed below.

2. Overview of Part 1 of Bill C-39

(i) Legislative Summary of Part 1 of Bill C-39

Bill C-39 was introduced for First Reading on September 21, 2026, received Second Reading on October 8, 2026, and was then referred to a special legislative committee for further study and review. The Senate is also reviewing Bill C-39.

Part 1 of Bill C-39 (sub-titled “Build Canada Now”) contains seven Divisions which collectively amend several of Canada’s most important environmental laws and regulatory regimes.

For example, the legislative summary¹ that accompanies Bill C-39 describes the amendments to the *IAA* proposed in Division 1 of Part 1 as follows:

Part 1 implements certain measures in relation to project evaluations.

Division 1 of Part 1 amends the *Impact Assessment Act* to, among other things,

- (a) provide that the Canadian Nuclear Safety Commission is to conduct the impact assessment of a designated project that includes activities that are regulated under the *Nuclear Safety and Control Act*;
- (b) authorize the Minister of the Environment to grant certain federal authorizations that are required in respect of a designated project at the same time that the Minister issues a decision statement in respect of the project;
- (c) ensure that a decision statement in respect of a designated project for which the Impact Assessment Agency of Canada conducts the impact assessment is issued within one year after the proponent provides the required information or studies;
- (d) provide for the coordination of the impact assessment of designated projects and the review processes for certain federal authorizations that are required in respect of those projects; and
- (e) provide for the coordination of consultations with Indigenous groups.

The legislative summary describes the amendments to the *Building Canada Act (BCA)* proposed in Division 2 of Part 1 as follows:

Division 2 of Part 1 amends the *Building Canada Act* to, among other things,

- (a) establish, for certain types of projects located within a region of national interest, a similar framework to the one applicable to national interest projects;
- (b) allow the minister designated under that Act to add, remove or amend any condition in respect of an authorization that was granted for a national interest project before the name of that project was added to Schedule 1 to that Act;

¹ [Government Bill \(House of Commons\) C-39 \(45-1\) - First Reading - Building Canada Strong Act - Parliament of Canada](#). CELA notes that the legislative summary describes some – but not all – of the significant changes contained within Part 1 of Bill C-39.

- (c) ensure that obligations to make information public associated with decisions made under that Act are administratively feasible; and
- (d) authorize the Governor in Council to add the name of a region to a new schedule to that Act if the Governor in Council is of the opinion, having regard to certain factors, that the designation of that region is in the national interest.

The legislative summary describes the amendments to the *Canadian Energy Regulator Act* (CERA) proposed in Division 3 of Part 1 as follows:

Division 3 of Part 1 amends the *Canadian Energy Regulator Act* to, among other things,

- (a) ensure decisions in respect of pipelines, designated power lines and offshore renewable energy projects are issued within one year of receiving the required information and studies;
 - (b) provide for the coordination of consultations with Indigenous peoples of Canada in respect of pipelines, designated power lines and offshore renewable energy projects;
 - (c) provide for the coordination of federal authorizations in respect of pipelines, designated power lines and offshore renewable energy projects with federal authorities;
 - (d) provide that the Commission is the sole assessor of applications in respect of pipelines, designated power lines and offshore renewable energy projects;
 - (e) provide authority for the Commission to
 - (i) make decisions in respect of applications relating to pipelines, designated power lines and offshore renewable energy projects, unless otherwise specified in the Act,
 - (ii) exempt certain pipelines or branches of or extensions to pipelines from the application of certain provisions, and
 - (iii) integrate a detailed route hearing into an ongoing hearing; and
 - (f) provide that the Governor in Council is to determine whether certain pipelines and designated power lines are in the public interest.
- It also makes consequential amendments to the *Federal Courts Act* and the *Northern Pipeline Act*.

The legislative summary describes the amendments to the *Canadian Navigable Waters Act* proposed in Division 4 of Part 1 as follows:

Division 4 of Part 1 amends the *Canadian Navigable Waters Act* to require the Minister of Transport to, among other things, take into account the feasibility of the terms and conditions in respect of an approval relating to certain works. It also transfers to that Minister the power to exempt bodies of water from the application of certain provisions of the Act if that Minister is satisfied that it would be in the public interest. Finally, it allows the Governor in Council to make regulations to exclude structures, devices or other things from the definition “work” to avoid duplication with other Acts and regulations.

The legislative summary describes the amendments to *CEPA* proposed in Division 5 of Part 1 as follows:

Division 5 of Part 1 amends the *Canadian Environmental Protection Act, 1999* to, among other things,

- (a) ensure that environmental protection compliance orders may be issued with respect to any thing to which that Act applies and to non-continuing offences, including with respect to contravening imports;
- (b) broaden the scope of such orders by permitting an enforcement officer to direct a person to take additional measures, such as managing contravening imports in the manner specified in the order, returning them to their place of origin or removing them from Canada; and
- (c) provide that certain permits issued under that Act may, in certain circumstances, be valid for more than one year.

The legislative summary describes the amendments to *SARA* proposed in Division 6 of Part 1 as follows:

Division 6 of Part 1 amends the *Species at Risk Act* to, among other things, require the competent minister to take into account the feasibility of the terms and conditions in respect of certain agreements and permits.

Finally, the legislative summary describes the amendments to the *Fisheries Act* proposed in Division 7 of Part 1 as follows:

Division 7 of Part 1 amends the *Fisheries Act* to, among other things,

- (a) modify the fish habitat bank regime to allow for the use of habitat credits by third parties;
- (b) authorize the making of regulations respecting the circumstances in which a person who is authorized to carry on a work, undertaking or activity may pay a fee to offset adverse effects on fish and fish habitat and provide for these fees to be credited to the Environmental Damages Fund; and
- (c) transfer certain regulation-making powers from the Governor in Council to the Minister of Fisheries and Oceans.

(ii) CELA's General Comments on Part 1 of Bill C-39

It is beyond the scope of these submissions by CELA to analyze and respond to all of these and other proposed amendments to the current federal environmental framework. Instead, these submissions focus on the Part 1 proposals which are of greatest concern to CELA from a public interest perspective.

CELA's overall conclusion is that the nature, scope, and magnitude of the sweeping changes being proposed by Part 1 of Bill C-39 to Canada's environmental safety net are unprecedented, unjustified, and unsupportable.

Moreover, major projects which are fast-tracked under federal assessment and approval regimes that are weakened (or made inapplicable) by Part 1 of Bill C-39 may cause

significant adverse environmental effects and/or infringe upon the exercise of treaty/Aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

CELA notes that the apparent rationale for Bill C-39 is to “build Canada strong” by streamlining and expediting federal assessment and approvals processes in order to attract investment and fast-track major projects across the country. Recent examples of this questionable industry-friendly approach include:

- The 2025 enactment of the *Building Canada Act* ([Bill C-5](#)), which enables the federal government to designate and pre-approve “national interest” projects under various federal environmental statutes
- The establishment of the federal [Major Projects Office](#) which is intended to advance “nation-building” projects “faster” by providing a “one-window” approach for coordinating and facilitating approvals needed by proponents
- The 2026 proposals to designate various large-scale (and environmentally significant) infrastructure projects (including the proposed underground repository in northwest Ontario for [used nuclear fuel waste](#)) as “national interest” projects under the *Building Canada Act*, despite ongoing public and Indigenous concerns about the environmental and public health risks associated with these projects
- The signing of several federal-provincial “co-operation” agreements in 2025-26 under the *IAA* which appear largely intended to defer or [off-load](#) assessment responsibilities to provincial governments, even in relation to projects that may have adverse impacts on areas of federal jurisdiction
- The 2026 [amendment](#) to the *IAA* projects list regulation that de-listed certain energy projects (i.e. interprovincial pipelines), which means that these projects are no longer subject to the *IAA*

Viewed in this context, it appears to CELA that Part 1 of Bill C-39 is not an isolated initiative, but is instead just the latest installment of the federal government’s dubious de-regulation agenda. Moreover, the oft-repeated mantra of “building Canada strong” appears to be premised on the long-discredited “jobs vs the environment” argument which claims that environmental regulation is merely “red tape” that unduly constrains economic growth and development.

To the contrary, it is well-recognized that a strong economy depends on a healthy environment. In short, good sustainable jobs can be created or secured without sacrificing the environment and removing essential legislative guardrails.

Moreover, CELA is not opposed to appropriate 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, effective environmental protection, 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 Part 1 of Bill C-39.

While we have considered whether selective amendments to Bill C-39 can “save” or salvage the proposed legislation, CELA has determined that Bill-C-39 is fundamentally flawed and cannot be remedied by amendments which merely finetune Part 1 but do not materially alter the intended purpose and legal effect of the Bill. Accordingly, the only amendments to Part 1 of Bill C-39 that CELA is recommending below are deletions, not minor clarifications or “housekeeping” revisions.

It is also unclear to CELA why the environmental components in Part 1 of Bill C-39 are being advanced by the Minister of Transport and Government House Leader, rather than by the responsible Ministers who administer the above-noted environmental statutes.

Similarly, CELA questions the federal government’s rationale for referring the wide-ranging environmental aspects of Part 1 of Bill C-39 to a special legislative committee, rather than to the Standing Committee on Environment and Sustainable Development (ENVI) for public hearings in the usual manner.

3. CELA’s Detailed Comments on Part 1 of Bill C-39

A. Proposed IAA Amendments

In our view, Division 1 of Part 1 proposes a number of problematic and unnecessary changes to the existing impact assessment process under the *IAA*. CELA’s primary concerns about the proposed *IAA* amendments are set out below.

CELA further notes that the *IAA* was amended by Parliament as recently as 2024, and there appears to be no compelling environmental rationale or public interest justification for the *IAA* amendments now being proposed in Bill C-39. While CELA recognizes the need to strengthen and improve the *IAA*, the suite of amendments proposed in Division 1 of Part 1 of Bill C-39 do not address the actual areas in need of appropriate reform under the *IAA*.

(i) Giving the CNSC sole authority to conduct assessments of nuclear projects

Division 1 of Part 1 of Bill C-39 contains over 90 sections which propose numerous amendments to the *IAA*, and includes several provisions which fundamentally alter the conduct of impact assessments for nuclear projects that are designated in the projects list regulation under the *IAA*.² At present, the types of major nuclear projects which are designated under the *IAA* and which trigger impact assessments (IA’s) include:

² SOR/285-19, sections 26-29.

- The construction, operation and decommissioning of one of the following:
 - (a) a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;
 - (b) a new facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more;
 - (c) a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.
- The site preparation for, and the construction, operation and decommissioning of, one or more new nuclear fission or fusion reactors if
 - (a) that activity is located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 900 MWth; or
 - (b) that activity is not located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 200 MWth
- The construction and operation of either of the following:
 - (a) a new facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing *nuclear facility*, as defined in [section 2](#) of the *Nuclear Safety and Control Act*, other than a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors that have a combined thermal capacity of less than 200 MWth;
 - (b) a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.
- The expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more.

However, Division 1 of Part 1 of Bill C-39 inappropriately proposes to transfer responsibility for the conduct of nuclear project impact assessments solely to the CNSC, thereby removing the Impact Assessment Agency of Canada (IAAC) from its current role in those assessments and avoiding mandatory review panel hearings under the *IAA*.

CELA has various concerns about this proposal based on our extensive experience representing clients and appearing before the CNSC and Joint Review Panels in nuclear licensing and IA / EA matters. CELA has participated in environmental assessments involving nuclear projects under the *Canadian Environmental Assessment Act, 1992* as amended, as well as under the *CEAA 2012*, and most recently under the *IAA*. For many years, CELA has also participated in numerous CNSC licensing decisions on behalf of environmental not-for-profit organizations and citizens' groups.

Notably, the *IAA* currently requires the Minister to refer the IA of a designated project to a review panel if the project includes physical activities that are regulated under the *NSCA*.³ The persons appointed to such review panels must “be unbiased and free from any conflict of interest relative to the designated project and must have knowledge or experience relevant to the designated project’s anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.”⁴ At least one member of the review panel must be appointed from a roster of CNSC members, but such persons cannot form the majority of the panel.⁵ In general, review panels must conduct the IA, ensure public disclosure of information, hold hearings “in a manner that offers the public an opportunity to participate meaningfully,” and submit an IA report to the Minister.⁶

It has been CELA’s experience that in cases where the IAAC is or has been involved in the impact assessment process (formerly environmental assessment) of nuclear projects, there are substantial advantages compared to proceedings conducted solely by the CNSC.

Of note is the improved transparency of the record, and of decision-making processes. For example, under the current *IAA* process, there is a comprehensive record and all documents submitted in relation to the matter are posted such that any member of the public can see them, search them, and follow chronologically. This includes documents such as MOUs between agencies which is an important transparency provision. Furthermore, in recent examples, the IAAC has sought comments and posted draft timelines, public participation plans, and approvals roadmaps.

In contrast, while the CNSC posts documents for hearings, the accessibility of these documents by the public and the long-term duration of those records is much more limited and unwieldy. Furthermore, the CNSC has recently been granting extensive exemptions to the nuclear industry from posting relevant documents in its hearings, often allowing only very generic summaries that are not very useful to the public in attempting to grapple with and engage with the issues in the hearing. These exceptions to transparency often go to the very heart of the substantive issues in the hearing. They also often relate to the matters of most concern to the public, namely safety issues which are integrally related to technical operations and design.

In the case of public hearings involving nuclear projects, CELA has participated in Joint Review Panels under CEAA 1992 that involved both the Agency and the CNSC. There were marked procedural improvements in those panel hearings compared to the CNSC-alone run licensing hearings, and the panel hearings generally provided for more input from the public about the questions that needed to be answered, traceability of responses, rights of further *viva voce* questioning, and ongoing rights of submissions and final reply by the public intervenors.

CELA continues to advocate for much needed procedural improvement to CNSC hearings and processes in general, but the CNSC continues to deny these improvements whether in amendments to its rules, or in specific hearing contexts. The result is that it is difficult to appreciate or

³ *IAA*, section 43.

⁴ *IAA*, subsection 44(2).

⁵ *IAA*, subsections 44(3) and (4).

⁶ *IAA*, section 51.

understand how the CNSC weighs evidence to arrive at its decisions; in fact, CELA submits that the matters that make up the CNSC's Records in its proceedings do not generally accord with judicial safeguards and procedural rights under the *Canada Evidence Act*. There is no sworn evidence; there is no qualification of experts; there is no right of cross-examination; there is poor structuring of issues; and the resulting decision invariably favours the proponent of the proposed nuclear project without appearing to give credence, in anything but a superficial way, to the substantive and well-researched reports and submissions provided by the public Intervenor. This concern was very well documented in a recent report, commissioned and published by CELA, [Acknowledged and Deferred: Intervenor Influence in CNSC Licensing Decisions](https://archive.celafoundation.ca/archive-item/report-acknowledged-and-deferred-intervenor-influence-in-cnsc-licensing-decisions/)⁷ in which the author finds that the CNSC's processes and decision-making allow formal public participation but that the concerns of the public rarely shape the outcomes of the proceedings.

CELA Executive Director Theresa McClenaghan also authored a chapter on the topic of regulatory capture in a recent text edited by Bruce Campbell, *Corporate Rules*⁸ in which she outlined the hallmarks of regulatory capture by the CNSC. The overarching concern is that the CNSC is a regulator of a highly hazardous industry for which the surrounding public bears the safety risk but the CNSC lacks the confidence and trust of the members of the public and civil society who regularly engage with its proceedings.

CELA submits that issue of regulatory capture results in poor decision-making and increases risks because of the danger of the “echo chamber” in which proponents, CNSC regulatory staff, and other members of industry firmly believe in the safety of their operations and are disinclined to hear serious concern and criticism. Hallmarks of regulatory capture include greater access to regulatory staff by industry than the public; significant movement of staff between industry and regulator; frequent identification of regulatory staff as part of the industry; close cooperation between industry and regulator, often without adequate public disclosure; and a high tendency to accept safety assurances by industry instead of sceptically and publicly probing those claims.

One example of the type of decision making that leads to this type of public concern is the trend for the CNSC Commissioners to grant the license or decision in question, despite unresolved design or safety issues, and delegate the resolution of such issues to CNSC staff working with the proponent, which takes the matter out of the public realm. In 2017, the independent Expert Panel Report “*Building Common Ground*”, which informed the development and passage of the *IAA* in 2019, reported that many members of the public did not find the federal energy industry regulators to be trusted and impartial. The Expert Panel reported:

Other participants were concerned about having the NEB and CNSC conduct assessments. A frequently cited concern was the perceived lack of independence and neutrality because of the close relationship the NEB and CNSC have with the industries they regulate. There were concerns that these Responsible Authorities promote the projects they are tasked with regulating. The apprehension of bias or conflict of interest, whether real or not, was the

⁷ Khan, S. 2026 <https://archive.celafoundation.ca/archive-item/report-acknowledged-and-deferred-intervenor-influence-in-cnsc-licensing-decisions/> (Canadian Environmental Law Association Publication #1719, ISBN 978-1-77842-034.4).

⁸ Campbell, B. Ed. *Corporate Rules, the Real World of Business Regulation in Canada*, 2022 (Lorimer Press).

single most often cited concern by participants with regard to the NEB and CNSC as Responsible Authorities. The term “regulatory capture” was often used when participants described their perceptions of these two entities. The apprehension of bias on the part of these two Responsible Authorities eroded confidence in the assessment process.

Additionally, some participants argued that these industry-specific regulatory agencies are more focused on technical issues than they are on the planning process that is fundamental to a thorough IA. Participants felt that issues were not properly being assessed and were being put off to the post-decision regulatory phase. The Agency, by contrast, was described favourably, largely for not being subject to the same pressures faced by the NEB and CNSC as regulators.

Some participants proposed that all IAs be conducted by a single, independent and impartial body to help increase public trust in IA outcomes and provide more process consistency and predictability. Participants identified that the Agency should be strengthened and provided additional capacity and expertise to fulfil this role (emphasis added).⁹

Based on CELA’s decades-long experience, CELA strongly objects to putting the CNSC solely in charge of the impact assessment process in relation to nuclear projects. If enacted, this approach represents an unacceptable loss of credible and independent reviews of nuclear projects under the *IAA*, and ushers in an unfortunate return to the widely discredited “Responsible Authority” mechanism found in the now-repealed *CEAA 2012*.

For the same reason, CELA opposes the proposal in Part 1 of Bill C-39 to essentially let the CNSC itself determine the extent to which a nuclear project’s adverse effects upon federal jurisdiction are likely to be significant (see proposed section 61.1(1) of the *IAA*). In our view, having regard for the CNSC’s track record, it can be reasonably anticipated that the CNSC will invariably find that such effects are unlikely to be significant due to the proponent’s mitigation measures, which effectively prevents a referral to the Cabinet for final decision-making on whether significant effects are justified in the public interest (see proposed section 61.1(2) of the *IAA*). We further note that Part 1 of Bill C-39 empowers the CNSC to issue the *IAA* decision statement to the proponent that includes conditions applicable to the nuclear project (see proposed 65.1 of the *IAA*).

Recommendation 1: CELA recommends that all provisions in Division 1 of Part 1 of Bill C-39 which designate and empower the CNSC as the sole responsible authority in relation to impact assessments of nuclear projects must be deleted (i.e. proposed *IAA* sections 6(2), 8.2, 8.3, 17.1, 17.2, 19(7), 28(2.1), 28(3.1) to (3.5), 28(6.1), 36.1, 61.1, 62(3) to (5), 65.1, 66.1, 67(1), 68.1, 70.1, 71.1, 75.2, 76(1)(a) and (b), 76(3), 77, 78, 80(a), 104(3), 105.1, 106(2.1), 107(1)(b), 107(2), 108, 114.1, 119(1), 119(2.1), 120(2) and (3), 127(2)(h) and (3), 130(2) and (3), 131, 135, 137(2), 141(2), 149, 150(1) and (2), 152.1, 165.1 to 165.3, 191(1), 192, 193, 194, etc.), and that the role of the IAAC (and review panels) in impact assessments of nuclear projects must be maintained under the *IAA*.

⁹ Expert Panel Report: Building Common Ground, A New Vision for Impact Assessment in Canada (2017) at section 3.1.1 https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc034

(ii) Shortened Timelines for Project Reviews under the IAA

Section 19 of the *IAA* currently gives proponents up to three years to provide IAAC with the information or studies set out in the notice of commencement of the IA process for the designated project. There is, of course, nothing preventing proponents from filing these materials, if available, well before the third anniversary of the notice of commencement.

However, Division 1 of Part 1 of Bill C-39 proposes to amend section 19 by specifying that the required materials must be provided to IAAC within 365 days of the notice of commencement (subject to a discretionary extension granted by IAAC upon request by the proponent).

To our knowledge, the federal government has provided no environmental rationale for this abrupt reduction in the prescribed timeframe. Moreover, CELA is concerned that using this shorter timeline will undermine the robustness and credibility of the information-gathering stage of the IA process. This timeline may also result in perfunctory public consultation and/or improper performance of the duty to consult and accommodate Indigenous peoples whose section 35 treaty/Aboriginal rights may be adversely affected by the project.

In addition, in light of CELA's experience in past and ongoing federal IA / EA processes, the proposed one year timeline appears arbitrary and unworkable in practice (i.e. where multi-year studies of potentially affected flora or fauna may be necessary). We therefore submit that the new one-year limit should not be enacted in the *IAA*.

Recommendation 2: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 to amend the prescribed timeline in section 19 of the *IAA* must be deleted.

Where a review panel is currently required for a non-nuclear designated project, section 27 of the *IAA* generally prescribes a 600 day limit (subject to extensions) for the submission of the panel's report and for IAAC to make post-report recommendations to the Minister. However, Division 1 of Part 1 of Bill C-39 proposes to reduce this timeline to 300 days.

Again, no environmental rationale for this reduction has been offered by the federal government. Moreover, CELA is concerned that this compressed timeframe will invariably lead to rushed or incomplete IA panel reports on major projects which pose direct, indirect and cumulative impacts. For this reason, CELA does not support the proposed 300 day time limit. In short, a faster IA process (with truncated timelines) is not necessarily a better or more robust IA that meets the public interest purposes and provisions of the current *IAA*.

Recommendation 3: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 to amend the prescribed time limit in section 27 of the *IAA* must be deleted.

(iii) Enabling early construction or other activities before completion of the IA process

Proposed *IAA* section 7(3)(d) and (e) in Division 1 of Part 1 of Bill C-39 proposes to grant the Minister and the CNSC the discretionary power to allow proponents to undertake unspecified acts, things, or activities before the IA process has been completed and a decision statement has been

issued. While these responsible authorities must find that these early actions are “in the public interest,” Division 1 contains no statutory or regulatory criteria for determining when early actions are – or are not – in the public interest, and does not specify any express limitations on the nature, scope, and extent of early actions which may be permissible under these new provisions.

CELA is strongly opposed to giving responsible authorities open-ended discretion to allow proponents to proceed with early construction or other activities before completion of the IA process. In our view, allowing early activities in this manner undermines the credibility, soundness, and precautionary purpose of the IA process, which is supposed to identify, assess, and prevent adverse impacts of all aspects of designated projects upon areas of federal jurisdiction in a robust and participatory manner. Accordingly, these new provisions should be deleted from Bill C-39.

Recommendation 4: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 (new section 7(3)(d) and (e) which proposes to allow early activities by proponents before completion of the IA process) must be deleted.

B. Proposed *BCA* Amendments

Division 2 of Part 1 of Bill C-39 proposes various amendments to the *BCA* even though the legislation was only enacted last year. The proposed *BCA* amendments of greatest concern to CELA are outlined below.

(i) Designation of “regions of national interest”

Division 2 of Part 1 of Bill C-39 proposes to empower the Cabinet to designate “regions of national interest” in which “eligible” types of major projects may be carried out (see proposed section 8.2(1) of the *BCA*).

“Region of national interest” is simply defined as a “region named in Schedule 3” of the amended *BCA*, which can occur if the designation is preceded by a regional assessment under the *IAA* and if Cabinet has considered the generic factors prescribed in proposed section 8.2(6) of the *BCA*:

- (a) strengthen Canada’s autonomy, resilience and security;
- (b) provide economic or other benefits to Canada;
- (c) have a high likelihood of successful execution;
- (d) advance the interests of Indigenous peoples; and
- (e) contribute to clean growth and to meeting Canada’s objectives with respect to climate change.

These are the same vague factors found in the existing *BCA* for designating national interest projects, which were strongly criticized by CELA for raising transparency, accountability, and Rule of Law concerns.¹⁰ CELA raised identical objections to Ontario’s enactment of the substantially similar “Special Economic Zones” approach under controversial omnibus Bill 5.¹¹ In

¹⁰ [CELA Submission re: the Need to Pause or Fix Bill C-5 \(One Canadian Economy Act\) - Canadian Environmental Law Association.](#)

¹¹ [CELA Comments on Bill 5 "Protect Ontario by Unleashing our Economy Act, 2025" - Canadian Environmental Law Association.](#)

our view, these well-founded concerns are equally applicable to the factors now being proposed for designating “regions of national interest.”

Aside from the generic factors and dubious process for designating “regions of national interest,” CELA is also opposed to the “deeming” provision in proposed *BCA* section 8.3 and the mandatory duty in proposed section 8.4 that automatically compels the Minister to issue authorizations for “eligible” projects in such regions. If enacted, these sections effectively pre-approve “eligible” projects in such regions, but the authorizations are issued by the Minister of One Canadian Economy, rather than the ministers who administer the applicable federal environmental laws. In our view, the blanket authorization of “eligible” projects – regardless of their environmental impacts or risks – is contrary to the public interest and is the antithesis of the precautionary principle often espoused by the federal government.

Recommendation 5: CELA recommends that all provisions in Division 2 of Part 1 of Bill C-39 which enable and implement the designation of “regions of national interest”, and which govern the pre-approval of “eligible” projects in such regions, must be deleted (i.e. proposed *BCA* sections 2, 4, 8.2, to 8.7, 9 to 20).

(ii) Retroactive changes to approval conditions for national interest projects

New *BCA* section 8.01 in Division 2 of Part 1 of Bill C-39 proposes to enable the federal government to amend or remove approval conditions that were previously imposed by federal authorities upon projects before they were designated as national interest projects under the *BCA*.

CELA strongly opposes giving the federal government virtually unlimited discretion to retroactively change or remove project conditions which, on the evidence, were determined by relevant authorities to be necessary under federal law to protect the environment and human health and safety. The mere fact that the project may be subsequently designated as a national interest project does not materially change its environmental impacts or risks, nor does it obviate the need to keep the approval conditions intact and in full force. In addition, these conditions are commonly intended to address concerns raised during public consultations about the project, but the proposed section 8.01 does not require any meaningful public notice or comment opportunities before the Minister decides to change or remove approval conditions.

Recommendation 6: CELA recommends that proposed *BCA* section 8.01 in Division 2 of Part 1 of Bill C-39 must be deleted.

C. “Feasibility” of Approval Conditions

Part 1 of Bill C-39 proposes substantially similar amendments to several federal statutes, each of which indicates that the relevant decision maker must, as a requirement before including conditions in a permit, license or other “document of authorization”, “take into account the technical, economic and practical feasibility of the conditions.”

Similarly worded provisions are proposed in relation to decisions of the Canadian Energy Regulator, Minister(s) responsible for *Fisheries Act*, *SARA*, and *Canadian Navigable Waters Act*, as well as certain decisions under *CEPA*. These will be further described below:

- decisions of the Canadian Energy Regulator Commissioners in attaching conditions to any document of authorization under section 65 of the *Canadian Energy Regulator Act*;
- decisions of the Minister of Fisheries in relation to specified *Fisheries Act* approvals issued under paragraph 34.4(2)(b) (authorizations of works that may result in the death of fish subject to conditions established by the Minister) or 35(2)(b) (authorizations of works that may result in the harmful alternation, disruption or destruction of fish habitat subject to conditions established by the Minister) (i.e. designated projects under the *IAA*, works regulated by the Canadian Energy Regulator, other works that may be specified in regulation);
- decisions of the Minister of Transport in relation to specified *Canadian Navigable Waters Act* approvals under section 7(6) for major works that may interfere with navigation or other works that may interfere with navigation on listed waterways (i.e. designated projects under the *IAA*, works regulated by the Canadian Energy Regulator, other works that may be specified in regulation);
- decisions of the Minister of Environment in relation to CEPA section 127(1) approvals for the disposal of waste at sea (i.e. those section 127(1) approvals related to designated projects under the *IAA*, works regulated by the Canadian Energy Regulator, other works that may be specified in regulation);
- decisions of responsible Ministers under section 73 of *SARA* regarding approvals of agreements or permits that authorize the person to “engage in activity affecting listed wildlife species, including any part of its critical habitat or residences of its individuals”, in relation to specified *SARA* approvals (i.e. designated projects under the *IAA*, works regulated by the Canadian Energy Regulator, other works that may be specified in regulation).

CELA submits that the proposed imposition of the ambiguous “feasibility” constraint during project-level decision-making will inevitably lead to ineffective and diluted “lowest common denominator” approval conditions which are agreeable to proponents but are not sufficiently protective of the environment or human health and safety. Moreover, superimposing this “feasibility” qualifier upon the governmental authority to craft approval conditions appears to pave the way for disgruntled proponents to seek judicial review of conditions that they perceive to be too onerous or expensive.

CELA’s further comments about the proposed “feasibility” factor are set out below.

(i) *Proposed Changes to the CERA*

In relation to decisions by the Canadian Energy Regulator, the decision on whether to issue the relevant document of authorization is constrained by the factors which it must consider pursuant to the *CERA*, as amended by Division 3 in Part 1 of Bill C-39. To use one example, pipelines requiring under 300 km of new right of way would be considered in light of the following factors in proposed section 183 of *CERA*:

Factors to consider

(2) The Commission must make its decision taking into account — in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data — all considerations that appear to it to be relevant and directly related to the pipeline, including

- (a) the environmental effects, including any cumulative environmental effects;
- (b) the safety and security of persons and the protection of property and the environment;
- (c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;
- (d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
- (e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (f) the availability of oil, gas or any other commodity to the pipeline;
- (g) the existence of actual or potential markets;
- (h) the economic feasibility of the pipeline;
- (i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
- (j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
- (k) any relevant assessment referred to in section 92, 93 or 95 of the *Impact Assessment Act*; and
- (l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

Representations by the public

(3) Any member of the public may, in a manner specified by the Commission, make representations with respect to an application for a certificate Insertion in respect of a pipeline referred to in subsection 182(1).

In CELA's view, the new provision 65.1 (which sets out "feasibility" factors) would be subject to the decision-making factors applicable to the relevant project (pipeline or power line) such as those set out above. As a matter of statutory interpretation, section 65.1 would be constrained by the

purpose of the *CERA*, the applicable decision-making factors, and the public convenience and necessity test specified by the *CERA*.

CELA queries the utility of an additional provision further constraining the decision-maker to consider whether the contemplated conditions are “feasible” (technically, economically and practically) as these are vague, subjective, and do not add to the factors already required to be considered. There is already an economically feasible consideration in the statutory factors under the *CERA*. If the Commission or the Governor in Council, based on the evidence before it in relation to the factors to be considered under the Act, determines that certain conditions would be required in order to meet the purposes of the Act, but the applicant argues that those conditions are too expensive, impractical, or technically difficult, then the alternative may be that the decision to grant the authorization should be denied until the proponent can find a way to satisfy those conditions. The purpose of the Act, among other things, is:

6. (a) to ensure that pipelines and power lines as well as facilities, equipment or systems related to offshore renewable energy projects, are constructed, operated and abandoned in a manner that is **safe, secure and efficient** and that **protects people, property and the environment** (emphasis added).

Pipeline and powerline projects that are constructed, operated and abandoned in such a manner are undeniably more expensive than such projects which disregard safety, security, and protection of people, property and the environment. Regardless, Canadian society, and the legislators who adopted the legislation, do not wish to see cheaper pipeline and powerline projects that disregard these purposes and that have not been reviewed in light of the statutory factors outlined in the *CERA*.

Recommendation 7: CELA recommends that section 125 of Division 3 to Bill C-39 (which proposes a new section 65.1 to the *CERA*) must be deleted.

(ii) Proposed Changes to the Canadian Navigable Waters Act

In considering whether to issue a permit for a work that may interfere with navigation under section 7 of the *Canadian Navigable Waters Act*, the Minister is currently required to consider the following factors:

Assessment — factors

(7) In determining whether to issue the approval, the Minister must consider the following:

- (a) the characteristics of the navigable water in question;
- (b) the safety of navigation in that navigable water;
- (c) the current or anticipated navigation in that navigable water;
- (d) the impact of the work on navigation, including as a result of its construction, placement, alteration, rebuilding, removal, decommissioning, repair, maintenance, operation or use;

- (e) the impact of the work, in combination with other works, on navigation, if the Minister is provided with, or has in his or her possession, information relating to that cumulative impact;
- (f) any Indigenous knowledge that has been provided to the Minister;
- (g) any comments that he or she receives from interested persons within the period provided for under subsection (4);
- (h) the record of compliance of the owner under this Act; and
- (i) any other information or factor that he or she considers relevant.

CELA submits that it is inappropriate to constrain these factors with an additional generic, vague, and subjective “technical, economic and practical” feasibility factor as proposed by Bill C-39 that may prevent the Minister from exercising decision making functions in the public interest. Should the proposed work potentially compromise safety of navigation, for example, then the conditions necessary to provide for it must retain the integrity of those deemed by the Minister to be appropriate to protect safety of navigation. If this cannot be done without the conditions being too expensive or too complex according to the applicant, then the Minister should not grant the permit at all. The Minister should not be constrained in his or her decision-making in that respect.

Recommendation 8: CELA recommends that Bill C-39 Division 4, section 159 (which proposes a new section 9.01 in the *Canadian Navigable Waters Act*) must be deleted.

(iii) Proposed Changes to CEPA

The *CEPA* provisions related to the issuance of permits for disposal of waste at sea are currently set out as follows in section 129(1):

- 129 (1)** A Canadian permit shall contain any conditions that the Minister considers necessary for the protection of marine life, any legitimate uses of the sea or human life, including conditions relating to the following:
- (a) the nature and quantity of the substance for loading, disposal or incineration;
 - (b) the method and frequency of the disposal or incineration authorized including, if necessary, the date or dates on which disposal or incineration is authorized;
 - (c) the manner of loading and stowing the substance authorized for disposal or incineration;
 - (d) the site at which disposal or incineration may take place;
 - (e) the route to be followed by the ship or aircraft transporting the substance to the disposal or incineration site;
 - (f) any special precautions to be taken respecting the loading, transporting, disposal or incineration of the substance; and
 - (g) the monitoring of the disposal, the incineration and the disposal site to determine the effects of the disposal on the environment and human life.

If enacted, Division 5 in Part 1 of Bill C-39 would further constrain the Minister in attaching conditions that he or she “considers necessary” for protection of marine life, of any legitimate uses of the sea, or human life by requiring consideration of their feasibility (see proposed *CEPA* section 129.1). In CELA’s view, this is an inappropriate and unacceptable constraint, and there is no

environmental benefit or justification for it. Adding requirements to consider the practical, economic and technical feasibility of such conditions may interfere with the Minister's determination as to precautions to be taken, routes to follow, monitoring to conduct, nature and quantity of material disposed and so forth. The proposed additional feasibility constraints included in Bill C-39 suffer from the issues of vagueness and subjectivity noted earlier, and do not assist the Minister with fulfilling the purpose of this part of *CEPA*.

Recommendation 9: CELA recommends that section Bill C-39 Division 5 section 167 (which proposes a new s. 129.1 in *CEPA*) must be deleted.

(iv) Proposed Changes to SARA

CELA has identical concerns in relation to the *SARA* amendments proposed in Division 6 in Part 1 of Bill C-39 which intend to constrain the relevant conditions added by decision-makers in similar language (see proposed *SARA* section 73.1).

The existing purposes of *SARA* are set out in section 6. These public interest purposes should be fully achieved and implemented without undermining it by inserting the constraining language of “economic, technical and practical feasibility.”

6 The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened.

Furthermore, section 73 of *SARA* presently contains provisos and preconditions upon the issuance of a permit or agreement “to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals” as follows:

- (2)** The agreement may be entered into, or the permit issued, only if the competent minister is of the opinion that
 - (a)** the activity is scientific research relating to the conservation of the species and conducted by qualified persons;
 - (b)** the activity benefits the species or is required to enhance its chance of survival in the wild; or
 - (c)** affecting the species is incidental to the carrying out of the activity.

Marginal note: Pre-conditions

- (3)** The agreement may be entered into, or the permit issued, only if the competent minister is of the opinion that
 - (a)** all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
 - (b)** all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and
 - (c)** the activity will not jeopardize the survival or recovery of the species.

The existing provisions and preconditions upon the issuance of such a permit or agreement under the *SARA* already provide a sufficient basis where such permits may be issued. More importantly, they restrict the issuance of such permits to cases where doing so would “not jeopardize the survival or recovery of the species.”

However, with the proposed amendments under Bill C-39, the Minister would be further constrained from imposing appropriate conditions by the proposed requirement to consider their technical, economic and practical feasibility.

As noted earlier, this additional constraint is vague and subjective but also may result in the Minister’s perceived inability to attach necessary conditions for the protection of a species. Because this limiting condition is specific to projects regulated by the Canadian Energy Regulator, projects undergoing the IA process, and other projects determined by future regulation, the Minister may well feel pressured to issue the permit or agreement despite reservations about whether they are able to ensure “the best solution” to minimizing impact is adopted; or that “all feasible measures will be taken to minimize the impact”; or that the activity “will not jeopardize survival of the species.”

Decision-making under *SARA* should be made on the basis of the current provisions without the addition of the extraneous “feasibility” constraints proposed by Bill C-39.

Recommendation 10: CELA recommends that Bill C-39 Division 6 section 177 (which proposes a new section 73.1 in *SARA*) must be deleted.

(v) Proposed Changes to the Fisheries Act

In relation to decisions by the Minister of Fisheries and Oceans in relation to *Fisheries Act* section 34.4(2)(b) (authorizations of works that may result in the death of fish subject to conditions established by the Minister) or 35(2)(b) (authorizations of works that may result in the harmful alternation, disruption or destruction of fish habitat subject to conditions established by the Minister), those decisions are currently constrained by the purpose of the *Fisheries Act*:

- 2.1** The purpose of this Act is to provide a framework for
- (a)** the proper management and control of fisheries; and
 - (b)** the conservation and protection of fish and fish habitat, including by preventing pollution.

However, the Minister’s discretion to attach conditions to a section 34.4(2)(b) authorization is broad, and this raises the concern that without further constraint or statutory guardrails, the proposed section 35.01 regarding “feasibility” will take on undue importance and improperly impact the decision of the Minister if faced with proponent claims about economic, technical and practical feasibility. At all times, the Minister should retain the ability to make the authorization decision on the basis of the existing factors specified under the *Fisheries Act*.

Recommendation 11: CELA recommends that Bill C-39 Division 7 section 183 (which proposes a new section 35.01 in the *Fisheries Act*) must be deleted.

4. Conclusion and Recommendations

For the foregoing reasons, CELA concludes that Part 1 of Bill C-39 represents a significant rollback of important procedural and substantive provisions that currently exist in Canada's environmental law framework to protect the environment and safeguard human health.

Accordingly, if Part 1 of Bill C-39 is not otherwise withdrawn and reconsidered by the federal government (which would be our preferred outcome), then CELA provides the following recommendations regarding specific amendments to Bill C-39:

Recommendation 1: CELA recommends that all provisions in Division 1 of Part 1 of Bill C-39 which designate and empower the CNSC as the sole responsible authority in relation to impact assessments of nuclear projects must be deleted (i.e. proposed *IAA* sections 6(2), 8.2, 8.3, 17.1, 17.2, 19(7), 28(2.1), 28(3.1) to (3.5), 28(6.1), 36.1, 61.1, 62(3) to (5), 65.1, 66.1, 67(1), 68.1, 70.1, 71.1, 75.2, 76(1)(a) and (b), 76(3), 77, 78, 80(a), 104(3), 105.1, 106(2.1), 107(1)(b), 107(2), 108, 114.1, 119(1), 119(2.1), 120(2) and (3), 127(2)(h) and (3), 130(2) and (3), 131, 135, 137(2), 141(2), 149, 150(1) and (2), 152.1, 165.1 to 165.3, 191(1), 192, 193, 194, etc.), and that the role of the IAAC (and review panels) in impact assessments of nuclear projects must be maintained under the *IAA*.

Recommendation 2: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 to amend the prescribed timeline in section 19 of the *IAA* must be deleted.

Recommendation 3: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 to amend the prescribed time limit in section 27 of the *IAA* must be deleted.

Recommendation 4: CELA recommends that the proposal in Division 1 of Part 1 of Bill C-39 (new *IAA* section 7(3)(d) and (e)) to allow early activities by proponents before completion of the IA process must be deleted.

Recommendation 5: CELA recommends that all provisions in Division 2 of Part 1 of Bill C-39 which enable and implement the designation of “regions of national interest”, and which govern the pre-approval of “eligible” projects in such regions, must be deleted (i.e. proposed *BCA* sections 2, 4, 8.2, to 8.7, 9 to 20).

Recommendation 6: CELA recommends that proposed *BCA* section 8.01 in Division 2 of Part 1 of Bill C-39 must be deleted

Recommendation 7: CELA recommends that section 125 of Division 3 to Bill C-39 (which proposes a new section 65.1 to the *CERA*) must be deleted.

Recommendation 8: CELA recommends that Bill C-39 Division 4, section 159 (which proposes a new section 9.01 in the *Canadian Navigable Waters Act*) must be deleted.

Recommendation 9: CELA recommends that section Bill C-39 Division 5 section 167 (which proposes a new s. 129.1 in *CEPA*) must be deleted.

Recommendation 10: CELA recommends that Bill C-39 Division 6 section 177 (which proposes a new section 73.1 in *SARA*) must be deleted.

Recommendation 11: CELA recommends that Bill C-39 Division 7 section 183 (which proposes a new section 35.01 in the *Fisheries Act*) must be deleted.

CELA trusts that these recommendations will be duly considered and acted upon as Parliament continues to review Bill C-39.

October 26, 2026