



Speaking notes to the Standing Senate Committee for Energy, the Environment and Natural Resources regarding Bill C-69

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Good morning Madame Chair and Senators.

My name is Scott Kidd. I am a member of the Conservation Council of New Brunswick. Founded in 1969, the Conservation Council is the largest New Brunswick environmental organization and one of the oldest such organizations in Canada. The Conservation Council has participated in a number of federal and provincial environmental assessments. Most recently, the Conservation Council, with my assistance, was an intervenor in the National Energy Board hearings for the Energy East project and a funded participant in the federal comprehensive environmental assessment of the proposed Sisson tungsten and molybdenum mine.[\[1\]](#)

Before I begin my remarks, I and the Conservation Council of New Brunswick want to thank the Senate Committee for Energy, the Environment and Natural Resources for inviting me to speak with you this morning about the important legislation that Bill C-69 represents.

This morning I will briefly:

1. Discuss why the Conservation Council of New Brunswick supports Bill C-69,
2. Address several points made by those opposed to Bill C-69, and
3. Describe how weakening Bill C-69 may be detrimental to efforts of reconciliation with Canada's Indigenous peoples.

To begin, the Conservation Council believes there is great value in robust impact assessment processes. When done right, impact assessments promote more public participation and trust in government decision-making, increased transparency and accountability, and sound environmental, social, health, and economic planning and decision-making. Strong impact assessment processes, among other things, further fairness in the sharing of the costs and benefits of projects.

It is because the Conservation Council supports strong impact assessments that we also support Bill C-69. While not perfect, Bill C-69 represents an improvement over the current *Canadian Environmental Assessment Act, 2012*. Areas of Bill C-69 that we are in favour of include:

- Its recognition of the respect owed to the rights of Indigenous peoples (e.g., s. 6(1), 6(2)).
- The inclusion of a planning phase into the assessment process.

- The list of factors set out in s. 22 that are required to be taken into account during an assessment and in particular the factors that require an assessment of: 1) a project's impacts on Indigenous rights, 2) a project's contribution to sustainability, 3) a project's impacts on Canada's climate change commitments, and 4) a project's differential gender impacts.
- The removal of project assessment responsibilities from the Canadian Nuclear Safety Commission and the National Energy Board/Canadian Energy Regulator (s. 43).
- That the Minister or Cabinet must provide written reasons why they consider a project to be or not be in the public interest (s. 63, s. 65).

Moving from our support of Bill C-69, I would like to address some of the general statements of opposition to it. There has been from some parties a misunderstanding or mis-portrayal of the purpose of impact assessment. They describe impact assessment as simply one in a line of a regulatory approvals. At its core, this is not what impact assessment is about. As I discussed earlier, impact assessment is a participatory process aimed at *improving* planning and decision-making. It is about understanding the present and future impacts of the positives and negatives of projects and other activities.

For example, it was estimated that if built, Energy East would have created 121 direct jobs in New Brunswick during its 40 years of operation.[\[2\]](#) In comparison, a 2010 report stated that in 2008, the New Brunswick portion of the Bay of Fundy, through various sectors such as fishing and tourism, supported over 9,000 full-time equivalent direct jobs and contributed over \$475 million yearly in direct GDP to the New Brunswick economy.[\[3\]](#) Proper impact assessment allows us to question and answer whether we

are willing to put those jobs and economy at risk to a possible catastrophic oil spill in the Bay of Fundy.

One other issue of opposition that I would like to address is that Bill C-69 should be amended to provide for only limited rights of judicial review. This amendment is unnecessary. I know of no substantive decision to allow or not allow a project to proceed that has been overturned by a Canadian court. Canadian courts only quash impact assessment decisions when the process, i.e., the law, has not been followed correctly. Surely there should be no limits placed on ensuring whether the rule of law has been complied with.

Finally, for those who are opposed to stronger impact assessment, I have to say that that ship has sailed. Whether you want to call it social license or something else, Canadians now expect to be able to participate in impact assessments and the less robust these assessments become, the more discord there is.

The last point I would like to make is regarding the issue of reconciliation with Canada's Indigenous peoples. In the 2004 *Taku River* case,[\[4\]](#) the Supreme Court of Canada stated that consultation with Indigenous communities regarding the accommodation of their rights can take place during an environmental assessment. It is clear such consultations cannot be done in haste; that there is no time limit on the length of these negotiations. Shortening the time for the assessment of large projects from what is proposed in Bill C-69 will likely result in situations where an impact assessment is completed well before consultations and negotiations with Indigenous communities are completed. It is our concern that in some cases, it is these consultations that will become the new target of blame for purported delays in the

development of projects. Obviously, such a result would not advance reconciliation with Canada's Indigenous peoples.

That concludes my remarks and thank you again for listening to me this morning. I look forward to answering any questions the committee may have of me.

[1] The Sisson Mine, if built, would be located approximately 100 kilometres northwest of Fredericton.

[2] CBC News. Sept. 10, 2013.

<https://www.cbc.ca/news/canada/new-brunswick/energy-east-pipeline-may-create-10-000-jobs-study-says-1.1699614>.

[3] Department of Fisheries and Oceans and Govt. of New Brunswick. 2010. Economic Impact of the New Brunswick Ocean Sector: 2003-2008.

[4] Tlingit First Nation v. British Columbia (Project Assessment Director) (SCC, 2004).