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Indigenous Knowledge Policy Framework

for Project Reviews and Regulatory Decisions



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1.0 Introduction

The Government of Canada passed legislation on June 21, 2019 relating to the [Impact Assessment Act](#), the [Canadian Energy Regulator Act](#), the [Fisheries Act](#) and the [Canadian Navigable Waters Act](#) (together, the Acts). These legislative changes now require Indigenous Knowledge be considered, when provided, alongside other factors, in project reviews and regulatory decisions. These Acts however do not require any Indigenous Peoples to share their knowledge and include the ability to request specific Indigenous Knowledge be kept confidential or used for limited purposes.

1.1 Purpose of the Framework

The purpose of this Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions (Framework) is to support the consistent application of provisions dealing with Indigenous Knowledge in the Acts. The Framework articulates overarching principles that guide the work of federal officials when applying the provisions under the Acts and will provide a basis for departments and agencies to develop policies and guidance tailored to each department and agency's specific operational requirements. The five principles are outlined in Section 5.

This Framework speaks to progression and integrity, while acknowledging the need for, and importance of Indigenous Knowledge to be incorporated (including First Nations, Métis, and Inuit) alongside and equal to western science when considering possible developments. Execution of this Framework will assist the departments when reviewing potential projects. The basis of this Framework and associated documents are meant to be a starting point to much needed dialogue as it relates to Indigenous Knowledge integrity, advice and community feedback for respectful inclusion. (Stanley Oliver, Inuk, Labrador).

1.2 Application of the Framework

This Framework applies to federal officials implementing the Indigenous Knowledge provisions for project reviews and regulatory decisions by the Impact Assessment Agency of Canada, the Canada Energy Regulator, Transport Canada, and the Fish and Fish Habitat Protection Program at Fisheries and Oceans Canada.

For greater clarity, the Framework applies to reviews led by the Impact Assessment Agency of Canada, including designated project reviews (i.e., impact assessments) and regional and strategic assessments conducted under the *Impact Assessment Act*. Review Panels under the *Impact Assessment Act* will take into consideration this Framework, as well as any federal department or agency-specific procedures and guidance on Indigenous Knowledge when they set their own processes related to Indigenous Knowledge. In the *Impact Assessment Act* the confidentiality provisions do not apply to sections 82 and 83, the provisions covering projects carried out on federal lands and outside Canada respectively. Therefore, while the Framework provides relevant guidance with respect to Indigenous Knowledge, it does not apply to federal departments and agencies making decisions on non-designated projects on federal lands and outside Canada under sections 82 and 83 of the *Impact Assessment Act*.

Specific to Transport Canada, the Framework applies to decisions of whether to approve works, as per subsection 7(7) of the Canadian Navigable Waters Act. Subsection 7(7) sets out nine factors that the

Minister of Transport must consider, including Indigenous Knowledge that has been provided, when making these decisions.

Specific to Fisheries and Oceans Canada, the Framework applies to decisions of whether to authorize works, undertakings or activities under the fish and fish habitat protection provisions, of the *Fisheries Act*, as per subsection 34.1(1) of the Act. Subsection 34.1(1) sets out eight factors that the Minister of Fisheries and Oceans must consider, including Indigenous Knowledge that has been provided, when making these decisions.

Specific to the Canada Energy Regulator (CER), the Framework will guide the CER's work during project reviews and regulatory oversight of the construction, operation and abandonment of federally regulated pipelines, power lines and offshore renewable energy projects. Independent panels under the *Canadian Energy Regulator Act* will take into consideration this Framework, as well as any federal department or agency-specific procedures and guidance on Indigenous Knowledge, when they set their own processes related to Indigenous Knowledge.

Given each Act is unique in its scope and application, the process for considering Indigenous Knowledge may vary from one process and one Act to the next, depending on the situation. Flexibility has been built into the Framework's guiding principles to respond to these operational realities.

2.0 Context

The Government of Canada is committed to reconciliation with Indigenous Peoples through a renewed, nation-to-nation and government-to-government relationship, based on the recognition of rights, respect, co-operation, and partnership.

Treaties define ongoing treaty rights and obligations between Indigenous Peoples and the Government of Canada. Honouring treaties, including pre-confederation, numbered and modern treaties, is essential for Indigenous and non-Indigenous peoples to live together in Canada.

The Government of Canada exercises its powers and performs its duties and functions in a manner that is consistent with the rights of the Indigenous Peoples of Canada recognized and affirmed in section 35 of the *Constitution Act, 1982*.

The [United Nations Declaration on the Rights of Indigenous Peoples](#) (the UN Declaration) and the [Principles Respecting the Government of Canada's Relationship with Indigenous Peoples](#) (Principles) inform how the Government of Canada approaches the implementation of its legal duties. They also provide the context for engaging with Indigenous Peoples, including applying the Indigenous Knowledge provisions in the Acts. Engaging with Indigenous Peoples to consider Indigenous Knowledge provided for project reviews and regulatory decisions is part of establishing and maintaining a healthy and respectful relationship between the Government of Canada and Indigenous Peoples. Indigenous Knowledge has made, and continues to make, valuable contributions to environmental, regulatory, and other processes across the country.

In 2021, Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration Act) received royal assent and came into force. This legislation provides a roadmap for the Government of Canada and Indigenous Peoples to work together to implement the UN Declaration based on lasting reconciliation, healing, and cooperative relations. The purposes of this legislation are to "affirm the Declaration as a universal international human rights instrument with application in Canadian law, and provide a framework for the Government of Canada's implementation of the Declaration". The UN Declaration Act establishes that the Government of Canada must, in consultation and cooperation with

Indigenous Peoples, take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration.

The UN Declaration contains 24 preambular provisions, including the recognition that “respect for Indigenous Knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”. The UN Declaration also contains 46 Articles and while the UN Declaration must be read and understood in its entirety, the following articles are particularly important to the Framework:

- Article 31(1). Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- Article 31(2). In conjunction with Indigenous Peoples, States shall take effective measures to recognize and protect the exercise of these rights.
- Article 43. The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world.

References to Free, Prior and Informed Consent (FPIC) are found in various articles of the UN Declaration. FPIC emphasizes the importance of ensuring that there is effective and meaningful participation of Indigenous Peoples in decisions that affect them, their communities and territories. FPIC is fundamentally about working together in a meaningful way, and striving to achieve consensus. The UN Declaration Act’s framework reinforces the opportunity for the Government of Canada to develop, together with Indigenous Peoples, how FPIC should be interpreted and applied in different contexts. Upholding the commitments in the Acts to consider Indigenous Knowledge and obtaining consent from Indigenous Peoples in relation to how Indigenous Knowledge is provided, is an important part of respecting these commitments in the UN Declaration.

In 2018, Canada adopted the *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* that are rooted in section 35 of the *Constitution Act, 1982*, guided by the UN Declaration, and informed by the *Truth and Reconciliation Commission Calls to Action* (2015), and the Report of the Royal Commission on Aboriginal Peoples (1996). They reflect a commitment to good faith, the rule of law, democracy, equality, non-discrimination, and respect for human rights. The Principles guide federal departments and agencies in fulfilling the Government’s commitment to renewed nation-to-nation and government-to-government relationships, including implementing the Indigenous Knowledge provisions in the Acts.

3.0 Indigenous Knowledge

There is no universally accepted definition of Indigenous Knowledge. The term describes complex knowledge systems embedded in the unique cultures, languages, values, and worldviews of Indigenous Peoples. Indigenous Knowledge exists within Indigenous legal, political, and governance systems. First Nations, Inuit and Métis have distinct knowledge systems that may share certain common characteristics. Other common terms for Indigenous Knowledge systems include traditional knowledge, traditional ecological or environmental knowledge, Aboriginal traditional knowledge, Métis Traditional Knowledge, and Inuit Qaujimajatuqangit.

Indigenous Knowledge is community specific and place-based, arising from Indigenous Peoples' intimate relationship with their environment and territory over thousands of years. It is generally understood to be collective knowledge that encompasses community values, teachings, relationships, ceremony, oral stories and myths. It is cumulative and dynamic, building upon the experiences of earlier generations, informing the practice of current generations, and evolving in the context of contemporary society. Indigenous Knowledge is defined and collected according to protocols and procedures of each Nation or community.

Indigenous Knowledge systems are diverse, living value systems that need to be considered equally alongside other knowledge, including western science. Spirituality, ceremony, reciprocity, relationships with and responsibilities towards the earth are an integral part of Indigenous Knowledge. Indigenous Knowledge is not limited to land-use, it is not simply data, and it is not relegated to the past (as the term traditional may imply). Indigenous Knowledge may be expressed differently by women, gender diverse people, Two-Spirit peoples, people of different sexual orientation, age, socioeconomic class or marital status. Indigenous Knowledge holders are identified by their communities.

Indigenous Knowledge is a systematic way of thinking applied to phenomena across biological, physical, cultural, and spiritual systems. It includes insights based on evidence acquired through direct and long-term experiences and extensive and multigenerational observations, lessons, and skills. It has developed over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation (Inuit Circumpolar Council, 2013)

Canada's colonial history and its ongoing legacy of systemic barriers have important implications for the ability of Indigenous Peoples to maintain and develop their knowledge systems. For example, the Summary of the Final Report of the Truth and Reconciliation Commission of Canada states that "for over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada". Indigenous Peoples are inseparable from their knowledge, and given colonial attempts to separate Indigenous Peoples from their knowledge, communities are taking concerted efforts to revitalize their languages and Indigenous Knowledge systems.

4.0 Indigenous Knowledge in the Acts

The Government of Canada recognizes that Indigenous Knowledge improves federal decision-making and strengthens project reviews and regulatory decisions. For example, Indigenous Knowledge helps federal organizations to have a more complete understanding of Indigenous worldviews, Indigenous cultures, historic and current conditions of the environment, and the social, health and economic conditions of Indigenous Peoples and how these can respond to potential changes. Indigenous Knowledge systems and western scientific knowledge systems are equally valued and will be used in tandem or interwoven to achieve these better outcomes. Federal officials should work to understand the values, teachings, relationships, and cultural context of the community providing the information.

Under the *Impact Assessment Act*, the *Canadian Energy Regulator Act*, the *Canadian Navigable Waters Act*, and in relation to authorization decisions under the fish and fish habitat protection provisions of the *Fisheries Act*, Indigenous Knowledge must be considered, when provided, alongside other factors in project reviews and regulatory decisions. The Acts require that:

1. Indigenous Knowledge be considered, in certain decisions or processes when provided;
2. Indigenous Knowledge be treated as confidential when provided in confidence;

3. Indigenous Knowledge be protected from unauthorized disclosure when provided in confidence, subject to certain exceptions, including procedural fairness and natural justice or for use in legal proceedings; and
4. Before disclosing Indigenous Knowledge provided in confidence for the purpose of procedural fairness or natural justice, federal officials must consult the knowledge holder, or Nation or community who provided the Indigenous Knowledge and the person or organization to whom it is proposed to be disclosed about the scope of the proposed disclosure and the potential conditions under which the Indigenous Knowledge will be disclosed, and implement measures to manage that disclosure.

To complement the provisions in the Acts related to Indigenous Knowledge provided in confidence, the *Access to Information Act* was amended. As a result, Indigenous Knowledge provided in confidence under the Acts is protected from Access to Information requests.

For project reviews and regulatory decisions, Indigenous Peoples may share Indigenous Knowledge in various ways including through formal studies, or during the process of consultations.

5.0 Guiding Principles

The sections below outline the five principles, that will guide federal officials in the Impact Assessment Agency of Canada, the Canada Energy Regulator, the Fish and Fish Habitat Protection Program at Fisheries and Oceans Canada and Transport Canada (the federal departments and agencies), when applying the Indigenous Knowledge provisions in the Acts.

5.1 Respect Indigenous Peoples and their knowledge

The federal departments and agencies recognize that Indigenous Knowledge enhances the understanding of the potential impacts of projects, and leads to better project design, construction, operations, decommissioning methods, strengthened mitigation and accommodation measures, and more effective monitoring. Indigenous Knowledge that is provided, therefore, plays an important role in improving outcomes of project reviews and regulatory decisions, including whether a project is approved.

The federal departments and agencies recognize that Indigenous Peoples may have established processes and protocols that govern matters related to Indigenous Knowledge. These processes and protocols may come in many forms (e.g., formally documented, communicated orally, or through ceremony). The intent of the Framework is not to replace or change any Indigenous processes and protocols. It is up to Indigenous Peoples to decide whether to share their knowledge with federal departments and agencies. Dialogue with Indigenous Peoples is critical to understanding Nation and community-specific instructions around Indigenous Knowledge processes and protocols; to learning about potential effects of decisions; and to informing outcomes.

The following guidelines illustrate how federal officials will apply this principle when implementing the Indigenous Knowledge provisions in the Acts

- Understand the context of the Aboriginal and treaty rights of First Nations, Inuit and Métis affirmed in Section 35 of the *Constitution Act, 1982*, and apply this understanding when working with Indigenous Peoples.

- Respect the diverse interests, priorities and circumstances of First Nations, Inuit and Métis.
- Indigenous Peoples will guide the understanding of the context and meaning of any Indigenous Knowledge that they provide.
- Interactions with Indigenous Peoples are respectful of their governance, guidance, protocols, ceremonies and processes, including Indigenous Knowledge protocols. If provisions of the Government of Canada’s existing treaties and formal consultation agreements with Indigenous Nations and communities apply to the collection and consideration of Indigenous Knowledge, these are respected.
- Indigenous Peoples will determine how they collect their Indigenous Knowledge, the purpose for which it is being collected and provided, and how their Indigenous Knowledge, even when not provided in confidence, may be shared.
- First Nations, Inuit and Métis knowledge holders are recognized and respected for their expertise.

5.2 Establish and maintain collaborative relationships with Indigenous Peoples

The federal departments and agencies recognize that building long-term relationships with Indigenous Peoples based on mutual respect and trust, and working in collaboration with Indigenous Peoples, is critical for laying the groundwork for the sharing, understanding, and consideration of Indigenous Knowledge in project reviews and regulatory decisions.

Early engagement is an important trust-building exercise as it helps to create better conditions for Indigenous Peoples’ voices and perspectives to influence project reviews and regulatory processes.
(Manitoba Métis Federation)

A proper understanding of, and respect for, the cultural context as well as Indigenous¹ rights, inherent and treaty rights are needed for the appropriate consideration of Indigenous Knowledge. This is normally acquired through ongoing relationships and dialogue with individual Indigenous Nations and communities, and not as a separate process.

The following guidelines illustrate how federal officials will apply this principle when implementing the Indigenous Knowledge provisions in the Acts

- Communicate early with Indigenous Peoples about opportunities to share Indigenous Knowledge for project reviews and regulatory decisions, and provide information about the proposed project and available funding.
- Inform Indigenous Peoples of processes and policies associated with project reviews and regulatory decisions to provide department specific context.
- Engage early with Indigenous Peoples to promote meaningful and ongoing dialogue about the Indigenous Knowledge to be considered, any conditions for its consideration, and the context of the Indigenous Knowledge. This dialogue is critical for Indigenous Peoples to decide whether and how to share their knowledge and to ensure that federal officials respectfully apply the provisions under the Acts.

¹ The use of the term “Indigenous rights” can be read as “Aboriginal rights”.

- Recognize only Indigenous Knowledge holders, and Nations and communities are positioned to share their Indigenous Knowledge and provide guidance on its consideration.
- Respect the rights of Indigenous Peoples to maintain, control, protect and develop their Indigenous Knowledge. There are tools developed by Indigenous Peoples and organizations that federal officials should understand and apply as applicable, for example First Nations principles of ownership, control, access, and possession (OCAP®), National Inuit Strategy on Research or other specific protocols.
- Processes to include Indigenous Knowledge in project reviews and regulatory decisions are inclusive of the voices of Indigenous women, youth, Elders, gender diverse and Two-Spirit peoples.

5.3 Meaningfully Consider Indigenous Knowledge

Indigenous Knowledge enhances the understanding of the potential impacts of projects and its consideration can strengthen mitigation and accommodation measures, help develop project conditions, and contribute to more effective long-term monitoring of project impacts. Two-eyed seeing and ethical space are useful approaches to bring together Indigenous Knowledge systems and western knowledge systems to better understand project impacts. Clear guidance, processes and policies for the meaningful consideration of Indigenous Knowledge, developed by each of the four departments or agencies, is needed to support project reviews and regulatory decisions.

The following guidelines illustrate how federal officials will apply this principle when implementing the Indigenous Knowledge provisions in the Acts

- Prior to providing Indigenous Knowledge, Indigenous Nations and communities will decide who provides and, when appropriate, who verifies Indigenous Knowledge and how permissions to include Indigenous Knowledge in project reviews and regulatory decisions are obtained.
- When Indigenous Knowledge is provided for project reviews and regulatory decisions it must be considered and will not be disregarded.
- In order to promote the accurate and respectful consideration of Indigenous Knowledge, federal officials will engage with Indigenous Peoples to clarify how Indigenous Knowledge is to be understood. For example, if Indigenous Knowledge is shared during a meeting, federal officials will validate the meeting summary with the Indigenous participants.

The importance of IK for project reviews and regulatory decisions cannot be overstated. IK provides a holistic and more nuanced understanding of project impacts; improves project design and development; strengthens mitigations and accommodation measures; enhances project monitoring; helps protect Indigenous rights, lands, resources, and culture; and more. Further, there is no way that the Crown can uphold its duty to consult, respect our Treaty rights, or implement the United Nations Declaration on the Rights of Indigenous People (UNDRIP) without real, effective, and respectful utilization of IK in project assessment and project decision-making. In short, utilization of IK is a practical, ethical, and legal imperative. (Mikisew Cree First Nation)

- Flexibility in the processes and policies of federal departments and agencies, subject to legislative and regulatory requirements, will help support the meaningful consideration of Indigenous Knowledge; for example, accommodating knowledge provided in an Indigenous language and in forms other than written form, travelling to communities, and being responsive to community needs.
- Indigenous Knowledge needs to be understood and considered within the context provided by the Nation or community. This includes considering the knowledge only for the purpose for which it is provided. Indigenous Knowledge will not be used for future decisions without the permission and guidance of knowledge holders.
- Both Indigenous Knowledge, including oral knowledge, and western scientific knowledge systems are equally valued. When it is considered with other knowledge systems, including western science, the integrity of Indigenous Knowledge will be maintained.
- Communicate with Indigenous Peoples the outcome of the project review or regulatory decision including how Indigenous Knowledge was considered.

5.4 Respect the Confidentiality of Indigenous Knowledge

The federal departments and agencies are required to protect confidential Indigenous Knowledge from unauthorized disclosure in accordance with the respective Acts. Provisions in each of the Acts afford protection to confidential Indigenous Knowledge, subject to certain legislative exceptions, including procedural fairness and natural justice or for use in legal proceedings. For example, procedural fairness means that Indigenous Peoples and proponents may have a right to participate, to know what information the decision-maker is relying on when making the decision, and may be given a chance to respond to that information. Indigenous Knowledge provided in confidence under these Acts is exempt from disclosure under the *Access to Information Act*.

The federal departments and agencies recognize the importance of establishing consent-based processes to prevent unauthorized disclosure of confidential Indigenous Knowledge. The federal departments and agencies acknowledge that Indigenous Nations and communities will determine whether to share their knowledge, and what aspects of that knowledge they wish to provide in confidence. They also recognize the importance of procedures to prevent the unauthorized disclosure of confidential Indigenous Knowledge and acknowledge that consent must be explicit and not assumed.

The following guidelines illustrate how federal officials will apply this principle when implementing the Indigenous Knowledge provisions in the Acts

- Before Indigenous Knowledge is shared, federal officials will clearly communicate about the exceptions in the Acts under which Indigenous Knowledge provided in confidence may be disclosed.
- Federal departments or agencies will discuss with the Nation or community how knowledge provided in confidence will be safeguarded including its handling and storage.
- Given an understanding of the disclosure exceptions in the Acts and how Indigenous Knowledge provided in confidence will be safeguarded, Indigenous Nations and communities will determine whether to share their knowledge, and what aspects of that knowledge are provided in confidence.

- Where Indigenous Knowledge would be posted on a public registry, Indigenous Knowledge that is determined to be confidential would not be made available on that public registry.

5.5 Support Capacity Building Related to Indigenous Knowledge

The federal departments and agencies recognize there is a need to support Indigenous Peoples in building their capacity to participate fully in project reviews and regulatory decisions. Indigenous Nations and communities may require increased capacity over the long-term to support the revitalization, collection, storage, and preservation of Indigenous Knowledge. There is also a need to increase the capacity of federal officials to effectively engage with Indigenous Peoples.

The federal departments and agencies acknowledge that Indigenous Peoples also require adequate time and resources to collect and manage Indigenous Knowledge, including human resources, education, training, research, translation, information storage and management, among other activities. Supporting Indigenous Nations and communities in these ways will better enable Indigenous Peoples to participate in project reviews and regulatory decisions and to provide Indigenous Knowledge for consideration in these processes.

The following guidelines illustrate how federal officials will apply this principle when implementing the Indigenous Knowledge provisions in the Acts

- When funding or other mechanisms are available to support the participation of Indigenous Peoples in project reviews and regulatory decisions, it will be accessible and provided as early as possible.
- Where Indigenous Peoples identify capacity needs for their Nation or community related to sharing Indigenous Knowledge, departments and agencies will provide support to the extent possible. This may include development of Indigenous Knowledge protocols and specific needs such as: language or logistical requirements; support for collection and analysis of Indigenous Knowledge; support for women and youth participation; and availability of knowledge holders, or Nation or community representatives.
- Support building cultural competency and awareness of federal officials involved in project reviews and regulatory decisions. Training should include: the history, heritage, cultures, perspectives of First Nations, Inuit and Métis, and their relationships with the Crown including the Indigenous, inherent and treaty rights of Indigenous Peoples; the UN Declaration; working respectfully with Indigenous Peoples; understanding the existence and legitimacy of different knowledge systems; and the meaningful consideration of Indigenous Knowledge.

6.0 Conclusion

This Framework supports the consistent application of the Indigenous Knowledge provisions found in the *Impact Assessment Act*, the *Canadian Energy Regulator Act*, the *Canadian Navigable Waters Act* and authorization decisions under the fish and fish habitat provisions of the *Fisheries Act*. The overarching principles will guide the work of federal officials under these Acts. These federal departments and agencies will develop their own policies and guidance that are consistent with this Framework and that are tailored to each department's specific operational requirements. Federal departments and agencies

will need to dedicate adequate resources, staffing and training to properly implement the Indigenous Knowledge related provisions in these Acts.