



Government
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DISCUSSION PAPER: INDIGENOUS KNOWLEDGE POLICY FRAMEWORK FOR PROPOSED PROJECT REVIEWS AND REGULATORY DECISIONS



INTRODUCTION

The purpose of this discussion paper is to initiate a discussion and seek input from Indigenous peoples, stakeholders, provinces, territories and the public on principles, best practices and other elements that will inform the development of an Indigenous Knowledge Policy Framework for proposed project reviews and regulatory decisions. The policy framework will help guide the implementation of the Indigenous knowledge provisions in the legislation proposed under Bills [C-68](#) and [C-69](#).

The policy framework will be developed in partnership with Indigenous peoples, with further input being sought from Indigenous individuals, governments, communities and organizations through various meetings and workshops on Indigenous knowledge being organized across Canada.

Indigenous knowledge improves project reviews and regulatory decisions

Indigenous knowledge has made, and continues to make, valuable contributions to environmental, regulatory, and other processes across the country. Indigenous knowledge has also been the focus of growing international discourse. In recognition of the unique perspectives and value of Indigenous knowledge, governments across the world have integrated Indigenous knowledge into decision-making. Indigenous knowledge has also been addressed by a number of international agencies, including the United Nations in the *United Nations Declaration on the Rights of Indigenous Peoples*, which recognizes “that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”

Indigenous knowledge improves federal decision-making and strengthens the rigour of project reviews and regulatory decisions. Indigenous

knowledge enables federal organizations to have a more complete understanding of Indigenous world views, Indigenous cultures, the environment, and the social, health and economic conditions of Indigenous peoples. It enhances the understanding of the potential impacts of projects, and its consideration, as demonstrated in past projects, has led to improved project design. Indigenous knowledge can also strengthen mitigation and accommodation measures and conditions of approval to be met by proponents, and contribute to more effective long-term monitoring of project impacts on Indigenous peoples, and more broadly.

New rules for proposed project reviews and regulatory decisions under Bills C-68 and C-69

In February 2018, the Government of Canada introduced proposed legislation (Bills [C-68](#) and [C-69](#)) that would put in place new rules to protect our environment, fish and fish habitat and waterways, and ensure public confidence in how decisions about resource development are made. The new rules would reflect values that are important to all Canadians, and would enable proposed project reviews and regulatory decisions to be informed by the distinct cultures, knowledge, practices and expertise of Indigenous peoples. The new rules would also give companies the certainty and clarity they need from the start, and lead to more timely and predictable project reviews and regulatory decisions, encouraging competitiveness and investment in Canada’s natural resources sectors.



New rules would facilitate Indigenous engagement and partnership

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

The new rules set out in Bills [C-68](#) and [C-69](#) would continue to ensure that respect for the rights of Indigenous peoples of Canada are built into processes to support proposed project reviews and regulatory decisions. Indigenous peoples would be actively engaged, be better able to partner and collaborate with federal officials, and have greater opportunities for participation on boards, expert and [advisory committees](#) and [advisory councils](#).

What we have heard from Indigenous peoples

The proposed legislation was informed by input provided to, and considered by, expert panels and parliamentary committees, in addition to consultations with Indigenous peoples, industry, provinces and territories, and the public. Federal officials also held direct meetings with, and received submissions and comments from, Indigenous groups.

During the course of the process, a number of key issues related to Indigenous knowledge were raised by Indigenous groups, including:

- Indigenous knowledge should ultimately be reflected in decision-making in a transparent manner;
- Indigenous knowledge, when provided confidentially, should be protected from unauthorized disclosure and inappropriate use;
- Indigenous knowledge should be considered on equal footing with western science; and,
- Indigenous ways of knowing and cultural context should be reflected in assessments and regulatory processes.

Further input on issues pertaining to Indigenous knowledge in the context of proposed project reviews and regulatory decisions is being sought through continued engagement with Indigenous peoples on the Bills.

Indigenous knowledge in the proposed legislation

Indigenous knowledge is an integral component of Bills [C-68](#) and [C-69](#) – the proposed [Impact Assessment Act](#), the proposed [Canadian Energy Regulator Act](#), the proposed [Canadian Navigable Waters Act](#), and in the [amendments to the Fisheries Act](#). The Bills use “Indigenous knowledge” in broad terms, to be inclusive of the evolving knowledge of Indigenous peoples. The importance of considering Indigenous knowledge in decision-making, together with scientific information and data, is recognized in the preamble of Bill [C-69](#).

"Whereas the Government of Canada is committed to using transparent processes that are built on early engagement and inclusive participation and under which the best available scientific information and data and the Indigenous knowledge of the Indigenous peoples of Canada are taken into account in decision-making"

Preamble – Bill C-69

Consideration of Indigenous knowledge in proposed project reviews and regulatory decisions under Bills C-68 and C-69

Building on years of practice of considering Indigenous knowledge and input in project reviews, the proposed legislation would introduce a requirement for the mandatory consideration of Indigenous knowledge, when provided. More specifically, Indigenous knowledge, when provided, must be taken into account in the following proposed project reviews and regulatory decisions:

- impact, strategic, and regional assessments;
- federally regulated pipeline and power line certificates;
- authorizations for offshore renewable energy projects and offshore power lines;
- approval of works in navigable waters; and,
- fish and fish habitat protection authorizations.

Further to what we have heard from Indigenous groups, the proposed Impact Assessment Act would also require that impact, strategic, and regional assessment reports describe how any Indigenous knowledge provided is taken into account and used to promote transparency in decision-making. This is one such way that the proposed Impact Assessment Agency of Canada will transparently reconcile different sets of information in their analysis and decision-making processes. In addition, the Minister of the Environment would only be permitted to approve the substitution of a process (i.e., an impact assessment to be conducted by another jurisdiction) if he or she is satisfied that the assessment report would set out how any Indigenous knowledge provided was taken into account and used with respect to the project. These requirements for transparency will need to be carefully balanced with provisions for the confidentiality and protection of Indigenous knowledge set out in the proposed legislation, as described further below.

Confidentiality and protection of Indigenous knowledge

The proposed legislation includes provisions to ensure the confidentiality and protection of Indigenous knowledge from unauthorized disclosure in the context of proposed project reviews and regulatory decisions. Any Indigenous knowledge shared in confidence with the relevant Minister, the proposed Impact Assessment Agency of Canada, the proposed Canadian Energy Regulator, a strategic or regional assessment committee or the review panel, as the case may be, would be required to be treated as confidential information.

Specifically, confidential Indigenous knowledge would not be disclosed without written consent, unless:

- it is publicly available;
- its disclosure is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings; or
- its disclosure is authorized in the circumstances set out in regulations.

Before disclosing confidential Indigenous knowledge for the purposes of [procedural fairness and natural justice](#), consultation regarding the scope of proposed disclosure and potential conditions of disclosure would be required. This consultation would take place between the relevant Minister, the proposed Impact Assessment Agency of Canada, the proposed Canadian Energy Regulator, a strategic or regional assessment committee, or the review panel, as the case may be, the person or entity who provided Indigenous knowledge, and the person or entity to whom the Indigenous knowledge is proposed to be disclosed. In this context, “disclosure” for such a reason does not mean that Indigenous knowledge provided in confidence would become publicly available or made available to anyone without ongoing protections and limitations regarding its potential distribution and/or use.

Consequential amendments are proposed to be made to the Access to *Information* Act under Bills [C-68](#) and [C-69](#) to prohibit the disclosure under that Act of Indigenous knowledge provided in confidence in proposed project reviews and regulatory decisions.

Development of an Indigenous Knowledge Policy Framework

The Indigenous Knowledge Policy Framework will provide an overarching, principles-based approach for the consideration and protection from unauthorized disclosure of confidential Indigenous knowledge provided in proposed project reviews and regulatory decisions under Bills [C-68](#) and [C-69](#). The policy framework will promote a common understanding between Indigenous peoples and federal organizations involved in project reviews and regulatory decisions proposed under the Bills, while recognizing regional, cultural and distinctions-based approaches to Indigenous knowledge.

The policy framework is intended to ensure that the Indigenous knowledge provisions in the proposed legislation are applied consistently. Federal organizations will be responsible for applying the policy framework to certain processes and decisions under the proposed legislation, and will be able to use the policy framework as a basis for developing additional procedures and guidance. The policy framework will provide further predictability in proposed project reviews and regulatory decisions, and will also address the need to promote transparency under the proposed [Impact Assessment Act](#), while ensuring the protection from unauthorized disclosure of any confidential Indigenous knowledge provided. The policy framework will also set out safeguards and measures that could be put in place to protect any confidential Indigenous knowledge that is provided in the context of proposed project reviews and regulatory decisions.



SEEKING YOUR VIEWS

Through the sharing of this discussion paper, the Government of Canada is initiating a discussion and seeking views from Indigenous peoples, stakeholders, provinces, territories and the public on principles and best practices for the development of a policy framework regarding the consideration and protection from unauthorized disclosure of confidential Indigenous knowledge provided in proposed project reviews and regulatory decisions.

Input on other possible elements of the policy framework, or matters related to Indigenous knowledge more broadly, are encouraged and welcome.

In providing feedback, you may wish to consider the following general questions:

A principles-based Indigenous knowledge policy framework

- 1 What principles should guide the Government of Canada in the consideration and protection from unauthorized disclosure of confidential Indigenous knowledge in proposed project reviews and regulatory decisions?
- 2 What existing best practices could help inform and guide the development of a policy framework?

Consideration of Indigenous knowledge provided in proposed project reviews and regulatory decisions

- 3 How can meaningful consideration of Indigenous knowledge be promoted in proposed project reviews and regulatory decisions?
- 4 What principles and values are key to the understanding of Indigenous knowledge?
- 5 What are some protocols, best practices or guidance in considering Indigenous knowledge?

Respect and protection of Indigenous knowledge provided in proposed project reviews and regulatory decisions

- 6 What principles, practices and protocols should be in place to promote the respect and protection of Indigenous knowledge?
- 7 How should confidential Indigenous knowledge be recorded or stored by government?

Other questions for consideration

- 8 How can the government balance the need for transparency under the proposed Impact Assessment Act, with legislative requirements for the confidentiality and protection of Indigenous knowledge?
- 9 What measures could be put in place to ensure that Indigenous knowledge is considered and protected from unauthorized disclosure in the substitution of a process?



INDIGENOUS KNOWLEDGE RESOURCES

[Aboriginal traditional knowledge: process and protocols guidelines](#) (see also Appendix 2: [Aboriginal traditional knowledge: protocols resources](#))

[Aboriginal Women and Aboriginal Traditional Knowledge \(ATK\): Input and Insight on Aboriginal Traditional Knowledge](#)

[Best Practices for Project Planning with Indigenous Traditional Knowledge](#)

[Centre for International Governance Innovation, Traditional Knowledge](#)

[Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act, 2012](#)

[Convention on Biological Diversity, Article 8\(j\) - Traditional Knowledge, Innovations and Practices](#)

[Convention on Biological Diversity, Akwé: Kon guidelines](#)

[First Nation of Na-Cho Nyak Dun Traditional Knowledge Policy](#)

[Government of the Northwest Territories Traditional Knowledge Policy and Traditional Knowledge Policy Implementation Framework](#)

[Indigenous Policy Framework for the City of Calgary](#)

[Mackenzie Valley Review Board Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment](#)

[Mackenzie Valley Review Board, Traditional Knowledge External Resources](#)

[Métis Traditional Environmental Knowledge](#)

[Mi'kmaq Ecological Knowledge Study \(MEKS\) Protocol](#)

[New Brunswick Mi'gmaq Indigenous Knowledge Study \(NBMIKS\) Guide V.3](#)

[Nunavut Impact Review Board, Inuit Qaujimajatuqangit](#)

[Roundtable on Indigenous Knowledge and Western Science: Summary of Literature](#)

[Traditional Knowledge Guide for the Inuvialuit Settlement Region, Northwest Territories, Volume I: Literature Review and Volume II: Using Traditional Knowledge in Impact Assessments](#)

[The First Nations Principles of OCAP®](#)

[The Land is Our Teacher: Reflections and Stories on Working with Aboriginal Knowledge Holders to Manage Parks Canada's Heritage Places](#)

[United Nations Declaration on the Rights of Indigenous Peoples](#)



ANNEX A: GLOSSARY OF KEY TERMS

Impact Assessments:

Impact assessments would be a planning tool to understand the positive and negative effects of a designated project, including its environmental, economic, social and health impacts. The proposed [Impact Assessment Act](#) would mark a shift away from environmental assessments towards impact assessments.

Indigenous Advisory Committees:

Bill [C-69](#) would make it mandatory for the proposed Impact Assessment Agency of Canada to establish an Indigenous Advisory Committee to provide advice and support to the agency's work with Indigenous peoples in the development of a broad range of policies and guidance related to the proposed new impact assessment process. The proposed [Canadian Energy Regulator Act](#) includes a mandatory provision for the proposed Canadian Energy Regulator to establish an advisory committee to enhance the involvement of Indigenous peoples in projects involving pipelines, power lines and offshore renewable energy as well as abandoned pipelines. Appointments to these committees would reflect a distinctions-based approach, with a mandatory requirement to include members who represent the interests of First Nations, Métis and Inuit peoples.

Minister's Advisory Council:

A council established by the Minister of the Environment to advise him or her on issues related to the implementation of the impact assessment and regional and strategic assessment regimes set out under the proposed [Impact Assessment Act](#). Appointments to the Minister's Advisory Council would reflect a distinctions-based approach, with a mandatory requirement to include members who represent the interests of first Nations, Métis and Inuit peoples.

Procedural Fairness and Natural Justice:

Procedural fairness is a principle based on the theory that the substance of a decision is more likely to be fair if the procedure through which that decision was made has been just. Procedural fairness does not concern the correctness of a decision. Rather, principles of natural justice help to ensure that the decision maker followed the proper procedure in arriving at their decision. In the context of the proposed project reviews and regulatory decisions in Bills [C-68](#) and [C-69](#), confidential Indigenous knowledge may be disclosed, subject to certain conditions outlined above, to proponents or other implicated parties/individuals for the purposes of procedural fairness and natural justice.

Regional Assessments:

A key tool to better understand and manage cumulative effects caused by a variety of activities over time, identify the potential impacts on the rights and interests of Indigenous peoples, and inform project assessments, all in collaboration with provinces, territories, Indigenous peoples, and stakeholders.

Review Panel:

A body that may conduct an impact assessment of a designated project, when referred by the Minister of the Environment. Membership on the Review Panel includes one or more persons who are unbiased and free from any conflict of interest relative to the designated project and who 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. A joint review panel involving multiple jurisdictions may also be established in order to avoid duplication when a proposed project requires an impact assessment by both the federal government and a province or another jurisdiction.

Strategic Assessments:

Strategic assessments under the proposed [Impact Assessment Act](#) will provide guidance on how a policy, plan, program or issue relevant to conducting an impact assessment should be considered in the impact assessment process.

Substitution:

The proposed [Impact Assessment Act](#) continues the potential for substitution, which allows the process of another jurisdiction, such as a province, to replace a federal process as long as it meets the same standards. However, at the end of the substituted process, the public interest decision would continue to be made by the Minister of the Environment or Cabinet, if the matter is referred.

Technical Advisory Committee on Science and Knowledge:

A committee established by the proposed Impact Assessment Agency of Canada to advise it on topics related to impact assessments and regional and strategic assessments. These topics include scientific, environmental, health, social or economic issues and Indigenous knowledge. The Technical Advisory Committee on Science and Knowledge must include at least one Indigenous person.

