Memo on Cooperative Federalism and IA

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By: Heather M. Fast, Patricia Fitzpatrick, and Katrine Dilay

EXECUTIVE SUMMARY

This research memo discusses the shared responsibilities of Canadian Governments (e.g., Federal, Provincial, and Territorial) in an impact assessment context. The concept of "cooperative federalism" is explored along with examples of legal and policy developments that have been implemented to facilitate cooperation between different levels of government during impact assessment processes. This includes impact assessment cooperation agreements made under federal IA law and recent updates made in the context of critical mineral and mining developments. Past (and ongoing) cooperation mechanisms are examined and expert recommendations for harmonized IA processes are explored.

Research results indicate that in Canada, the impact assessment of multi-jurisdiction projects continues to be challenging. The priorities of the federal government are currently unclear when it comes to collaborative assessment, with recent reforms and policy developments seemingly emphasizing substitution. However, there are lessons to be learned from past coordinated assessments, including those that have taken place in Manitoba, and IA experts continue to recommend harmonization or coordinated assessment as the best approach to multi-jurisdictional IA.

Overall, key messages from IA experts in Canada are that: cooperation is good, but harmonization is best in an impact assessment context, and detailed procedural steps should be included in cooperation agreements. There is also significant emphasis on the need for governments at all levels to work with Indigenous rights holders and governments to facilitate Indigenous-led processes and coordinated IA.

Research Questions

1) What are the legal responsibilities of the Federal and Provincial Governments re: Impact Assessment?
2) What is Cooperative Federalism?
3) What is contained in Impact Assessment Cooperation Agreements in Canada?
4) How has Cooperative Federalism worked in Canada re: Impact Assessment?

Research Approach:

This memo draws on a combination of academic articles, regulatory frameworks, case studies, and policy documents. Specific focus was placed on the Canadian Constitution and the

regulatory frameworks administered by the Federal and Provincial governments in Canada. For information about the role of Indigenous Governments and rights holders in Impact Assessment processes, please see our *Indigenous-Led Impact Assessment Memo* on the Manitoba Eco-Network website.

1. Responsibilities of the Federal and Provincial Governments re: Impact Assessment

The Canadian Constitution sets out the legal rules that provincial and federal governments must abide by, including the division of legal powers. It also lays out the powers and authorities of the office of the Governor General, the Canadian Courts, as well as those of the Senate and the House of Commons.

There is no specific mention of the environment or environmental protection in the Canadian Constitution, so it is not explicitly clear how legal responsibility over the environment is divided between the different levels of government. As a result, the legal responsibilities of the different levels of government over the environment have been determined based on the indicated areas of power that are set out in the Constitution and the Supreme Court of Canada's interpretation of the Constitutional heads of power and their application. There are also legal responsibilities derived from the "ownership" of federal and provincial crown land – i.e., jurisdictions are legally responsible for what they 'own'.

Provincial governments are usually considered to have more control over environmental regulation than the federal government, due to the fact there is more provincial crown land than federal crown land in most provincial jurisdictions (i.e., the more you own, the more you control) and the Canadian Courts have generally granted broad legal authority to the provinces. However, with the growing number of inter-provincial projects and discussions of large-scale energy developments with national implications, the scope of legal responsibility over impact assessment in Canada continues to fall into the legal grey area of "shared responsibility".

a) Federal Responsibilities

The Canadian Constitution (s 91, 92, 132) gives the federal government of Canada legal powers in relation to:

- public debt and federal public property
- trade and commerce
- raising money by taxation
- navigation and shipping
- seacoast and inland fisheries
- lands reserved for Indigenous rights holders
- the criminal law
- extra provincial works and undertakings
- works for the general advantage of Canada
- establishing peace, order, and good government (P.O.G.G. power)
- implementing international treaties.

Based on these constitutional powers and the Supreme Court of Canada's (SCC) past decisions, the federal government is considered to have legal jurisdiction in a number of areas

relating to the protection of the environment, natural resources and impact assessment, including:

- all federally owned lands (e.g., national parks and other federal lands, including the bed and shores of natural rivers, lakes, and other natural bodies of water.) and all resources on these lands (e.g., timber, water, wildlife, and mines and minerals);
- natural commercial, sport, or recreational fishery *habitat* in Canada, whether on federal or non-federal lands, and whether on privately owned or public lands;
- navigation on any waters that potentially can be navigated anywhere in Canada;
- ocean pollution and ocean mammals; and
- migratory birds and to a limited degree, migratory bird habitat (whether on federal or non-federal lands and whether on privately owned or public lands).

b) Provincial Responsibilities

The Canadian Constitution (s 92, 92A, 109) gives provincial governments legal responsibility over the following areas:

- taxation for provincial purposes
- management and sale of provincial public lands including timber and wood
- municipal institutions in the province
- local works and undertakings
- property and civil rights in the provinces
- penalties for violating provincial law
- local or private matters
- the exploration, development, management, and subject to overriding or conflicting federal legislation, the export to other provinces and taxation of non-renewable natural resources and electrical energy
- natural resources.

Based on these constitutional powers, in addition to the legal control that accompanies land ownership (i.e. crown lands) provincial governments can be considered to have legal responsibility over the following, as it relates to the protection of the environment, natural resources and impact assessment:

- provincial Crown lands and all resources on these lands and provincial property, including minerals, timber, water, range, and wildlife, wherever it occurs in the province, whether on public or private lands, except for on federal lands; and
- matters of general application regarding land uses such as land titles systems and planning and development law on any land in a province, except for federal or reserve lands.

Provinces also have legal authority to legislate and set policy for air and water pollution and soil contamination within provincial borders. (Hughes et. al. 2019)

c) Shared Responsibilities

The Canadian Constitution also indicates several areas where Provincial and Federal governments have shared legal responsibilities. For example, section 95 of the Constitution indicates that “Agriculture” is a shared area of responsibility between the levels of government.

Court interpretation of the Constitution has also established other areas of shared responsibility, including:

- Impact Assessment,
- Parks and Protected Areas,
- Species Protection,
- Pollution Control, and
- Climate Change.[1]

d) Responsibility for Impact Assessment

Legal responsibility for impact assessment is shared between the federal and provincial governments. This responsibility has derived from court interpretation of the Constitution and consideration of whether or not federal impact assessment requirements are constitutionally valid. As a result of this shared legal responsibility, each Canadian jurisdiction has distinct impact assessment legislation, with different regulatory requirements for all aspects of the process, including the types of developments subject to review, factors to be considered during the IA, the basis on which the decision is made, and the level of public participation in the IA process, among other things. (Fitzpatrick et. al. 2024)

The level of involvement of the federal government vs provincial/territorial governments in different Canadian jurisdictions tends to vary, largely depending on how many projects trigger federal impact assessment requirements. For example, in Manitoba the vast majority of proposed developments are solely assessed under the provincial impact assessment, as only a handful of the largest projects (e.g., hydro dams, transmission lines, pipelines) historically have met the requirements for the federal impact assessment process of the time to apply.

Under current federal IA legislation (i.e., the IAA), projects that require a federal impact assessment include those listed in the *Physical Activities Regulations* and any projects designated by the Minister of Environment and Climate Change under section 9 of the IAA. The Minister has so far denied requests to exercise discretionary powers to designate Manitoban projects (such as the Sio Silia Sand Extraction Project) as within federal jurisdiction. Thus, the provincial government exercises most direct responsibility for the impact assessment of projects in Manitoba on a day-to-day basis.

2. What is Cooperative Federalism?

In Canada, shared jurisdiction in a range of different regulatory areas can result in a very complex, confusing, and sometimes disjointed regulatory processes. For example, when two separate governments are working on the same legal issue without coordination, there is an increased risk of "duplication, delay and intergovernmental conflict". (Kennett 1992) Recognizing the potential benefits of inter-government collaboration, the concept of "cooperative federalism" has emerged, which "in the Canadian context, is a concept of federalism based on

[1] See for example, *Friends of the Oldman River Society v. Canada (Minister of Transport)* [1992] 1 S.C.R. 3; *Reference re Greenhouse Gas Pollution Pricing Act* 2021 SCC 11*; Reference re Impact Assessment Act* 2023 SCC 23, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20102/index.do.

the federal and provincial governments working together to achieve mutual goals." (Chen 2019; Olszynski 2024)

In an environmental context, there have been longstanding efforts to coordinate environmental regulatory approaches, including impact assessment, in the spirit of cooperative federalism. For example, the Canadian Council of Ministers of the Environment developed *The Canada-Wide Accord on Environmental Harmonization,* which was signed in 1988 by all provinces, except Quebec. (CCME 1988) The goal of the Harmonization Accord was to facilitate cooperation between governments in order to achieve the highest level of environmental quality for all Canadians. Under the accord, participating governments retained their existing legal authority but commit to act collaboratively to achieve enhanced environmental results. The Harmonization Accord has facilitated cooperation in many areas of environmental regulation in Canada, including impact assessment, and has led to more formal cooperation instruments, such as the formal cooperation agreements and MOUs discussed later in this memorandum.

The Government of Canada has also formally recognized the need for "regulatory cooperation", which is considered to be "a process where governments work together to:

- adopt international standards
- harmonize or align regulations
- share information and experiences
- reduce unnecessary regulatory differences
- eliminate duplicative requirements and processes." (Treasury Board of Canada Secretariat, n.d.)

This approach is applied to a range of regulatory activities (e.g., inspections, certification, policy development, product and testing approvals, adoption and development of standards) and levels of regulation (e.g., national, international). (Treasury Board of Canada Secretariat, n.d.)

a) Cooperative Federalism and Impact Assessment

In the context of Canadian impact assessment processes, the benefits of different levels of government working together have been recognized (e.g., minimize overlap, prevent duplication, share resources) and a cooperative approach has been encouraged by the Government of Canada. For example, one of the key principles of the federal *Impact Assessment Act*, is "cooperation with other jurisdictions", such as provinces, territories, and Indigenous jurisdictions. The goal is "a single impact assessment process for major projects with each jurisdiction maintaining authority over their respective areas of jurisdiction" (i.e., one project, one review or the "one window approach"). (IAAC n.d.; Fitzpatrick et. al. 2024)

The federal Impact Assessment Agency recognizes the benefits of cooperation, guided by the principle of "one project, one review", to include:

- agreed-upon principles for assessments,
- streamlined planning,
- reduced duplication,
- reduced burden for proponents and other participants,
- increased efficiency and certainty of the assessment process, and

- use of the best available expertise. (IAAC n.d.)

However, it is unclear how harmonization and cooperation has been encouraged and facilitated in an IA context. There is also limited understanding of what, if any, barriers have contributed to a seeming lack of attention from regulators (e.g., expiration of cooperation agreements under CEAA 1992 and no new agreements signed except with BC). There has been increasing discord at the federal level around the perceived "interference" of federal authorities in the approval of developments taking place within provincial borders, most often in the context of energy developments in the oil and gas sector. This opposition to the involvement of the federal government led directly to the series of court challenges that have made their way to the Supreme Court of Canada in order to clarify the legal responsibilities and jurisdiction of Canadian governments over IA and other approval processes (e.g., *Reference Re: Impact Assessment Act).*

Although the SCC ultimately confirmed the federal government has a role to play in IA processes across Canada, the SCC's decision required reforms to the *Impact Assessment Act* in order to ensure the federal government was not operating outside its legal jurisdiction. These reforms, alongside other policy and legal changes focused on "regulatory efficiency", seem to be narrowing the scope of federal IA responsibilities and encouraging the substitution of provincial regulatory processes and requirements. Since there has only been one cooperation agreement signed so far (with BC), it is currently unclear how much emphasis will be placed on harmonization vs substitution when other provincial regulators are involved in collaborative IA processes.

3. How has Cooperative Federalism worked in Canada re: Impact Assessment?

Under the *Impact Assessment Act (IAA)*, the federal government of Canada can officially collaborate with different jurisdictions[2], including agencies, regulatory bodies, provincial and territorial governments, and Indigenous governing bodies during the impact assessment of projects that fall within shared legal responsibility.

The IAA creates a number of pathways for cooperation with other jurisdictions, including:

a) *Coordinated assessments*: where the jurisdictions involved coordinate activities and, where possible, timelines and documents.

[2] Under the IAA (s 2), "jurisdiction" means: (a) a federal authority; (b) any agency or body that is established under an Act of Parliament and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project; (c) the government of a province; (d) any agency or body that is established under an Act of the legislature of a province and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project; (e) any body — including a co-management body — established under a land claim agreement referred to in section 35 of the Constitution Act, 1982 and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project; (f) an Indigenous governing body that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project [...]; (g) an Indigenous governing body that has entered into an agreement or arrangement referred to in paragraph 114(1)(e); (h) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and (i) an international organization of states or any institution of such an organization.

b) *Delegation*: This approach involves the federal government assigning responsibility for parts of the federal assessment process to another body or jurisdiction, with the federal government retaining overall responsibility for the IA process.
c) *Substitution*: Under the IAA, another jurisdiction's assessment, or a harmonized assessment, is substituted for the federal one. In a substituted assessment, each government makes its own decisions, but the decisions are based on the substituted impact report.
d) *Harmonized assessments*: the jurisdictions involved jointly develop an IA process that meets the requirements of the IAA and the other jurisdiction's legislative framework.
e) *Joint review panels*: the jurisdictions jointly appoint panel members and agree on terms of reference for an independent panel to conduct the assessment. (Fitzpatrick et. al. 2021; IAAC n.d.)

A variety of these approaches may be used during a cooperative impact assessment undertaken between Canada and another party. However, delegated processes, which have limited applicability, have yet to be implemented in Canada. (Fitzpatrick et al. 2024) To formalize the approaches to be used between collaborating jurisdictions, the federal Minister of Environment can sign a cooperation agreement with another jurisdiction, the contents of which are discussed more below. So far, British Columbia is the only jurisdiction with whom the federal government has entered into a cooperation agreement with provisions for substitution under the federal *Impact Assessment Act*. (IAAC 2019a; Fitzpatrick et al. 2024)

The federal government can also undertake "project-specific cooperation", where the parties (e.g., the federal government and a province, territory, or Indigenous government) can develop an agreement for cooperation on an individual project assessment. During the Planning phase of the federal IA process, a cooperation approach can be developed and documented through a project-specific agreement or outlined in the Cooperation Plan for the project. Cooperation Plans and any project-specific agreements are posted on the IAA registry. (IAAC n.d.)

4. *Cooperation Agreements in Canada*

Through the development of formal cooperation agreements or memoranda of understanding (MOU), the federal government and a collaborating body (e.g., provincial, territorial or Indigenous governing body) can set out the rules for how they will work together during the impact assessment process. (Fitzpatrick et. al. 2021) Under both the IAA and its predecessor, the former *Canadian Environmental Assessment Acts* (CEAA) of 2012 and 1992, Canada has signed formal cooperation agreements with different provincial governments and one territory.

Cooperation agreements in Canada tend to focus on coordinating IA activities, especially in relation to public participation requirements. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2016) Such agreements typically affirm the application of key steps in each IA process and emphasize coordinating milestones with the goal of implementing a shared timeline. Cooperation agreements often have sections dedicated to ensuring the public has access to information and an opportunity to participate in the IA process. The role of Indigenous rights holders and coordination of Consultation processes may also be addressed.

In Canada, there is currently only one active IA impact assessment cooperation agreement (i.e., between the federal government and BC), that was signed under the IAA. The remainder of IA cooperation agreements that had been signed under previous federal impact assessment legislation have lapsed. The following section is largely based on the analysis of these expired cooperation agreements. It is currently unclear what, if any, activities are being undertaken by IA regulatory authorities to facilitate the development of new agreements.

Most cooperation agreements in Canada have focused on facilitating coordinated assessment, harmonized assessment, or joint panel review. Few jurisdictions have included provisions for substitution, although British Columbia has done so in their most recent agreement with the federal government.

a) Expired Environmental Assessment Cooperation Agreements under the *Canadian Environmental Assessment Act, 1992*

Most of the agreements that were signed under CEAA 1992 have been expired for over a decade, although the federal government has indicated that "Canada and the provinces and territories continue to work together in the spirit of these agreements." (Fitzpatrick et. al. 2024) It is unclear what this has meant in actual practice.

The Agreements signed between the government of Canada and provincial/territorial governments under CEAA 1992 include the:

- Canada - Yukon Agreement on Environmental Assessment Cooperation (2004)
- Canada - British Columbia Agreement for Environmental Assessment Cooperation (2004)
- Canada - Alberta Agreement for Environmental Assessment Cooperation (2005)
- Canada - Saskatchewan Agreement on Environmental Assessment Cooperation (2005)
- Canada - Manitoba Agreement on Environmental Assessment Cooperation (2007)
- Canada - Ontario Agreement on Environmental Assessment Cooperation (2004)
- Canada - Quebec Agreement on Environmental Assessment Cooperation (2010)
- Draft Canada - Newfoundland and Labrador Agreement for Environmental Assessment Cooperation (2005)

Most of these agreements contain similar provisions, although small variations exist between the different jurisdictions. The agreements with Alberta and Quebec vary the most, with particular attention and a considerable portion of these agreements focusing on the provincial jurisdiction retaining as much control over shared assessment processes as possible. Both agreements contained provisions for substituted assessment (Fitzpatrick and Sinclair 2016)

b) Expired Memoranda of Understanding (MOU) under the *Canadian Environmental Assessment Act, 2012*

Canada and British Columbia developed a memorandum of understanding (MOU) in 2013 to facilitate substitution of the federal assessment process to British Columbia under the *Canadian Environmental Assessment Act, 2012*. (Canada 2013) The stated purposes of the MOU were to facilitate information exchange between the Parties; describe the roles and

responsibilities of the Parties to enable timely and well-informed substitution decisions by the Federal Minister; and establish an administrative framework that will facilitate efficient and effective substituted environmental assessments. (Canada 2013)

c) Comparing the Content of Canadian Cooperation Agreements

Comparing the content of different Canadian IA cooperation agreements is complex since they address the legal requirements of different IA legislation and have been developed in different political and environmental contexts. As a result, the objectives of Canadian IA cooperation agreements have varied over time. (Fitzpatrick and Sinclair 2005; Fitzpatrick and Sinclair 2009) However, as more IA cooperation agreements have been signed over the years, there appears to be more consistency. Most IA cooperation agreements cover:

- administrative aspects of coordinated EA (e.g., scope of the agreement, objectives, designated offices, lead party identification, agreement duration, and renewal process);
- preliminary process (e.g., consultation between parties, notification);
- process requirements for cooperative assessment processes and/or substituted assessment processes;
- requirements for public participation;
- provisions for a joint panel assessment;
- Consultation with Indigenous rights holders; and
- transboundary provisions. (Fitzpatrick and Sinclair 2016)

There appeared to be an emphasis on harmonization in early cooperation agreements under CEAA 1992, however, since 2013, the only cooperation agreements, signed with British Columbia (2013, 2019), seem to emphasize substitution as the preferred approach to collaborative assessment. (Canada 2013; IAAC 2019; IAAC 2025). Recent legal and policy changes made to facilitate "regulatory efficiency" have also seemingly influenced a shift towards streamlining and coordinating approval processes to make them faster.

The MOUs signed with the CNSC and the CER, discussed below, are the first examples of cooperation agreements signed between regulators, so it is unclear what this indicates as the emphasis in these documents is on "integrated assessment", which seems to align more with cooperation than substitution. Overall, it continues to be unclear what the federal government's preferred approach to collaborative IA is, despite recent developments that appear to emphasize substitution.

d) Impact Assessment Cooperation Agreements under the *Impact Assessment Act*

At the federal level, the *Impact Assessment Act* (IAA) establishes cooperation as a core objective of all impact assessment methods. (Fitzpatrick et. al. 2021) Although the term "harmonization" is not used, it seems the Impact Assessment Agency of Canada (IAAC) uses the term "coordinated assessment" in place of "harmonization". Therefore, this memo considers harmonization and coordinated assessment to be equivalent terms. There are four methods for cooperative impact assessment established under the IAA:

- coordinated review,
- substitution,
- delegation, and
- joint and integrated review panels. (Fitzpatrick et. al. 2021)

Under the IAA, the Government of Canada (through the IAAC) continues to have powers to sign formal cooperation agreements with other jurisdictions. There has been one Cooperation Agreement signed under the IAA between Canada and British Columbia. This agreement was updated in March 2025. (IAAC 2025)

Along with other governments, the IAAC can sign cooperation agreements with other agencies to facilitate coordinated IA, including the Canadian Nuclear Safety Commission (CNSC) and the Canadian Energy Regulator (CER). In 2025, the IAAC signed MOUs with the CNSC and the CER to facilitate coordination and establish a process for integrated assessment. (IAAC 2019c; IAAC 2019d)

British Columbia (2019, updated in 2025)

In 2019, the IAAC and the Government of British Columbia signed a cooperation agreement. This is currently the only government-to-government cooperation agreement signed under the IAA. (IAAC 2019a; IAAC 2019b; McKenna and Heyman 2020) Under the agreement, projects that require an impact assessment by both the Government of Canada and the Government of British Columbia will undergo a collaborative IA process. The agreement includes three mechanisms for cooperative impact assessments: coordination, substitution, or a joint review panel. The agreement emphasizes the use of substitution, similar to the Federal-BC MOU signed under CEAA 2012, and notes that "Canada and British Columbia agree that substituted impact assessments provide benefits to proponents, Indigenous peoples and the public by reducing workload and streamlining participation while ensuring that the expertise of both governments is applied." (IAAC 2019a)

The 2019 Federal-BC agreement also includes a commitment for Canada and British Columbia to work together to coordinate cooperation and collaboration with Indigenous peoples throughout impact assessments. (Fitzpatrick et. al. 2021; IAAC 2019a) An interesting addition to the agreement is the inclusion of "local governments" (e.g., municipal governments) in the agreement. As a result, when there is a BC-federal IA, local governments will have some recognition and opportunity for early involvement in a project's impact assessment. (Fitzpatrick et. al. 2021)

In March 2025, an update to the 2019 agreement with BC was published that focuses on *Coordination on Permitting Critical Mineral Projects* ("Commitment Statement"). (IAAC 2025) See Appendix A for more details. This "extension" to the 2020 agreement is aligned with the BC and Federal *Critical Mineral Strategies*. (IAAC 2025) These strategies outline priorities that support intergovernmental collaboration related to critical minerals developments ("priority projects") in the province and the acceleration of regulatory efficiency. See our *Memo on Regulatory Efficiency and IA* for more information about this concept and associated regulatory approaches.

The stated objective of the 2025 critical minerals Commitment Statement is to "accelerate decision-making around critical minerals projects through aligning their respective regulatory processes and requirements to the extent possible." (IAAC 2025) The statement is intended to represent "further alignment efforts related to permitting and authorizations, that aim to result in increased coordination and integration, eliminating duplication, and achieving

shorter overall timelines for decisions across the full range of regulatory requirements for critical minerals projects." (IAAC 2025) British Columbia's Ministry of Mining and Critical Minerals is also included as one of the responsible regulatory authorities (it was not included in the Cooperation Agreement signed in 2019). It is unclear what role the Ministry will play in future Fed-BC IA processes.

The Commitment Statement emphasizes the use of substitution, although coordinated assessment is also mentioned. There is focus on continuing to "advance initiatives to streamline processes" including relying on BC's regulatory processes "to the extent possible". It also includes a commitment to exploring "enhanced capacity support for substituted impact assessments carried out by British Columbia". (IAAC 2025) The Commitment Statement addresses regulatory processes other than impact assessment, i.e., "permitting processes" and seeks to facilitate the alignment and integration of these other processes into the IA processes. (IAAC 2025) The Commitment Statement also includes a range of commitments to supporting and improving "effective engagement with Indigenous Peoples" and improving alignment and coordination of Crown-Indigenous consultation. (IAAC 2025) There are few details so it is unclear what specific actions or activities will support these commitments.

Lifecycle Regulators – CNSC and CER (2019)

Under the IAA, projects regulated by lifecycle regulators, the Canadian Nuclear Safety Commission (CNSC) and the Canadian Energy Regulator (CER), are subject to an integrated impact assessment, a single assessment process that meets the requirements of both the IAA and either the *Nuclear Safety and Control Act* or the *Canadian Energy Regulator Act*. As discussed above, the IAAC is able to sign cooperation agreements with a range of different parties under the IAA, including other regulatory authorities. As a result, the IAAC has signed memoranda of understanding (MOU) with the CNSC and the CER. These MOUs are intended to facilitate coordination and enhance efficiencies in the regulatory process for integrated impact assessments involving the CNSC and the CER. (IAAC 2019c; IAAC 2019d)

The MOUs and Annexes contain very similar objectives, with a focus on achieving the goal of "one project, one assessment" in an "efficient and effective manner." (IAAC 2019c; IAAC 2019d) Overall objectives include:

- implementing a framework that creates a single, comprehensive process for integrated impact assessments that is "fair, inclusive, transparent and efficient";
- clarifying the roles and responsibilities for the participants for the conduct of integrated impact assessments;
- facilitating coordinated public engagement and Indigenous consultation activities;
- ensuring the statutory requirements of both the IAA and the NSCA/CERA can be fulfilled; and,
- facilitating timely and consistent information sharing and coordination between the participants. (IAAC 2019c; IAAC 2019d)

There are more details included in the CNSC MOU, including commitments to share technical and scientific information with the IAAC and a specific section on Indigenous Consultation. However, Annexes attached to the CER MOU address these topics. Both MOUs have eight Annexes providing more details about aspects of the integrated IA process (i.e.,

Information Sharing and Notification; Public Engagement and Participation; Crown Consultation; Terms of Reference for an Integrated Review Panel; Appointments to Rosters and Integrated Review Panels; Project Team and Secretariat; Development of Conditions; and Joint Integrated Review Panel Agreements). (IAAC 2019c; IAAC 2019d)

5. Best Practices for IA Cooperation: Harmonization (Coordinated Assessment)

Best practice recommendations for cooperation in an IA context have varied over time, with greater divergence between experts and governments as of late. While IA experts have been consistently recommending harmonization as the ideal method of collaborative IA, there seems to have been a change in perspective for federal regulators based on the recent legal reforms and policy developments discussed above. The emphasis in the IAA on cooperative assessment seemed to indicate that IA practices at the federal level would be moving towards harmonization, rather than less cooperative approaches like substitution or delegation. However, based on the one Cooperation Agreement that has been signed under the IAA and recent regulatory changes to speed up and streamline regulatory approvals, there appears to be a shift to focus on substitution instead of harmonization and coordination.

This section addresses past critiques of collaborative IA processes in Canada, including discussion of project examples from Manitoba. Best practices for harmonization (coordinated assessment) are also discussed, as this continues to be the collaborative approach most recommended by IA experts.

a) Past Critiques

In the past, substitution seems to have been the most critiqued approach to cooperative IA. While delegated assessment is also a contentious approach, it has not been used in Canada, so it does not often come up. Substitution involves only one assessment that is conducted under jurisdiction A's process (the lead party). Jurisdiction B relies on jurisdiction A's assessment and makes its impact assessment and regulatory decisions based on A's assessment. As a result, jurisdiction B's involvement in the assessment can vary from virtually no involvement to considerable involvement. The amount of involvement may depend on the requirements of the legislation, policy, the circumstances of a particular assessment, and Cooperation/Substitution agreements. (Fitzpatrick et. al. 2021) As a result of the significant uncertainty surrounding this type of approach, substitution has, in practice, rarely been used in Canada.[3] (Fitzpatrick et. al. 2024)

Experts have instead recommended harmonization as the best approach to coordinating the impact assessment processes of different Canadian jurisdictions. (Fitzpatrick et. al. 2024, Fitzpatrick and Sinclair 2016) However, harmonized IA approaches have not always been well designed in Canada. This has led to situations where time and resources are wasted when, for example, two separate assessments unfolded instead of one coordinated process. (Fitzpatrick et. al. 2024) In Manitoba, other problems with coordinated assessment include a lack of federal

[3] Even though CEAA 2012 added the potential for provincial and Indigenous assessments to be substituted for federal ones, only two jurisdictions' processes were substituted (BC and an IA established under the Inuvialuit Final Agreement). By 2020, only four assessments had been completed using process substitution. Under the IAA, the only assessment completed has been a substituted process.

presence at provincial hearings, which compounded process uncertainties, especially when the Federal Government had indicated they would monitor the process. (Fitzpatrick et. al. 2024, Fitzpatrick and Sinclair 2009a)

In Manitoba, past coordinated assessment for large energy projects like the Wuskwatim Generating Station, the Keeyask Generating Station, and the Manitoba Minesota Transmission Line Project (MMTP) have highlighted some of the problems and challenges that can arise during cross-border assessment in Canada. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2009; Fitzpatrick and Sinclair 2016) The most recent example, the MMTP, involved the construction of a 500 kV line to connect Manitoba's electrical grid with that of Minnesota, United States, through the Great North Transmission Line. (Fitzpatrick et. al. 2024) Although Manitoba and the Federal government had signed a harmonization agreement for the IA of the project, the review ended up being largely uncoordinated with multiple different hearings with different regulatory bodies, causing a myriad of problems for Indigenous and public interest organization participation. (Fitzpatrick et. al. 2024) Based on experiences like these, experts have continued to develop best practices and advocate for policy and law reforms to ensure impact assessment processes can be undertaken in a more harmonized manner.

b) Moving Towards Harmonization (Coordinated Assessment)

Harmonized impact assessment (also referred to as "coordinated assessment") has been recognized by IA experts as the most effective cooperative IA approach in Canada. Compared to other methods, harmonization has the highest potential to meet the legislative requirements of the involved jurisdictions, with each jurisdiction carrying out its requirements through one cooperative and coordinated process. Harmonized impact assessment also encourages jurisdictions to incorporate the requirements of the others into the joint assessment, thus providing opportunity for a broad yet efficient impact assessment on which to base individual decisions.

Recognized benefits of harmonization:

- Better ensuring one project, one assessment;
- avoiding duplication;
- allowing for consistency in scope, process, and timelines;
- strengthening opportunities for meaningful engagement, including access to funding and information;
- providing redundancy where each jurisdiction can review the other's work;
- minimizing the chance of error and decreasing gaps in analysis; and
- allowing for consistent, effect and enforceable conditions. (Fitzpatrick et. al. 2021)

In terms of how harmonized impact assessment should be undertaken, transparency and clearly identifying the process to be followed is an important factor. Coordinated IA is often complex and involves process uncertainty, particularly since IA legislation and coordination agreements are light on the details of key steps in the process. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2005, 2009a, 2016; Horvath, 2021) It is therefore important for regulators to be transparent about the process steps to be followed, and provided capacity building resources, if needed. For example, some of the early coordinated assessments in

Canada included a class for practitioners and government official to train them on how to be involved in the review process (e.g., The Sable Gas Project). (Fitzpatrick et. al. 2021) Over time, participants have been largely left to figure out the coordinated process on their own.

Ideally, the objectives of a harmonized IA process should include:

- The coordination and integration of the impact assessment processes of all involved jurisdictions so that there is only one process, one report and, if there is a hearing, one hearing.
- The reduction of duplication of requirements and the standardization of impact assessment elements.
- Each jurisdiction carrying out its legislative requirements in the cooperative process.
- Each jurisdiction fulfilling its information needs to enable an informed exercise of authority under its legislation. (Fitzpatrick et. al. 2021)

In a harmonized approach, as well as other cooperative approaches, the clear identification of the procedural components of the assessment helps facilitate coordination and provides all parties with transparency. For example, at the international level, cooperative IA agreements focus on:

- allocating legal responsibility between the jurisdictions,
- dividing costs, and
- establishing how to develop a common evaluative framework. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2005)

Unfortunately, in Canada, the cooperation agreements that have been implemented to facilitate coordinated assessment processes, including harmonized assessment, have focused on synchronizing IA activities, instead of identifying the key steps in the coordinated process that will be followed by each participant, particularly in relation to public participation. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2005) There has been a general lack of procedural information in Canadian cooperation agreements, with some appendices containing more specific details about the cooperative assessment, including concrete timelines, instead of in the body of the agreement. Relegating such detail to appendices makes it challenging for the public to access important details about cooperative review processes. Moving forward, more work needs to be done so the procedural elements of cooperative IA processes are more clearly identified in the main body of cooperation agreements, including identification of the common criteria that will be used by all parties during the assessment.

Overall, experts indicate that considerably more work is needed in Canada to ensure impact assessment processes can be undertaken in a harmonized manner. While the IAA contains provisions addressing coordinated assessment, "[t]he direction in the IAA for coordinated assessment is only notional" as the Act has not clearly established that coordinated assessment as the default and preferred method of IA when multiple jurisdictions are involved in Canada. (Fitzpatrick et. al. 2021) There should be specific language in the Act and the Minister should use their discretionary powers to provide guidance and codes of practice to acknowledge this preference. Clear legal requirements for coordinated assessment could help avoid two separate assessments, avoid substituted assessment, and could result in fewer court challenges. (Fitzpatrick et. al. 2021)

There also needs to be more support from the federal government and incentives for all jurisdictions to favour a coordinated IA approach and constructively cooperate and participate to ensure one project, one assessment. (Fitzpatrick et. al. 2021) For example, experts have suggested the establishment of a multi-jurisdictional impact assessment program to assist and encourage the negotiation of cooperative agreements. (Fitzpatrick et. al. 2021) There has also been suggestions for the development of a new national accord for cooperative assessment in the spirit of the previous Canadian Council of Ministers of the Environment Harmonization Accord discussed above. (Fitzpatrick et. al. 2021)

Most importantly, regulators need to ensure IA regulatory frameworks and guidance materials are being updated to address the surge in Indigenous sovereignty work and Indigenous communities reclaiming their inherent rights in Canada. (Fitzpatrick et. al. 2021) Governments will need to consider impact assessment as it applies in Indigenous-led assessment processes and create legal requirements and guidance that facilitate these processes. Indigenous-led IA may look very different from traditional IA processes. As a result, impact assessment legislation may need to make special provisions that recognize the sovereignty and inherent rights of Indigenous peoples so coordinated impact assessment can take place within the proper cultural and legal contexts. (Fitzpatrick et. al. 2021)

CONCLUSION:

In Canada, the impact assessment of multi-jurisdiction projects continues to be challenging. The priorities of the federal government are currently unclear when it comes to collaborative assessment, with recent reforms and policy developments seemingly emphasizing substitution. However, there continues to be a lack of details in IA legislation (at all levels), cooperation agreements, and guidance materials on the specifics of how coordinated assessment (or other cooperative approaches) should be accomplished. Instead, efforts have focused more on synchronizing the efforts of multiple agencies instead of identifying the key steps of an integrated IA process.

There are lessons to be learned from past coordinated assessments, including those that have taken place in Manitoba. Ongoing developments at the federal level also continue to provide insights on governance principles and regulatory approaches that could be adopted in other Canadian jurisdictions.

Overall, the key message from IA experts in Canada is that cooperation is good, and harmonization is best in an impact assessment context, and that detailed procedural steps should be included in cooperation agreements. There is also significant emphasis on the need for governments at all levels to work with Indigenous rights holders and governments to facilitate Indigenous-led processes and coordinated IA.

Appendix A:

Overview of Update to BC Cooperation Agreement re: Coordination on Permitting Critical Mineral Projects

In March 2025, an update to the 2019 agreement with BC was published that focuses on *Coordination on Permitting Critical Mineral Projects*. (IAAC 2025) This "extension" to the 2020 agreement is aligned with the BC and federal Critical Mineral Strategies. These strategies outline priorities that support intergovernmental collaboration related to critical minerals development in the province and the acceleration of regulatory efficiency.

Moving forward, for critical minerals projects subject to a BC and/or federal assessment and that require multiple provincial and federal permits and authorizations, the two governments will work together to undertake the following activities:

- Jointly identify "priority critical mineral proposed projects" and establish joint measures that will support streamlined regulatory process, early issues resolution, and effective engagement with Indigenous Peoples (e.g., prioritizing technical resources, aligning capacity funding with priority projects, and joint regulatory efficiency tables for identified priority projects).
- Align and prioritize resources for regional strategies and negotiations that mitigate risks for multiple critical minerals projects, with an early focus on northwest British Columbia.
- With respect to impact assessment, continue to advance initiatives to streamline processes under the Cooperation Agreement and explore enhanced capacity support for substituted impact assessments carried out by British Columbia.
- improve alignment and coordination of Crown-Indigenous consultation with relevant Indigenous groups on applicable regulatory instruments undergoing environmental and impact assessments. Specifically align the scope of consultation and associated capacity funding in relation to priority projects.
- Identify as early as possible, and in a predictable manner, in an assessment process whether any provincial or federal authorizations, permits or licences are needed.
- Facilitate the alignment and integration of permitting processes and requirements into the environmental or impact assessment process, to the extent possible, and improve coordination and integration of federal and provincial permitting processes. Specifically, commit to review areas where there may be regulatory overlaps with a view to increasing reliance on provincial authorization processes.
- Enhance existing joint tools and processes to expedite authorizations and permitting for priority projects, and implement any specific measures brought forward by British Columbia.
- Align funding awarded by the Governments of Canada and British Columbia in support of critical minerals to the extent possible to shared priorities, including under Canada's Critical Minerals Infrastructure Fund.
- When there is a provincial environmental assessment process, rely on the associated provincial reports and documents to meet subsequent provincial and federal regulatory and permitting processes and requirements, to the extent possible.

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