



# MANITOBA ECO-NETWORK

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Comments submitted via online engagement platform:

<https://letstalkimpactassessment.ca/co-operation-agreement-between-manitoba-and-canada>

## **Re: Manitoba Eco-Network Response to the Draft Co-operation Agreement between Manitoba and Canada**

This submission contains the feedback of the Manitoba Eco-Network (MbEN) on the proposed *Co-operation Agreement between Manitoba and Canada (Draft MB Agreement)* published by the IAAC in November 2025. We've also previously submitted comments on the *"One Project, One Review": Co-operation Agreements for the Assessment of Major Projects (Discussion Paper)* published by the IAAC in September 2025.

Overall, MbEN supports the "one project, one review" concept. However, we find the approach proposed in the *Draft MB Agreement* to be inadequate and likely to result in gaps and/or inefficiencies in the impact assessment (IA) and regulation of projects that could detrimentally impact the environment and the health of Manitobans. After review of the *Discussion Paper*, BC's Agreement and the other Draft Agreements published (e.g., PEI, New Brunswick, Ontario), it appears that the Federal Government's preferred approach to a one-window review is through relying on provincial IA processes as a substitute for the federal IA process. MbEN rejects this approach.

The *Draft MB Agreement* incorrectly states that "Canada and Manitoba have each established robust processes for the high-quality assessment of the effects of certain types of projects, informed by rigorous science, Indigenous Knowledge and community knowledge, and that lead to sound decisions." This is simply not true and has been disproved through the large number of academic publications and law reform reports pointing out the serious flaws and gaps in Manitoba's IA process.

For this reason, Manitoba needs a Co-operation Agreement that better articulates the responsibilities of both the federal and provincial government to protect the environment and human health and provides more details about the specific roles and liabilities of the different governments involved in the proposed cooperative IA process. The cooperative, harmonized approach that Manitoba needs should not result in the Federal Government being able to solely rely on Manitoba's outdated impact assessment process.

The other fundamental flaw of the *Draft MB Agreement* is the lack of consideration of Indigenous rights-holders and the many Indigenous Governments regularly engaged in the impact assessment process in Manitoba. The *Draft MB Agreement* states that Canada and Manitoba "are committed to ensuring that processes are informed by, and aligned with the principles of the United Nations Declaration on the Rights of Indigenous Peoples"; however, Manitoba does not,

in fact, have enabling legislation for the Declaration (unlike Canada and British Columbia). *The Path to Reconciliation Act* in Manitoba does not even come close to meeting the standards set out in the Declaration.

Overall, MbEN rejects the proposed *Draft MB Agreement* and recommends restarting negotiations in a more transparent and inclusive tripartite process that acknowledges the existing weaknesses in Manitoba's IA process and establishes Indigenous governments as official partners in any IA processes undertaken in Manitoba.

### **The One Project, One Review Approach:**

MbEN generally supports the "one project, one review"<sup>1</sup> concept and also views co-operation agreements as a pathway to achieving this goal. However, we feel that the IA process that occurs under a co-operation agreement needs to be focused on harmonization and have clearly defined steps, decision-making criteria, and definite roles for officials from both levels of government involved. We also do not think that co-operation agreements should be developed as a means of ensuring "accelerated assessments for nation building projects, and for all other major projects."

Manitoba needs a co-operation agreement that is focused on harmonization and the protection of the environment and human health through a clearly defined process that reflects public interests and best practices. A well drafted and comprehensive co-operation agreement can help provide process certainty by setting out how jurisdictions will work together on the impact assessment of major projects. The current draft does not meet this standard.

We also need a co-operation agreement that includes mechanisms to facilitate co-operation with other governments and rights-holders (like Indigenous governments) from all parties, not just the lead-government. Manitoba's cooperation agreement should commit all parties to collaborate on and coordinate meaningful communications and consultation with Indigenous Peoples during assessments. Manitoba's cooperation agreement should also include detailed provisions addressing coordination of Consultation with Indigenous rights-holders and how both parties will work to implement requirements of the *United Nations Declaration on the Rights of Indigenous Peoples Act*. Particularly when coordinating multiple types of assessments, permits, and approvals that could trigger overlapping Consultation and decision-making processes (e.g., during future Major Project assessments).

### **Protecting People and the Planet First:**

MbEN and our partner organizations PILC and the University of Winnipeg recently completed a law reform project, [\*Empowering Impact Assessment\*](#), that was focused on gathering public insights on Manitoba's provincial IA process under *The Environment Act* and identifying community priorities for impact assessment reform. Our research relied on multiple methods to address our purpose and objectives. We completed background research surrounding best practices in impact assessment and produced a series of research memos. In addition, we conducted a survey of Canadian and select international IA legislation to determine what is

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<sup>1</sup> "a single assessment for all projects, in a manner that respects federal, provincial, and territorial jurisdiction, enhancing co-ordination activities on permitting and eliminating duplication." (*Discussion Paper*, 2025)

typically included in the scope of the assessment, and the basis on which the assessment decision is made. Concurrent with the background research, we launched a public survey in March 2025, and held a series of in-person workshops in April and May 2025.

Overall, we found that Manitoba's provincial IA process is outdated and in need of significant reform. When compared with federal IA requirements under the IAA, there are significant differences that put Manitobans at a disadvantage. For example, there are gaps in Manitoba's framework that creates a scenario where an increasing number of projects are not adequately assessed by the provincial IA process. There are also significantly different levels of public access to information, including both through the federal public registry and through the decision-making reports provided throughout the federal IA process.

We heard clearly from Manitobans that they expect the protection of people and the environment through a robust provincial IA process, which incorporates meaningful public engagement and fosters trust. We also heard that Indigenous knowledge and Indigenous-led assessments must be enabled, recognized and respected when assessing the impacts of proposed projects. When it comes to federal IA and the development of a co-operation agreement with Manitoba, these same expectations apply. Manitobans ask for federal involvement because it is viewed as requiring a more detailed level of information, a higher level of environmental protection, better access to information, and stronger licensing requirements. Monitoring, follow-up, and enforcement activities at the federal level are also viewed as better in comparison to Manitoba. A cooperative approach to IA in Manitoba could help establish a higher standard of IA in our province and ensure better protection of local citizens and the environment.

After all of our work in the community, MbEN does not view IA as an obstacle to development, or as something that should be rushed through in order to secure a project's approval. Instead, IA is a process meant to protect and inform citizens and fulfill government responsibilities. It is also an important evaluation of whether or not a project should be allowed to proceed.

As recently noted by the United Nation Special Rapporteur on the human right to a clean, healthy and sustainable environment, "Governments have an obligation to ensure that impact assessments occur in a comprehensive and integrated manner, considering cumulative impacts" (Riaño 2025). When it comes to impact assessment, "the duty of States includes regulating, undertaking, monitoring and enforcing these processes and ensuring adequate access to information, public participation and access to justice and effective remedies" (Riaño 2025). Thus, the Canada-Manitoba cooperation agreement should set a higher standard of impact assessment than currently available under provincial legislation, particularly for activities with detrimental and disproportionate environmental impacts. Anything else could result in a violation of the federal and provincial governments' duty to protect the human rights to a healthy environment and to life, and other rights.

Based on these understandings of IA best practices and the feedback of Manitobans, MbEN views impact assessment as an important mechanism to help protect the environment and human health. There are public expectations that governments at all levels are working towards stronger environmental protections, and based on recent interpretations of international and domestic

law, Canadian governments are also legally responsible and obligated to do so. Moving forward, all co-operation agreements, including Manitoba's, should reflect these legal obligations and responsibilities to protect the environment and human health first, and ensure all governments involved are effectively contributing when a coordinated IA takes place.

### **A Lack of Meaningful Public Participation:**

While MbEN appreciates this opportunity to provide feedback on the *Draft MB Agreement*, there is a need for a more meaningful public consultation process both for the overall approach taken by the IAAC and the individual consultations needed for each draft agreement. So far, consultation opportunities have been rushed and overlapping. For example, the consultation period for the *Discussion Paper* and *Draft New Brunswick Agreement* occurred at the same time earlier this fall. Comments were also due before applicants received confirmation of possible participant funding. The consultation process for the *Draft MB Agreement* has also overlapped with the consultation period for the *Draft PEI Agreement*, and the *Draft Ontario Agreement*. This is extremely problematic and has certainly limited public engagement, particularly since no additional funding was provided for review of the individual draft agreements.

The involvement of other levels of government in the development of co-operation agreements, like the Government of Manitoba, is also very unclear. A co-operation agreement involves two parties. However, so far we have only seen the discourse of one party, the federal government, about the development of co-operation agreements, and there have been no corresponding consultation processes occurring at the provincial level or coordinated between the two jurisdictions theoretically involved. The Government of Manitoba received a specific request from a local colleague to include the *Draft MB Agreement* in the public registry where all provincial IA proposals are posted. This request was denied and the Department indicated that all coordination was being undertaken by the Agency. This lack of provincial engagement has very likely contributed to the limited number of comments received about the *Draft MB Agreement*.

Coordinated IA is often complex and involves process uncertainty. (Fitzpatrick et. al. 2024; Fitzpatrick and Sinclair 2005, 2009, 2016) It is important for regulators to be transparent about the process steps to be followed, and to provide capacity building resources, if needed. For example, some of the early coordinated assessments in Canada included a class for practitioners and government officials to train them on how to be involved in the review process (e.g., The Sable Gas Project). (Fitzpatrick et. al. 2021)

In terms of access to information, the *Draft MB Agreement* should clarify how the public will be able to get information about the assessment and licensing of projects that undergo the coordinated IA process. For example, without proper coordination and communication to members of the public, citizens may have to check three to four public registries at different levels of government, minimum, to access information and find out how to participate in an IA processes. Will information be available in all respective registries (e.g., Canadian Impact Assessment Registry, Provincial IA registry, Major Projects Registry)? Will there be one primary registry identified? What information will be contained in the public registry/registries? For

example, where will monitoring and follow-up information be available? More details are needed.

Overall, MbEN wants to see robust access to information and meaningful public participation in all aspects of the IA process, regardless of which government is the “lead”. This includes more information about the role of the provinces and how both levels of government are facilitating a meaningful public consultation process for the development of the Draft Cooperation Agreements. Meaningful public consultation requires a variety of opportunities and dedicated efforts to include interested local citizens. Posting a draft agreement or public notice on one federal website does not meet the standard of meaningful public participation when multiple levels of government are supposedly equally involved.

### **No Substitution!**

MbEN has concerns with the approach taken so far with the development of new Cooperation Agreements across Canada. Most troubling, is that there does not appear to be a basic standard of IA that must be met to ensure federal legal obligations are fulfilled. There needs to be a basic standard established to guide the development of future co-operation agreements and allow for effective evaluation of the IA outcomes facilitated by individual agreements.

For this reason and many others, MbEN does not support co-operation agreements that are focused on substitution, particularly when it comes to Manitoba’s Cooperation Agreement. In our opinion, substitution does not create the co-operation that is needed for a robust assessment of projects with potential detrimental effects in multiple jurisdictions. While the language used in the *Draft MB Agreement* does not as clearly emphasize substitution as much as other Draft Agreements have, it is still very concerning that Manitoba’s IA process could be substituted for the more robust federal process.

The *Draft MB Agreement* and other published materials do not provide information about how the IAAC has assessed the adequacy of provincial IA regulatory requirements. This analysis should be publicly available so Manitobans can be assured that the IAAC actually understands Manitoba’s process and has engaged with the local experts and organizations who work day-to-day within the provincial IA framework. Unfortunately, in the past there have been numerous situations where the decision not to undertake a federal impact assessment for a project appears to have been based on inaccurate information. For example, the Vivian Sand Extraction Project, which should have triggered the federal IA process, was found not to need a federal IA at the time, since the provincial process was thought to have adequately addressed potential adverse effects.<sup>2</sup> However, when the Clean Environment Commission reviewed the IA data for the Vivian Sand Extraction Project during a public hearing, they found that a number of potential impacts had been inadequately assessed, including cumulative effects.<sup>3</sup> From a Manitoba perspective, there seems to be an ongoing disconnect between what the Federal Government thinks the

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<sup>2</sup> IAAC, Minister’s Response, Vivian Sand Project (2021), <https://iaac-aeic.gc.ca/050/evaluations/document/142317>

<sup>3</sup> Clean Environment Commission, *Report on the Vivian Sand Extraction Project* (2023), [https://www.cecmanitoba.ca/hearings/silica-sand-extraction-project/doc/cec\\_vivian\\_sands\\_extraction\\_project\\_report.pdf](https://www.cecmanitoba.ca/hearings/silica-sand-extraction-project/doc/cec_vivian_sands_extraction_project_report.pdf)

provincial IA process under *The Environment Act* does, and what it actually does, in terms of how effectively the environment and human health is protected.

The *Draft MB Co-operation Agreement* is largely silent on many of the elements typically included in past harmonization agreements.<sup>4</sup> Moving forward, more work needs to be done so the procedural elements of cooperative IA processes are transparent and more clearly identified in the main body of co-operation agreements, including identification of the common criteria that will be used by all parties during the assessment. There is also more information needed about the involvement of provincial governments and how legal requirements in both jurisdictions will continue to be met.

### **What Should Manitoba's Co-operation Agreement Contain?**

There is a need to tailor the specifics of a co-operation agreement to reflect the respective legal requirements of each jurisdiction and the public interests of local citizens and Indigenous rights-holders - which is why our main suggestion is to go back and restart the negotiation process in a more transparent and inclusive manner. However, there are a number of general components and/or standards that can be drawn from best practice that should be incorporated into all Canadian co-operation agreements to ensure robust protection of the environment and human health.

For example, there are objectives and standards that can be drawn from the many layers of legal requirements that governments must fulfill in order to meet their legal obligations. For example, the 2023 Supreme Court of Canada Decision in *Reference Re: Impact Assessment Act* underscored the need for federal and provincial governments to work together on impact assessment in the spirit of co-operative federalism. Despite the seeming misinterpretation of this decision to support efforts to reduce IA requirements, the federal government is still required to satisfy the requirements of the *Impact Assessment Act*. It cannot just offload its obligations on provincial governments. Both levels of governments have their own constitutional obligations to uphold, which is why the development of co-operation agreements should be focused on harmonizing the process to ensure individual and mutual legal obligations are fulfilled.

In terms of the scope of IA processes under co-operation agreements, there is a need to ensure the IA process fulfills all applicable legal requirements - international, federal, and provincial. For example, to ensure IA processes respect human rights and other international obligations, the UN Special Rapporteur has recommended that impact assessment processes:

- a) Be undertaken as early as possible and prior to any proposal authorization or the commencement of any activity, or when significant modification and/or expansion is proposed;
- b) Assess proposals' direct, indirect, domestic, transboundary, adverse, positive, cumulative, comprehensive, long-term, short-term, climate, biodiversity, environmental, health,

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<sup>4</sup> For more analysis of past Canadian Co-operation Agreements and discussion of best practices, see: Fitzpatrick et. al. 2024; Fitzpatrick et. al. 2021; Fitzpatrick and Sinclair, 2016; Fitzpatrick and Sinclair, 2009; and Fitzpatrick and Sinclair 2005.

cultural, social and human rights impacts, alongside proposals' compatibility with the State's international legal obligations and policies;

- c) Follow precautionary, prevention, proportionality, best-available science, maximum disclosure and equity and non-discrimination principles;
- d) Be prepared by independent, qualified experts;
- e) Ensure understandable, accessible, timely and complete information relevant to the proposal and assessment process;
- f) Provide effective, meaningful, open and inclusive public participation throughout each stage of the assessment process, including the monitoring of approved projects according to the terms and conditions of approval;
- g) Ensure access to justice and effective remedies, including for violations of assessment procedures and foreseeable human rights violations;
- h) Ensure special measures for the protection of the rights of marginalized people and groups. (Riaño 2025)

Manitobans want robust IA that meets federal standards, not weak provincial standards. As a result, MbEN endorses the amendments to the *Draft MB Agreement* recommended by Dr. John Sinclair and Dr. Patricia Fitzpatrick in [their submission](#) on the Draft Agreement:

- Add a provision similar to the *Draft Ontario Agreement* requiring the review of the agreement each year (Clause 12(1)), soliciting input from non-government entities;
- Develop of a quality assurance program that is public facing and allows all parties to identify criteria against which the effectiveness of the agreements can be assessed and strengths and weakness identified;
- Update the open-ended term of the agreement to replace it with a fixed term of not more than 5 years;
- Add clear guidance and new provisions to the *Draft MB Agreement* on meaningful public participation, including but not limited to early participation and education programs on how to comment on substitution proposals or substitution to a harmonized process;
- Add stronger language about the provision and timing resources provided by the federal government to Manitoba, merging language from s.8 of the *Draft Ontario Agreement* with s.9(5) of the *Draft MB Agreement*; and,
- Publish clear guidance on the IA process elements that will be subject to an “arrangement” between the federal and Manitoba governments – in other words the means of achieving a cooperative, harmonized approach.

Overall, there are many options for improving the accountability and transparency of the harmonized IA processes that will take place under the *Draft MB Agreement*.

### **Conclusion:**

MbEN is supportive of the concept of “one project, one review” and the use of co-operation agreements as a pathway to achieve this goal. However, we have serious concerns with the approach proposed in the *Draft Manitoba Cooperation Agreement* since it is likely to result in the assessment and regulation of projects in ways that could detrimentally impact the environment and the health of Manitobans.

MbEN does not support the development of co-operation agreements that are focused on substitution. Substitution is inadequate. Manitoba's provincial IA process is outdated and in need of significant reform and should not be relied upon for the assessment of major projects.

Manitobans want to see improvements to IA processes that focus on strengthening the protection of the environment, rather than streamlining project approvals. We want a *Manitoba Co-operation Agreement* that clearly sets out how the cooperating governments are going to collaborate and ensure there are no gaps in the regulatory framework so thorough and robust IA occurs.

As a result, MbEN rejects the proposed *Draft MB Agreement* and recommends restarting negotiations in a more transparent and inclusive tripartite process that acknowledges the existing weaknesses in Manitoba's IA process and establishes Indigenous governments as official partners in future IA processes undertaken in Manitoba.

Thank you for considering the feedback of MbEN on the draft *Co-operation Agreement between Manitoba and Canada*. We welcome future opportunities to engage with the Impact Assessment Agency of Canada to ensure the highest level of environmental and health protection measures are implemented for the benefit of current and future generations.

Sincerely,

Heather Fast, J.D., LL.M., Policy Advocacy Director

A handwritten signature in black ink that reads "Heather Fast".

James Beddome, LL.B., Executive Director

A handwritten signature in green ink that reads "James Beddome".

**About Manitoba Eco-Network:**

The Manitoba Eco-Network is a non-profit registered charity which seeks to strengthen Manitoba's environmental community with the goal of protecting our environment for the benefit of current and future generations. We serve as an umbrella for environmental non-governmental organizations across the province. Our mission is to promote good environmental governance, support and build capacity, advocate for environmental justice, and act as a bridge between environmental organizations, the public, and all levels of government.

**Resources**

Fitzpatrick, P., H. Fast, K. Dilay and J. Beddome. (2025) *What Manitobans Expect: Findings from the Impact Assessment Reform Project*. The University of Winnipeg: Winnipeg MB. [Forthcoming on Oct. 30, 2025]



Fitzpatrick, P., Kwasniak, A., & Sinclair, A.J. (2021) "Putting Multi-jurisdictional Impact Assessment into Action Under the Impact Assessment Act." In M. Doelle & A.J. Sinclair (Eds.), *The Next Generation of Impact Assessment: A Critical Review of the Impact Assessment Act* (pp. 165–193). Toronto: Irwin Law, 2021.

Fitzpatrick, P., & Sinclair, A. J. (2005). Multi-jurisdictional environmental assessment. In K. Hanna (Ed.), *Environmental impact assessment: Process and practice* (pp. 160-184). Toronto, ON, Canada: Oxford University Press.

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Fitzpatrick, P., Alan Bond and A. John Sinclair, (2024) "Crossing boundaries and jurisdictions: implications for public participation highlighting Canada and Europe" in Tanya Burdett and A. John Sinclair (eds) *Handbook of public participation in Impact Assessment* (Edward Elgar Publishing).

IAAC (2025) *"One Project, One Review": Co-operation Agreements for the Assessment of Major Projects*. Government of Canada.

IAAC (2025) *Draft Co-operation Agreement between New Brunswick and Canada on Environmental and Impact Assessment*. Government of Canada.

Riaño, A.P. (2025) *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño: Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment*. United Nations, A/80/187.