April 21, 2025

The Vital Importance of Federal Environmental Assessment and the Federal Election

By: Arlene Kwasniak

Matter Commented On: The federal leaders' debate and how the role of federal environmental assessment was inappropriately miscast, denigrated, and not defended.

On April 17th I watched the English debate among the Canadian Prime Minister contenders. I watched the French debate the day before. For those who may not know, I want to set something straight. It deals with so called "Bill C-69" that CPC leader Pierre Poilievre insists should be repealed. He calls it the "No Pipelines Act," a term he lifted from Jason Kenny, who called it that years ago. Poilievre calls it new legislation that blocks development, in particular development related to the energy industry like pipelines and references it as just a bunch of useless red tape standing in the way of industrial and resource development. This post addresses these false claims.

First off, the name of the legislation is the *Impact Assessment Act* (SC 2019, c 28, s 1). It hasn't been Bill C-69 since it was a bill, introduced in 2018 and passed and came into force in 2019. There have been many Bill C-69's over the years, even one introduced since the Bill C-69 that became the *Impact Assessment Act* (see Bill C-69, *Budget Implementation Act, 2024, No. 1*). This is because "C-69" is just a number assigned to a federal Bill introduced in the House of Commons during a session of Canadian Parliament. Any person seeking elected office, and in particular an incumbent leader of a political party, should understand this basic premise: A bill is a proposed statute and once the bill passes through the legislative process it is no longer referenced as a bill. See here for an overview of the legislative process in Parliament.

Secondly, impact assessment legislation is not new in Canada, or in most places in the world. Canadian environmental impact legislation requiring the federal government to conduct an environmental and social review of a proposed project in some situations where the project will impact areas of federal jurisdiction (exclusive or shared, e.g. coastal and inland fisheries, oceans, migratory birds, provincial and international transboundary impacts, nuclear developments,, endangered species, First Nations, Metis, and Innuit peoples, matters of a National Concern, Federal lands), has been around since 1992 with the *Canadian Environmental Assessment Act* (SC 1992, c 37), and before that with federal policy of a legislative nature called the "Environmental Assessment Review Process" (1973 - 1992)). At odds with Poilievre's rampage about the legislation, the requirements to consider whether a federal assessment is needed regarding a proposed project has weakened over the years reducing and limiting the federal government's authority to conduct assessments. The most significant cut to federal authority to require an assessment was in 2012, with the Stephen Harper era changes to the legislation which dramatically reduced the number of federal assessments in Canada. Prior to the *Canadian Environmental Assessment Act, 2012* (SC 2012, c 19, s 52,), if a project would likely negatively impact an area

of federal jurisdiction, unless it was excluded by a regulation, it was subject to at least a screening to determine whether a fuller assessment was required. This was called the "all in unless out" approach. The 2012 iteration of the legislation set out a project list, and unless a proposed project was a project type on the list, or added to the list by the Minister, which was permitted in limited circumstances, even if it impacted an area of federal jurisdiction, it did not need to be assessed under the Act. It was an "out unless in" approach. And this narrow approach still exists in the *Impact Assessment Act*. In fact, in general, thresholds for when a proposed project might require an assessment by the project type being on the project list have been raised, resulting in even fewer federal assessments. (See, for example, David Wright, "The New Federal Impact Assessment Act, Implications for Canadian Energy Projects" (2021) 59:1 AB LRev at 76). And, contrary to what Poilievre seemed to disregard in the English debate, there are mechanisms in the Act for provincial assessment processes to be substituted for federal ones, and also for joint federal-provincial assessments and other applications of cooperative federalism.

Thirdly, dropping requirements for federal assessment altogether, which is what Poilievre seems to be suggesting by his aggressive calls to "repeal Bill C-C9" would be incredibly regressive, taking Canada backwards to the 1980s on federal environmental assessment governance, and inevitably damaging to environment, society, and societal values and principles. Without environmental assessments, projects could proceed without comprehensive consideration of their social and environmental impacts, and without avoidance or mitigation of those impacts. This could lead to irreversible damage to environment, ecosystems, and biodiversity, as well as to facilitating air pollution, negative impacts on water quality and quantity, and to negative social and health impacts. It also would mean less opportunity for public, community, and Indigenous input and buy in (though constitutional responsibilities to Indigenous peoples must be otherwise met), likely resulting in more litigation and delay on projects. Why would any politician want to give industry free passes to impose these impacts on environment, society, and communities, and take away public interest opportunities to make projects better and more acceptable? Why would anyone think it was a good plan to bestow such free passes?

Fourthly, I was disappointed with the other leaders not directly defending federal assessment. I got the impression they thought they might lose support if they directly did so. It is sad how environment plays such a small role in the campaign. To be fair though, both Mark Carney's and Jagmeet Singh's responses seem to presuppose they would preserve federal assessment processes but would focus on one project one assessment – so federal/provincial cooperative approaches. That's fine, but no one called Poilievre out for his outright and unjustified dismissal of the need for or value of federal assessment of projects that will impact areas of federal jurisdiction. There has been commentary on how there simply is no way that provinces can adequately or should take on review of a project for its impacts on areas outside of provincial jurisdiction. An example is my publication "Environmental Assessment, Overlap, Duplication, Harmonization, Equivalency, and Substitution: Interpretation, Misinterpretation, and a Path Forward" (2009) 20 J Env L & Prac 1. Why would provinces even want to conduct a review of impacts outside of their own jurisdiction, unless part of a joint or cooperative review?

Finally, contrary to Poilievre's claim on X that Bill C-69 blocked 16 energy projects, journalistic fact checking has pointed out that this is not true. Fact checking revealed that these projects proposals were pre-*Impact Assessment Act* so the Act could not have blocked them. Also, fact

checking disclosed that the fact that they underwent federal assessment was not why they did not go ahead. There were other causes, including proponents abandoning proposals for economic or other reasons, or being turned down at the provincial level. See here and here.

Kwasniak posted an earlier version of this article on social media on April 17 and 18th, 2025.

This post may be cited as: Arlene Kwasniak, "The Vital Importance of Federal Environmental Assessment and the Federal Election" (21 April 2025), online: ABlawg, http://ablawg.ca/wp-content/uploads/2025/04/Blog_AK_IAA.pdf