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## First Five *Building Canada Act* Projects of National Interest (PONIs): Hot to Trot, or All for Naught?

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**Matter Commented On:** *Building Canada Act*, [SC 2025, c 2, s 4](#)

After months of speculation (see e.g. [here](#)), the first list of projects of national interest (PONIs) under the new *Building Canada Act* (BCA), [SC 2025, c 2, s 4](#) was [recently released](#) by the federal government. So, now what? This post explores where these projects sit in the new BCA process and the legal paths ahead. Discussion is framed around several key legal questions that bring to the surface some of the complexities that will arise during implementation of the new regime. This builds on the [previous ABlawg post](#) that discussed and commented upon the basic structure of the BCA.

Overall, working through these legal questions reveals that from a purely legal perspective identifying the projects was the easy part. At first glance, this first string of PONIs appear to be relatively close to approval-ready (i.e., hot to trot), but it is important to look at the rest of the process under the BCA to explore the open question as to whether the BCA is all for naught. In particular, key issues are the remaining federal authorizations for each of these projects, as well as the fulfilment of Crown consultation and accommodation duties with respect to Indigenous communities. This post concludes with reflections that look beyond the BCA paddock, including the importance of not completely abandoning the vitally important, long-standing role of federal impact assessment (IA) for the major natural resource and infrastructure projects.

### Background

The BCA came into force on June 26, 2025 after a virtually unprecedented expedited [legislative process](#). As explained in detail in this [post](#), the BCA creates a new federal process intended to fast-track federal review and approval of major infrastructure and natural resource projects that are determined to be in the national interest (i.e. PONIs). The thrust of the agenda, as [described](#) when the bill was tabled, is to shift the federal review and approval process from whether a project will proceed to how.

The weeks and months since the BCA came into force have seen predictions of what projects might be on the list, along with criticisms about the new regime from virtually all sides (see e.g. [here](#) and [here](#) and [here](#)). Some of that criticism has driven litigation, including at least one [legal challenge](#) from Indigenous communities and [another one](#) originating from Quebec.

Setting aside important concerns about the very rushed legislative process (which ought not be minimized, and will no doubt be well articulated in the lawsuits cited above), my own view is primarily a pragmatic one. What matters most now is how the BCA is implemented. If the implementation reveals that the BCA will exalt a relatively small number of projects to PONI status and they are relatively uncontroversial in terms of environmental and socio-economic impacts and impacts to the rights and interests of Indigenous communities, then it may be a ‘minimal harm, minimal foul’ situation. If however, there are many long strings of PONIs that are patently at variance with Crown consultation duties (including Canada’s commitment to implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#), and the broader shared reconciliation agenda guided by the Truth and Reconciliation Commission’s [94 calls to action](#)), climate change commitments (for example, [under the Paris Agreement](#) and [federal net-zero legislation](#)), interests of adversely affected marginalized and proximate communities, and other evidence-based sustainability concerns, then the BCA really is cause for deep concern. However, conjecture at this early stage of BCA implementation is not very constructive. Instead, working through the below legal questions pertaining to the PONIs’ path ahead under the BCA is illuminating.

### **The First Five PONIs: Short List = Low Risk**

There is now considerable clarity about the number and type of projects included in the first string of PONIs, although the suggestion that they have been [sent to the Major Projects Office \(MPO\) for “further assessment and consultations”](#) is a bit confusing (no such step is contemplated in the BCA; the decision to list a PONI belong with federal Cabinet and Cabinet alone). In any event, it is a [list of just five](#) PONIs. They are as follows:

- LNG Canada Phase 2, Kitimat, British Columbia
- Darlington New Nuclear Project, Bowmanville, Ontario
- Contrecoeur Terminal Container Project, Contrecoeur, Québec
- McIlvenna Bay Foran Copper Mine Project, East-Central Saskatchewan:
- Red Chris Mine expansion, Northwest British Columbia

However, the announcement was also coupled with an indication that more are to come, even going so far as to list specific projects as candidates to be added to the list. Examples include: Wind West Atlantic Energy (offshore wind and transmission), Pathways Plus (carbon capture, utilization and storage and associated carbon dioxide pipeline), Arctic Economic and Security Corridor (perhaps including the Gray’s Bay Port and Road Project, but that’s unclear), Port of Churchill upgrade and trade corridors. These projects, [according to the Prime Minister’s Office](#), are seen as “potentially transformative” but “at an earlier stage and require further development”.

The government’s forbearance in not yet listing these other projects, and also in not listing or hinting at any others, for example an Alberta-to-tidewater bitumen pipeline, is revealing in itself. It suggests, at least at this stage, a relatively cautious and risk averse approach by the government, and one that attempts to not stray beyond a zone where there is existing public and Indigenous support, and relatively well understood costs and benefits of the projects. To put this in terms of [social license](#), this first string of PONIs indicates that the government is trying to stay within a zone of existing social acceptance and consent. Time will tell if future PONIs stray from this relatively safe paddock.

## Key Legal Questions at the Present Juncture

### 1. *How were these projects selected and how do they get legally formalized as PONIs under the BCA?*

Under the BCA, and subject to the current fuzzy MPO “further assessment” limbo, the government will now move to place (corral?) the five PONIs in Schedule 1 of the BCA. The process for doing so is as follows. Under s 5(1), the Governor in Council (i.e., federal Cabinet) will now, by order, amend Schedule 1 “to add the name of the project and a detailed description of it, including the location where it is to be carried out”. However, before adding the project to Schedule 1, 30 days notice is required, as is consultation with the government of the province or territory in which the project will be carried out (s 5(1.1)). Further, if the project “falls within areas of exclusive provincial or territorial jurisdiction” then that government’s written consent is required (s 5(1.1)).

Underpinning all of this is the actual PONI identification step that is obviously now complete by virtue of the list being announced. Specifically, under s 5(6) Cabinet has to have considered “any factor” it considers relevant, including the extent to which the project can: strengthen Canada’s autonomy, resilience, and security; provide economic or other benefits to Canada; have a high likelihood of successful project execution; advance the interests of Indigenous Peoples; contribute to clean growth and addressing climate change. Additionally, the Minister must have, by the present stage, consulted with “Indigenous peoples whose rights recognized and affirmed by section 35 of the *Constitution Act, 1982* may be adversely affected by the carrying out of the project to which the order relates” (s 5(7)) (more on this further below).

Beyond those mechanisms and requirements required en route to formally adding the PONI to Schedule 1, the Minister must also satisfy the public registry requirements (that registry being one of the changes to Bill C-5 late in the legislative process). In what is good news in terms of transparency and public-facing information, s 5.1(2) requires the following for each project: a detailed description of the project and the reasons why it is in the national interest; the extent to which the project is expected to meet the factors listed in in s 5(6); detailed cost estimates that do not include private sector commercially sensitive financial information; and the estimated timelines for completion of the project. At the time of writing, the new Major Projects Office (MPO) has set up its [website](#), including a [map](#) with links to projects and a list with links to not-so-detailed [project descriptions](#), but there is no registry per se, at least nothing explicitly called a registry. Presumably this is forthcoming by the time the amendments to Schedule 1 take effect.

### 2. *What’s the legal status of federal authorizations once the PONI is listed?*

The PONIs’ exalted (branded?) status crystallizes quickly once formally added to Schedule 1. In short, all applicable federal authorizations are immediately greenlighted. These authorizations are all “deemed to be made or formed, as the case may be, in favour of permitting the project to be carried out” (s 6(1)). This is the early green light that was front and centre in announcements around Bill C-5 in June 2025, i.e., shifting to *how* not *whether* a project would be carried out.

But there is an important caveat from a legal requirements perspective. This is not just a giant, no-strings-attached free pass. Rather, under s 6(2), the PONI proponent must still “take all measures

that they are required to take” in respect of any applicable authorization. In real terms, this means that if, for example, a *Fisheries Act* authorization is required, the proponent must still do the work required to obtain that authorization. The main change, then, is simply that there is no longer any question that the permit will be issued in favour of the project proceeding. A ‘no’ is off the table (although see caveats explained below).

This is the step of the new BCA process that may still be time consuming. It is unclear how long it will take proponents to do the work required to obtain applicable authorizations, for example with respect to navigation, species at risk, and fisheries. Whatever the volume and pace of work, it will now all be assisted, and presumably expedited to the extent possible, by the abovementioned new MPO created under s 20 ([announced to be situated in Calgary](#)).

To be clear, even though there is an immediate green light, there is not absolute certainty with respect to applicable federal approvals for the PONI. That’s because before issuing the all-authorizations-in-one document to the proponent, the Minister must satisfy several conditions set out in s 7(2). First, the Minister must be satisfied that that the proponent has actually taken all measures required in respect of each federal authorization (these are essentially the receipts for the s 6(2) requirement explained above). Second, the Minister must consult with the other minister(s) responsible for each of those authorizations, including with respect to conditions to be imposed on the project (e.g., mitigation measures). The Minister must also “undertake a national security review for all state-owned or foreign investments from hostile countries in any national interest project” (b.1), and be satisfied that, with regard to any foreign investments in the project, all necessary measures have been taken to protect national security interests” (d) (these were also additions late in the legislative process). Finally, the Minister must also ensure meaningful consultation with Indigenous communities, as discussed immediately below.

### *3. How does Indigenous consultation, cooperation, and consent peoples related to this scheduling, deeming, and authorization-issuing sequence?*

The short answer to this question is that Crown consultation with Indigenous communities whose rights may be adversely affected by the PONI would be ongoing before and during the processes and steps described above. In addition to the consultation requirement under s 5(7) in the PONI listing process, there are the requirements in s 7(2)(c) and 7 (2.1). Subsection 7(2)(c) requires that before the all-authorizations-in-one document is granted, “Indigenous peoples whose rights recognized and affirmed by section 35 of the Constitution Act, 1982 may be adversely affected by the carrying out of the project to which the document relates must be consulted”, and s 7(2.1) requires that “the Minister must ensure that a process is established that allows for the active and meaningful participation of the affected Indigenous peoples and that a report of the consultation process and results is made available to the public”. Less explicit, but still relatively clear is that this must be preceded by some degree of engagement with Indigenous communities very early in the process such that the Minister can form the opinion that a PONI should be listed because it can “advance the interests of Indigenous peoples”, as contemplated in the abovementioned factor under s 5(6)(d).

However, focusing on these detailed statutory provisions risks losing the forest for the trees. The rights of Indigenous peoples at issue in relation to these PONIs are constitutionally protected. It is, of course, well established that while regulatory schemes such as the BCA may be put in place

for the Crown to use to fulfill its consultation and accommodation duties (see e.g. *Haida Nation v. British Columbia (Minister of Forests)*, [2004 SCC 73 \(CanLII\)](#) at para 51), these *constitutional* Crown obligations exist independent of statutory requirements and processes. And so, in looking at this first string of PONIs and their imminent trot through the BCA process, the real question that matters is whether the Crown has fulfilled the duty to consult and accommodate. What that means in legal and practical terms has been well covered in the literature (e.g. see [here](#)) and case law. As stated in *Coldwater First Nation v. Canada (Attorney General)*, [2020 FCA 34 \(CanLII\)](#), the “case law is replete with indicia” of what constitutes meaningful consultation, for example good faith, Crown open-mindedness about accommodation, two-way dialogue, demonstrable integration of concerns (at para 41). It is beyond the scope of this blog post to examine each PONI on this front, but the pressing present question then is the extent to which any potentially adversely affected Indigenous communities have concerns about Crown consultation and accommodation obligations not being fulfilled up to the current juncture and then any such concerns at the later stage of the all-authorizations-in-one documents being issued to the proponent.

Beyond the duty to consult and accommodate, there is also the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Canada has voiced its [full support](#) for UNDRIP and [legislated a framework](#) to guide implementation of that commitment under the UNDRIP Act. The big question in practical terms for major natural resource and infrastructure projects is whether implementation of UNDRIP in Canada means that consent of Indigenous communities is required. That is still being worked out (see [here](#) for commentary, and [here](#) for a very recent decision on point in the nuclear waste context), but it is fair to say that the law in Canada is evolving toward consent being required, as opposed to mere consultation. Perhaps in recognition of that, the Prime Minister [made remarks](#) in the early summer to the effect that respecting the rights of Indigenous Peoples is “at the core” of the BCA. So, in addition to the above-stated pressing questions regarding the duty to consult, there is the question of whether Indigenous consent shall be the legal or de facto standard with respect to each of these PONIs, and, if it is, whether consent be reached by the stage of issuing the all-authorizations-in-one documents.

Faltering on this front could be fatal for any given PONI. Put another way, because Indigenous communities and constitutionally protected rights can’t be simply deemed to be in favour of permitting the PONI to be carried out, this aspect represents the strongest legal tether restraining PONIs under the BCA. Depending on the views of any given Indigenous community, and it is critically important to note here the substantial diversity of rights and views across the country on this front, this could be a tremendously heavy burden to bear by Indigenous communities who oppose a project (more detailed discussion on this point is available in this [podcast episode](#)).

#### 4. *From which laws will be the PONI be exempt?*

As explained in detail in this [forthcoming article](#), the BCA includes a power to exempt a PONI from some federal laws, including federal environmental protection laws in particular. Subsection 22(1)(a) and (b) allows federal cabinet, through regulation, to exempt a PONI for federal laws or specific provisions of federal laws listed in [Schedule 2](#) of the BCA (a list that can be added to at any time, but cannot include statutes listed in s 21(2)). These exemption-ready statutes include virtually all flagship federal environmental laws, for example, the *Fisheries Act*, the *Canadian Navigable Waters Act*, the *Species At Risk Act* (SARA), *Impact Assessment Act* (IAA), and the *Canadian Environmental Protection Act, 1999* (CEPA). For instance, this provides legal power to

completely exempt a PONI from application of the fish and fish habitat provisions of the *Fisheries Act* (see this [2019 policy statement](#) for information on this cornerstone of federal environmental protection). Similarly, even though under s 19 of the BCA most of the IAA still applies to a PONI (but for the planning phase), the s 22 power allow cabinet to exempt the PONI from all or additional portions of the IAA.

However, the answer to the question of which laws these first five PONIs are exempt from is, in short, none. To date, the government has not exercised the regulation-making power under s 22, meaning that no exemptions have been issued. But is that still possible with respect to these specific PONIs? Yes indeed. Will it happen? It is too early to tell. An initial review of the first five projects suggests that, though relatively advanced in the federal system, some federal authorizations are still required under the laws listed above.

For example, it may be the case that the McIlvenna Bay Foran Copper Mine Project still requires authorizations under the *Fisheries Act*, CEPA, and SARA (see [2025 Foran technical report](#) at 421, which notes these requirements but is unclear on whether they've yet been obtained). As such, it is foreseeable that if a particular federal authorization reveals itself to be unattainable for some reason (e.g., bureaucratic complications, lack of technology, or lack economic willingness), then the government may reach for this power. Only through future frequency and intensity of the use of this exemption authority (i.e., which laws, which portion of laws, and how often) will impacts of this aspect of the BCA be understood. But in terms of plain legal authority under the BCA (which is an instance of what's colloquially called a Henry VIII clause, see [here](#)), the magnitude of this exemption power is, to use my colleague Martin Olszynski's characterization (and credit to him for leading this aspect of our [earlier analysis](#)), staggering. To be clear, however, and further to the above, the government is constitutionally precluded from exempting a PONI from Crown consultation and accommodation duties with respect to Indigenous peoples.

#### 5. *Will there be a federal impact assessment?*

In short, it depends, but the default is yes based on several if-then features of the BCA. The governing provision is s 19. If a PONI is also a “[designated project](#)” under the IAA (see this list [here](#) but note that the project list is [currently under review](#)), then the Impact Assessment Agency of Canada (IAAC) is deemed to have decided that an IA is required (s 19(a)), and onward the PONI trots through the IA process. However, because the BCA explicitly exempts a PONI from [planning phase](#) of the IA (s 19), the overall time of the federal IA process is reduced by at least six months. It may be obvious, but it is important to note that if a PONI is not a designated project under the IAA, then s 19 does not apply and there would be no federal IA unless the Minister exercises their [discretionary power under IAA s 9](#) to designate the PONI. The McIlvenna Bay Foran Copper Mine Project is again a helpful case in point on this aspect because though the Métis Nation of Saskatchewan [requested an IAA s 9 designation](#), that [request was refused](#) and thus there is no federal IA being conducted.

Another if-then scenario relates to the Henry the VIII clauses discussed above. If federal cabinet exempts by regulation a PONI from application of the IAA, then the IAA simply does not apply and there is no federal IA. Of course, given the scale of these nation-building projects and associated potential impacts, there would likely still be some kind of provincial assessment. On that note, even if a federal IA is required, additional federal-provincial coordination agreements

are expected in coming months (see examples from [New Brunswick](#) and [British Columbia](#)), aimed at streamlining the process through a “[one project, one assessment](#)” approach. For some, that approach has long been the holy grail of Canadian project assessment (see discussion [here](#) at 2.2.1, but it has proven elusive.

## Concluding Comments

Reflecting on these specific questions and revisiting the overarching question for this post, it is fair to conclude that even though these PONIs are hot to trot given their relatively advanced stage, the BCA is not all for naught. The MPO is in place, the first PONIs appear to have some outstanding federal authorizations to be expedited, and a process of engagement and consultation (and co-ownership?) with Indigenous communities is ongoing. How the MPO exercises its mandate to escort these PONIs along the final stretch to greener-light pastures remains to be seen. But the legal framework and authority is now in place to do so.

It is critically important, however, to step out of the technocratic – perhaps even myopic – BCA barn and view all this in plain daylight. While these initial PONIs are not of the magnitude some would expect coming from the new BCA regime, bigger projects are almost certainly coming in future strings of PONIs (e.g., see Wind West Atlantic Energy and Pathways Plus, mentioned above). At this critical, early BCA implementation juncture, it will be important for the federal government to give serious consideration to ensuring that federal IA remains part of the process. To not conduct a full and comprehensive federal IA on at least the biggest and riskiest of these mega-projects is deeply unwise. Relying only on provincial assessments would be problematic because they tend to be narrow and weaker (or not applied at all - see [this example](#)), a reality that is intensifying given the deregulation taking place in several provinces such as [Ontario](#), [British Columbia](#), and [Nova Scotia](#). Yes, the present economic and geopolitical context is unprecedented in post WWII Canada. However, decisions of this magnitude still need a sound, comprehensive evidentiary basis for weighing costs and benefits, and for understanding how a project may affect the extremely high stakes with respect to matters of reconciliation, climate change, human health, pollution, and long-term environmental liabilities.

For over a decade, Canadians, project proponents, and governments have been talking past each other on separate channels when it comes to critical issues of natural resource governance, climate change, and decarbonization (see e.g. [this 2015 article](#) from the pipelines context). This disconnect is, in many ways, a natural product of the short-termism embedded in Canada’s staples economy – that is, the country’s long-standing dependence on natural resource exports (see deep discussions [here](#) at Parts 3 and 4). It is not clear that the BCA’s focus on speeding and narrowing the federal process is going to resolve such deep structural challenges. Indeed, there is a risk of the opposite: that the BCA is a significant intensifier of existing political and economic frailties. Some have already warned, for instance, of the [risk of a re-sparking of Idle No More](#). But that need not be the case.

The BCA includes legal space for robust federal IA. And in the present context, IA is arguably more vital than ever – as a forum for [deliberative participation](#), for the creation of common ground, and simply for informed decision-making (“look before you leap”). Decades of experience have shown that rigorous IA can improve good projects and prevent the worst outcomes (see discussion

[here](#) by West Coast Environmental Law, and [here](#) and [here](#) by Mark Winfield). Now is not the time for further retreat from robust federal IA. The backfire risk is real and significant. And if it happens, the BCA really will be all for naught, or worse. With the first PONIs now in the BCA system, it behooves the federal government to get implementation right.

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