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Experimental Deregulation: Next Steps for the Pacific Link Pipeline as the First Official *Building Canada Act* Project of National Interest

By: David V. Wright

Matters Commented On: [Order in Council PC 2026-0925 \(2026\)](#) and [Explanatory Note](#) for Pacific Link Pipeline Project; *Building Canada Act*, [SC 2025, c 2, s 4](#)

On October 1st, more than one year after the new *Building Canada Act* (BCA) [SC 2025, c 2, s 4](#) came into force, the first Project of National Interest (PONI) was added to Schedule 1. That means the proposed [West Coast Oil Pipeline](#), now being called “[Pacific Link](#)”, will proceed through the fast-tracking review and approvals process established under the BCA. This post draws on a [previous post](#) and works through a series of questions to explain the legal process ahead for Pacific Link Pipeline (PLP). It concludes with short commentary on the rationale provided by the government, the broader context, and hurdles ahead.

Overall, working through these legal questions reveals that from a purely legal perspective getting PLP on the Schedule 1 was the easy part. As I said on the [CBC Edmonton morning show](#), now the hard work really begins, most notably with respect to federal authorizations for this project, as well as Crown consultation and accommodation duties with Indigenous communities. Canada is in highly experimental territory here, as reviewing and approving a project of this magnitude by the [stated target date of Sept 1, 2027](#) would be unprecedented in the modern era.

Before turning to the analysis and commentary, it should be noted that a detailed analysis of the BCA statutory scheme can be found in [this article](#) by Professor Martin Olszynski and me, and we anticipate further posts in the near future that help make sense of the tectonic changes to the federal regimes for review and approval of major projects in Canada, including the recently tabled [Bill C-39](#) (preliminary commentary on C-39 in this [CJSW podcast](#)) as well as dramatic reductions in the application of the federal impact assessment regime (discussed in detail in [this forthcoming paper](#)).

What Happens Now – Key Legal Questions

1. *How did PLP get legally formalized as a PONI under the BCA?*

The BCA came into force on June 26, 2025 after a virtually unprecedented expedited [legislative process](#). Though many projects, initiatives, and strategies have been referred to the Major Projects Office (the MPO) (see this [previous post trying to decipher confusing terminology](#)), none had been officially added to Schedule 1, which is the step required to begin the fast-tracked legal process.

The federal government has now placed the first PONI on Schedule 1 of the BCA. Pursuant to s 5(1), the Governor in Council (i.e., federal Cabinet) has, by Order in Council (OIC), amended 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”. Here is what that item looks like:

1 Schedule 1 to the *Building Canada Act* is amended by adding the following in numerical order:

	Column 1	Column 2										
Item	Name of Project	Description of Project										
1	West Coast Oil Pipeline	Interprovincial pipeline capable of transporting one million barrels per day of Canadian crude oil, from Bruderheim, Alberta (approximately 50 km northeast of Edmonton) to a deepwater port near Delta, British Columbia (approximately 35 km south of Vancouver), for transfer to vessels and shipping to global markets, including the following major components: <table><tr><td>1</td><td>a receipt tank terminal in Bruderheim, Alberta, where product will be received, measured, stored and then pumped through the pipeline;</td></tr><tr><td>2</td><td>a pipeline up to approximately 1 250 km in length;</td></tr><tr><td>3</td><td>power interconnection, transmission and possible generation;</td></tr><tr><td>4</td><td>approximately 11 pump stations along the route to keep product flowing and maintain the required flow rate and pressure over long distances; and</td></tr><tr><td>5</td><td>a delivery tanks terminal and offshore marine loading facility with capacity for Very Large Crude Carrier vessels where product will be delivered, stored and then loaded onto Very Large Crude Carrier vessels.</td></tr></table>	1	a receipt tank terminal in Bruderheim, Alberta, where product will be received, measured, stored and then pumped through the pipeline;	2	a pipeline up to approximately 1 250 km in length;	3	power interconnection, transmission and possible generation;	4	approximately 11 pump stations along the route to keep product flowing and maintain the required flow rate and pressure over long distances; and	5	a delivery tanks terminal and offshore marine loading facility with capacity for Very Large Crude Carrier vessels where product will be delivered, stored and then loaded onto Very Large Crude Carrier vessels.
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Before adding the project to Schedule 1, at least 30 days notice was required (and such [notice was provided](#)), as was consultation with the government of the province or territory in which the project will be carried out (s 5(1.1)). On the latter aspect, the OIC indicates that the government did indeed consult with the governments of Alberta and British Columbia (see OIC preamble and Explanatory Note conclusion). It is interesting to observe here that the BCA requires that if the project “falls within areas of exclusive provincial or territorial jurisdiction” then that government’s written consent is required (s 5(1.1)). The OIC and associated explanatory note includes no comment regarding such consent being required or provided. That is presumably because interprovincial

pipelines are primarily federal jurisdiction, notwithstanding the modern collaborative federalism context where there is provincial ability to regulate some aspects of such pipelines so long as it does not frustrate the exercise of federal jurisdiction (see [here](#) and [here](#) for helpful overviews). As such, silence on this specific aspect can be read as the federal government simply maintaining that jurisdictional view on this point of constitutional law.

Underpinning the listing on Schedule 1 is the actual PONI identification step under BCA s 5(6). Pursuant to that provision, Cabinet may consider “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)). That is now complete. Helpfully, and to the government’s credit (i.e. the MPO in this case), the OIC is accompanied by a very lengthy “Explanatory Note” that is framed around these five factors. The upshot is summarized in the conclusion:

In reaching a decision that the Project is in the national interest, the GIC considered the factors in subsection 5(6) of the Act, information gathered through consultation with Indigenous peoples, input from Canadians provided in response to the Canada Gazette Notice, and engagement with implicated provinces and federal departments, among other factors and sources of information. The GIC is satisfied that the duty to consult with Indigenous peoples in relation to the listing decision has been fulfilled. The GIC is further assured that consultations will continue to be conducted with Indigenous peoples through the regulatory review of the Project following its listing under the Act, in order to inform the issuance of a Conditions Document.

The GIC has determined that the Project would strengthen Canada’s autonomy, resilience, and security while creating material economic benefits that will improve the nation’s prosperity, which will be critical within a context of increasing trade uncertainty and economic rupture. The Project also demonstrates a credible pathway for successful execution with an experienced Ownership Group and strategic development approach, and it is expected to provide benefits to Indigenous peoples and advance their interests through equity and benefit sharing, employment, and procurement opportunities. Although the Project does not directly contribute to Canada’s GHG emission reduction targets and is anticipated to have some adverse impacts on marine and territorial environments, the GIC has concluded that these impacts can be mitigated through the regulatory process and do not displace the national interest character of the Project. The Project can also be a key enabler for other important environmental measures. (Explanatory Note at “Conclusion”)

Overall, even if there is ample room to disagree with key claims made in the explanatory note (and indeed a number of [BC First Nation Chiefs were quick to do so](#) on the consultation aspect), including on the basis that such claims are impressionistic and not clearly substantiated, the note does do a reasonably good job of relaying at least some of the key points made against the project by various parties during the expedited pre-listing consultation phase. For example, the note explains that, “the GIC recognizes that the majority of Indigenous communities consulted were not prepared to support Project listing based on the information available, and instead focused their dialogue with Canada on concerns about potential impacts of the Project and about the processes Canada should observe to ensure that recognized or asserted Aboriginal and treaty rights are respected” (under Crown-Indigenous Consultation sub-heading). The note also included that many who responded to the listing notice “questioned the Project's financial viability, raised concerns about taxpayer exposure and cost overruns, and argued that projected economic benefits, including government revenues, long-term market demand, and expected returns from expanded oil exports, were uncertain and could be outweighed by alternative investments in other sectors of the economy.” The final portion of this post includes further reflections on the rationales and conclusions included in that Explanatory Note.

In addition to consideration of the s 5(6) national interest factors and the above statutory requirements for formally adding the PONI to Schedule 1, the Minister must now also satisfy the public registry requirements. Pursuant to requirements added relatively late in the Bill C-5 legislative process, s 5.1(2) requires the following to be included in a public registry: 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 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.

Surprisingly, the [MPO website](#) does not have a webpage described as a registry per se. Intuitively that seems out of step with the explicit requirement in s 5.1(1): “The Minister must establish and maintain a public registry of national interest projects that is made accessible to the public through the Internet.” This stands in contrast to other federal public registries such as the one administered by the [Impact Assessment Agency of Canada](#) and the [Canadian Environmental Protection Act Registry](#). In any event, the MPO website does include the type of information and documents one would expect in such a registry, including [links to information on the PLP](#). As more projects are designated as PONIs, however, one would expect a specific part of the MPO website to be clear about its role as the requisite registry required under the BCA and how to find the specific information required to be posted there under s 5.1(2).

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

The PLP's exalted status as a PONI is now enshrined in law by virtue of the OIC and listing in Schedule 1. As such, all applicable federal authorizations are now "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 the [government's messaging around Bill C-5](#), i.e., shifting to *how* not *whether* a project would be carried out.

But there is an important caveat here from a legal perspective. This is not actually a final approval. It technically takes off the table an outright late-stage rejection of the project; however, 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 (which it surely will be), then the proponent must still do the work required to obtain that authorization. And the government must do the work to review proponent submissions and ensure that all requirements will be satisfied and impacts mitigated. Failure to do any of this well would increase litigation risk for all. Some of these authorizations may be more straightforward than others. One that could be particularly complex and fraught, however, is an authorization under s 73 under the federal *Species at Risk Act*, [SC 2002, c 29](#) for associated shipping activities (see acknowledgement of this authorization in the [Government of Alberta submission to MPO](#) at p 82 and see concerns raised by Ecojustice [here](#) particularly with respect to the [Southern Resident Killer Whales](#)).

The main change here is that, legally, there is a clear path for these permits to be issued in favour of the project proceeding. It is, however, unclear how the proponent will be able to do the enormous amount of work required to satisfy the applicable authorizations, for example with respect to navigation, species at risk, and fisheries. Done diligently for a pipeline project of this magnitude, it should be a very time and resource intensive process for the proponent and government. One feature of the BCA that should be helpful to the proponent is that such will take place through "one window" and assisted, if not led, by the MPO created under s 20 ([situated in Calgary](#)).

Even with this immediate green light, however, 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 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 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 relate 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 are envisioned to be ongoing before and during the processes and steps described above. In addition to the s 5(6)(d) national interest factor to “advance the interests of Indigenous peoples” and the associated explicit consultation requirement under s 5(7) in the PONI listing process (which the government now views as complete according to the OIC Explanatory Note, even if First Nations immediately disagreed), 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.”

The Explanatory Note and government messaging around listing the PLP suggests a decent understanding of these requirements. In addition to, and perhaps more legally important than, offering Indigenous communities a minimum of 10% ownership interest financed through Canada and Alberta’s Indigenous Loan Guarantee Programs, the note indicates the following:

“...federal decision-making occurs within the framework of Canada’s respect for Aboriginal and treaty rights as recognized and affirmed by section 35 of the *Constitution Act*, 1982; its duty to consult with Indigenous peoples; its commitment to reconciliation; and its respect for the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples. Crown-Indigenous consultation is explicitly required to inform key decisions taken under the Act, including decisions to list national interest projects. These decisions can be taken only after Canada has met its duty to consult and, where appropriate, accommodate Indigenous peoples whose Aboriginal and treaty rights may be adversely affected by the carrying out of the projects to which the decisions relate.” (Explanatory Note at “Background”)

Based on this, the government appears to appreciate the legal reality that the rights of Indigenous Peoples potentially adversely affected by the PLP are constitutionally protected and that focusing just on subordinate BCA provisions around Indigenous consultation would be far too limited and

transactional. It is, of course, well established that administrative schemes such as that created by 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 independently of statutory requirements and processes.

As such, what really matters in relation to the PLP is whether the Crown has fulfilled the duty to consult and accommodate with respect to each First Nation involved. What that needs to look like 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). How the government will try to achieve this in such an extremely compressed timeframe remains to be seen. The term “mission impossible” comes to mind. Legal challenges are virtually certain, as [plainly acknowledged](#) by Natural Resources Minister Tim Hodgson. It is entirely foreseeable that when Cabinet moves to issue the Conditions Document for the PLP several potentially adversely affected Indigenous communities with concerns about Crown consultation and accommodation obligations not being fulfilled may commence legal proceedings on that basis. It is, however, critically important to note here the substantial diversity of rights and views across the PLP route on this front. Some may support this project and some will not. Unfortunately, in some contexts opposition could be a tremendously heavy burden to bear by Indigenous communities who oppose this project (more detailed discussion on this point is available in this [podcast episode](#)).

Stepping back, it is important to note that this is taking place in a context where Canada has voiced its [full support](#) for United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and [legislated a framework](#) to guide implementation of that commitment under the *United Nations Declaration on the Rights of Indigenous Peoples Act* (SC 2021, c 14). As such, a key legal question for the PLP and all 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 recent decision 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. It is perhaps in recognition of this legal context that the Explanatory Note included reference to UNDRIP and the principle of free, prior and informed consent (see e.g. Explanatory Note at “Consultation Process”); however, a close read reveals that to date the BCA process approaches the matter with consent as an “objective”, not a requirement.

Relating this back to the sequencing and mechanics of the BCA, constitutionally protected rights of Indigenous communities are unlike the other federal permitting reviews and approvals at issue in the PLP context. The determination as to whether consultation and accommodation duties have

been fulfilled cannot be simply deemed to be in favour of permitting the PLP to be carried out. Rather, the process must respect the duty to consult and accommodate constitutional law landscape and proceed accordingly. Again, how that happens between now and next September in a way that passes constitutional muster will remain an open legal question and an existential risk to this project. And, of course, pipelines approvals have been quashed on this basis in the past (see e.g. *Gitxaala Nation v Canada*, [2016 FCA 187](#); and *Tsleil-Waututh Nation v Canada (Attorney General)*, [2018 FCA 153](#)).

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

As explained in detail in this [article](#), the BCA includes a power to exempt a PONI from certain federal laws, including federal environmental protection laws in particular. Subsections 22(1)(a) and (b) allow federal cabinet, through regulation, to exempt a PONI from 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-eligible 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). Concretely, 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, and further to the above comment, if satisfying the requirements to issue a SARA permit become too challenging or virtually impossible (as may be the case with respect to the Southern Resident Killer Whale population), the government has given itself this extraordinary free-pass power in the BCA. However, to be clear, at this stage immediately following the listing of the PLP, the government has not exercised this regulation-making power under s 22, meaning that no exemptions have been issued. And to be clear on the above point regarding Indigenous consultation, the government is constitutionally precluded from exempting the PLP from Crown consultation and accommodation duties with respect to Indigenous Peoples.

5. *Will there be a federal impact assessment of the PLP?*

No, not under the federal *Impact Assessment Act*. To understand why, one must look at this listing as part of a broader suite of significant changes rolling through the system right now, which includes the government quietly [amending the list of projects](#) that trigger application of the IAA in early September. Specifically, interprovincial pipelines and several other types of energy projects were removed from the list on the asserted basis of [improving efficiency and attracting investment](#). This change came in addition to other significant actual and proposed changes rolled out in recent weeks, including a new [Cabinet Directive](#) that purports to further narrow and condense remaining federal reviews and permitting, and the proposed *Building Canada Strong Act* in Bill C-39 (see [here](#) and [here](#) for early law firm commentary). Detailed coverage of this broader

change will require more analysis and further posts, but for the PLP it is relatively straightforward. Because the IAA project list amendment trimmed a pipeline project like the PLP out of that assessment regime, it will not be reviewed by an Integrated Review Panel under the IAA. Instead, the PLP will be reviewed by the Canada Energy Regulator (CER) under the *Canadian Energy Regulator Act*, [SC 2019, c 28, s 10](#). To be clear, however, that Act does include some of the same features and factors as the process under the IAA (see especially the factors in s 183(2). For a succinct analysis of key changes in the CER, see [here](#). It should also be noted here that if that amendment to the IAA project list had not occurred such that PLP still triggered the IAA, the above-described s 22 power would still have been available to allow cabinet to exempt the PLP from application of the IAA.

Concluding Comments: Canada's Grand Deregulation Experiment

This new fast-tracking regime under the BCA is a grand experiment. From a legal perspective, the extent to which it can deliver on its objectives is an open question. Like any experiment, it will proceed in steps, and certainly listing the first PONI was a key one. However, the more difficult, labour-intensive steps are yet to come, and they will be particularly challenging in a radically condensed timeframe for a project that follows a long, linear route implicating many Indigenous communities and traditional territories where meaningful exercise of rights is constitutionally protected.

This experiment is also taking place in a context of very high stakes. The Prime Minister indicated that listing the PLP as a PONI is important evidence that “Canada works.” That may be the case, and it may be important to say so right now as the Alberta referendum on secession approaches, but it is also a premature claim given what lies ahead. There may be smoother political waters at this point, but legal riptides lurk, including in Georgia Strait.

Even if the PLP proceeds relatively smoothly through the BCA, in experimental fashion on legal and political fronts, there will still be the fundamental question as to whether the costs of the PLP truly do outweigh the benefits. Project assessment processes across Canada are notoriously poor at comprehensively assessing the full costs and risks of major infrastructure and natural resource extraction projects. There is a tendency to engage in apples to oranges framing, selecting big attractive numbers on the benefit side of the ledger (e.g. jobs, GDP) without presenting similar on the other side. This can be seen in the PLP Explanatory Note and [associated announcement](#) which underscore the prospect of 140,000 jobs and increases in GDP but then uses qualitative terms to diminish social and environmental burdens. There is no doubt that the present virtually unprecedented geopolitical and economic context requires big moves by Canada; however, governments across the country need to do better at laying out the social, environmental, and economic case for committing to such major projects, especially in cases like the PLP where it is

primarily a government-led project (90%) using public dollars. Build Canada Strong? For sure, but it also needs to be Build Canada Smart and certainly not Build Canada Wrong.

As a final point, it is important to acknowledge that the BCA is just one part of a broader deregulation agenda sweeping across Canada at the moment. As noted above, the federal government has been making several changes to further narrow and condense the federal assessment regime (not to mention [remove and weaken greenhouse gas emission reduction measures](#)). A full review of reforms is beyond the scope of this post, but key examples include handing off much assessment work to provincial regimes (see [this post](#) by my colleague, Nigel Banks), amending (i.e. shrinking) the list of projects that triggers application of the IAA (see above), using existing discretion in the IAA to exempt many designated projects from full assessments (see [this forthcoming paper](#) framed around “total abdication”), and issuing the abovementioned new Cabinet Directive. Additionally, and most consequentially if implemented, the recently tabled Bill C-39 would further change and weaken the federal assessment regime through additional narrowing and compressing of federal assessments, injecting more discretion into other key federal environmental protection regimes, and potentially expanding the BCA’s pre-approval features to more projects and regions. Revisiting the above metaphor, if the BCA and PLP listing is a new experiment, all of Canada has become a high-stakes deregulation laboratory with a heavy emphasis on investor-friendly vibes and discretion-laden practices. Canada may indeed need to move faster given today’s extreme geo-political and economic circumstances, but in this high-stakes deregulation laboratory, speed without scrutiny risks turning a grand experiment into costly mistakes.

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