

A short consolidated list of priority areas for regulatory direction under the *Impact Assessment Act*

Prepared by



Robert B. Gibson, Professor at Department of Environment and Resource Studies, University of Waterloo and long time advocate for strong environmental laws. Bob has worked mostly on environmental and sustainability policy issues. His research and writing have centered on decision-making successes and failures in environmental planning, assessment and regulation in various Canadian jurisdictions and on the emerging design and practice of sustainability assessment.

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Picture at <https://uwaterloo.ca/sustainability-assessment-project/people-profiles/robert-b-gibson>

The following list includes areas needing

- additional (or at least more specific) regulation making provisions in the statute, and/or
- regulatory initiatives using the broad regulation-making powers already there.

Failing immediate development of regulations, policy guidance may be useful as an interim measure.

The relevant statutory provisions are those in s.109 and s.112 of the *Impact Assessment Act*, as proposed, concerning regulation-making powers.

The key areas needing attention are set out here as if they were adopted as statutory provisions in s.109 or 112.

- (a) establishing the core criteria to be applied in assessments and decision making evaluating net contribution to sustainability and ensuring rigorous attention to the other factors set out in s.63;
- (b) clarifying how the s.22 considerations are to be used to inform the decision making under s.63 (and clarifying what, if any other considerations, may be taken into account);
- (c) establishing core trade-off rules to guide assessments and decision making on whether adverse effects can be justified in the public interest;

(d) establishing basic direction on how alternatives to and alternative means are to be identified and addressed in “detailed description of the designated project” [s.15(1) and s. 112(a)] in assessments by the Agency and review panels, and in decisions by the Minister and Governor in Council;

(e) clarifying how indigenous knowledge and conventional science are to be used as complementary sources of understanding;

(f) clarifying the core contents of Agency reports [28(3)] and review panel reports [s.51(1)(d)] to ensure inclusion of

- a comparative evaluation of the project as proposed, and of the project with recommended conditions of approval, in comparison with any relevant alternatives under s.22(e) and (f);
- assessment of the implications of potential effects on Indigenous groups and rights, and compliance with the UN Declaration on the Rights of Indigenous Peoples;
- assessment of the implications of prospects for hindering or contributing to meeting environmental and climate change commitments; and
- overall assessment of (net) contributions to sustainability, including the justifiability of any trade-offs involved¹;

(g) establishing specific means of ensuring meaningful public participation in each key phase of project and strategic and regional assessments, in regulatory and policy development under the Act, and in other key deliberations (e.g., re project list additions and priority regional and strategic assessment needs);

(h) establishing basic assessment process elements for Strategic and Regional Assessments – including attention to the considerations set out in section 22 and 63, assigning responsibilities for provision of information and analyses related to these matters, specifying criteria and trade-off rules, ensuring meaningful public participation, clarifying potential means for delivering credible and authoritative guidance for project level planning and assessment;

(i) establishing a Strategic and Regional Undertakings List or the equivalent, identifying key categories of regional and strategic undertakings automatically subject to assessment, and identifying priorities for particular strategic and regional initiatives and assessments, including categories of regional and strategic undertakings of the federal government, on federal lands, with federal financial support, requiring federal licensing, and with potential to hinder meeting the Government of Canada’s environmental and climate change commitments;

(j) establishing a special regulation-based sub-list for regional and strategic undertakings automatically subject to assessment, but only viable if undertaken by the federal

¹ this would include clarifying that Agency reports, like panel reports, are to provide “rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program.”

government in cooperation with one of more other jurisdictions and dependent on a cooperation agreement with those jurisdictions;

(k) establishing criteria for decision making on public requests for regional and strategic assessments, and clarifying expectations and options for responses from Minister or Governor in Council, with reasons based on the criteria;

(l) specifying matters to be considered by regional and strategic assessments and means of ensuring meaningful public participation in regional and strategic assessments.

(m) clarifying how cumulative effects, broad alternatives and big policy issues are to be addressed, including by government authorities, where proponent capacities and authority are insufficient, in project-level assessments in the absence of completed and up-to-date regional or strategic assessments;

(n) specifying criteria and methods for determining whether and the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change and establishing the methods to be used to determining the GHG emissions properly attributable to a proposed project and its alternatives;

(o) establishing explicitly that the categories of projects that may be designated under s.109(b) include categories of projects that may, individually or cumulatively, hinder meeting the Government of Canada's international and national climate change commitments;

(p) clarifying that the "detailed project description" [s.15(1)], which is required before a comparative evaluation of alternatives could be completed be treated as a "detailed description of project options;"

(q) clarifying options and means for assigning responsibilities for follow-up monitoring of effects and compliance, and suitable responses to monitoring findings, including assignment of responsibilities to federal and other government bodies and to communities and civil society organizations, with suitable funding support.