

カナダ国における環境影響評価の新制度

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New Legal Framework of Canadian Environmental Impact Assessment

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Abstract

The legal framework of the Canadian Environmental Impact Assessment was newly revised in 2019. The Environmental Impact Assessment Agency plays a primary role in developing the Tailored Impact Statement Guidelines and Impact Statement, creating plenty of opportunities for public participation. The Registry opens up the entire process to the public and all stakeholders. The Review Panel and the Agency conduct the Impact Assessment. The new system will enhance the transparency of the assessment and increase the opportunity for public participation, including participation by federal, provincial, indigenous, and other stakeholders.

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1. Background

The legal framework of the Canadian Environmental Impact Assessment was created in 1992 and revised in 2012 and 2019. In the 2012 revision titled CEAA2012, both the number of projects requiring an impact assessment and the scope of the assessment were reduced from the initial CEAA. Also, only a limited number of governmental bodies could engage with the process, such as the Environmental Impact Assessment Agency, the Canadian Nuclear Safety Commission (CNSC), the National Energy Board (NEB), and a review panel. The sustainability and the impacts for the future generation were not necessarily considered. In addition, the CEAA2012 limited public participation in

the environmental assessment processes conducted by the NEB or a review panel to only interested parties, which was defined as any person who is directly affected by the project or has relevant information or expertise. As a result, the CEAA2012 seemed to have taken a step backward from the initial CEAA for a development-friendly society.

On the other hand, under the new Impact Assessment Act enacted on August 28, 2019, the Agency can engage with a variety of subjects, including indigenous groups, local and federal jurisdictions, federal expert departments, and the public. More sustainability will be required under the new legislation. Further, public participation is required from the planning stage until

even after the decision is made, which might strengthen the follow-up procedure.

2. New EIA Procedure

2-1. Proponent and Agency in the Planning Phase

First, when the project is included in the project list, the initial project description is submitted to the Impact Assessment Agency of Canada (the Agency) by a Proponent, the person or entity that proposes or carries out the designated project. The Agency posts it on the Agency's Registry when it meets the requirements of the Information and Management of Time Limits Regulations. The Agency will collaborate with lifecycle regulators or consult with federal authorities if necessary. More importantly, the Agency must engage not only with provincial and territorial jurisdictions but also with indigenous groups that may be affected by the project. The Agency initiates the engagement and consultation activities with the indigenous groups, the public, and any other participants in order to identify key issues of concern and determine how indigenous groups and the public would like an Impact Assessment.

The Agency provides the Summary of Issues to the Proponent, who then responds to it in order to outline how it plans to address the Summary of Issues. The Proponent updates the information about the possible environmental, social, health and economic effect of the project in the Detailed Proponent Description. The Agency then reviews the Detailed Project Description and posts it to the Registry, as well as the Response to the Summary of Issues. The Agency determines if an Impact Assessment (IA) is required and, if so, it develops the Public Participation Plan, the Indigenous Engagement Partnership Plan,

the Impact Assessment Cooperation Plan, the Permitting Plan, and the Tailored Impact Statement Guidelines. During the development of these documents, the Agency continues to engage with indigenous groups, the public, and other jurisdictions. The Agency posts the decision of the IA requirement and the reasons for this requirement on the Registry.

After posting the draft of the Tailored Impact Statement Guidelines on the Registry to collect comments and feedback, the Agency finalizes the Tailored Impact Statement Guidelines and provides it to the Proponent. The finalized Tailored Impact Statement Guidelines and the Notice of Commencement will be posted on the Registry. This planning phase should be completed in 180 days after the Initial Project Description is accepted by the Agency and posted on the Registry. The Agency can extend this 180-day planning phase by up to 90 days at the request of another jurisdiction. Within 45 days of posting of the Notice of Commencement, the Minister may decide whether the Impact Assessment should be conducted by the Review Panel as well as by the Agency. A Review Panel consists of a group of independent experts who have knowledge of indigenous issues, along with their own pertinent experience and expertise, and is appointed by the Minister to conduct an Impact Assessment.

2-2. Impact Statement and Impact Assessment Phase

The Impact Statement is developed by the Proponent and must contain the information and studies outlined in the Tailored Impact Statement Guidelines. The Proponent engages indigenous groups and the public in order to collect information and conduct studies. The Agency reviews the Proponent's Impact

Statement when it is submitted. The Agency invites comments from federal authorities, lifecycle regulators, indigenous groups, other jurisdictions, and members of the public to ensure that it conforms to the Tailored Impact Statement Guidelines. The Agency issues the Notice of Determination on the Registry when the Impact Statement satisfies all the requirements. This Impact Statement process should be completed within three years from the date the Notice of Commencement is posted.

The Impact Assessment is conducted by the Agency after the Impact Statement phase. The time limit is up to 300 days after the Notice of Determination is posted on the Registry. When analyzing the Impact Statement, the Agency will engage the Proponent to seek clarifications, resolve issues, or ask questions. If an Impact Assessment by a provincial, territorial, or indigenous jurisdiction is required for a designated project, the Agency offers to consult and cooperate with them and implements the Impact Assessment Cooperation Plan developed in the planning phase. The Agency continues to consult indigenous groups and engage the public while implementing the Indigenous Engagement and Partnership Plan, as well as the Public Engagement Plan developed in the planning phase. The Agency may hold public meeting or open houses as opportunities for indigenous groups, stakeholders, and the public to participate and ask questions of the Proponent, the Agency, and federal experts. In addition, the Agency can initiate an Independent Science Review to develop scientific questions to pose to the experts if required. The Agency develops the draft of the Impact Assessment Report, the draft of potential conditions, and the Consultation

Report.

The Impact Assessment will also be conducted by the Review Panel. The Minister of Environment and Climate Change decides to refer the Impact Assessment to a Review Panel during the planning phase within 45 days from the posting of the Notice of Commencement. The Minister establishes the Review Panel's Terms of Reference (TOR) in the Impact Statement phase. The panel is appointed from a roster of individuals qualified to undertake the Impact Assessment and is supported by a secretariat comprising staff from the Agency and other jurisdictions as appointed. The Review Panel conducts its analysis on the information and studies provided in the Proponent's Impact Statement, engaging with the Proponent, federal departments, indigenous groups, the public, and other jurisdictions on the Impact Statement. When a designated project requires an assessment by another jurisdiction, the Minister may make arrangements with the other jurisdiction for the conduct of the Impact Assessment. In these cases, the Agency develops the Joint Review Panel Agreement. The Review Panel holds a public hearing for the Panel to determine that it has sufficient information. The Review Panel can consult independent, non-government experts if expertise was not available from expert federal departments or other government agencies. The Review Panel can initiate an Independent Science Review. The Review Panel prepares and submits the Impact Assessment Report to the Minister.

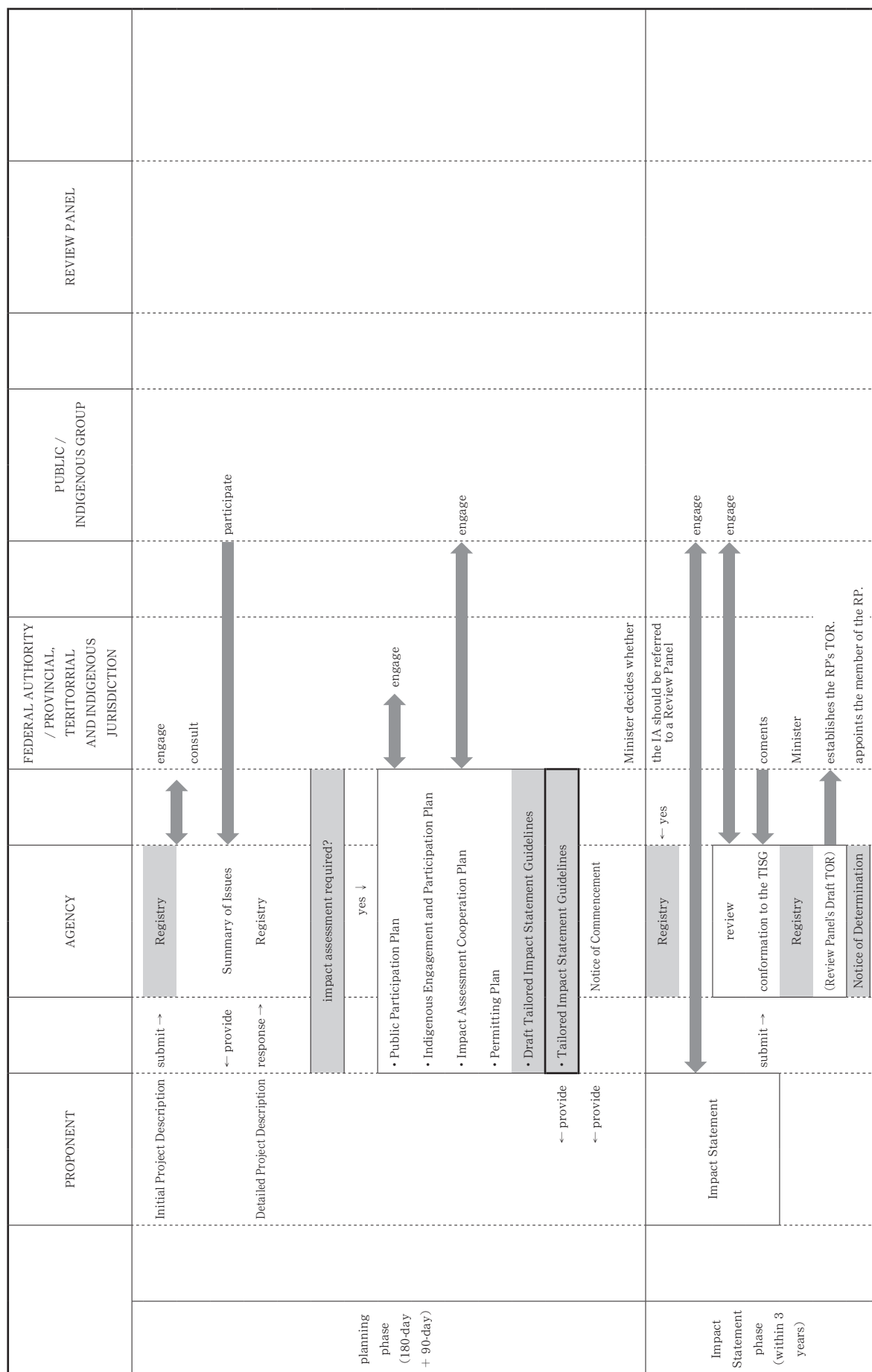


Figure 1-1: New Canadian Impact Assessment Process, 1

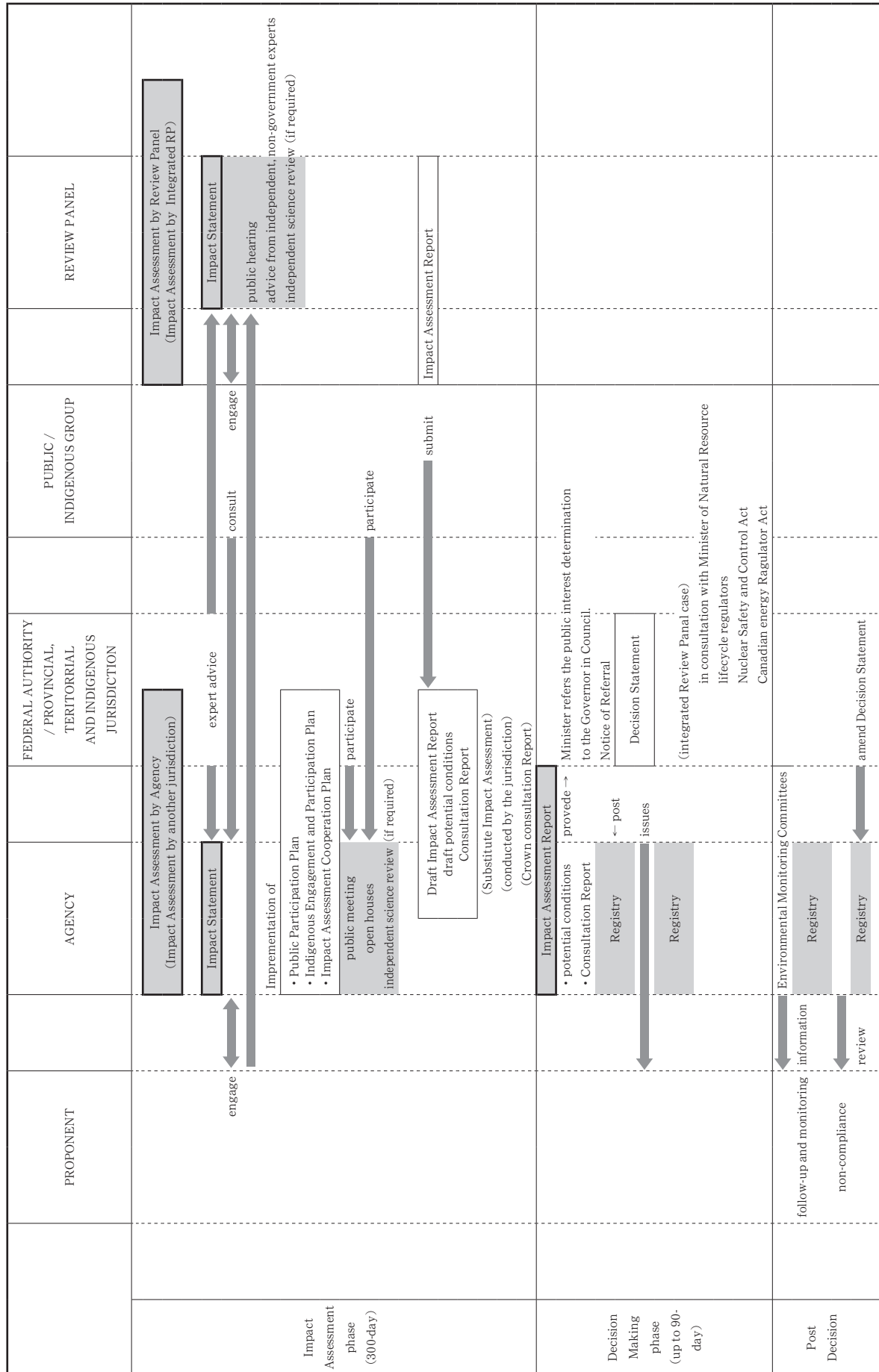


Figure 1-2: New Canadian Impact Assessment Process, 2

2-3. Decision Making and Review Procedure

After receiving the Impact Assessment Report, the Consultation Report, and potential conditions from the Agency, the Minister makes a decision and issues a Decision Statement to the Proponent. The decision maker, whether the Minister or the Governor in Council, must consult with and accommodate the indigenous peoples and ensure the Crown duty has been fulfilled. Determination will be done by either the Minister of Environment and Climate Change or the Governor in Council. The Decision Statement must be issued no later than 30 days after the Impact Assessment Report is posted on the Registry when the Minister makes the public interest determination, or 90 days when the Governor in Council makes the determination. In the case of the Impact Assessment by a Review Panel, the Minister must refer the public interest determination to the Governor in Council. It then follows the same process as the Impact Assessment by the Agency. In the case of the Integrated Review Panel's Impact Assessment, the Minister's referral to the Governor in Council is done in consultation with the Minister of Natural Resources. Also, regulatory decisions under the lifecycle regulator's legislation, the Nuclear Safety and Control Act, and the Canadian Energy Regulator Act may be taken.

After the decision is made, the Proponent is responsible for carrying out the follow-up and monitoring programs. It needs to include the involvement of Federal Authorities, indigenous groups, and the public in relevant activities. The Agency will establish Environmental Monitoring Committees so that it can provide additional legitimacy for the science and evidence used in the follow-up and monitoring programs. Information

relating to follow-up and monitoring will be posted on the Registry. In circumstances of non-compliance, the Agency will establish a review process and post relevant information. The Minister may amend a Decision Statement and issue an amended Decision Statement. The final amendment Decision Statement will be posted on the Registry by the Agency.

3. Public Participation

Public participation opportunities are available throughout the Impact Assessment process. In the early planning phase, the Agency engages and consults with the public on the Initial Project Description. The issues raised by the public will be included in the Summary of Issues. The Agency will remain engaged with the public while developing the Public Participation Plan, the Indigenous Engagement Plan, the Impact Assessment Cooperation Plan, the Permitting Plan, and the Tailored Impact Statement Guidelines.

In the Impact Statement phase, the Proponent has to continue engaging the public to inform its Impact Statement. The Agency has to invite comments on the Impact Statement and engage with the public to ensure all the information and studies outlined in the Guidelines are included in the Proponent's Impact Statement. In the Impact Assessment phase, the Agency must implement the Public Engagement Plan, which is developed in the planning phase. It may hold public meetings or open houses to allow the public to participate in the Impact Assessment process. The information and evidence collected should be considered to develop the draft of the Impact Assessment Report by the Agency. The same process should be followed when the substituted Impact Assessment is conducted by other jurisdictions. In the case of

the Impact Assessment by the Review Panel or Integrated Review Panel, each of them holds a public hearing to obtain the information required to complete its assessment and give the public an opportunity to participate in the Impact Assessment. In most cases, the Proponent, the Agency, the jurisdiction or the Review Panel also engage or consult with the indigenous groups, lifecycle regulators, federal authorities, and other jurisdictions, as well as the public.

The information is collected and disclosed through the Registry, which is the Internet site established and maintained by the Agency. The Registry is operated in a manner that allows access for anyone who is interested in finding information about a project or Impact Assessment Process. All the documents in the planning phase, such as the Proponent's Project Description, the Agency's Summary of Issues, the determination of whether or not the Agency requires an Impact Assessment, the Tailored Impact Statements Guidelines, and a notice of the Minister's decision for the Review Panel reference will be posted on the

Registry. The Agency also posts the Notice of Commencement and a note informing that the Impact Statement contains all the required information on the Registry in the Impact Statement phase. The Notice of Determination and the expert advice from federal authorities is posted on the Registry in the Impact Assessment phase. Also, during the review process with the Review Panel, the Impact Statement development will be done through the Registry by engagement with the public and the other stakeholders. The expert advice from federal authorities and independent, non-government experts will also be posted on the Registry.

Table 1 shows the public participation opportunities of the Canadian EIA process in each phase compared with the Japanese process. The public can easily get involved in the whole Impact Assessment process throughout the phase on the Registry in Canada, whereas the public can access the information and take part in the process each time it happens in Japan. The Registry also enhances the transparency of the information.

Table 1: Public Participation Opportunity

	CANADA		JAPAN	
Phase	Assessment Process	Public Participation		Assessment Process
Planning	Project Description	◎	○	Primary Environmental Impact Consideration
Scoping	Tailored Impact Statement Guidelines	◎	○	Scoping Document
Impact Statement	Impact Statement	◎		Impact Statement
Impact Assessment	IA by the Agency	◎	○	Impact Assessment
	IA by the Review Panel			
	IA by another jurisdiction			
Decision Making & Follow-up	Environmental Monitoring Committee	○		

4. Conclusion

The new Canadian Impact Assessment is relatively open to the public and has multi-layered processes. First, the Environmental Impact Assessment Agency plays a primary role for developing the Tailored Impact Statement Guidelines and Impact Statement, and working with the Proponent during the planning and impact statement phase. It leads the public participation, working with federal, provincial and indigenous authorities during the Impact Statement phase and the Impact Assessment phase. Secondly, the Registry makes the entire process open to the public and all the stakeholders. People can access the information related to the follow-up and monitoring activities on the Registry, including data, summaries, and other relevant documents even after the decision make phase. All the information about each specific project can be accumulated on the Registry. Lastly, the Impact Assessment by the Review Panel supports the Impact Assessment by the Agency. The members are selected based on their knowledge of indigenous issues, along with their own experience and expertise. Because they must also be free from bias or conflict of interest relative to the project, the Panel provides more objectivity and legitimacy to the entire Impact Assessment process.

The new system will enhance the transparency of the assessment and increase the opportunity for public participation, including federal, provincial, indigenous and other stakeholders.

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- 1) Internet site that anyone who is interested in a project or impact assessment procedure can be allowed access to find information.
 - 2) List of issues that provides the proponent with an understanding of issues and allows participants to see how their comments and concerns have been characterized.
 - 3) It can be an integrated Review Panel if the integrated project includes physical activities that are regulated under the Nuclear Safety and Control Act, Canadian Energy Regulator Act, and Canada-Newfoundland and Labrador Atlantic Accord Implementation Act or Canada-Nova Scotia Offshore Petroleum Resources Accord implementation Act.
 - 4) See 1, p5 in detail.