

## **Submission to the Standing Senate Committee on Energy, the Environment and Natural Resources on Bill C-69**

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Honourable Senators,

Thank you for this opportunity to provide comments on Bill C-69. I am writing on behalf of the Council of Canadians, a grassroots social justice organization with more than 100,000 supporters and network of more than 60 volunteer chapters across Canada. We create a powerful voice for social and environmental justice and work to hold governments accountable and challenge the unbalanced power of corporations, empowering people and communities to promote a sustainable and just future.

I write to you what I would have presented during your time in Halifax had I been given the opportunity. The Harper regime dramatically altered the relationship between government and industry during their time in power, specifically in 2012 with changes to bills like the Canadian Environmental Assessment Act and the Fisheries Act now included in C-69. We at the Council of Canadians were pleased to hear a commitment to reversing some of these changes as part of the Liberal platform and awaited the announcement of changes to those and other bills with bated breath.

Bill C-69 is a big piece of legislation, at a time when Canada is clearly on a collision course with global ambition to address climate change. Industry and governments are encouraging exploration for offshore Atlantic oil and gas production, the tar sands and related transportation infrastructure continue to expand, the B.C. government is incentivizing an LNG export port, and plans are underway to increased fracked natural gas. Although we were initially calling for the bill to be scrapped, we realize that given the timing, this bill must pass with the changes we propose below.

### **Recommended improvements to the bill**

#### **The Impact Assessment Act (IAA)**

The Impact Assessment Act does not respect the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the explicit need for Indigenous nations to give free, prior, and informed consent for resource development projects, and is out of step with Prime Minister Trudeau's commitment to bringing all Canadian law into alignment with UNDRIP.

*CNSOPB and CNLOPB should only play an advisory role*

In relation to the offshore regulators, namely the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) and the Canada-Newfoundland and Labrador Offshore Petroleum Board (CNLOPB), Bill C-69 grants more authority by giving them the power to participate in the impact

assessments for offshore drilling projects. This includes the ability for Cabinet to require assessments of projects regulated by the offshore boards to be conducted by review panels appointed by the Minister. These five-person panels include at least two appointed on the recommendation of the offshore petroleum board (OPB) chair and could be OPB members themselves. In addition, the position of review panel chair can be a petroleum board member.

The petroleum boards are made up of unelected political appointees who are primarily oil industry veterans. They have conflicting mandates to promote oil and gas development and protect the marine environment. The Campaign to Protect Offshore Nova Scotia (CPONS), a project of the Council of Canadians South Shore chapter, has raised clear concerns with the petroleum board's track record on not adequately involving the public meaningfully in its deliberations. If the government wants to regain public trust in environmental assessments, granting greater authority to petroleum boards is the wrong way to go.

This is supported by the findings of the government-appointed Expert Panel tasked with reviewing Environmental Assessments which stated:

"...an authority that does not have concurrent regulatory functions can better be held to account by all interests than can entities that are focused on one industry or area and that operate under their own distinct practices."

In addition, expanding the powers of petroleum boards allows for government to approve bad projects because it is only obliged to take public consultation "into account," and it will also only apply to a handful of "major" projects. This means that the public will not have an automatic right to participate in assessments of most smaller projects, and cumulative effects will go unaddressed.

Regarding industry responsibility, as per the recent Supreme Court of Canada decision about abandoned wells in Alberta, the impact assessment process must result in a full plan to address restoration, in detail, in every approved proposal. Mitigation measures are often *pro forma* and the bill even includes a line, "... that are technically and economically feasible" when referencing factors to consider in impact assessments, creating a level of subjectivity to be exploited by the proponent.

Lastly, with respect to the mention of "climate change" throughout this section of the bill, including in the section on Strategic Assessments, we would ask that it be at the top of the list. The climate is THE issue of our time and should be seen as such.

### **The Canadian Energy Regulator Act (CERA)**

The Canadian Energy Regulator Act (replacing the National Energy Board Act) restricts the public's ability to challenge decisions and keeps the decision about whether to approve pipelines in the hands of Cabinet, meaning that decisions will be political rather than fact-based.

It also allows the Commission to decide not to include upstream and downstream greenhouse gas (GHG) emissions in pipeline reviews.

This loophole could enable the rubber-stamping of fossil fuel projects and must be closed so that C-69 reflects the science underlying the need for immediate climate action and provides meaningful protections for waterways and Indigenous rights.

### **The Canadian Navigable Waters Act (CNWA)**

The new CNWA is arguably the weakest bill within C-69 and part of why we were calling for C-69 to be scrapped. One of our major concerns is that it still exempts pipelines and powerlines, leaving lakes and rivers unprotected. Pipelines like the Trans Mountain Expansion Pipeline project, which crosses 1,355 waterways, would not be regulated by this Act. Environment and Climate Change Minister Catherine McKenna has stated the Trans Mountain pipeline would have been approved under the new Act.

This is another significant loophole in the legislation that must be closed.

The CNWA would also create two categories of “protected” waterways. It maintains the schedule of now 97 lakes, 64 rivers and 3 oceans that the former Harper government created, but it also creates a confusing second category of protected waterways. If all navigable waters are protected under this Act, why are there two categories of “protected” waterways? It is essential that every lake, river and watershed be clearly protected.

In relation to dams, Bill C-69 could also give the green light to the 118 proposed Site C-type dams. These dams should also be regulated by the federal government, but, conveniently for fracking companies, former Prime Minister Stephen Harper’s changes absolved the federal government from having to review projects like this.

A section in the new CNWA, under the section “Major Works in any Navigable Water Listed in the Schedule,” gives the Minister power to approve an activity after it has begun. This section, combined with how navigable waters are now defined, could give fracking companies a free pass to continue building these illegal dams without federal scrutiny.

Bill C-69 does not restore all lost protections to the CNWA – instead, it keeps the system of only giving full protection to waters that are listed in a schedule. It does introduce a new requirement that all projects designated as “major projects” must obtain a permit if constructed on any waterway – not just scheduled waters – but for other projects, it is up to the public to prove that a project or activity impedes navigation.

Most importantly, Bill C-69 does not list environmental factors among the things that Transport Canada must consider when deciding to issue a permit. As part of its justification for only having the Impact Assessment Act apply to major projects, the government has said that laws

like the Canadian Navigable Waters Act will act as a safety net for smaller projects. But if it doesn't consider environmental issues, it cannot be that safety net we need.

Without the environment being considered in the Act, many important cumulative effects of smaller projects could go unaddressed. The CNWA must consider environmental effects.

### **UNDRIP**

Bill C-69 does not respect the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the explicit need for Indigenous nations to give free, prior, and informed consent for resource development projects. It is also out of step with Prime Minister Trudeau's commitment to bringing all Canadian law into alignment with UNDRIP.

Bill C-69 must be amended to come into full alignment with UNDRIP, as Prime Minister Trudeau has committed to and is alluded to in the Act.

### **Public participation**

We appreciate the recognition throughout this bill that public participation is important and should be prioritized. We would recommend, however, that the means of communication with the public are not solely electronic. Despite the fact that many have come to depend on the internet as a means of information sharing, communities who have proposed large-scale industrial projects tend to be rural or even isolated, often lower income, and access to electronic means of communication is not always an option. We therefore request that a standard policy for public notice should include print means, including in newspapers as well as postings in local libraries and other communal locations.

### **Why we support Bill C-69 with changes**

After the devastating changes to each of the three bills back in 2012, many people were thrilled to hear Prime Minister Trudeau's commitments to review Canada's environmental assessment process and introduce new, fair processes, modernize the National Energy Board, restore lost protections and introduce modern safeguards to both the Navigable Waters Protection Act and the Fisheries Act, and establish a renewed nation-to-nation relationship with the Indigenous peoples of this land.

Despite these promises, as it stands, Bill C-69 does not go far enough. We need strong environmental protections enshrined in law to protect Mother Earth for generations to come. We need to stop further expansion of fossil fuels and effectively manage existing industries in the context of achieving a phase-out of fossil fuels by 2050 in a manner that supports both workers and resource extraction-dependent communities.

We care deeply about the environment, our communities and climate, and we cannot keep letting big industry lobby government into weakening our environmental laws in order to fast track harmful projects. We are calling on the Senate of Canada to send Bill C-69 back to

Parliament with the changes proposed above in order to strengthen the Bill and allow it to be used to safeguard our waters, Indigenous rights, the environment and our future.

Sincerely,

A handwritten signature in blue ink that reads "Angela Giles". The signature is written in a cursive style with a large, sweeping flourish at the end.

Angela Giles

Atlantic Regional Organizer | Organisatrice régionale, Région Atlantique

Organizing on unceded ancestral territory of the Mi'kmaq Nation

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