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Intelligence MEMOS

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From: George Vegh and Kate Koplovich
To: 'Nation Building' Observers
Re: PROPOSED MAJOR PROJECT REGULATORY CHANGES A GOOD STEP, BUT WORK REMAINS

It seems the federal government is intent on sidestepping its own major project processes set up just a year ago.

Bill C-5, the ***Building Canada Act***, received royal assent just last year, to "urgently advance projects throughout Canada… through an accelerated process that enhances regulatory certainty and investor confidence."

A **discussion paper** released early last month suggests the creation of a "simpler, more coordinated process in Canada."

Though its relation to Bill C-5 is unclear, the objective and intent of the changes are well-meaning. And the discussion paper contains positive proposed improvements to administration and processes we argue must change.

Yet, there are concerning aspects to be considered before enshrining these legislative and regulatory changes.

With no mention of either Bill C-5 or the Major Projects Office, it is unclear how this new expedited process interacts with processes outlined in Bill C-5 and described by the Major Projects Office. In fact, the new discussion paper describes yet another process for yet another category of project. Furthermore, for projects not referred to the Major Projects Office, and not defined as "major" – more on that below – what improvements exists?

The discussion paper refers to a major project as "mines, ports, airports, pipelines, nuclear facilities, and transportation infrastructure." While it is not explicitly defined, it does not seem this process applies to referred or designated national interest projects.

Unfortunately, the discussion paper continues to centralize the regulatory regime within Governor in Council (Cabinet), which politicizes the approval process and maintains the instability and unpredictability felt by project proponents, if a switch in governing parties means shifting priorities.

Meanwhile, the Department of Justice's own **backgrounder** on The *United Nations Declaration on the Rights of Indigenous Peoples Act* is clear that 'free prior and informed consent' describes processes that "occur sufficiently prior to a decision so that Indigenous rights and interests can be incorporated or addressed effectively as part of the decision-making process."

Pre-approval of projects, ministerial authority to adjust conditions, and early construction permission before impact decisions are made, all undermine that principle, and are all too likely to raise objections from Indigenous Nations and organizations that will only increase project risks and delays.

Assessment studies and authorizations for specific acts – fisheries, species at risk and navigable waters – achieve different objectives. Conducting these simultaneously may sound like it will decrease timelines, but operationally, it's unclear how this can be executed.

Authorizations need project specifics, routing, and engineering details that can only be confirmed once a project is planned and assessment studies conducted. If modifications are required, authorizations will need to be re-authorized. In addition, authorizations require details on time of year for work activities, which changes requirements for environmental mitigations. These details cannot be known while an assessment study is being undertaken – or alternatively, will require proponents to bring detailed project plans and studies to the regulator, which will take upfront costs and time to develop.

In theory, the proposed economic zones could reduce regulatory approval timelines, but this will be dictated by the specific projects within each zone, given the continued need for assessments and conditions of specific projects.

These zones may also encounter push back from local and Indigenous communities depending on location and the approved activities. Furthermore, the success of these kinds of economic zones is mixed, and very much depend on the marketing and the stacking of incentives. If zones are not located where businesses would naturally locate to be closer to customers and peers, they may not be as beneficial as intended.

Rather than side-step its own new processes and create further confusion as to how this new process interacts with existing regulatory regimes, the federal government should focus on removing complexities within the existing system.

Here are six, unsexy, ways to tangibly improve Canada's regulatory regime:

1. Remove the political nature of decision-making over projects and replace it with clearly defined assessment criteria directly related to project impacts.
2. Induce all provinces to sign onto a "one project, one review" agreement.
3. Use a risk-based approach to right-size project assessments and associated timelines, especially for known project types with known impacts.
4. Use existing statutory power to issue clear and binding policy directions to the regulator.
5. Enforce statutory time limits for both governments and proponents.
6. Create one single-window digital portal for easier navigation and communication of project assessment requirements and compliance obligations, rather than individual department portals.

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