Proposed Amendments to the Impact Assessment Act in the Budget Implementation Act 2024

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The federal Finance Minister has filed a Notice of Ways and Means to introduce a Bill entitled *An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024*, or *Budget Implementation Act, 2024, No. 1*. Of the many proposals included within this Bill are the anticipated amendments to the *Impact Assessment Act* SC 2019 c. 28 (the Act) following last October's ruling by the Supreme Court of Canada in *Reference re Impact Assessment Act, 2023 SCC 23*, which concluded that certain provisions of the Act were unconstitutional as they exceeded federal jurisdiction.

This reference decision was one of the rare instances where federal paramountcy on environmental issues was not reaffirmed, and contrasts with other recent decisions such as *the References re Greenhouse Gas Pollution Price Act* 2021 SCC 11.

As expected, the language of the Bill does not suggest a sweeping reform of federal impact assessment. Rather, the proposed amendments are surgical and meant to tweak the wording of the Act in consideration of the Supreme Court's conclusions. The federal government qualifies the amendments as aiming to "ensure the Act is constitutionally sound, facilitating efficient project reviews while advancing Canada's clean growth and protecting the environment."[1].

Overview of the proposed changes:

- **Adverse effects within federal jurisdiction**: the notion of "effects within federal jurisdiction" is repealed and replaced with "adverse effects within federal jurisdiction" which are directly tied to various federal heads of power, such as fish or fish habitats within the meaning of the *Fisheries Act*.
- **Direct or incidental adverse effects**: the previous definition of "direct or incidental effects" is repealed and replaced by "direct or incidental adverse effects" which incorporate the notion of "non-negligible adverse effects" and is tied to federal authority.
- **Mitigation:** The amendments introduce additional focus on prevention and mitigation of impacts, an acknowledgement that some measure of impact is inherent to some of the designated physical activities the Act shall apply to.

- **Minister's power to designate:** The factors that the Minister may consider when making a decision to designate an activity are further detailed, and include public concerns, as well as whether the adverse effect within federal jurisdiction can be addressed by another means.
- **Substitution:** The proposed amendments broaden the scope of possible cases of substitution to include situations where the assessment by another jurisdiction can be combined to an agreement in order to be deemed appropriate for substitution.
- **Designated Project**: Amendments to the Governor in Council's power to make regulations regarding physical activities would now require that such activities cause, within the Governor in Council's opinion, adverse effects within federal jurisdiction or direct or incidental adverse effects.

The Designated Project List is set to undergo its five-year review over the course of the next few months.

This is a first look at the Government's proposal, following several months of consultation with various stakeholders. These amendments are not yet in force, and we will continue to follow the *Budget Implementation Act, 2024, No 1*'s progress.

For any questions on how this may impact your current or future projects, please reach out to the authors or any of our key contacts below.

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