CANADA'S OIL & NATURAL GAS PRODUCERS

March 18, 2019

Via e-email: enev@sen.parl.gc.ca
Clerk of the Senate Standing Committee on Energy, the Environment and Natural Resources

RE: CAPP follow up material on Bill C – 69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Dear Committee Members,

During CAPP's testimony to the Standing Senate Committee on Energy, the Environment and Natural Resources ("Senate Committee") with respect to CAPP's proposed amendments to Bill C-69, CAPP received a number of questions from senators with respect to the amendments. CAPP received a question from Senator Carignan on the intent behind directing appeals of decisions made under the Impact Assessment Act straight to the Federal Court of Appeal. Senator Carignan also asked for examples of full privative clauses that are included in other legislation. A translation of Senator Carignan's questions is included in **Appendix A**. In addition, Senator McCoy asked for clarification on CAPP's position on Section 52(2) and Section 56 regarding the ability for both a review panel and the Minister to request additional data collection and studies after the planning phase. CAPP has engaged our legal counsel on the matters and provides the below responses for consideration by the Senate Committee.

In addition, CAPP has also reviewed Testimony from Government Officials related to Bill C-69 and would like to offer some further consideration related to the testimony. CAPP's consideration of the Testimony is included in **Appendix B**.

Question (Translated Version)

Senator Carignan: You are proposing amendments to the appeal process. You propose to appeal directly to the Federal Court of Appeal for questions of law and jurisdictional issues. I am wondering about the reasons for going directly to the Federal Court of Appeal. I understand that you want to save time and that you do not want cases to go to court; but the Federal Court of Appeal normally revises the questions of law, of course, but all work is done in the first instance at the hearing of witnesses and evidence. Even if they are only questions of law that you want to appeal, there are jurisdictional issues, and often they ask for evidence, because there will be questions that will affect the rules of natural justice - to know if we have been heard, if we have put forward his point of view, et cetera. All of this is evidence, it involves witnesses. I wonder how it will work on appeal. Without having the privilege of the first instance to carry out that part, are you aware of examples in Canadian law that show that, by

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going directly to the court of appeal, it works? Where does this suggestion come from going directly to the Federal Court of Appeal?

Response to Senator Carignan's question related to the Federal Court of Appeal.

There are several examples where court reviews of decisions made by federal administrative decision makers are under the exclusive jurisdiction of the Federal Court of Appeal in the first instance.

Subsection 18(1) of the *Federal Courts Act,* RSC 1985, c F-7 states that, subject to section 28, the Federal Court Trial Division has exclusive jurisdiction over applications for judicial review of decisions made by federal administrative decision makers. Section 28 lists a number of federal administrative decision makers, including the National Energy Board, Canadian Radio-television and Telecommunications Commission, Canadian Transportation Agency and the Competition Tribunal. The Federal Court of Appeal has exclusive jurisdiction to consider judicial reviews of decisions made by the foregoing decision makers as well as the other decision makers listed in section 28.

In addition, CAPP notes subsection 22(1) of the *National Energy Board Act,* RSC 1985, c N-7, which states:

> Appeal to Federal Court of Appeal
>
> **22** (1) An appeal lies from a decision or order of the Board to the Federal Court of Appeal on a question of law or of jurisdiction, after leave to appeal is obtained from that Court.

The appeal provision proposed by CAPP for the *Impact Assessment Act* is modelled after the provision in the *National Energy Board Act,* which is also closely aligned with the current wording of section 72 in the *Canadian Energy Regulator Act.* So, the suggestion to send an appeal of a decision made under the *Impact Assessment Act* directly to the Federal Court of Appeal is not a new concept.

It is not unusual for reviews of administrative decisions to fall to an appeal court in the first instance. The purpose of court reviews of administrative decisions is to ensure the legality of the decision and decision-making process. This includes ensuring that administrative bodies comply with principles of procedural fairness and natural justice. Court reviews of administrative decisions, whether by judicial review or appeal, typically involve a review of the record of the impugned decision and do not involve or require a trial *de novo*. Depending on the type of decision at issue, the decision record may include witness testimony, evidence and argument (e.g., a review panel hearing decision), which would be reviewed by an appeal court. In other cases, the nature of the decision may not attract a high degree of procedural fairness. Whether the appropriate degree of procedural fairness was accorded in the case of a particular decision is a question of law that could be reviewed by an appeal court.

The purpose of CAPP's proposed amendment is to channel reviews of decisions made under the *Impact Assessment Act* to the Federal Court of Appeal and limit the grounds for appeal to

questions of law and jurisdiction. Under the *Federal Courts Act*, a judicial review of a federal administrative decision can be brought on several grounds, including errors of law and jurisdiction, errors of fact and errors of mixed fact and law. Decisions under the *Impact Assessment Act* will be made or informed by specialized, expert decision makers, and findings of fact of those decision makers should not be open to challenge. By limiting the grounds of appeal to questions of law and jurisdiction, the *Impact Assessment Act* will maintain appropriate judicial oversight without unnecessarily hampering the finality of the decision-making process.

Question (Translated Version)

Senator Carignan: If you could have more information from your lawyers; I understand that a final decision is a kind of privative clause, but it's partial. There is surely a way to have much more complete privative clauses than that, and I would like your lawyers to send us examples.

Response to Senator Carignan's question related to CAPP proposal of a privative clause.

The privative clause proposed by CAPP, which states that decisions made under the *Impact Assessment Act* are final, was drafted to align with other similar clauses in legislation governing federal tribunals (e.g., National Energy Board).

There are examples of privative clauses in other legislation that are more complete. One example can be found in the *Responsible Energy Development Act,* SA 2012, c R-17.3, which governs the Alberta Energy Regulator. The clause reads as follows:

> **Exclusion of judicial review**
>
> 56 Subject to sections 38, 42 and 45, every decision of the Regulator or a person carrying out the powers, duties and functions of the Regulator is final and shall not be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered or proceedings taken in any court, by way of injunction, certiorari, mandamus, declaratory judgment, prohibition, quo warranto, application to quash or set aside or otherwise, to question, review, prohibit or restrain the Regulator or any of the Regulator's proceedings.

Another example of a strong privative clause is in the Alberta *Workers' Compensation Act,* RSA c W-15. Subsections 17(1) and (2) read as follows:

> **Jurisdiction of Board**
>
> 17(1) Subject to section 13.1, the Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act or the regulations and the action

or decision of the Board on such matters and questions is final and conclusive, and is not open to question or review in any court.

(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board, any employee or officer of the Board or any member of the board of directors in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

Question

Senator McCoy: I noticed there are two sections that I had flagged and you don't — and you might have reasons for this and if it doesn't come to you today maybe you can provide them later — but in section 52(2): A review panel may require additional data collection and studies, even after the planning phase, which heightens uncertainty. And in section 56: The minister may at any time before referring a matter to cabinet require additional information or studies, adding uncertainty I think in both cases. I couldn't find those in your amendments and I wondered whether that was deliberate. If you want time to consider that and provide an answer later, that would be fine too.

Response to Senator McCoy's question related to CAPP consideration of Section 52(2) and 56.

While CAPP does understand that the referenced sections do provide the opportunity for delay, CAPP's position is that any requests completed in this regard would have to be completed within the overall proposed time limitations of CAPP (see CAPP's proposed Amendment 62.1).

CAPP does not want to prevent the collection of information or studies if they are deemed necessary and required to make an informed decision. That being said, it is CAPP's understanding that any of the information requests included in sections 52(2) or 56 would have to be in alignment with the scope of the assessment that was determined in Section 18(1). There would not be an opportunity to request information that was not included in the initial scope of the assessment.

In addition, these opportunities to request additional information would need to be accounted for in the overall timeline prescribed in CAPP's proposed Amendment 62.1. As such, the level of information requested at these stages would need to be manageable within the prescribed timelines. In order to meet the prescribed timelines, there would need to be a high level of discipline and consideration of the circumstances in which these information requests were to be made. CAPP expects that at the late stages of an impact assessment, the nature of these requests would likely be areas of clarification on the information and studies that have already been completed.

Given all of the above reasons, CAPP deemed these requests to be of low risk to extend timelines, but still a means to provide Review Panels or the Minister with the ability to get additional clarification on items within the scope of the assessment if absolutely necessary.

CAPP also notes that the same provisions are currently included in the *Canadian Environmental Assessment Act, 2012* (see sections 44(2) and 47(2)).

CAPP and its members, appreciate the opportunity to provide input on the study of Bill C-69. CAPP represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 80 per cent of Canada's natural gas and crude oil. CAPP membership is inclusive of approximately 150 organizations.

We hope these responses provide additional clarity on the responses we provided during our testimony. Should you have any questions please do not hesitate to contact me and for further clarification on the technical aspects of this submission, you may also contact Patrick McDonald, Director, Climate and Innovation at (403) 267-1136.

Sincerely,

Shannon Joseph
Vice-President, Government Relations
Canadian Association of Petroleum Producers

Appendix A – February 19, 2019 - Transcript Translation (Google Translate)

Senator Carignan: You are proposing amendments to the appeal process. You propose to appeal directly to the Federal Court of Appeal for questions of law and jurisdictional issues. I am wondering about the reasons for going directly to the Federal Court of Appeal. I understand that you want to save time and that you do not want cases to go to court; but the Federal Court of Appeal normally revises the questions of law, of course, but all work is done in the first instance at the hearing of witnesses and evidence. Even if they are only questions of law that you want to appeal, there are jurisdictional issues, and often they ask for evidence, because there will be questions that will affect the rules of natural justice - to know if we have been heard, if we have put forward his point of view, et cetera. All of this is evidence, it involves witnesses. I wonder how it will work on appeal. Without having the privilege of the first instance to carry out that part, are you aware of examples in Canadian law that show that, by going directly to the court of appeal, it works? Where does this suggestion come from going directly to the Federal Court of Appeal?

Ms. Joseph: I think at first the recommendation comes from our lawyers. I think the principle behind that is that there should be some deference to the agency's decisions with respect to who will participate and how, and what information is required. In fact, we are trying to strengthen those decisions, in relation to this legislation, so that the decisions of the court ultimately do not deal with these issues. This is the first principle. Secondly, in the proposed amendments, we want to introduce a discipline in the way these issues are brought to court, after a certain period of time, as soon as possible after the decisions have been made to, again, have more certainty by report to the process.

Certainly I am not an expert, I am an engineer, not a lawyer; So I cannot tell you if there are other examples elsewhere where the decisions of an agency go directly to the court of appeal. We could certainly come back to this question, if it can work like that, and for me to have the chance to find

Senator Carignan: I would like that, please, if you could ask your lawyers to send us documents on that. Already, you suggest that decisions be final, and we are talking about specialized tribunals. There is already a restraint that the superior courts will have. Did your lawyers think about suggesting a privative clause?

Ms. Joseph: Yes, in fact there are privative clauses in a number of our amendments. For example, in the section on stakeholder participation, it was written that the agency's decisions are final with respect to this selection. There are other decisions like this one in relation to section 22, which discusses the different considerations for project evaluation; and it is still said that the decisions of the agency in relation to the extent of the analysis are final.

So the privative clauses are there; but I think what we learned in the TMX trial is that sometimes there is a lack of deference to technical issues that should be managed by the agency. We want to clarify this with the privative clauses, but we also want to clarify this in relation to the process to bring this to court.

Senator Carignan: If you could have more information from your lawyers; I understand that a final decision is a kind of privative clause, but it's partial. Surely there is a way to have much more comprehensive privative clauses than that, and I would like your lawyers to send us examples.

Appendix B: CAPP Views Regarding Testimony by Government of Canada Officials

Testimony Related to Standing and Public Participation

Testimony from Government Officials:

"Throughout the assessment process, the public would have meaningful opportunities to participate. There are many potential ways to ensure that stakeholders and the public have that opportunity to provide feedback and to be heard within timelines specified by the agency, from town halls to workshops to online feedback platforms.

These opportunities would be tailored to the circumstances of a particular project. The agency has significant experience in engaging the public on project reviews, and we will be developing further guidance respecting how we will continue to ensure that all views can be expressed and heard as part of a transparent and timely process."

Ron Hallman, President of the Canadian Environmental Assessment Agency

"the specification in the bill — and this was an amendment that was made in the house — is that meaningful participation will occur within the time limit specified by the agency. Indeed, the modalities of public participation would be based on guidelines developed, consulted on but affirmed by the agency, and courts have recognized and deferred to guidance of the agency, assuming it has been undertaken and accessed using a reasonableness standard."

Stephen Lucas, Deputy Minister from Environment and Climate Change Canada

"we have and will continue to have a variety of means of engaging stakeholders and the public, depending on the nature of their interest. It could be through email, online feedback portal, town halls, round tables, et cetera. That's important, it needs to be meaningful and we take that very seriously"

Ron Hallman, President of the Canadian Environmental Assessment Agency

"Quand c'est la participation du public, notre politique et les lignes directrices seront disponibles sur notre site web afin de démontrer le processus de participation.»

Christine Loth-Bown, Vice President, Policy Development Sector

CAPP Views:

Public participation is an important aspect of the project review process – CAPP and its members understand the importance of this. At the same time, in the interest of ensuring the voices of those most affected receive appropriate focus/attention and to ensure that the process is manageable, an amendment to the legislation is necessary.

The legislation must clearly empower the agency to determine the nature and scope of public participation in order for those decisions to have judicial resilience. At present, C-69 does not explicitly empower the agency to do this and without that clear authority, there is a greater risk that any such decision, including for example, potentially excluding participation in a hearing, could be successfully challenged on appeal or judicial review. It is important to add legislative clarity that reflects the Official's comments quoted above.

By way of example, CAPP notes that under CEAA 2012, review panels are currently empowered to determine participation in a hearing by reference to the "interested party" test, which is effectively the same as the standing test in the NEB Act (i.e., directly affected or someone with relevant knowledge or expertise).

Section 43(1)(c) of CEAA 2012 states that:

> 43 (1) A review panel must, in accordance with its terms of reference,
> …
> (c) hold hearings in a manner that offers any interested party an opportunity to participate in the environmental assessment;

Also, Section 2(2) of CEAA 2012 states:

> (2) One of the following entities determines, with respect to a designated project, that a person is an interested party if, in its opinion, the person is directly affected by the carrying out of the designated project or if, in its opinion, the person has relevant information or expertise:
> …
> (b) in the case of a designated project in relation to which the environmental assessment has been referred to a review panel under section 38, that review panel.

CAPP is not specifically advocating for this particular test to be added to the new legislation. Rather we are pointing out that this provision currently empowers the Agency to make such decisions and they support more manageable processes and therefore a legislative amendment to Bill C-69 should ensure that decision makers have similar discretion to appropriately manage public participation.

Testimony Related to Suspension of Project Reviews

Testimony from Government Officials:

"The minister's ability to suspend the timelines is actually regulated by criteria. The minister would have to invoke the fact that the proponent has requested it; there is an outstanding payment that we expected from the proponent; or there is a major design change, with the resulting impacts being different than what was potentially anticipated

in the process. We've had a lot of discussion already about the early planning and how we would scope out what that project looked like.

If that project were to change, there's the possibility that the minister could, under that criterion, then, pause the timeline in order to give the proponent the opportunity to go away, do the work on the project that's needed in order to bring that information forward to continue the review."

Brent Parker, Director, Legislative and Regulatory Affairs, Canadian Environment Assessment Agency

CAPP Views:

Timeline certainty in the IA process is critical to ensuring that Bill C-69 is not a deterrent to investment. The expanded scope of the assessment process and broader participation rights have collectively increased the potential for delay. The Act also creates various opportunities at each step of the process for the Minister and Governor in Council to grant timeline extensions and stop the clock without providing reasons or adhering to specific criteria. Despite these numerous opportunities for extending timelines, the Act does not currently contain provisions regarding a maximum overall timeline creating considerable uncertainty and potential for extensive, unlimited delay.

In general, CAPP recommends that opportunities to "stop the clock" should be eliminated or at least limited to very specific, unique and restricted circumstances. CAPP is supportive of decisions to extend timelines being made at the Ministerial level and has made recommendations on criteria that would appropriately justify stopping the clock. However, CAPP has yet to see the government's criteria for "stopping the clock," as the proposed draft Information Requirements and Time Management Regulations have not been made public. The current legislation simply requires the Minister to publish reasons for "stopping the clock".

It is for these collective reasons that CAPP is not satisfied that the criteria to stop the clock referenced in the government's testimony would be sufficient to instill certainty in the management of timelines within the proposed IA process. CAPP therefore proposed the following amendments to better manage timelines:

> 62.1 (1) Notwithstanding subsections 28(5), 28(6), 28(7), 28(9), 36(3), 37(3), 37(4), 37(6), 37.1(2), 37.1(4) and 65(5), a decision pursuant to paragraph 60(1)(a) or section 62 for a designated project must be made within 730 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project.
>
> 62.1 (2) On the proponent's request, the Minister may extend the time limit in subsection 62.1(1) by any period requested by the proponent. If the Minister extends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.

Note that the proposed amendments provide an overall time limit and allows the proponent to request an extension of the maximum legislated timeline to allow it to react to changing conditions or circumstances while still maintaining its spot in the process.

Testimony Related to Litigation Risk

Testimony from Government Officials:

"The additional factors for consideration and the new scheme does indeed have or present potential litigants with more opportunities to challenge a decision made under the act. The risk of litigation will really hinge on the work being done on a case-by-case basis by the agency review panel and the decision maker. Those risks, as is currently the case, will in all likelihood be reviewed on the reasonableness standard by the court which is, at this time, the standard applied by the court that shows the greatest deference to the decision maker. Yes, the more factors we have, the more steps in the process to open the door to potential recourse to the courts."

"having considered the cases that have been filed against government so far under the current legislation and the one before it, the position of the government is that it's most likely that any of those decisions will be assessed on a reasonableness standard and so a court should show a degree of deference to the decision maker as to the decisions that are considered."

Jean-Sébastien Rochon, Senior Counsel, Resource Development Coordination Unit, Department of Justice Canada

CAPP Views:

CAPP appreciates that the government has acknowledged that the legislation has provided potential litigants with more opportunities to challenge a decision made under the act. It is for that reason the government's testimony does not fully address CAPP's concerns with respect to opportunities for legal challenge and litigation under the Impact Assessment Act. It may be more likely than not that a reviewing Court would apply a standard of reasonableness to its review of a decision made under the Act, however, this will be addressed on a case-by-case basis and is not a certainty. The existence of a privative clause within an administrative decision maker's legislation provides a strong indication of legislative intent and that the decision maker should be granted deference by the Court. If the expectation is that a reviewing Court will apply a deferential standard to decisions made under the Act, and the federal government believes this is appropriate, it is unclear why the government would be opposed to signalling that intent through inclusion of a privative clause. For this reason CAPP has proposed amendments that introduce privative clauses that clarify legislative intent.

Further, the testimony from the federal government official responds to the potential risks associated with litigation once a matter is already before the Court. This does not address CAPP's concern about the potential for the Act to create new, additional opportunities for legal challenges and litigation. Indeed, the testimony from the federal government acknowledges that the additional factors for consideration in the Act present litigants with more opportunities to challenge a decision. CAPP has proposed

appeal provisions which are meant to directly address this risk. The purpose of the appeal provisions is to channel reviews of decisions made under the Act to the Federal Court of Appeal and limit the grounds for appeal to questions of law and jurisdiction. Decisions under the Act are made by specialized, expert decision makers, and findings of fact by those decision makers should not be open to challenge. By limiting the grounds of appeal to questions of law and jurisdiction, the Act will maintain appropriate judicial oversight while preserving the finality of the decision-making process.

Testimony Related to Early Planning

Testimony from Government Officials:

"The new early planning phase will engage proponents, jurisdictions, potentially affected Indigenous peoples and communities to ensure that key issues raised early in the project are brought out, federal authorities assess the proposed outline of the project and proponents know, through tailored guidelines and public participation plans at the outset, what will be expected of them for their assessment."

Stephen Lucas, Deputy Minister from Environment and Climate Change Canada

"Early planning is intended to bring greater certainty and predictability to the process by establishing, at the outset, those requirements and expectations that will inform and guide a project assessment through to decision and beyond, including monitoring and follow up. Early planning is also intended to lay out how we will engage with Indigenous groups to determine whom to consult and how best to collaborate throughout all phases of the assessment. Early planning creates opportunities to engage with other jurisdictions on ways to better cooperate and to reduce duplication and it entails creating opportunities for the public to meaningfully participate in and be heard in project reviews. Most importantly, perhaps, for project proponents, early planning includes establishing what specifically will be examined during the impact assessment phase and identifying any information and studies that will be required from the proponent

A key support to proponents from early planning, the tailored impact statement guidelines that would lay out the information and studies required from the proponent for the assessment, taking into account any other information that may already be available, such as previously completed regional assessments or cumulative effects monitoring data. Of course, each project is different and so the guidelines would be tailored for each specific project, consistent with its unique scope and complexity, to ensure the appropriate focus and to provide clarity and predictability for subsequent assessment steps.

What Bill C-69 does, through early planning, is it allows the agency to convene all of the appropriate interests, the proponent, provincial jurisdiction, Indigenous groupings, others, to identify very early on what the issues may be with the potential project. That allows a proponent to identify how they will address those issues or whether they want to make a design change that will address a particular issue early on rather than at the

eleventh hour when they have invested years and many dollars in a certain design that may be harder to switch away from.

It also allows them, by having a certainty, to start to attract the investment and the support of those who will help them with their project when it moves forward. Perhaps most importantly, it sets the table for the appropriate, early and engaging discussion with Indigenous groups about the potential impacts and the types of mitigation or adjustments that may be made to accommodate Indigenous interests or respond to their concerns. That is the real benefit for industry in all of this. If that happens appropriately at the early stage, that should make each successive step in the process go that much more efficiently."

Ron Hallman, President of the Canadian Environmental Assessment Agency

"To bring all the players together in the early phase will help a lot, as we can have all the concerns and the right scoping of the project, making sure all the right factors will be part of the scope and after that the proponent will know what he has to deliver. I think it will bring certainty and we will enter into that impact assessment phase where we are going to have a tight timeline."

Christyne Tremblay, Deputy Minister, Natural Resources Canada

CAPP Views:

CAPP is supportive of early planning if done effectively and efficiently. CAPP believes that early, meaningful input and identification of issues is beneficial and supports an efficient process. CAPP is optimistic that the development of the Impact Assessment Cooperation Plan, the Public Engagement Plan, the Indigenous Engagement Plan, the Tailored Impact Statement Guidelines, and the Permitting Plan will assist in a more focused Impact Assessment process.
However, this new 180-day process could be a substantial burden, particularly for projects that may, in the end, not be subject to an IA.

As proposed under current draft legislation, the 180 day review process requires proponents to complete work that would be more appropriately included within the actual IA. Unfortunately, Section 15 of the Act requires an extensive amount of information be developed, most of which would be developed and addressed in the actual assessment should an IA be required. CAPP does not support an early planning process that requires the proponent to conduct work that would be completed during the impact assessment as such creates requirements for 2 separate project descriptions and would require the proponent to address all the issues raised by stakeholders in early planning before even starting the assessment. CAPP believes that the early planning phase as it is currently drafted will:

- lead to delays of the process before the IA even starts,
- lead to duplication of efforts within the IA, and
- be excessively burdensome for projects that in the end will not be subject to IA.

CAPP continues to recommend the deletion of Section 15(1)-(3) to avoid duplicating efforts more appropriately undertaken within the IA process. Furthermore, CAPP's

proposed amendment to Section 16 (1) would establish interim decision points within early planning, including the determination of whether a project will be subject to an IA, be defined by regulation.

Testimony Related to Assessment Factors

Testimony from Government Officials:

"on cumulative effects, this reflects the state of the air, water, ecosystems, biodiversity, specific species, and we work with other federal experts, such as fisheries and oceans, but as well as the provinces and territories to define these. There are established standards for water quality and air quality. We work and develop with the provinces, so those are known elements.

In the area of biodiversity there are metrics and there are robust scientific processes informing the state of species at risk. We develop recovery strategies and define critical habitat, and this is information we are committed to making more broadly available to advance the science in parallel to the specific consideration on the project assessment system so we can consider, as relevant, the incremental impact of a project given the state of the environment in an area."

Stephen Lucas, Deputy Minister from Environment and Climate Change Canada

"we will be developing a policy framework and guidance to explain explicitly what's meant by a gender-based analysis. In a nutshell, it boils down to understanding people in communities and where they are coming from — what their gender is, what their cultural heritage is, what their religion is, what their income level is. Projects take place in communities, so it's understanding the people who live in those communities, how a project might impact them and how it impacts them differently as a result of factors that we all bring forward in our individual makeup. Then it's about working with proponents for us to find ways to be able to manage some of those impacts."

Christine Loth-Bown, Vice President, Policy Development Sector

"a lot of what we're doing is based on the GBA analysis done by status of women, which is something that is currently public."

Brent Parker, Director, Legislative and Regulatory Affairs, Canadian Environment Assessment Agency

CAPP Views:

CAPP is pleased that there are plans to develop these policy frameworks in an effort to provide clarity to the areas noted above. If the intent of government is to develop clear policy frameworks as noted in its testimony, then there should be no problem referencing those in the Bill. Public policy items in the list of factors in subsection 22(1) should direct proponents to any applicable completed strategic or regional assessments, or other policy guidance. If clear assessment boundaries are not

established for public policy items, the Act will open a project impact assessment process to broad policy debates, which distorts the overall purpose of the process and negatively affects certainty and efficiency. Currently the Act states that proponents would have to address these issues in each assessment. CAPP has proposed amendments to section 22 that references consideration of relevant published policy on the intersection of sex and gender and on climate.

Furthermore, while references to protecting the environment are found throughout the Impact Assessment Act, other economic considerations do not figure as prominently. CAPP believes changes to the Bill are required to ensure that the full suite of social and economic considerations within the Minister's stated objectives[1] underlying the legislation are recognized and factored into decision making. As such CAPP has proposed amendments to Section 6 and 63.

[1] https://openparliament.ca/debates/2018/2/14/catherine-mckenna-3/