ONTARIO RIVERS ALLIANCE

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By Email: envi@parl.gc.ca

**Re: Briefing Note on Bill C-69 – Impact Assessment Act**
**Prepared by Linda Heron, Chair, Ontario Rivers Alliance**

Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several stewardships, associations, private and First Nation citizens, who have come together to protect, conserve and restore riverine ecosystems.

On the 8th of February 2018, Bill C-69 was tabled by the federal government to repeal the *Canadian Environmental Assessment Act, 2012* (*CEAA 2012),* and replace it with the *Impact Assessment Act (IAA)*.

When enacted, this omnibus legislation would replace the *National Energy Board Act* and establish the *Canadian Energy Regulator Act*, and amend the *Navigation Protection Act*, the *Fisheries Act*, and consequential amendments to several other federal laws.

ORA feels that this government has not fulfilled its promise to fix the broken *CEAA* process. On the surface the *IAA* appears to be an improvement to the *CEAA 2012*; however, on closer examination the *IAA* is very disappointing, and many important recommendations made by the Expert Panel were ignored. Rather than establishing a clear and concise rule-based regime during the information-gathering and decision-making process; at key stages of the *IAA* process decision makers can exercise their discretion. This undermines any science or evidence-based approach that might have improved confidence and/or credibility in the process.

Additionally, there is no clear list of projects set out that would be subject to the *IAA*, or information to even identify the types of activities that would trigger an *IAA*. The list makes only “major” projects subject to a federal *IAA* and excludes projects such as in-situ tar sands expansion. There is also not enough information in the *IAA* to know the scope or scale of any potential effects of projects that might be considered under the *IAA*. Again, this is set up to be at the discretion of the Minister if in his/her opinion the proposed activity warrants designation due to its adverse effects or due to public concerns about such effects. This discretionary condition is calling on citizens to rise up to ensure risky projects are addressed under the *IAA*.

It is unacceptable that the final decision should be made by the Minister or Cabinet with no right to appeal. Instead it will be a political decision-making process, which is no different from the Harper government’s failed *CEAA 2012*, and fails to instill public trust.

The *IAA* also includes provisions that afford the government total discretion over whether to initiate regional assessments or strategic assessments of government policy. Both are badly needed to help make better decisions and should be mandatory.

There must also be safeguards to ensure that review panels cannot be stacked with members with potential bias or influence. The Expert Panel made clear recommendations that regulatory officials should not conduct impact assessments and that an independent assessment authority should be established as a specialized quasi-judicial commission that would make evidence-based decisions on whether a project should proceed or be rejected. ORA calls for a more clear and meaningful separation of corporate interests and government, as recommended by the Expert Panel tasked in making recommendations on modernizing the National Energy Board.

The *Navigation Protection Act* being renamed the *Canadian Navigable Waters Act* is the only significant change to that law. This government promised to restore the protections for lakes and rivers that were lost in 2012; however, the proposed legislation eliminates environmental considerations in decision-making related to navigation. ORA recommends that all lakes and rivers have the same heightened level of oversight and protection that is currently reserved for a few designated or "scheduled" rivers. All our waterways must be protected.

Bill C-68, the *Fisheries Act,* is the only bright light, and ORA is pleased that many protections have been restored, such as the "*harmful alteration, disruption or destruction*" of fish habitat. We are also pleased to see a proposed new public registry that would make information available on authorizations to harm fish and fish habitat available to Canadians.

It is essential that the precautionary and ecosystem approach be legal requirements in all elements of the *IAA*, rather than it being left up to Ministerial discretion. Development decision-making must also be required to take into account the cumulative effects of multiple projects within a watershed - of both the proposed development, and the many existing developments within the watershed. This would require a public registry to track all sizes of developments.

ORA is calling for these important recommendations to be incorporated and set out clearly in the *IAA* and its regulations so there can be predictability, confidence and assurance of a credible, science-based decision-making *IAA* process. The proposed *IAA* also falls short of a new comprehensive, timely and fair process that would have meaningful positive impacts on Canadians and the environment.

ORA also strongly recommends the full and meaningful implementation of the United Nations Declaration of the Rights of Indigenous Peoples, and that all federal legislation and projects have the free, prior and informed consent of First Nations where inherent and Treaty rights are affected or impacted.

Thank you for this opportunity to comment.

Respectfully,

Linda Heron
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