



July 30, 2018

Honourable George Heyman
Minister of Environment and Climate Change Strategy
PO Box 9047 Stn Prov Govt
Victoria BC V8W 9E3

Via Email: ENV.minister@gov.bc.ca

Dear Minister:

Re: BC Environmental Assessment Review: Discussion Paper

By way of background, Independent Contractors and Businesses Association (ICBA) has been the leading voice of British Columbia's construction industry for 43 years, representing more than 2,300 members and clients who collectively employ over 50,000 people. ICBA advocates for its members in support of a vibrant construction industry, responsible resource development, and a growing economy for the benefit of all British Columbians.

On behalf of its broad membership base, ICBA undertakes public policy development and advocacy; sponsors apprenticeship and training for construction professionals; and provides group health and retirement benefit programs. Members are non-union or non-affiliated union contractors and businesses and, taken together, these two segments of BC's construction sector employment account for nearly 85 percent of the industry's workforce in BC.

The Need for "Revitalization" of the BC Environmental Assessment Act?

Your mandate letter from Premier Horgan calls on you to make substantive progress on a number of priorities, including "to revitalize the environmental assessment process and review the professional reliance model to ensure the legal rights of First Nations are respected, and the public's expectation of a strong, transparent process is met".¹

The call for "revitalization and review" is done without positing any evidence or data that there actually is a problem within existing environmental assessment legislation and its application in practice or, for that matter, within the province's professional reliance² system. In the absence of such data and evidence, your government has created unnecessary uncertainty through this process and through the recent release of the final report of the review of professional reliance in natural resource decision making.³ Against the

¹ Premier John Horgan, Mandate Letter to Honourable George Heyman, Minister of Environment and Climate Change Strategy, July 18, 2017, page 2.

² See: ICBA Letter to Honourable George Heyman, Minister of Environment and Climate Change Strategy, Review of the Professional Reliance System, January 19, 2018.

³ Mark Haddock, Professional Reliance Review: The Final Report of the Review of Professional Reliance in Natural Resource Decision Making, May 18, 2018.

backdrop of both reviews, domestic and international investors could be forgiven for wondering if your government is truly serious about facilitating responsible resource development in British Columbia and the value-creating resource development that provides private sector job creation and revenues for health care, education and other social programs for British Columbians.

In this and other recent submissions to your government, we have drawn attention to the steep challenges the investment community is having when considering whether to place capital in our country and province. Canada – and British Columbia – are facing stiff international competition for investment, causing a number of leading CEO's to publicly express their concern. For example, Dave McKay, President and CEO of RBC has publicly stated that capital is leaving Canada in “real time”, noting the recent acceleration in outward flows to the United States.⁴ These concerns come as Canada and British Columbia continue to review and pursue regulatory measures which add to the cost and complexity of doing business. In fact, British Columbia already has the sixth highest marginal effective tax rate (METR) for the business sector as a whole among 34 OECD jurisdictions and the 10 provinces combined.⁵

As a final note, as if BC's lack of competitiveness on the key METR metric were not concerning enough, dramatic tax cuts announced in late 2017 under the *US Tax Cut and Jobs Act*, general uncertainty surrounding NAFTA negotiations, and resultant reciprocal trade sanctions have only compounded matters. These realities should be a “clarion call” to you and your cabinet colleagues to eschew major revisions to BC's environmental assessment regime aimed at adding further complication or impediments to project approval and investment in our province.

A “Crisis in Confidence”?

In this review process, your government has given voice to the (false) NGO narrative that there is a “crisis in confidence” in BC's environmental protection regime. This is manifestly wrong particularly if you believe – as we do – the current system while not perfect, generally works and has benefited from ongoing incremental improvements since its inception. Undertaking business in BC is already very challenging juxtaposed to competing jurisdictions; in fact, every day we hear from our members -- who are suppliers of construction services to resource industries – about the significant challenges of locating, permitting, and building major projects in BC.

Your government's review of the provincial environmental assessment framework is also taking place in the immediate aftermath of Bill C-69, the federal government's new *Impact Assessment Act*. Along with many other national and provincial business associations, ICBA has expressed strong objections about the scope and content of changes contained in the new federal regime. We encourage you and your officials to review our objections to Bill C-69.⁶ We strongly caution the provincial government against writing into provincial proposals changes that mirror or build on the new federal policy.

⁴ Andy Blatchford, “Investment dollars are already flowing out of Canada in ‘real time’, RBC CEO warns”, *Financial Post*, April 2, 2018 <http://business.financialpost.com/news/economy/investment-outflow-from-canada-already-underway-in-real-time-rbc-head>.

⁵ D. Chen and J. Mintz, “The 2014 Global Tax Competitiveness Report,” School of Public Policy, University of Calgary, SPP, Research Papers, Volume 8, Issue 4, February 2015 as cited in: Business Council of BC, Submission to the Select Standing Committee on Finance and Government Services in Advance of the 2018 Provincial Budget, October 16, 2017, page 9

⁶ See: ICBA, Letter Submission to Ms. Deborah Schulte, M.P., Chair, Standing Committee on Environment and Sustainable Development, House of Commons, Ottawa, April 6, 2018.

On a final note, if there a “crisis in confidence”, it is not in the efficacy of BC’s environmental assessment process. Rather, it is in the ability of policy makers – including your government – to hold the line against calls for increasing regulation that does nothing to contribute to improving British Columbia’s domestic and international competitive position.

Some Key Considerations – Environmental Assessment Review and Discussion Paper

We note that your government’s review process is at the mid-way point. As your review process continues, we will, where appropriate, provide additional comments or suggestions to you and your officials. At this juncture, ICBA would like to provide the following top-line comments:

- 1) **Indigenous Nation Engagement:** together with others in the business community, ICBA wants to ensure that Indigenous Nations are partners in economic development and shared prosperity, but it is your government’s job to provide a framework to ensure this happens without compromising opportunities to attract capital investment and talent to BC. We are very concerned that your government has yet to clarify how it is going to meet the open-ended commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which is in every Minister’s mandate letter. To date, your government’s approach on UNDRIP implementation has been haphazard. For example, recent announcements by the Minister of Agriculture on the future of fish farm tenures in the Broughton Archipelago has created uncertainty in the salmon farming industry and, collaterally, called into question the security of other tenures on the provincial land base in other resource industries.

Your current proposals for change include early engagement with Indigenous Nations that would involve Ministry officials. While “early and often” engagement is always a best practice, we are concerned that provincial officials not become too involved in early stage engagement. Generally, this should be initiated by a proponent seeking to build a project and invest capital with Indigenous Nations who have sufficient strength of claim where a project is being contemplated. The “early stage” is also a critical relationship-building phase for proponents and Indigenous Nations. To the extent that early involvement by government officials is desirable or necessary, it should occur only after a clear indication from Indigenous Nations and proponents that it is deemed helpful and welcome.

ICBA is also strongly of the view the environmental assessment process is NOT the place to advance all aspects of reconciliation. In the interests of creating viable, value-creating projects on the provincial land-base, the environmental assessment process must not conflate broader legal issues around rights and title with practical matters under consideration in an environmental assessment. The “What We Heard” consultation document captures business concerns in this regard well: “concerns were expressed about creating additional leverage points and complexity in the EA process that could undermine proponents’ relationships with Indigenous groups and their efforts to establish agreements”.⁷

⁷ Environmental Assessment Office, What We Heard: Summary of the EAO’s Direct Engagements on EA Revitalization, May 2018, p. 11.

- 2) **One Project, One Process:** business groups, including ICBA, have long-supported the proposition that provincial and federal regulatory authorities should streamline practices to the greatest extent possible to reduce duplication and overlap and to boost certainty of process and outcomes for proponents. This review, together with emerging practices in some recent major projects, have shown the potential desirability of including environmental reviews conducted by Indigenous Nations within a “one project, one process” approach to help boost investor confidence. As a general principle, this makes considerable sense, though there may be exceptions which could render the approach unworkable in some circumstances. This underscores the importance of maintaining a flexible, nimble, and iterative environmental process balanced with a clear line-of-sight to timely statutory decision-making.
- 3) **Scope:** your government has heard calls from some stakeholders for BC’s environmental assessment process to cover a broader array of socio-economic factors. It is likely many of these calls arise from the expansive list of considerations added to the federal regime in Bill C-69. ICBA does not support expanding socio-economic grounds beyond the current “five pillars” that underpin BC’s existing legislative regime. Many of the factors within the “What We Heard” discussion document advocated by NGO’s are highly subjective, do not help streamline the process, and will be hard to define in practice. While some may be worthy of consideration elsewhere from a broader public policy perspective, they detract from BC’s environmental assessment process.
- 4) **Certainty of Process, People, and Practices:** while not perfect, the current environmental assessment process has generally served British Columbia well. Since its inception, changes to the environmental assessment process have been incremental and evolutionary. In this regard:
- we caution your government against adopting measures that will add complexity to the existing process or inhibit the iterative nature of review and the relationships proponents build with environmental assessment staff;
 - we counsel against adding more procedural hurdles in the environmental assessment process that might result in longer project review periods, and support continuation of existing legislated timeframes; and,
 - we note that timelines associated with designated projects depend heavily on the discipline of internal project management procedures. In addition to policy (legislation, regulation and guidelines), the two “p’s of people and practices are also critically important. Acute attention should be given within the provincial environmental assessment process to the “hard skills” (i.e. technical credentials) and “soft skills” (finding pathways to “yes”) of government personnel. Experience suggests the competence of the people driving review processes within statutory agencies is often the determining factor of whether a major project is converted from “planning and review” to “being underway”.

Conclusions

ICBA appreciates the opportunity to provide our comments at this stage of your review process. We strongly encourage your government not to compound the regulatory burden already facing investors and project proponents. We also encourage you to go slow when considering any changes that could add to the steep competitive challenges already facing domestic and international proponents seeking to do business in British Columbia. Finally, we look forward to providing our comments when your government's "Intentions Paper" is released this fall in advance of prospective legislative change.

Respectfully,

Independent Contractors and Businesses Association

A handwritten signature in black ink, appearing to read "Chris Gardner", written in a cursive style.

Chris Gardner
President