SASKATCHEWAN
CHAMBER of COMMERCE

25 March 2019

Maxime Fortin
Clerk of the Senate Standing Committee on Energy, the Environment, and Natural Resources
Senate of Canada
Centre Block, Parliament Hill
Ottawa, ON K1A 0A4

Dear Maxime,

On behalf of the Saskatchewan Chamber of Commerce (SCC), thank you for the opportunity to provide the following brief to the Senate Standing Committee on Energy, the Environment, and Natural Resources (SSCEENR) for use in their analysis and handling of Bill C-69. This package includes the brief to the Committee, along with additional SCC documents related to the Bill located in the Appendix section.

Sincerely,

R.J. (Bob) Schutzman, P.Eng.
SCC Environment Committee Chair

SASKATCHEWAN
CHAMBER of COMMERCE

To: Maxime Fortin, Clerk of the Senate Standing Committee on Energy, the Environment, and Natural Resources

From: R.J. (Bob) Schutzman, P. Eng., Chair of the Saskatchewan Chamber of Commerce Environment Committee

Subject: SCC Submission on Bill C–69, *The Impact Assessment Act to* the Senate Standing Committee on Energy, the Environment, and Natural Resources

Date: 25 March 2019

Introduction and Position

The Saskatchewan Chamber of Commerce (SCC) is a member-based research and advocacy organization that represents the interests of over 10,000 individual businesses, industry associations, and local chambers across Saskatchewan through its Chamber Network. As the voice of business for the province, the Chamber has a responsibility to articulate to the Federal Government, the concerns of its members, many of whom will be directly impacted by the draft legislation and accompanying regulatory framework being proposed.

The SCC is grateful for the opportunity to provide the following brief to the Senate Standing Committee on Energy, the Environment, and Natural Resources (SSCEENR) for use in their analysis and handling of Bill C-69. SCC believes that robust environmental protections and a thriving investment climate can go hand in hand. The SCC is seeking an assessment and permit approval process that is timely, predictable, robust, and promotes investor certainty. However, the Bill as it is written, contains significant deficiencies and offers no real improvement upon the current legislation, *The Canadian Environmental Assessment Act, 2012* (CEAA 2012).

Issue:

In February 2018, the Government of Canada introduced new legislation in the form of Bill C-69, *The Impact Assessment Act*. The Bill was drafted in an attempt to restore public trust in the system, restore the confidence of prospective investors, advance Indigenous reconciliation, and protect the environment. The Bill seeks to overhaul the federal regulatory process by replacing both the Canadian Environmental Assessment Agency (CEAA) and the lifecycle regulator National Energy Board (NEB) with the proposed Impact Assessment Agency of Canada (IAAC) and the Canadian Energy Regulatory (CER). In addition, the Bill also seeks to make consequential amendments to other acts, most notably The *Navigation Protection Act* and *The Fisheries Act*.

Discussion and Analysis:

The SCC Environment Committee has been actively involved with this file from the outset. The SCC Environment Committee is comprised of technical experts, many of whom have experience managing federally regulated resource development projects. The SCC's research and advocacy efforts around this issue has included a number of meetings with stakeholders and government

since 2016. SCC has also submitted letters to the government on the issue, including on the CEAA 2012 expert panel review report, the *Environmental and Regulatory Reviews* discussion paper; and on various iterations of Bill C-69 in May 2017, August 2017, April 2018, and January 2019 respectively. Copies of those documents are appendices to this brief for your reference

Below are our detailed analyses of the major changes proposed in Bill C-69:

A. *Broadening the Scope of the Assessment Process*

The Bill attempts to broaden the scope of a future assessment process in two ways. The first includes moving away from the existing threshold of whether "significant adverse environmental effects" will occur under *CEAA 2012* in favour of a broader "public interest" test. The second consideration is the inclusion of factors above and beyond the bio-physical environment, like socio-political issues, public health, economic, gender, indigenous rights, GBA+ criteria, etc. The challenge with the first consideration is that the public interest test is inherently more vague and subjective than the more narrowly-defined "significant adverse environmental effects" test that currently exists.

With regard to the second consideration, while a vibrant democratic society should address timely and important socio-political challenges, project assessments are not the appropriate venue to resolve such contentious and often highly-divisive issues. It can be reasonably assumed that broadening the scope would be expected to further politicize the process, which ironically runs counter to the Government's assertion from the outset that project assessments are not an effective forum for resolving broader public policy matters. Furthermore, based on consultations with professional environmental managers, the coupling of environmental factors with larger socio-political factors would make it more difficult to properly control for and measure adverse environmental impacts.

B. *Integration of Permit Granting Authority with Lifecycle Regulator*

Bill C-69 proposes to bundle the decision-making authority (Impact Assessment Agency of Canada) and the life-cycle regulators (Canadian Energy Regulator and Canadian Nuclear Safety Commission) together into one project review agency. Based on the information gathered, it remains unclear how bundling together the proposed IAAC and a lifecycle regulator will achieve any meaningful efficiencies. The Canada West Foundation's report, *What Now? Rebooting Bill C-69*, asserts that bundling together both energy regulation and impact assessment into one process means it is likely the Bill will attempt to take on too much and end up doing neither aspect particularly well. While both the decision-making authority and the lifecycle regulator require technical expertise, each entity's focus will not necessarily overlap.

C. *Ministerial Decision-Making Power*

Bill C-69 assigns a very strong role for the Minister of Environment and Climate Change when determining a number of important factors, most notably if a proposed project is in the public interest; determining what should or should not be included in an assessment; and the authority to amend decision statements.

While the rationale for this provision offered by the Government of Canada was to allow for flexible and adaptive management and to ensure that accountability is tied to an elected official, if unchecked, this provision would allow the Government to effectively change the rules of the game midway through the process, leading to a loss of ownership of the project by the proponent. Such a large concentration of power in any one person or Crown entity also risks undermining the Government's stated objectives of enhancing transparency and would allow for political discretion

where there should be none. Based on our research, it can be reasonably expected this would have very negative impacts on investor confidence.

D. *Legislated Timeframes*

The SCC acknowledges the explicit reference to shortened, legislated timelines in the Bill - for example, requiring that an agency panel assessment be delivered in a maximum of 300 days (currently 365 days), and a review panel assessment in 600 days (currently 720 days) for more complex projects. The Bill also establishes a mandatory, 180 day early planning and engagement phase that does not currently exist under CEAA 2012. In all phases of the proposed regulatory process, the Minister of Environment can extend timeframes by 90 days almost indefinitely. In addition, virtually unlimited opportunities exist for delays to occur during the project initiation phase, as well as during the actual review process. Under Bill C-69, there is almost unlimited opportunity for either the Minister or Cabinet to delay what should otherwise be a final decision.

A potential consequence is that it will be difficult to predict with any reasonable certainty, how long an impact assessment will take, in light of the opportunities for timeframe extensions and the increased number of stakeholder groups that may be involved. Based on our discussions with business leaders, the lack of predictability in terms of concrete timeframes is unlikely to encourage or inspire investor confidence in Canada's regulatory process; in fact, investors are already leaving. Given the opportunities present for the Government to stop the clock, delay tactics become more likely in the event there is strong political opposition to a proposed development project, regardless of the project's merits.

E. *Scope of Public Participation and the Standing Test*

Bill C-69 seeks to enhance and broaden public participation in the assessment process by eliminating the NEB's Standing Test. While eliminating the standing test at least theoretically would allow for more diverse viewpoints, it also significantly increases the likelihood that stakeholder groups not participating in good faith and not on the basis of direct involvement would derail the hearing process without consequence. It can be reasonably expected this will have repercussions on the timeliness and efficiency of the assessment process. For practical reasons, it would be impossible to accommodate every single participant that might wish to make their views heard on a particular matter and some sort of screening would need to take place to realize the Government's objective of a timely and well-informed hearing process.

F. *Status of Uranium Mining and Mills under Bill C-69*

For uranium mines and mills under Bill C-69, it has been estimated that timelines, at least in practice, would be longer than is currently the case under CEAA 2012. Credible estimates include a minimum of seven years from the beginning of the assessment process to production. This is in conjunction with the loss of a single-window assessment and licensing regime under the current CEAA 2012. Over the course of a lengthier review panel process, the economics of a proposed project are likely to have changed multiple times over. Uranium mines and mill projects under CEAA 2012 are presently subject to joint federal-provincial regulatory oversight.

Empirically, uranium mines and mills in Canada have a proven and effective track record in terms of environmental assessment, project impact assessment, and regulatory lifecycle management. There is no gap in sustainability governance in this subsector of mining that would justify an automatic referral to an extensive review and panel process as proposed under Bill C-69. Maintaining a practical approach to assessment and lifecycle regulation is imperative in light of a recent Natural Resource Canada report stating that total mining projects planned and under construction have decreased by more than 50% in value from June 2014 to June 2017.

G. *Mining Activities in Saskatchewan and the Project List*

As of March 2019, the *Regulations Designating Physical Activities* (Project List) intended to supplement Bill C-69 has not been released to the public. There is a possibility that mining projects in Saskatchewan could be designated as projects that would require a federal impact assessment process. Under the Constitution, mining and mineral resource development is under Provincial jurisdiction. The Government of Saskatchewan already has significant technical expertise, as well as a robust and efficient process for assessing the environmental and socio-political impacts of a proposed project. Given its many decades of world-class expertise and proximity, the Government of Saskatchewan is logically in the best position to carefully assess the overall cost and benefits of a proposed mining project.

Recommendations:

The following are our recommendations to resolve the problems with the Bill:

1. *On the Scope of the Assessment Process*

Canada's future assessment regime should be limited to significant adverse environmental effects within a factual, science-based process that is informed by accepted quantitative measures. Expanding the scope of a federal EA process to become a much broader Impact Assessment (IA) process is retrogressive and serves to dilute the importance of the environmental component.

2. *On the Integration of the Permit Granting Authority with the lifecycle Regulator*

An assessment agency should not be involved in operational permitting and project operation. Both the permit granting authority and the relevant lifecycle regulator should remain separate and distinct entities.

3. *On the Creation of the Canadian Energy Information Agency*

The SCC supports the creation of the proposed Canadian Energy Information Agency that has a mandate to collect, analyze, and disseminate energy-related information independent of the lifecycle regulator.

4. *On Ministerial Decision-Making Power*

The SCC endorses the Canadian Chamber of Commerce's recommendation of adding the Minister of Natural Resources and a Crown Minister with an economic portfolio (Finance, Trade Diversification, etc.) to a joint decision-making panel with the Minister of Environment and Climate Change on such matters throughout the Bill.

5. *On Legislated Timeframes*

The SCC recommends the Government of Canada ensure greater predictability for project proponents by providing reasonable and concrete timeframes for decisions. Timelines need to be no longer than three years total from beginning to end.

6. *On Defining the Scope of Public Participation*

The SCC recommends the Government of Canada carry over the *Standing Test* from the NEB to the new assessment regime. Proving a direct connection should be maintained. The SCC also recommends that an amended version of Bill C-69 more clearly define the nature and scope of public participation during the assessment process.

7. *On Clarifying Project Criteria and Stakeholder Responsibilities*

Section 22 of the Bill needs to be revised to more clearly define the relevant impact factors, including e.g. the use of GBA+ criteria, in future assessments. If socio-political concerns have to be factored in, the SCC believes the best way to accomplish this would be to put the socio-political issues and detail under guidelines separate from the assessment process.

8. *On the Crown's Duty to Consult*

The SCC recommends an amendment to the Bill seeking to compensate proponents and partnering Indigenous groups that adhere to and fully comply with Canada's regulatory process, but find their project cannot proceed because of errors and omissions made by the Government of Canada in attempting to meet its Duty to Consult. Such compensation should cover lost opportunities in terms of foregone direct investment and job creation.

9. *On Recent Amendments to the Bill*

The SCC supports the Government of Canada's ongoing commitment to the concept of one project-one review. The SCC welcomes the inclusion of recent amendments that provide greater transparency around ministerial decision-making.

10. *On Proposed Amendments for Uranium Mining and Mills*

The SCC strongly recommends that SSCEENR amend Section 43 of the proposed *Impact Assessment Act* and remove the mandatory referral to a review panel for designated uranium mining or milling projects. Specifically, amend section 43 of the IAA (with additional amendments to ss. 39(2)(a), 44(1), 46 and 67(1)) as indicated by the following underscored text would remove the mandatory referral to a review panel for designated uranium mining or milling projects and would achieve the goal described above:

> 39(2) However, the Minister is not authorized to enter into an agreement or arrangement referred to in subsection (1)...
>
> (a) the *Nuclear Safety Control Act* <u>other than for a uranium mine or mill</u>.
>
> 43 The Minister must refer the impact assessment of designated project to a review panel if the project includes physical activities that are at a nuclear facility regulated under any of the following Acts:
>
> (a) the *Nuclear Safety Control Act* <u>other than a uranium mine or mill</u>.

44(1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the *Nuclear Safety Control Act*, other than a uranium mine or mill, to a review panel…

46 For the purposes of conducting…, including preparing a report with respect to that impact assessment, a review panel referred to in s. 43 may exercise the powers…

67(1) The Minister…the *Nuclear Safety and Control Act* other than a uranium mine or mill, designate…

11. *On Mining Activities and the Project List*

The SCC recommends that the assessment of mining projects should remain under provincial jurisdiction and the federal assessment process should only apply to jurisdictions in which an established environmental assessment process is absent or where a jurisdiction requests for the federal requirements to apply. The rationale for this recommendation is that mineral resource development falls under provincial jurisdiction. An exception would be made for uranium mines and mills given the Federal Government's jurisdiction over the regulation of nuclear-related activities.