

Gutting of Environmental Assessments Drives Constitutional Rights to the Fore

The federal government's recent announcement of changes to the *Canadian Environmental Assessment Act* and the *Fisheries Act* have precipitated legitimate criticism from Aboriginal people across Canada. The rules of engagement are about to change with the field tilted in favour of the swift approval of Enbridge, Prosperity, Kinder-Morgan, Ring of Fire and other mega-projects.

The proposed changes underscore the importance of Aboriginal people resisting government's attempts to confine the consideration of their constitutional rights to environmental assessments.

Environmental assessments have always been an inadequate forum for the fulfillment of the Crown's duty to consult. The infringement of Aboriginal rights can't be reduced to environmental effects. Mitigation is not synonymous with accommodation.

Nonetheless, federal and provincial governments have increasingly offered Aboriginal people little choice—have your constitutional rights assessed along with potential environmental effects or stand accused of frustrating government's attempts to consult.

Government's legal obligations to protect the environment and to respect Aboriginal rights are very different. Legal requirements for environmental reviews exist at the whim of government—they can be watered down or even disappear based on political decisions. Government's duty to consult Aboriginal people is a constitutional requirement—it cannot be extinguished through changes to policy, regulations or legislation.

Moreover, the legal thresholds for environmental assessments and consultation on Aboriginal and Treaty Rights are very different. Government can justify serious environmental effects based on socio-economic benefits. Effects on section 35 rights are not so easily dismissed.

The federal government's gutting of environmental review requirements is further support for Aboriginal people to insist on robust duty to consult processes informed by but separate from environmental assessments.



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