



December 15, 2025

UPLOADED ONLINE

Impact Assessment Agency of Canada
 22nd Floor, Place Bell
 160 Elgin Street
 Ottawa, ON K1A 0H3

Re: Submission on the Draft Co-operation Agreement between Ontario and Canada on Environmental and Impact Assessment

These are the comments of the Canadian Environmental Law Association (CELA) on the *Draft Co-operation Agreement between Ontario and Canada on Environmental and Impact Assessment* (the “Draft Agreement”).¹

For the reasons outlined below, CELA submits that it is premature to proceed with the Draft Agreement until it is fundamentally revised to address various substantive and procedural concerns about the nature, scope, content, and efficacy of the proposed co-operation agreement.

(a) Overview of CELA’s Background and Experience in Impact Assessment

Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. With funding from Legal Aid Ontario (LAO), CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives.

For example, CELA has participated extensively in various administrative proceedings, court cases, and law reform efforts under the *Impact Assessment Act* (“IAA”) and its predecessors (e.g. *CEAA 2012*, *CEAA 1992*, and the *EARP Guidelines Order*). CELA also intervened in the constitutional reference on the IAA and project list regulation conducted by the Alberta Court of Appeal, and we participated in the subsequent appeal heard and decided by the Supreme Court of Canada in 2023.

Similarly, CELA has participated extensively in various administrative proceedings, court cases, and law reform efforts under Ontario’s *Environmental Assessment Act* (“EA Act”) since its enactment in 1975. We have also represented clients in other provincial approval processes (i.e. *Environmental Protection Act*, *Ontario Water Resources Act*, etc.) for environmentally significant projects.

¹ [Draft Co-operation Agreement between Ontario and Canada on Environmental and Impact Assessment](#)
Canadian Environmental Law Association

(b) CELA's Concerns about the Proposed Canada/Ontario Co-operation Agreement

(i) CELA's General Concerns about Co-operation Agreements

On October 20, 2025, CELA signed onto a joint submission² with several environmental non-governmental organizations from across Canada discussing the Impact Assessment Agency of Canada ("IAAC") discussion paper, *"One Project, One Review": Co-Operation Agreements for the Assessment of Major Projects"* (the "Joint Submission"). The Joint Submission reviewed and provided recommendations on the IAAC's proposal to develop co-operative agreements with the provinces for reviewing major projects.

However, it appears that these recommendations have neither been acted upon by IAAC nor reflected in the Draft Agreement between Canada and Ontario. Accordingly, the general concerns raised in the Joint Submission remain valid and largely unaddressed in the provisions of the proposed Canada/Ontario Co-operation Agreement, as described below.

(ii) CELA's General Concerns about the Canada/Ontario Proposal

CELA has carefully reviewed the Draft Agreement in light of our impact assessment experience and public interest perspective. We provide the following comments for IAAC's consideration in respect of the Draft Agreement. Our comments build upon the concerns expressed within the previously mentioned Joint Submission, while focusing on the specific provisions of the Draft Agreement.

One of the stated goals of establishing a co-operation agreement between Canada and Ontario is to enhance "co-ordination activities on permitting" and eliminate "duplication"³ in the assessment process for certain projects.

First, CELA is not opposed in principle to eliminating unnecessary "duplication" (where it actually exists) within environmental review processes, as layers of duplicity can result in inconsistent outcomes for a project subject to more than one assessment process. Duplication can also create barriers for public participation or erode transparency and information sharing between different stakeholders. Enhancing co-ordination between government departments should be a priority in assessment processes to promote transparency, credibility, and efficiency during the entirety of a project's assessment. That being said, CELA submits that striving for efficiency and the elimination of alleged "duplication" should not compromise or circumvent the respective legal obligations of both levels of government to protect the environment and the public, and to respect and uphold Indigenous rights.

Second, in light of sections 91, 92, and 92A of the *Constitution Act, 1867*, there is nothing constitutionally impermissible about a single project being subject to both the federal and provincial assessment regimes. This was confirmed by the recent Supreme Court of Canada

² [Joint submission on Impact Assessment Agency of Canada Consultation Paper, "One Project, One Review" - Canadian Environmental Law Association](#)

³ Draft Co-Operation Agreement between Ontario and Canada on Environmental Impact Assessment, preamble page 1 ("Draft Agreement").

decision in the *Reference re Impact Assessment Act*,⁴ which nevertheless emphasized that decision-making by each level of government must stay within their assigned heads of power in the *Constitution Act, 1867*. Constitutional jurisdiction over different aspects of the same project is neither “duplication” nor “red tape,” and should not be used as the pretext for wholly avoiding a federal impact assessment (i.e. by full substitution to a provincial process, or by an early screening decision under the *IAA* that negates the need for an impact assessment).

Third, as a practical matter, it must be noted that in recent years, there has been decreasing overlap between the *IAA* and *EA Act* in terms of which projects trigger the federal and provincial assessment processes. This is because the current *IAA* Project List⁵ designates several dozen project categories (i.e. mines, nuclear facilities, etc.) that do not trigger Comprehensive Environment Assessments under Ontario’s current (and narrowly framed) Project List⁶ that was promulgated under the *EA Act*, as amended in 2020. Any potential overlap between the federal and provincial lists may be further diminished if the *IAA* Project List is amended to delete certain designated projects and/or increase thresholds,⁷ which means that even fewer projects would trigger federal impact assessments. Accordingly, CELA views the proposed Canada/Ontario Co-operation Agreement as a solution in search of a problem.

Fourth, the hallmark of effective impact assessment has always been in ensuring that decision-makers “look before they leap” in a prudent and precautionary manner. Unfortunately, given the parlous state of provincial environmental assessment in Ontario, the opposite has become the default position. The Draft Agreement in its present form turns a blind eye to, if not reinforces, this problem. For this reason alone, the Draft Agreement should not proceed unless it is substantially amended along the lines suggested in this submission.

(iii) CELA’s Specific Comments on the Canada/Ontario Proposal

Upon reviewing the sparse Draft Agreement, we have identified several concerns that require further consideration or amendments before an agreement is signed by Canada and Ontario, namely:

1. The Draft Agreement proposes a substitution process that is inherently non-co-operative;
2. The Province of Ontario does not have a robust assessment process to effectively substitute a federal impact assessment (“IA”);
3. The Draft Agreement does not provide clear language that ensures the provisions and principles of the United Nations Declaration the Rights of Indigenous Peoples (“UNDRIP”) will be upheld; and

⁴ 2023 SCC 23.

⁵ [SOR/2019-285 | Physical Activities Regulations | CanLII](#)

⁶ [O. Reg. 50/24 PART II.3 PROJECTS - DESIGNATIONS AND EXEMPTIONS | ontario.ca](#)

⁷ See [Submissions by CELA to the Impact Assessment Agency of Canada Regarding Discussion Paper on the Proposed Project List - Canadian Environmental Law Association](#)

4. The Draft Agreement requires more clarification and detail on how opportunities for meaningful public participation will be supported and implemented during assessment processes that fall under the agreement.

Each of these concerns is examined in more detail below.

CELA submits that the following comments and recommendations should be addressed to ensure the assessment processes for future designated projects in the province are actually robust and serve the best interests of Canadians, protect the environment and climate, and honour and safeguard Indigenous rights.

1. Full Substitution is not Co-operation

When reviewing the broader proposal for co-operation agreements within the Joint Submission, one of the key concerns highlighted by the signatory NGOs is that substitution is not co-operation. Within the Draft Agreement between Ontario and Canada, there are two substitution options: full substitution to the provincial assessment process, or substitution to a harmonized federal-provincial process (which, in our view, is the preferable approach).

While a harmonized federal-provincial process would theoretically be co-operative for both levels of government to develop a thorough review process for a project (i.e. by establishing a joint review panel), a full substitution to Ontario's review process essentially defers Canada's processes to the province's inadequate assessment and permitting regime, which does not constitute a co-operative assessment.

The *IAA* allows for substitution to a provincial process under certain conditions. For instance, s.33(1) of the *IAA* states:

33 (1) The Minister may only approve a substitution if he or she is satisfied that
 (a) the factors set out in subsection 22(1) will be considered under the process to be substituted or under an agreement or arrangement referred to in paragraph 114(1)(f);⁸

The factors in subsection 22(1) of the *IAA* are quite extensive, with a non-exhaustive list of factors including: cumulative effects; impacts on Indigenous peoples; Indigenous knowledge; community knowledge; contributions to sustainability; and the project's hinderance or contribution to Canada's environmental obligations in respect of climate change.⁹

While Ontario's *EA Act* purpose is "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment,"¹⁰ the actual prescribed content for Comprehensive Environmental Assessments under Part II.3 of the *EA Act*¹¹ is considerably shorter than section 22(1) of the *IAA*. Moreover, even these so-called mandatory components can be varied or waived by Terms of Reference

⁸ *IAA*, section 33(1)

⁹ *IAA*, section 22(1)

¹⁰ *EA Act*, section 2.

¹¹ *EA Act*, section 17.6.

approved under the *EA Act*.¹² Ontario's track record to date clearly demonstrates an overwhelming willingness to approve Terms of Reference which dispense with critically important assessment factors (i.e. need/rationale, alternatives to, alternative sites, etc.) which are mandatory under section 22(1) of the *IAA*.

In these circumstances, it is unclear how and why Ontario's Comprehensive Environmental Assessment process (or the forthcoming Streamlined EA regulations) would fulfill all of the factors listed in section 22(1) of the *IAA*. For example, the *EA Act* makes no mention of climate change, sustainability, cumulative effects, or impacts of malfunctions/accidents, thereby making it uncertain (or highly debatable) how deferring to Ontario's Comprehensive Environmental Assessment process would effectively evaluate all factors set out in section 22(1) of the *IAA*. CELA is concerned that a full substitution to the Ontario regime would diminish the opportunity for meaningful public participation, Indigenous engagement, and rigorous review of impacts associated with a project compared to a project assessed under the *IAA* regime.

As we will discuss in the next section, the Draft Agreement needs to ensure that co-operation between Canada and Ontario in establishing a "One Project, One Review" framework will, in fact, address or remedy the substantive gaps and procedural deficiencies in Ontario's current assessment and permitting regime.

2. Ontario Lacks a Robust Assessment Process

CELA is concerned that the Draft Agreement heavily relies upon the false narrative that Ontario has a "robust" assessment and permitting regime in place to protect public health and the environment from adverse effects arising from major projects. The preamble of the Draft Agreement baldly proclaims:

AND WHEREAS Canada and Ontario have each established robust processes for the high-quality assessment of the effects of certain types of projects, informed by rigorous science, Indigenous consultation, public participation, and community knowledge...

In our view, there is no room in the Canada/Ontario proposal for self-serving and unsubstantiated claims about the alleged robustness, "high quality", or "rigorous science" of the current provincial assessment process. More fundamentally, for several decades CELA, other civil society members, practitioners, Indigenous communities, the former Environmental Commissioner of Ontario, an independent advisory panel, and other commentators have identified numerous systemic problems in the provincial assessment process, and have called for various statutory and regulatory changes to strengthen and improve the *EA Act* regime. To date, however, these recommended reforms have not been implemented, and instead the Ontario government amended the *EA Act* in 2020 (without public consultation) in a manner that is widely viewed by stakeholders as a regressive rollback.

Accordingly, the Draft Agreement's claim that the *EA Act* regime is "robust" should be deleted since it is inaccurate, misleading, and lacks credibility.

¹² *EA Act*, section 17.4(2)(c).

Case Study: The Proposed Dresden Waste and Recycling Facility Project

An illustrative example of the controversial state of the provincial *EA Act* involves the proposed Dresden Waste and Recycling Facility Project.

In 2024, the Ontario government passed a regulation that designated this contentious large-scale undertaking as a project that required a Comprehensive Environmental Assessment under Part II.3 of the *EA Act*. In 2025, however, the Ontario government suddenly reversed this decision by amending the *EA Act* to provide a statutory exemption for this project so that a Comprehensive Environmental Assessment was no longer required.

On behalf of our client Dresden Citizens Against Reckless Environmental Disposal, CELA filed a request that the proposed Dresden Waste and Recycling Facility Project be designated as a project pursuant to section 9(1) of the *IAA* due to its potential impacts on federal jurisdiction.

This designation request was supported by the local municipality and an Indigenous organization, but was opposed by the proponent.

In response to the proponent's submission that the "there is no significant impact to federal jurisdiction on the environment or indigenous rights that cannot be adequately considered and comprehensively addressed under the required provincial permit process under the amendments sought to the ECAs," CELA submitted that the proponent's response disregarded the narrow scope of the Environmental Compliance Approval ("ECA") process under the *Environmental Protection Act* ("EPA"), particularly compared to the broad parameters of the *IAA*.

First, the purpose of Ontario's *EPA* is to protect and conserve the "natural environment," which is simply defined as the "air, land and water, or any combination or part thereof" in the province.¹³ Therefore, any adverse social, cultural, or economic impacts arising from the proposed Dresden Waste and Recycling Facility Project (i.e. upon nearby Indigenous communities) are beyond the scope of the *EPA*, and the MECP (Ontario Ministry of the Environment, Conservation and Parks) Director has no authority under the *EPA* to impose terms or conditions in an ECA to address such impacts on the basis of the public interest. This narrowly framed jurisdiction under the *EPA* was confirmed decades ago by Ontario's Divisional Court, which struck down landfill ECA conditions that attempted to address public education initiatives and other matters.¹⁴

Second, the ECA process under the *EPA* does not address the full range of important environmental planning issues required by section 22 of the *IAA*. For example, unlike the *IAA*, the ECA process does not require the proponent to systematically identify and evaluate: (a) the alleged need/purpose of the project; (b) "alternatives to" the project; (c) "alternative means" of carrying out the project; (d) socio-economic impacts of the project; (d) whether the project

¹³ *EPA*, section 1(1) [definition of "natural environment"] and section 3(1).

¹⁴ *Sudbury (Regional Municipality) v Ontario* (1995), 18 CELR (NS) 296 (Ont.Div.Ct.). See also *Re Guelph (City)* (1995), 15 CELR (NS) 241 (Ont.Div.Ct) [no EPA jurisdiction to safeguard against potential economic impacts by imposing a condition requiring a property value protection plan from the proponent].

contributes to sustainability; and (e) whether the project will help or hinder Canada in meeting its international obligations (e.g., UN Convention on Biological Diversity) or its climate change commitments. Accordingly, the Dresden Waste and Recycling Facility Project's potential adverse effects within federal jurisdiction cannot be adequately assessed, mitigated, or prevented through the provincial ECA process.

Third, unlike section 22(1)(c) of the *IAA*, the provincial ECA process does not expressly require the proponent to evaluate potential impacts on Indigenous peoples or their constitutionally protected rights (see below).

In summary, the ECA process under the *EPA* – and substantially similar approval processes under other provincial legislation – is not an adequate substitute for a robust, credible, and participatory impact assessment process under the *IAA*.

Nevertheless, the IAAC President denied this designation request under the *IAA*.¹⁵ Although an accompanying IAAC report confirmed the project's potential adverse impacts on federal jurisdiction,¹⁶ the IAAC President opined – without adequate explanation or elaboration – that such impacts can be addressed through other federal and provincial legislative regimes.

This case study involving the Dresden Waste and Recycling Facility Project highlights that the assessment and permitting processes in Ontario are not as “robust” as claimed, particularly in relation to preventing adverse environmental impacts within federal jurisdiction. Therefore, the federal government should be wary of replacing its more robust impact assessment process with the less rigorous procedures set out in Ontario's various legislation and regulations.

An additional concern is that section 3(1) of the Draft Agreement simply requires a “confirmation” from Ontario that its assessment or permitting processes will address potential adverse effects on federal jurisdiction. CELA draws no comfort from this vague stipulation, particularly since the Draft Agreement fails to specify any criteria, standards or benchmarks to be used by Ontario in making this confirmation. In addition, the confirmation fails to require that the Ontario process will “effectively” address potential impacts on federal jurisdiction in a participatory, accountable and transparent manner. Accordingly, section 3(1) simply amounts to boilerplate language that gives untrammelled discretion to Ontario, without any meaningful public and Indigenous engagement or oversight and review by the federal government.

Moreover, in the context of the Draft Agreement, CELA remains highly concerned about the prospect for “early decisions” under section 16 of the *IAA* that dispense with the need for a federal impact assessment on the grounds that adverse effects on federal jurisdiction can be taken care of under provincial law. The potential reliance of the Draft Agreement on the existence of Ontario's regulatory statutes is even more uncertain and tenuous given that the province has recently enacted the *Special Economic Zones Act* (“*SEZA*”), which enables specified areas, projects or proponents to be exempted from environmental laws (including the *EA Act*) or other provincial or municipal requirements. Thus, while Canada might dispense with an impact

¹⁵ [President's Response](#), page 2

¹⁶ [Analysis Report](#), page 11

assessment and defer to provincial processes for a designated project, it would still be open to the Ontario government to use the *SEZA* to subsequently oust the application of one or more provincial laws to the project.

3. Upholding UNDRIP and Indigenous Rights

Within the preamble, the Draft Agreement notes that Canada will maintain its commitment to UNDRIP. However, there is no language addressing Ontario's ongoing lack of legislative commitment to UNDRIP.

In 2019, *Bill 76, United Nations Declaration on the Rights of Indigenous Peoples Act, 2019*¹⁷ was introduced in the Ontario Legislature, which, if enacted, would require the Government of Ontario to take all measures necessary to ensure that the laws of Ontario are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Unfortunately, the Bill did not progress beyond second reading, which means that Ontario does not have UNDRIP implementation legislation currently in place. This gap in honouring and upholding Indigenous rights must be addressed before Canada relies on any Ontario assessment or permitting process.

Articles 18, 19, and 32 of UNDRIP requires Indigenous participation in decision-making, with Article 19 requiring a state to obtain free, prior and informed consent ("FPIC") before adopting and implementing legislative or administrative measures that may affect them (such as an impact assessment decision that authorizes a project to proceed).¹⁸ While section 6 of the Draft Agreement provides language indicating that IAAC and MECP will uphold the Crown's duty to consult, the Draft Agreement makes no mention of FPIC:

(1) IAAC and MECP commit to working together to co-operate on and coordinate open, transparent, effective and timely communications and consultation with Indigenous Peoples. This includes co-operating on the identification of Indigenous communities for consultation throughout assessment processes and coordinating consultation activities to the extent possible.

(2) IAAC and MECP commit to respecting the rights of Indigenous Peoples of Canada recognized and affirmed by Section 35 of the *Constitution Act, 1982*, supporting meaningful Indigenous participation in the assessment process, and incorporating Indigenous perspectives in assessments to ensure that both Canada's and Ontario's requirements are met.

(3) For certainty, nothing in this Agreement is intended to limit the ability of either of the Parties to cooperate, or enter into agreements or arrangements, with Indigenous Peoples respecting assessments.¹⁹

¹⁷ *Bill 76, United Nations Declaration on the Rights of Indigenous Peoples Act, 2019*, <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-76>

¹⁸ United Nations Declaration on the Rights of Indigenous People, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁹ Draft Agreement, section 6

In addition, the governments' professed commitment in section 6(2) to "respect" (but not necessarily "protect") constitutionally guaranteed Indigenous rights essentially amounts to a promise to comply with the law, which is expected of all governments in Canada.

We reiterate the statement made in the Joint Submission that the federal government should be doing all that it can to ensure that the federal assessment process is a vehicle for not just consultation but for FPIC as well as reconciliation. Therefore, CELA submits that section 6 of the Draft Agreement concerning Indigenous peoples requires the addition of language that: indicates how Canada's commitment to uphold UNDRIP would be implemented; specifies that FPIC will be honoured in assessment processes; and clarifies how FPIC would be integrated into an impact assessment substituting Ontario's processes.

4. Meaningful Public Participation is Essential

We welcome the language within the Draft Agreement which commits to the distribution of federal funding for participation in assessment processes, particularly since providing funding to the public and Indigenous peoples reduces barriers to participate in these processes. Section 9(1) of the Draft Agreement notes:

IAAC and MECP will work to coordinate distribution of federal funding for participation in assessment, to the extent practicable, including the provision of funding to Indigenous Peoples to support their participation in assessments conducted under this Agreement.

Nevertheless, CELA submits the Draft Agreement would benefit from outlining *how* meaningful public participation would be funded, and perhaps more importantly, *how* participation in general would be facilitated. In Ontario, public opportunities for notice of, and participation in, provincial assessments are lower than those under the *IAA* (especially given the demise of Ontario's *Intervenor Funding Project Act* in 1996 and the unfortunate decades-long absence of intervenor or participant funding under the *EA Act*). We maintain that this issue needs to be acknowledged and addressed with more specificity in the Draft Agreement. For example, the Draft Agreement needs to set out the particulars of procedures which will facilitate and ensure meaningful public participation.

In the section 5(3) discussion of the co-ordination of potential assessment conditions, decision-making, and permitting, the Draft Agreement states:

Where practical and appropriate, IAAC and MECP will coordinate the opportunity for proponents, Indigenous Peoples, and the public to review potential assessment conditions.

CELA submits that to increase transparency and enhance public participation and consultation with the public and Indigenous peoples, the qualifier "where practical and appropriate" should be removed from this provision. In the event that an Ontario process is selected to substitute for the *IAA* assessment process, providing a meaningful opportunity for public and Indigenous review of proposed assessment conditions is always necessary for procedural fairness reasons and for

ensuring that the provincial process results in effective, enforceable and equitable conditions in the event that the project is approved.

Substituted impact assessments under the Draft Agreement would require IAAC and MECP to prepare a permitting plan, in accordance with section 18(1)(b) of the *IAA*. However, a public participation plan or an Indigenous Engagement and Partnership Plan – which would otherwise be required for any federal impact assessment *not* being substituted – are not required if substitution to a provincial process is undertaken. We submit that any substituted process must require a public participation plan and an Indigenous engagement plan.

(c) CELA's Conclusion and Recommendations

For the foregoing reasons, CELA concludes that the proposed Canada/Ontario Co-operation Agreement should not proceed or be executed in its present form.

Accordingly, CELA recommends that the Draft Agreement should be substantially amended in order to address the general and specific concerns raised by CELA in this submission.

We are aware of the government's Throne Speech commitment to finalize and sign co-operation agreements with the provinces within a matter of months. However, political or administrative expediency should not override the public interest need to ensure that the Canada/Ontario Co-operation Agreement contains additional details, sufficient safeguards, and prescriptive provisions, as outlined in this submission.

We thank IAAC for the opportunity to comment on this Draft Agreement, and we trust that CELA's concerns and recommendations will assist in shaping a robust, collaborative, and transparent impact assessment regime for future proposed projects in Ontario.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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