

MAT# 42730868

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**CANADIAN ENVIRONMENTAL
ASSESSMENT ACT:
AN ANNOTATED GUIDE**

Beverly Hobby

Release No. 29, July 2020

This looseleaf service contains all the current case law and legislation and is your one-stop resource for a clear and complete understanding of the legislation and policies governing this area of law. Written by a team of experts who helped develop the Act, this resource includes: the historical context in which the *Canadian Environmental Assessment Act* was proclaimed; a detailed and practical commentary of each section of the Act with cross-references to other sections and regulations; a useful summary of relevant case law and cases pending before the courts; a useful summary of all important legal procedural issues addressed by the courts; as well as the text of the Act and main regulations. The full text of the *Impact Assessment Act* is now also included.

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What's New in this Update:

This release features updates to the case law and commentary in the *Canadian Environmental Assessment Act, 2012*. Additionally, two new legal memos have been added to Issues in Focus.

Highlights:

- **Canadian Environmental Assessment Act, 2012 — 19. Factors — Community Knowledge and Aboriginal Traditional Knowledge** — The Federal Court of Appeal consolidated and heard applications by several applicants for judicial review of the second Order in Council regarding the TMX pipeline. The application for judicial review was brought under s. 55 of *National Energy Board Act*, challenging second approval of project. There was no basis for interfering with the Governor in Council's second authorization of the project. The Governor in Council reinitiated consultations directly with the potentially affected Indigenous groups and retained a recognized expert with extensive experience in Indigenous matters to oversee and provide guidance. Significantly, the consultation process initiated by Canada invited the participation of 129 Indigenous groups potentially impacted by the project, and in the end, more than 120 either supported it or did not oppose it. The Governor in Council explained that in the end, a detailed Crown Consultation and Accommodation Report was provided to all members of the Governor in Council and was publicly disclosed, including to the Indigenous groups: *Coldwater First Nation v. Canada (Attorney General)*, 2020 FCA 34, 2020 CAF 34, 2020 CarswellNat 215, 2020 CarswellNat 216 (F.C.A.)
- **Canadian Environmental Assessment Act, 2012 — 44. Information — Studies and collection of information** — The Federal Court of Appeal determined that the panel's final report on the TMX pipeline was not reviewable. The final report was only a recommendation to relevant body and lacked any independent legal or practical effect. The final report, in itself, affected no legal rights and carried no legal consequences. The issue of whether a complete legal framework existed was not sufficient to distinguish the matter from earlier caselaw: *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 319, 2019 CarswellNat 7886, 313 A.C.W.S. (3d) 312 (F.C.A.), affirming 2017 FC 1099, 2017 CF 1099, 2017 CarswellNat 8274, 2017 CarswellNat 694 (F.C.), leave to appeal to SCC refused, 39066 (14 May 2020).
- **Canadian Environmental Assessment Act, 2012 — 52. Decisions of Decision Maker — Governor in Council's Decision** — Taseko

appealed the dismissal of the judicial review application related to the decisions made by the Minister of the Environment under s. 52(1) and the Governor in Council under s. 52(4) of the Act. The Court of Appeal found that the determinations of the Minister and the Governor in Council were within their jurisdiction. The review process was not deficient, and the report submitted to the Minister and to the Governor in Council constituted a report within the meaning of the Act. The report at issue complied with requirements of Act and all of the relevant factors were considered. The statutory process was followed and there was no indication of bad faith: *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320, 2019 CarswellNat 7887, 316 A.C.W.S. (3d) 288 (F.C.A.), affirming 2017 FC 1100, 2017 CF 1100, 2017 CarswellNat 9153, 2017 CarswellNat 6942, 15 C.E.L.R. (4th) 53 (F.C.), leave to appeal to SCC refused, 39066 (14 May 2020).

