



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

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Alain Beaulieu
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Alain Beaulieu:

On June 14, 2023, the Minister of Environment and Climate Change (the Minister) received a request¹ to designate the Trans-Canada Highway Twinning Project (the Project) from the Manitoba/Ontario border to Kenora under subsection 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (IAA). A review of whether limitations applied to the authority of the Minister to designate the Project had commenced prior to the Supreme Court of Canada's (SCC) issuance of its decision on the constitutionality of the IAA.

Following the SCC's issuance of its decision, the Government of Canada issued the Statement on the Interim Administration of the IAA Pending Legislative Amendments on October 26, 2023 (Interim Statement)². The guidance set out in the Interim Statement will be followed until amendments come into force to address the issues in the IAA identified by the SCC.

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¹ This correspondence was a follow-up to a letter dated July 5, 2022.

² <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/statement-interim-administration-impact-assessment-act-pending-legislative-amendments.html>

With respect to designation requests, the Interim Statement provides that no decisions to designate projects will be taken under section 9 of the IAA and that consideration of any new designation requests will only resume, as appropriate, once amended legislation is in force. To this end, no designation decision will be made with respect to the Project under section 9 of the IAA. Consideration of any new designation requests will take place as appropriate, once amended legislation is in force.

The Interim Statement further sets out that where designation of a project under section 9 of the IAA would not have been warranted, that information would be communicated to proponents.

It is in this regard that I am writing to advise you that based on the facts, I am of the view that the Project had substantially begun prior to the request dated July 5, 2022, and as a result it could not have been designated under section 9 of the IAA.

Under subsection 9(7) of the IAA, the Minister could not make a designation if the carrying out of the physical activity had substantially begun, or a federal authority had exercised a power or performed a duty or function in relation to the Project.

The Agency considered information provided by the Ontario Ministry of Transportation and the Agency's Guidance for interpreting "*substantially begun*" under subsection 9(7) and "*substantially begin*" under subsections 70(1) and 70(3) of the *Impact Assessment Act*.

This guidance is available on the Agency's website at:
canada.ca/en/impact-assessment-agency/services/policy-guidance/guidance-interpreting-substantially-begun-subsection-9-7-and-substantially-begin-subsections-70-1-70-3.html

My letter to the requesters is enclosed. My correspondence to you will be made available on the Canadian Impact Assessment Registry Internet site (Reference number 85999): <https://www.ceaa-acee.gc.ca/050/evaluations>.

Further questions regarding this letter can be directed to Amy Sen,
A/Director of the Ontario Region Office of the Agency, by email at
designationontario@iaac-aeic.gc.ca.

Sincerely,

<Original signed by>

Eric Landry (he/him, il)

Enclosure: Attachment I - Vice President's letter to requesters regarding
Trans-Canada Highway Twinning Project

c.c.: Brenda Liegler, Manager, Ontario Ministry of Transportation