

**Sustainability Assessment of the *Impact Assessment Act* of
2019**

by

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Abstract

Environmental impact assessment (EIA or IA) has been around since the 1970's and is a governmental process that evaluates the impacts of a project, policy, program, plan, and other initiatives. The process evaluates these initiatives to determine impacts, and explores associated mitigation techniques, alternative solutions, or stopping the initiative altogether. However, is the process itself sustainable? Does it produce sustainable decisions? Hence the purpose of this study is to evaluate the Canadian EIA process for sustainability, specifically the recent iteration of federal EIA law: the Impact Assessment Act of 2019 (*IAA 2019*, or 'the Act'). This study combines the methods of policy evaluation, sustainability assessment, and Next-Generation environmental assessment to evaluate the IAA 2019 against 3 sustainability criteria: 1. Strategic Assessment, 2. Public Participation, and 3. Indigenous Peoples. The main research question is: Is the *IAA 2019* an effective instrument in embedding sustainability in Canada? The results of this evaluation found that the Act is a partially effective instrument in embedding sustainability in Canada. Some strengths found include usage of the term 'meaningful participation' throughout the statute, and a strong top-down tiering approach. Some gaps found include public participation provisions that do not directly link to racialized and marginalized groups, and weak linkages to the United Nations Declaration on the Rights of Indigenous Peoples.

Forward

This research fulfills the culminating assignment for York Master of Environmental Studies. The program was designed to prepare students for this final research assignment. Each course in the program consisted of a final assignment, usually a paper or literature review of a minimum of 20 pages. The information gathered in the literature reviews and in the course papers provided the background information necessary to complete this major paper. The program also required a mandatory research methodologies course to be taken, where various research techniques and theory was studied, including positivism and reflexivity - this research utilized the methods of policy evaluation. Lastly, this research demonstrates the ‘mastery’ of a subject as it is suggested in the name ‘Master of Environmental Studies’.

Dedication

I dedicated this paper to my mother, father, siblings, Indigenous peoples who are fighting every day, and other minority groups.

Acknowledgements

I want to acknowledge the numerous people who supported me in accessing the program. I want to thank Peter Mulvihill for being both my advisor and supervisor throughout the MES, and Mark Winfield for agreeing to be a co-supervisor. I also want to acknowledge Liette Gilbert for her contributions, and the numerous other instructors, tutors, and colleagues I have met and who have assisted in editing along the way.

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Abbreviations

2010 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals (CDEAPPPP)

Cumulative effects – CE

Cumulative effects assessment – CEA

Canadian Environmental Assessment Act of 2012 – CEAA (2012)

Environmental Impact Assessment – EIA, EA, or IA

Free, Prior and Informed Consent – FPIC

Impact Assessment – IA

Impact Assessment Agency – the Agency

Next Generation Environmental Assessment – Next Generation EA

Policies, plans and programs - PPP

Public Participation – PP

Impact Assessment Act of 2019 - the Act, or *IAA 2019*

United Nations Declaration on the Rights of Indigenous Peoples – UNDRIP

Introduction

Environmental assessment was formally introduced to global politics in 1969 through the establishment of the United States National Environmental Policy Act (Winfield, 2012), which later influenced Canada's 1973 Federal Environmental Assessment Review Process Guidelines (Winfield, 2016). Before this time, Canadian environmental policy was mostly focused on pollution control, for example in waste management or air pollution control (Winfield, 2012). What the EA process did was consolidate a regime that separately managed various environmental impacts (for example air pollution or water contamination) (Winfield, 2016). Specifically, the new regime managed these aspects when a major development project, such as a mine or a paper mill, would have been introduced (Winfield, 2016). Additionally, EA provided the public with a chance to participate in environmental decision making, whereas previously participation opportunities were narrow at best (Winfield, 2016).

At its peak in the 20th century, the Berger Inquiry of the Mackenzie Valley Pipeline showcased EA in a meaningful way, through its comprehensive public participation, uptake of Indigenous Knowledge, pre-development process, and result in the rejection of the pipeline due to negative adverse environmental and social impacts (Boyd, 2003).

Federal EA legislation was formally introduced in Canada in 1995 under the Canadian Environmental Assessment Act, although the first EA legislation occurred at the provincial level in 1975 under Ontario's Environmental Assessment Act (RSO 1990, c. E-18, as cited in Winfield, 2016). In true EA form CEAA 1995 was controversial, for example statistically speaking 99.9% of projects reviewed under CEAA between 1995 – 2000 were approved (Boyd, 2003, p. 151). Some flaws of CEAA are that federal policies, programs and plans (PPP) are not covered by the Act (Boyd, 2003, p. 152), the Act has a discretionary nature, including the discretionary public participation process in the screening phase (Boyd, 2003, p. 153), and those adverse impacts could have been 'justified in the circumstances' (Boyd, 2003, p. 154). One positive aspect of CEAA 1992 was the comprehensive nature of its review panel stream (Boyd, 2003, p. 154).

The next federal EA law was CEAA 2012, which was a creation of the Stephen Harper Conservative government. This iteration is generally understood to have undone much progress made in CEAA 1995 (Doelle, 2012). Some of those limitations included restrictions in public

participation through both time limits and who can participate, significant restrictions in scoping of impacts, and a largely discretionary EA trigger mechanism (Doelle, 2012, p. 58-59).

In terms of sustainability, CEAA 1995 can be viewed as possessing moderate sustainability provisions, while CEAA 2012 is viewed as having little sustainability substance. Hunsberger et al. (2020) conducted an evaluation of CEAA 1995 and CEAA 2012 against criteria representing ‘good process’ for EA, which incorporated sustainability principles, and scored CEAA 1992 at 25.5 and CEAA 2012 at 22.5. Since the *Impact Assessment Act of 2019 (IAA 2019)* is a new iteration of IA legislation, it too should be evaluated.

Thus, the purpose of this research paper is to explore the *IAA 2019* and its relation to sustainability. Sustainability was chosen as the lens because of its high prominence in environmental law and policy literature in recent years. Moreover, it was chosen because previous versions of Canadian federal EA statutes were evaluated against sustainability principles and it is necessary to continue to evaluate the regime, and recent developments in fundamental EA principles (next generation components) have sustainability in their core. Thus, more specifically, the purpose is to do a sustainability assessment (SA) of the statute. The objective is to utilize sustainability principles to measure the Act and explore how effective it is in embedding sustainability in Canada, and to produce knowledge in the strengths and gaps to improve the Act in the future, and in the present, navigate its weaknesses and utilize its strengths. The main research question is,

Is the *Impact Assessment Act of 2019* an effective instrument in embedding sustainability in Canada?

Regarding my thesis, I am going to argue that the *IAA 2019* is a partially effective instrument in embedding sustainability in Canada, based upon the components of Regional and Strategic Assessment, Public Participation, and Indigenous Peoples.

The scope of this paper can be described in two parts: through the methodological and theoretical aspects, and through the criteria chosen. From the methodological and theoretical aspect, this paper will provide a discussion on policy evaluation, next-generation environmental assessment, and sustainability assessment theory and how they apply to this study. From a criteria perspective, this paper initially sought to do a comprehensive analysis, of the *IAA 2019* with over 10 criteria. Since this paper is a sustainability analysis and pulls from next-generation

sustainability theory and principles, a comprehensive analysis with numerous criteria is the ideal scope for this analysis. As a comparison, Sinclair et al (2018) evaluated the EA regime in Manitoba and used 11 criteria. However, due to time constraints, this evaluation will only use three criteria. The criteria chosen for this study were derived from current academic and political discourse in environmental policy, impact assessment (IA), and sustainability.

This paper is important because the *IAA 2019* is a central statute governing the process of evaluating major development initiatives in Canada. The statute is new and therefore it is important to understand its strengths and weaknesses, fill gaps, and improve it for the future of Canadian impact assessment policy. It is a federal statute, therefore its level of effectiveness will percolate into IA legislation at the territorial and provincial level, and since Canada was one of the earliest countries to adopt IA legislation, its effectiveness also has international reverberations. This paper matters because the process of impact assessment affects biodiversity, ecosystems, economics, and socio-cultural groups. Major developments such as mines, large-scale transportation corridors, and energy facilities have major impacts on socio-environmental systems, some with negative and irreversible impacts, so it matters to evaluate this legislation. It matters that the legislation aligns with the discourse of sustainability because sustainability has been a recurring principle in environmental policy since the 1990's. In recent years, the IA process has been largely critiqued through the lens of sustainability principles, thus, it makes sense to critique the most recent item of federal IA legislation. Thus, in terms of gaps in the literature, there are several intersectional dimensions this paper fills: 1. the discourse on sustainability using the *IAA 2019* as the object of study, including the discourse on next-generation environmental assessment, 2. the discourse in impact assessment literature evaluating the *IAA 2019* from a sustainability lens.

Currently in the peer-reviewed literature there are three articles that discuss the *IAA 2019*, which are Gibson (2020), Doelle and Sinclair (2019), and Hunsberger et al. (2020), and this paper contributes to that discussion. As its main influence, this paper draws on the ideas of Professor Robert Gibson who has been the major contributor to the academic discussion on impact assessment, sustainability assessment, and next-generation EA. In these three areas of study, there are numerous other scholars that this paper builds on and links to. For impact assessment and specifically the *IAA 2019*, other scholars include Meinhard Doelle, John Sinclair, Carol Hunsberger, Sarah Froese, and George Hoberg. For sustainability assessment, notable

scholars include Alan Bond, Angus Morrison-Saunders, Jenny Pope, Francois Retief, David Annandale, Meinhard Doelle, and John Sinclair. For next-generation assessment, main thinkers other than Robert Gibson include Meinhard Doelle, and John Sinclair.

The structure of this paper following the introduction is as follows: Methodology, Criteria, Analysis, Conclusion.

Methodology

The methods in this major paper involved the fusion of three major concepts: 1. Policy Evaluation, 2. Sustainability Assessment, 3. Next-Generation Environmental Assessment. In terms of time and evolutionary linkages between the three concepts, policy evaluation developed first during the 1950's (Pal, 2006), sustainability assessment began to gain momentum in the 1990's and further in the 2000's (Bond et al., 2012), and next-generation assessment followed in the 2010's (Gibson et al., 2016). All three are linked conceptually because each compares an initiative against a set of criteria or principles. The difference is sustainability assessment and next-generation EA are specialized in environmental policy, as opposed to policy in general. This section will provide a more in-depth discussion of the history and context of each concept in the following pages and will be presented in their evolutionary order. In an illustrative format, the relationship between each concept has been presented in Figure 1 below.

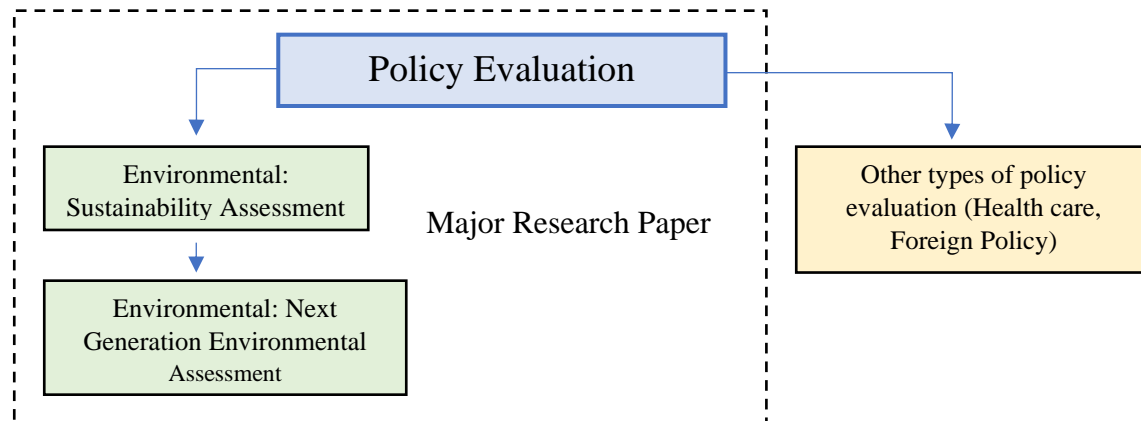


Figure 1: Relationship between Policy Evaluation, sustainability assessment, and next-generation environmental assessment.

Policy Evaluation

North American law, policy and politics came from Europe, therefore, to understand their history, it is necessary to understand their European origins (Pal, 2006). Within the European context, development of these ideations differed between the United Kingdom (UK) and the rest of Europe (Pal, 2006). The UK separated law and political science, whereas the rest of Europe included law and political science under a common heading: sociology (Pal, 2006). Since North America was mostly established under British rule, the separated dimensions of law and political science followed.

In the North American context, origins of the “policy sciences of democracy” began to take a unique American form in 1951 after social scientist Harold Lasswell coined the term (Laswell, 1951, as cited in Pal, 2006, p. 25). Subsequently, the concepts of “public policy” and “policy analysis” began to gain momentum in the 1960’s, and by the mid-1970’s many government departments in the United States had professional policy analysts. It is from this timestamp where the theory on policy evaluation used in this paper originated.

Mubanga and Kwarteng (2020) write moderately on policy evaluation theory in their study of environmental impact assessment (EIA) legislation in South Africa and Zambia. Multiple definitions of policy evaluation are discussed, one being: “the systematic application of social procedures for assessing the conceptualisation, design, implementation, and utility of social intervention programs” (Rossi and Freeman, 1993, as cited in Mubanga and Kwarteng, 2020, p. 3). The term *social intervention program* implies something that is put in place to govern social processes, or in other words it is referring to the machinery of government, and in the case of this research paper – legislation. In addition, Mubanga and Kwarteng assert that there are underlying reasons to perform a policy evaluation, specifically to: gain knowledge, contribute to policy development, and hold the government and their corresponding policy accountable (Stufflebeam, 1983; Sonnad and Borgatta, 1992, as cited in Mubanga and Kwarteng, 2020).

According to Mubanga and Kwarteng, it seems that policy evaluation is a mechanism of assessing a governing regime, specifically for the purpose of improvement. Patton (1990) confirms this by asserting that evaluation seeks to *improve* an initiative (as cited in Mubanga and Kwarteng, 2020). Author Leslie Pal has additional comments on policy evaluation theory.

Leslie Pal (2006) says that there are varying forms of policy analysis, which are: normative, legal, logical, and empirical (pg. 17-18). The form that resonates most to this major research is the ‘Normative’ form, which “analyses policy in reference to basic values or ethical principles” (Pal, 2006, p. 18), and in the context of this major research those ‘basic values or ethical principles’ are sustainability principles. Further, Pal continues that there are different ‘Objects’ of policy that can be analyzed, and specifically mentions three: “process (the various determinants of a policy, the actors and institutions that shaped it, content (problem definition, goals, instruments), and outcomes (legislation, regulations, actual impact or effect)” (p. 19). Thus, for the purpose of this research, the *object* of the IAA 2019 that will be evaluated are its

‘content’ and ‘outcome,’ specifically its problem definition, goals, instruments, legislation, and regulations.

Another dimension of policy analysis theory that should be discussed are its similarities and differences with impartial analysis. Pal (2006) argues that policy analysis should be impartial, which follows the ‘normative’ systematic process, however there are challenges to this style of analysis as it is often said that true impartiality cannot be attained. In response, Pal outlines that subjectivity is bound to be imbued in the analysts results, and thus, as can be seen, the process of policy analysis has elements of both impartial and subjective analysis. Given the importance of the research concept ‘positivism,’ and its similarities to policy analysis, it is worth it to briefly examine their linkages. The positivist methodology is structural and objective in nature (Gramsci, 1971), which is like the method of policy analysis. However, this means that it also has the same limitations which is that subjectivity is bound to be imbued in the research process.

In sum, policy evaluation is the systematic application of a set of criteria against a policy, for the purpose of holding the policy accountable, gaining information, and contributing to its improvement. Furthermore, policy analysis is objective in nature, with tendencies towards partialities and subjectivities since, like positivism, true objectivity cannot be attained. Now, have there been any examples of applying policy analysis theory? The next few paragraphs will explore some.

Bashour (2016) and Mubanga and Kwarteng (2020) both conduct an evaluation of impact assessment policy, specifically they review impact assessment legislation against a set of criteria. Bashour did a comparative study between four regimes in the Middle East, assessing legislation in each regime against 17 principles that constituted best practice in EIA follow-up. Similarly, Mubanga and Kwarteng did a comparative study of EIA legislation between Zambia and South Africa, assessing each regime against a set of ‘best practice’ EIA criteria. Like policy evaluation theory and the Normative form of analysis, both cases assessed an item of policy against a set of criteria or principles.

Bashour (2016) utilized a matrix format to score the legislation she was assessing, as can be seen in Figure 2 below.

Best practice principle	Lebanon	Palestine	Jordan	ASEZ
<i>Core values (Why?)</i>				
1. Follow-up is essential to determine EIA outcomes	●	●	●	●
2. Transparency and openness in EIA follow-up is important	●	○	○	○
3. EIA should include a commitment to follow-up	●	●	●	●
<i>Roles and responsibilities of participants in EIA follow-up (Who?)</i>				
4. The proponent of change must accept accountability for implementing EIA follow-up	●	●	●	●
5. Regulators should ensure that EIA is followed up	●	●	●	●
6. The community should be involved in EIA follow-up	○	○	○	●
7. All parties should seek to cooperate openly and without prejudice in EIA follow-up	○	○	○	○
<i>Nature of EIA follow-up (What?)</i>				
8. Follow-up should be appropriate for the EIA culture and societal context	–	–	–	–
9. EIA follow-up should consider cumulative effects and sustainability	○	○	○	○
10. EIA follow-up should be timely, adaptive and action-oriented	○	○	○	○
11. EIA follow-up should promote continuous learning from experience to improve future practice	○	○	○	○
<i>How EIA follow-up should be conducted (How?)</i>				
12. EIA follow-up should have a clear division of roles and responsibilities	●	●	●	●
13. EIA follow-up should be objective-led and goal-oriented	○	○	○	○
14. EIA follow-up should be 'fit-for-purpose'	●	●	●	●
15. EIA follow-up should include the setting of clear performance criteria	○	○	○	○
16. EIA follow-up should be sustained over the entire life of the activity	●	●	●	●
17. Adequate resources should be provided	○	○	○	○

●: Enabling legislation exists; ●: Enabling legislation partially exists; ○: Enabling legislation non-existent; –: Not applicable.

Figure 2: Example of matrix utilized in Bashour (2016) to evaluate EIA legislation against a set of best-practice components in EIA Follow-up.

In her matrix, it is evident that the criteria utilized are on the left of the matrix, while the legislation and corresponding scores are on the right. The same style of matrix will be used for the analysis of each criterion in this research. As can be seen, there are three levels of scoring, to which Bashour (2016) says the following:

“a full score when the enabling legislation exists to fulfill the principle, a partial score when reference to the principle can be inferred from the legislation but requires additional clarification in order to be enforceable, and a null score if the principle is not addressed at all in the legislation” (p. 73)

Thus, a full score requires full alignment with the criteria, a partial score requires partial or indirect alignment, and a zero score means there is no connection to the criteria. Since this scoring system is clear and makes sense, it will be utilized in this papers analysis.

In sum, Bashour (2016) and Mubanga and Kwarteng (2020) completed evaluations of EIA policy, and although they may or may not have intended to incorporate sustainability principles into their evaluations, based upon the subject matter their studies are inherently linked to sustainability, which leads to the introduction of the next major concept forming the theoretical basis of this paper: sustainability assessment.

Sustainability Assessment

Sustainability assessment (SA) developed in the 1990's shortly after the Brundtland Commission Report on sustainable development in 1987, the Rio Earth Summit in 1992 (Morrison-Saunders & Retief, 2012) and roughly 30 years of evolution in policy evaluation. Thus, what can be seen is an evolution of policy evaluation with a sustainability lens, however what has not been mentioned are two other contributing factors in the development of SA: EIA and strategic environmental assessment (SEA).

As mentioned, EIA and SEA had an influence on the development of sustainability assessment and there are notable similarities between EIA, SEA, and SA. First, what is SEA? SEA is understood to be an evolution of EIA. The definition of SEA and what it exactly is, is debated in the literature (Sheate et al., 2001, as cited in Pope et al., 2004), although one form, known as 'EIA-driven' SEA, takes the same process of EIA and applies at the strategic level, to policies, plans, and programs (PPP). For context purposes, SEA as a concept can also be any application of EIA-type processes at the strategic level, such as regional levels of multiple projects, or any other initiative that occurs at a higher scale. However, for the purposes of this historical account, this essay will focus on usage of 'EIA-driven' SEA. Thus, what can be seen are similarities between EIA and 'EIA-driven' SEA which both have similarities to sustainability assessment. So, then, what is sustainability assessment? And if SA and 'EIA-driven' SEA are forms of policy evaluation, how are they similar and different? Understanding SA and its relationships to these ideations can be done through understanding the triple-bottom-line concept.

The triple-bottom-line are the environmental, social, and economic dimensions that are fundamental to EIA (Pope et al., 2004). This concept characterises the traditional trade-offs that occur in project-based EIA processes between environmental and economic interests, which often there is a sacrifice between the former for the latter. The issue is that since 'EIA-driven' SEA applies the EIA process to PPP's, the same trade-offs occur to PPP's (Pope et al., 2004). Thus, the difference between 'EIA-driven' SEA and SA is that SA does not promote trade-offs between the triple-bottom-line and differently uses highly integrated principles or components of sustainability that incorporate triple-bottom-line dimensions (Gibson, 2001). Thus, what are principles of sustainability? There are several interpretations of principles of sustainability, the most notable of which set out by Gibson et al. (2005), which can be seen in Table 1 below.

Table 1 Gibson's sustainability components (Gibson, 2006, pg. 174)

<p>Socio-ecological system integrity the requirement: Build human–ecological relations to establish and maintain the long-term integrity of socio-biophysical systems and protect the irreplaceable life support functions upon which human and ecological well-being depends.</p> <p>illustrative implications:</p> <ul style="list-style-type: none"> • need to understand better the complex systemic implications of our own activities; <p>need to reduce indirect and overall as well as direct and specific human threats to system integrity and life support viability.</p> <p>Livelihood sufficiency and opportunity the requirement: Ensure that everyone and every community has enough for a decent life and that everyone has opportunities to seek improvements in ways that do not compromise future generations' possibilities for sufficiency and opportunity.</p> <p>illustrative implications:</p> <ul style="list-style-type: none"> • need to ensure provision of key prerequisites for a decent life (which, typically, are not now enjoyed by those who have little or no access to basic resources and essential services, who have few if any satisfactory employment opportunities, who are especially vulnerable to disease, or who face physical or economic insecurity); <p>need to appreciate the diversity, and ensure the involvement, of those whose needs are being addressed.</p> <p>Intragenerational equity the requirement: Ensure that sufficiency and effective choices for all are pursued in ways that reduce dangerous gaps in sufficiency and opportunity (and health, security, social recognition, political influence, and so on) between the rich and the poor.</p> <p>illustrative implications:</p> <ul style="list-style-type: none"> • need to build sustainable livelihoods for all, including practically available livelihood choices and the power to choose; <p>need to emphasize less materially- and energy-intensive approaches to personal satisfactions among the advantaged, to permit material and energy sufficiency for all.</p> <p>Intergenerational equity the requirement: Favour present options and actions that are most likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably.</p> <p>illustrative implications:</p> <ul style="list-style-type: none"> • need to return current resource exploitation and other pressures on ecological systems and their functions to levels that are safely within the perpetual capacity of those systems to provide resources and services likely to be needed by future generations; <p>need to build the integrity of socio-ecological systems, maintaining the diversity, accountability, broad engagement and other qualities required for long-term adaptive adjustment.</p>	<p>outputs through product and process redesign throughout product lifecycles), to permit continued economic expansion where it is needed, with associated employment and wealth generation, while reducing demands on resource stocks and pressures on ecosystems;</p> <p>need to consider purposes and end uses, recognizing that efficiency gains are of no great value if the savings go to more advantages and more consumption by the already affluent.</p> <p>Socio-ecological civility and democratic governance the requirement: Build the capacity, motivation and habitual inclination of individuals, communities and other collective decision-making bodies to apply sustainability requirements through more open and better informed deliberations, greater attention to fostering reciprocal awareness and collective responsibility, and more integrated use of administrative, market, customary and personal decision-making practices.</p> <p>illustrative implications:</p> <p>need governance structures capable of integrated responses to complex, intertwined and dynamic conditions;</p> <p>need to mobilize more participants, mechanisms and motivations, including producers, consumers, investors, lenders, insurers, employees, auditors, reporters</p> <p>need to strengthen individual and collective understanding of ecology and community, foster customary civility and ecological responsibility, and build civil capacity for effective involvement in collective decision-making.</p> <p>Precaution and adaptation the requirement: Respect uncertainty, avoid even poorly understood risks of serious or irreversible damage to the foundations for sustainability, plan to learn, design for surprise, and manage for adaptation.</p> <p>illustrative implications:</p> <ul style="list-style-type: none"> • need to act on incomplete but suggestive information where social and ecological systems that are crucial for sustainability are at risk; <p>need to design for surprise and adaptation, favouring diversity, flexibility and reversibility;</p> <ul style="list-style-type: none"> • need to prefer safe fail over fail-safe technologies; <p>need to seek broadly comprehensible options rather than those that are dependent on specialized expertise;</p> <p>need to ensure the availability and practicality of back-up alternatives;</p> <p>need to establish mechanisms for effective monitoring and response.</p> <p>Immediate and long term integration the requirement: Apply all principles of sustainability at once, seeking mutually supportive benefits and multiple gains.</p> <p>considerations:</p> <ul style="list-style-type: none"> • integration is not the same as balancing; <p>because greater efficiency, equity, ecological integrity and civility are all necessary for sustainability, then positive gains in all areas must be achieved;</p> <ul style="list-style-type: none"> • what happens in any one area affects what happens in all of the others;
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Resource maintenance and efficiency

the requirement:

Provide a larger base for ensuring sustainable livelihoods for all, while reducing threats to the long-term integrity of socio-ecological systems by reducing extractive damage, avoiding waste and cutting overall material and energy use per unit of benefit.

illustrative implications:

- need to do more with less (optimize production through decreasing material and energy inputs and cutting waste

it is reasonable to expect, but not safe to assume, that positive steps in different areas will be mutually reinforcing.

illustrative implications:

- need positive steps in all areas, at least in general and at least in the long term;
- need to resist convenient immediate compromises unless they clearly promise an eventual gain.

The above components integrate environmental, social, and economic dimensions of the triple-bottom-line in a highly integrated form that is separate from EIA and 'EIA-driven' SEA based thinking. Gibson (2001) notes that the traditional EIA-based triple-bottom-line approach categorizes and breaks down the concept sustainability, and thus, from the inverse perspective, sustainability assessment integrates these categorizations. The components noted above possess a long-term perspective, take a precautionary approach, and, among others, consider matters of equity. However, despite the positive outlook perceived thus far, there are limitations to these components as they don't necessarily align strongly with a policy analysis and are more geared towards analysis of developmental projects (M. Winfield, personal communication, 2021). For example, the principle of resource maintenance and efficiency is more directly aligned with mining projects that use resources in an unsustainable and copious way. Thus, these core sustainability principles developed by Gibson et al. serve as a starting point to develop criteria to be used for an assessment of a policy, or in the case of this paper, a statute. However, there is a more direct framework that speaks to sustainability assessment for policy and legislative review which is Next-Generation Environmental Assessment, and this framework will be reviewed in the following section. First however, there are some other perspectives that can help differentiate between EIA, SEA, and SA which are how they relate to the target of a sustainable world.

Pope et al. (2004) describe each type of assessment in relation to how they are conceptually different to the target of a sustainable world (which is the fundamental purpose of sustainability assessment). Table 2 below most clearly describes these relationships.

Table 2: Various orientations towards a 'target' of sustainability for EIA, SEA, and Sustainability Assessment

Table: Adapted from Pope et al., 2004, p. 608.			
	Environmental Impact Assessment	Strategic environmental assessment	Sustainability assessment
Relation to 'target'	Direction to target	Direction to target	Distance from target.

In table 2 above, both EIA and SEA are conceptualized to measure their relationship to a sustainable world in the context of 'are we heading in the right direction.' Otherwise, SA measures 'how far are we from the target' which is more accurate since it depicts how much is left or needed to reach the target of sustainability, and thus can be viewed as more progressive.

In another perspective to differentiate between EIA, SEA and SA, SA asks the question, "Is an initiative sustainable?" Other similar questions include "Does the initiative make a contribution to sustainability?" Or "Does the initiative make a contribution to sustainable development?" These are all ways of asking if the initiative is sustainable. Does it contribute to the national and international movement of sustainability? Does it bring progress to the goal of a sustainable world? These are the questions that have guided the formulation of the research question for this paper. Furthermore, regarding the components of sustainability assessment, such as the ones proposed by Gibson et al. (2005), these components could be used to influence the development of case-and-context specific criteria for a suggested evaluation, the point is that each initiative that is being evaluated should have case-and-context specific criteria that highly integrate sustainability principles (Gibson et al., 2005; George, 1999, as cited in Pope et al., 2004; Gibson, 2001).

In terms of the application of sustainability assessment, there are a wide range of initiatives that it can be utilized for (Gibson, 2016), however for the purposes of this study its application will be as a policy analysis. Dovers (2002) asserts that sustainability assessment should be applied to legislative regimes and policies (as cited in Pope et al., 2004).

Now that this paper has discussed the differences between EIA, SEA, and SA, as well as touched on some other aspects to bring more clarity as to what sustainability assessment is, there is one other aspect of SA that needs to be discussed since it is central to the concept, which are Trade-Offs.

Trade-Offs

As mentioned, the concept of trade-offs is a major part of sustainability assessment discourse. Gibson et al. developed trade-off rules that are widely accepted as the most prominent in SA literature (Morrison-Saunders & Pope, 2013), however they are mostly designed for tangible development projects. Morrison-Saunders & Pope (2013) describe Gibson et al.'s (2005) trade-off rules as most applicable at the final decision stage of a development initiative, they state "Gibson's trade-off rules provide acceptability criteria for substantive trade-offs that are particularly useful at the approval decision-making stage, as well as process rules for how the evaluation of acceptability should occur" (p. 61). Although some of the trade-off rules are applicable to strategic level items, including evaluation of a statute.

According to Gibson (2013), the most fundamental rule for trade-offs is to avoid any major trade offs. How this is possible is to ensure there is foresight into avoidance of major trade-offs early in the assessment process.

What are trade-offs? As previously mentioned, from the perspective of the triple bottom line, trade-offs historically have occurred between the dimensions, traditionally economic gains for ecological losses. In terms of other dimensions where trade-offs occur, they can occur between one or more criteria or components, such as Gibson et al.'s (2005) sustainability components, or other case-and-context specific components developed for an initiative. The only time when trade-offs of this nature are accepted is if there are no other options, or the only other option is a worse option (Gibson et al., 2005). The objective of a sustainability assessment is to orient an initiative in a manner that sees integration of all the components of sustainability, to ensure that all components are mutually reinforcing, and the way to do this is to use components that are highly integrative of ecological, economic, and social dimensions, such as Gibson's sustainability components mentioned in Table 1 (Gibson et al., 2005).

One key element that will contribute to significant trade-off avoidance is the inclusion of the public early in the process (Doelle and Sinclair, 2016, as cited in Morrison-Saunders & Pope, 2013). What this will do is instead of decision makers contemplating alternatives, members of the public can bring concerns to the table which will highlight the most pressing concerns for decision makers. From here, decision makers can alter the planning of the initiative at an early enough stage and in a manner that accomplishes high levels of integration of the sustainability

components, while avoiding significant trade-offs. In other words, public concerns can highlight trouble areas decision makers might have overlooked, so they can plan to avoid these trade-offs early in the process. Gibson (2013) asserts that the public acting in this manner constitutes a highly effective tool to avoid significant trade-offs.

Gibson (2013) also identifies several other process items that can contribute to the avoidance of trade-offs that are related to: 1. purpose, 2. broader level thinking, 3. the full scope of options. First, alteration of an IA occurs at the early stages of an assessment and is integrative at a high level which can account for significant trade-off avoidance and promotes a ‘distance to target’ atmosphere rather than one that is ‘direction to target’ oriented. Second, approaching an initiative from a strategic or broader level can contribute to avoidance of significant trade-offs since it is easier to make more integrative changes due to the broader scope of environmental management, which also better facilitates stronger alternatives exploration. Third, trade-off options should be considered in a manner that represents the full scope of options, which allows decision makers to generate alternatives that do not compromise the components of culture, social dimensions, economy, or biophysical dimensions (Gibson, 2013).

In terms of actual trade-off rules, there are six, which are outlined below and presented as they are written in Morrison-Saunders and Pope (2013, p. 59).

1. *Net gains* – any acceptable trade-off must deliver net sustainability gains (over the long term).
2. *Burden of argument*: the proponent of the trade-off must be required to provide justification.
3. *Avoidance of significant adverse effects*: no trade-off involving significant adverse effect is acceptable unless all alternatives are worse.
4. *Protection of the future*: no displacement of significant adverse impact from present to future can be justified unless all alternatives are worse.
5. *Explicit justification*: all trade-offs must be explicitly justified (including a context specific account of priorities and sustainability decision criteria).
6. *Open process*: stakeholders must be involved in trade-off making through open and effective participatory processes.

Since this major paper is a policy evaluation using sustainability analysis, these rules should apply, however as previously mentioned, not all may apply because some are geared towards development projects. Out of all six rules, two are relevant: Rule 1 ‘Net gains’ and Rule 3 ‘Avoidance of significant adverse effects.’ Rule 1 is in alignment with this major paper’s analysis because the rule itself is a part of my research question. Further this rule is applicable

because it is conceptually possible to assess if the *IAA 2019* contributes to net gains in sustainability. Rule 3 might apply in this study because if there are trade-offs found in process or substance of the legislative provisions, and if the alternatives are worse then it might be deemed that the initial trade-offs are acceptable. Rules 2, 4, 5 and 6 do not apply to this major research because they are more geared towards development projects.

Summary

Thus, sustainability assessment is a form of assessment that has stemmed from policy evaluation, EIA, and 'EIA-driven' SEA. EIA is more reactionary and focuses more on the mitigation of impacts, while 'EIA-driven' SEA assesses PPP's. In differentiating between EIA, 'EIA-driven' SEA, and SA, the former two focus more on triple-bottom-line dimensions, while the latter utilizes environmental principles that integrate at a high level environmental, social, and economic aspects, and does not promote trade-offs. The primary sustainability components are understood to originate from Gibson et al. (2005), however since these components are more geared towards development projects, they can be utilized to build case-and-context specific criteria for evaluating a PPP. In further differentiation between EIA, 'EIA-driven' SEA, and SA, they can be understood in terms of the target of a sustainable world, to which EIA and 'EIA-driven' SEA are 'direction to target' oriented, while SA is 'distance to target' oriented which is more accurate. Sustainability assessment does ask if an initiative 'is sustainable,' and this question is part of the underlying theory that has developed the research for this essay. Trade-offs are also a large aspect of SA, and the main two rules that apply to this study are: Rule 1- Net Gains; and Rule 2 – Avoidance of significant adverse effects.

There is a more direct framework that deals with policy and legislative evaluation relative to SA that is known as next-generation environmental assessment (next-generation EA), and the next section of this essay will focus on the historical and contextual information behind it, as well as how the principles from its theory have formulated the criteria developed for this essay.

Next Generation Environmental Assessment

As mentioned above, next-generation EA is an evolution of SA that specifically provides sustainability principles or criteria for the assessment of a policy or legislation, or any other impact assessment related initiative. It is an evolution of traditional IA, as traditional IA has not adequately integrated triple-bottom-line components like it was originally imagined doing so in

the 1970's (Gibson, 2016). Furthermore, throughout the evolution of impact assessment, current trends and issues in international environmental policy have not been depicted (Gibson et al., 2016a), so next-generation EA addresses these trends. It also differentiates from SA because it provides current and highly integrated sustainability components that can be applied to an IA regime or PPP.

The first published article on next-generation EA was written by Robert Gibson, Meinhard Doelle, and John Sinclair in 2016. They released a monograph-document that was published on the University of Waterloo's website, and a summative peer-reviewed version of the monograph in the *Journal of Environmental Law and Practice* entitled "Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment." These two documents formulated the founding documents of 'Next Generation Environmental Assessment.' These versions presented 16 components of sustainability, including linked tiers, participation, and assessment streams, among others. In addition, several transitional points are proposed for a regime to move from old tendencies in impact assessment to next-generation-based assessment regimes (p. 259 – 260).

1. The first being a shift towards a 'for the people' oriented and sustainability focused assessment regime and away from focusing only on impact mitigation.
2. The second is regarding trade-offs, since traditional IA allows trade-offs between social, economic, and ecological dimensions, while Next-Generation assessment promotes the integration of these components. Further, trade-offs are only allowed under strict rules, for example, if the only other possibility is a worse solution.
3. The third is that next-generation assessment would focus on learning and growing as proponents initiate projects, as opposed to proponents focusing on 'getting the projects approved,' and the approval process as several hoops to jump through.
4. The fourth is that IA will need to move towards a tiered process where higher level strategic and regional assessments inform lower-level assessments. This contrasts with project-level assessment being disconnected from larger level environmental decision making and environmental policy.

Methodologies Summary and Final Notes

The methods utilized in this paper combine policy analysis, sustainability assessment, and next-generation EA theory. Policy evaluation serves as the fundamental mode of evaluation that the latter two build off. Combined with the discourse on sustainability in the 1990's and

EIA and ‘EIA-driven’ SEA, SA was formed, while Next-Generation EA utilized trends in the 2010’s to produce a framework specific to EIA evaluation, including regimes and PPP.

Furthermore, this paper draws upon the methods of Bashour (2016) and Mubanga & Kwarteng (2020) in their evaluation of EA policy, and specifically utilizes Bashour’s matrix for legislative scoring that encompasses a full score, partial score, or null score system.

The next major section in this paper is the Criteria section, where the case-and-context specific criteria for this evaluation are developed through utilization of Pal’s (2006) normative framework, Gibson et al.’s (2005) core SA components, and Next-Generation SA components, among others.

Criteria

This section will first present the finalized criteria that will be used for the analysis of the *IAA 2019* (excluding regulations), as well as associated academic and grey literature. Second, the various inputs utilized to develop the finalized criteria will be presented, and third, historical and contextual information related to each criterion will be presented.

Final Criteria

The three criteria this paper will use are 1. Strategic Assessments, 2. Public Participation, and 3. Indigenous Peoples. These criteria and their sub-components/sub-questions can be seen in table 3 below.

Table 3: Final criteria used for analysis

Criteria	Sub-Criteria
Strategic Assessments	Legislation mandates that Next-Generation based assessments occur at the regional level addressing cumulative impacts, as well as occur at the policy, plan and program level mandating assessment of federal policies generally.
	Assessments at the regional and strategic levels are legislated to inform lower tiered assessments, and also there should be a mechanism for project level assessments to provide insight for changes at the strategic and policy level.
Participation for the people	Meaningful participation is sought very early in the process and incorporates the insights of deliberative democracy and collaborative rationality.
	Participation is imbued with a lens of environmental justice. In other words, does the participation element within the <i>Impact Assessment Act of 2019</i> consider marginalized socio-cultural groups? Are racialized people considered? Is Gender-based analysis used?
	Full access to all relevant information including an open and searchable database for all data collected from current and past assessments.
Indigenous peoples	Co-governance - Where Indigenous peoples may be affected, assessment and decision making processes are collaborative, consistent with the UN Declaration on the Rights of Indigenous Peoples, and reflect respectful nation-to-nation relationships.
	Within the United Nations declaration, articles 3, 4, 5, 8, 11, 18, 19, 23, 25, 26, 29, 31, 32, 34, and 39 are specific to impact assessment.
	Does the Impact Assessment Act hold strongly the international and national law of Free, Prior and Informed Consent (FPIC)?

These three criteria were based upon sustainability and next-generation principles. Now, this section will provide a table (Table 4) showcasing the various inputs used to generate the criteria, and then will provide historical and contextual information related to each criterion.

Various Sources Used to Develop Criteria

There were six sources that were consulted to develop the finalized criteria, which can be viewed in Table 4 below. The sources identified include:

1. Gibson et al. (2005) sustainability components.
2. Sinclair et al. (2018) next-generation EA criteria that were modified.
3. Results from the expert panel survey taken across Canada on what the initially proposed *IAA 2019* should be composed of, as it was written and referred to in Doelle and Sinclair (2019). In addition, IA specific articles in UNDRIP were found from the Expert Panel document (Expert Panel, 2017, p.29).
4. Federal government pillars of what the newly proposed *IAA 2019* should look like.
5. Personal criteria derived from my studies and experience within the Master of Environmental Studies program at York University.
6. Various Indigenous Perspectives on Sustainability,

It should also be noted that, column #6: Various Indigenous Perspectives on Sustainability was added to the table after the final criteria were developed in Table 3, and this was due to an inability to initially find relevant Indigenous conceptions on sustainability. The exploration of multiple items of literature that shed light on Indigenous conceptions in sustainability was triggered by an initial paper by Jeff Corntassel (2014) that had been brought to my attention by my supervisor Mark Winfield after the finalized criteria were built. It also occurred to me that, since ‘sustainability’ is a westernized concept, Indigenous usage on the term is likely not as widespread, even though their worldview shares many linkages. Nonetheless, including Indigenous conceptions of sustainability in what is now the updated version of Table 4 still provides contextual information about how Indigenous conceptions of sustainability align with westernized conceptions. It should additionally be mentioned that Gibson et al. (2016) were consulted to further refine the criteria for tiering and strategic assessments in Table 3, however their paper is not incorporated into Table 4 because this happened at a later stage in the criteria development process.

Table 4: Various inputs used to create the criteria depicted in Table 3.

1. Gibson (2005) Sustainability Criteria	2. Sinclair et al. (2018) Next Generation EA Modified	3. Expert Panel Survey	4. Federal Government Pillars of New IA Legislation	5. Master of Environmental Studies	6. Various Indigenous Perspectives on Sustainability
	Cooperative IA – all affected jurisdictions are required to carry out an IA (including regional and strategic) cooperatively with all other jurisdictions actively involved in the design of the process, its implementation, decision-making, and post decision follow-up.	Cooperative assessments with the active engagement of all affected jurisdictions as the primary tool for harmonization and jurisdictional cooperation with substitution only under strict conditions;	Restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with provinces and territories to avoid duplication;		
	Integrated, tiered assessments – assessment obligations apply to all undertakings at the regional, strategic and project levels that might impact prospects for sustainability, and the assessments at each of these levels inform the others.	A tiered approach to regional, strategic and project assessments, where project assessments are informed by higher tier assessments;			
	Co-governance with Indigenous Nations – where Indigenous peoples may be affected, assessment and decision making processes are collaborative, consistent with the UN Declaration on the Rights of Indigenous Peoples, and reflect respectful nation-to-nation relationships.	<p>An approach to the engagement of indigenous peoples in the assessment process and project decisions that is consistent with Canada's constitutional obligations and its commitment to United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);</p> <p>IA specific articles in UNDRIP from the Expert Panel report (2017): 3, 4, 5, 8, 11, 18, 19, 23, 25, 26, 29, 31, 32, 34, and 39.</p>			<p>Togetherness – Working together with local, provincial and federal governments, non-governmental organizations, and other groups to find solutions to problems, while engaging in a mutually supportive way (Hall, 2008). Moreover, engagement in this manner takes time, and with time comes understanding what each other's needs, and perspectives are (Hall, 2008). Furthermore, it is important to integrate Indigenous Knowledge with western knowledge because Indigenous knowledge is useful, has a longer-term perspective, and is proven (Hall, 2008).</p> <p>Sustainability of Culture – Indigenous values and principles are linked to the environment and conservation, including respecting the environment by not taking more than is needed, demonstrating reciprocity through a balanced relationship with other species, and humility by acknowledging that there are larger items in the world than humans (Hall, 2008). Furthermore, sustaining Indigenous culture means ensuring the preservation of</p>

					<p>traditional dancing, song, language, and ceremonies (Hall, 2008, p. 69).</p> <p>Indigenous peoples are allowed to live by their rules because sovereignty and treaty rights are respected (Hall, 2008, p. 71).</p>
<p>Socio-ecological civility and democratic governance</p> <p>“Build the capacity, motivation and habitual inclination of individuals, communities and other collective decision-making bodies to apply sustainability principles through more open and better-informed deliberations, greater attention to fostering reciprocal awareness and collective responsibility, and more integrated use of administrative, market, customary, collective and personal decision-making practices” (2013, p. 108).</p>	<p>Participation for the people – Meaningful public participation is sought very early in the process and incorporates the insights of deliberative democracy, collaborative rationality, and environmental justice.</p>	<p>Meaningful public participation through early and ongoing opportunities to engage and full access to all relevant information including an open and searchable database for all data collected from current and past assessments;</p>	<p>Provide ways for Canadians to express their views and opportunities for experts to meaningfully participate; and</p>		<p>The democratic process – The democratic process is one that Indigenous people should participate in, and do so in an organized fashion (Hall, 2008).</p>
<p>Precaution and Adaptation</p> <p>“Respect uncertainty, avoid even poorly understood risks of serious or irreversible damage to the foundations for sustainability, plan to learn, design for surprise and manage for adaptation” (p. 111).</p>	<p>Learning oriented – assessments facilitate learning throughout assessment stages and processes, to enhance understanding and improve decisions.</p>	<p>A focus on learning throughout the assessment process;</p>			<p>Adaptation and Responsibility- Adaptation is necessary to thrive (Hall, 2008). Dimensions of avoiding reckless behavior and adaptation to new ways of being and new technologies are dimensions of the Indigenous vision for a sustainable world (Hall, 2008).</p>
<p>Resource maintenance and efficiency - “Provide a larger base for ensuring sustainable livelihoods for all while reducing threats to the long-term integrity of socio-ecological systems by reducing extractive damage, avoiding waste and cutting overall material and energy use per unit of benefit” (Gibson, 2013, p. 105).</p>			<p>Require project advocates to choose the best technologies available to reduce environmental impacts.”</p>		
	<p>Ensuring compliance, contributions to sustainability, avoidance of adverse effects, and ongoing improvement after the approval – regime includes enforceable decisions and decision conditions, and</p>	<p>An improved follow-up process, including through improved transparency, coordination and accountability.”</p>			

	ensures robust follow-up monitoring of effects and compliance, active enforcement, and open reporting.				
	Transparency and Accountability – The key factors for consideration, criteria, process rules and reporting requirements to guide assessment deliberations and decision making, limit discretion and enable accountability are set in law.				
	Cumulative effects – all assessments emphasize attention to cumulative effects, with particular emphasis on regional and strategic level assessments for more effective and efficient attention broad options for cumulative effects management.				One world – all things are connected (Hall, 2008).
	Assessment streams – process pathways with different substantive and procedural demands for assessment, review and decision making are available for assessment of undertakings of different character, potential significance of adverse effects and benefits, and potential for public interest and concern.				
			Ensure decisions are based on science, facts and evidence and serve the public's interest;		
Intergenerational equity - “Favour present options and actions that are most likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably” (2013, p. 104).				Climate change	Regarding assessment and planning, a seven-generation model should be used (Wildcat, 2009, p. 124, as cited in Corntassel, 2014). Sustainability of Culture through Generational Equity – Indigenous values and principles are closely linked to the environment, which can be passed on to future generations (Hall, 2008).

Intragenerational equity - Ensure that sufficiency and effective choices for all are pursued in ways that reduce dangerous gaps in sufficiency and opportunity (and health, security, social recognition, political influence, etc.) between the rich and the poor (Gibson, 2013, p. 101).				Other avenues of Indigenous justice. Black lives matter Consideration of gender-based analysis	Healthy Lifestyles – Indigenous peoples are free from substance use and abuse and can make strong and informed decisions that have direction, are dimensions of the Indigenous vision of sustainability (Hall, 2008, p. 70).
Socio-ecological systems integrity - Build human– ecological relations that establish and maintain the long-term integrity of socio-biophysical systems and protect the irreplaceable life support functions upon which human as well as ecological well-being depends (p. 96).					Focus on Humans “A human focus calls for attention to the knowledge we have of ourselves and our environment, with focus on how to make a good life in coexistence with one another and other species” (Hall, 2008, p. 67).
	Sustainability as a core purpose – assessments aim to ensure net contributions to sustainability including the equitable distribution of risks, impacts and benefits.				
Immediate and long-term integration “Attempt to meet all requirements for sustainability together as a set of interdependent parts, seeking mutually supportive benefits” (p. 114).					
	Consideration of alternatives – assessments center on comparative evaluation of alternatives including the null alternative through the application of sustainability-based criteria and trade-off rules for decision making.				
		“An expanded project list combined with a formal petition process for projects not listed;			
		A broad scope of assessment that includes all impacts and benefits of proposed projects;			
		An assessment process to be run by an independent agency with a			

		mandate to focus on cooperation and consensus;			
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Thus, the combined inputs from all the sources identified in Table 4 have contributed to the final three components that will be used to analyze the *IAA 2019*, and relevant academic and grey literature. It is worth noting that there are a lot of criteria from these various sources; specifically, there are 20 rows with varying themes of sustainability and next-generation principles, inclusive of case-and-context specific components and major themes in international environmental policy. The reason only three criteria were chosen is that due to time constraints, a full comprehensive review of next-generation based criteria was not possible for this study. The three criteria chosen reflected major themes found from my experience in the Master of Environmental studies program that also integrated concepts from sustainability and next-generation assessment.

Historical and Contextual Information

Strategic Assessments

Origins of SEA can be traced to the American National Environmental Policy Act in 1970 where a provision for ‘programmatic’ evaluation using EIAs existed (Lee & Walsh, 1992, p. 127-128) (United States Environmental Protection Agency, 2021). Germany, in the European context, had SEA-type guidelines for the environmental assessment of PPPs since 1975 (Lee & Walsh, 1992). In the 1980’s the Organization for Economic Co-operation and Development discussed application of EIA-type processes at the program level, and the Asian Development Bank discussed incorporating environmental matters into economic planning (Lee & Walsh, 1992). Thus, by the 1990’s SEA had gained momentum on an international level (Lee & Walsh, 1992).

As previously mentioned, the definition of SEA is debated in the literature (Sheate et al., 2001, as cited in Pope et al., 2004), and the form identified in the methodologies section was ‘EIA-driven’ SEA applied to PPP. From my perspective, this process is sustainability oriented because it seeks to alter PPP towards more environmentally sensitive options. The PPP could either be built based upon sustainability-criteria or get subjected to sustainability-based criteria after the policy was initially formulated (Gibson et al., 2016a).

Another application of SEA is known as regional-SEA, or R-SEA. R-SEA evaluates the impacts of multiple projects over a large region using a similar process as in project-level EIA.

Moreover, since multiple projects over a large region can negatively and cumulatively impact the region, R-SEA effectively addresses cumulative impacts.

‘Tiering’ is a dimension of SEA that occurs in the R-SEA and ‘EIA-driven’ SEA. The concept of tiering is fundamentally about higher tiered assessments (ex. R-SEA; ‘EIA-driven’ SEA) informing lower tiered initiatives (ex. project level EIA). For example, if a R-SEA concludes that too much phosphorus is entering an ecosystem, then the results should inform future project EIA’s that phosphorus loading should be curbed, mitigated, or should not exist, and alternatives to the project need to be explored. Similarly, if the same phosphorus problem exists during an evaluation of a PPP, corresponding policy should ensure phosphorus loading is managed in lower tiered initiatives.

Origins of strategic assessment as it pertains to next-generation EA come from the original “next generation” article by Gibson et al. in 2016, where section (e) discusses tiering. There, the concept of tiering and linking project-level assessments to higher tiered assessments, as well as policies, programs, and plans, was discussed in the context of sustainability. Specifically, since next-generation assessments have an underlying sustainability-based purpose, with strategic assessment as a central concept within the next-generation discourse, it made sense to include it as a criterion within this essay.

There are also Indigenous conceptions of sustainability that link to the western concept of strategic assessment. Specifically, the concept of cumulative effects ties well with the Indigenous concept that ‘all things are connected’ (Hall, 2008). The linkage is that cumulative effects consider a more wholistic perspective in impact assessment, while the Indigenous ‘all things connected’ ideation is fundamentally wholistic, thus they are both similar in principle, however they differ in application since CEA is tied to a process and the other is a worldview.

Public Participation

Public participation has been a central component of impact assessment since the conception of impact assessment in the 1970’s (Winfield, 2016). They emerged both separately and together and gave the public an opportunity to comment on large scale infrastructure projects

for the first time¹. Prior to this time, Canadian environmental policy was focusing on mining and extractive industries, and environmental matters like resource extraction, air pollution and energy were managed under separate legislations (Winfield, 2016). In the late 1960's, progress in science and media attention increased public awareness of environmental issues (Winfield, 2016), to which the subsequent EIA and public participation regime emerged. Thus, participation in environmental management, and specifically IA, has been around for over 50 years and is a highly important concept.

The definition of public participation has been debated in the literature (Glucker et al., 2013). It is defined by the International Association for Impact Assessment (2006) as “the involvement of individuals and groups that are positively or negatively affected, or that are interested in a proposed project, programme, plan or policy that is subject to a decision-making process (pg. 1, as cited in in Glucker et al. 2013, p. 105). Alternatively, Arnstein (1969) describes it as a “categorical term for citizen power. It is a redistribution of power that enables the have-not citizen, presently excluded from the political and economic processes, to be deliberatively included in the future (p. 216, as cited in Glucker et al., 2005, p. 105). The former definition is somewhat vague (Glucker et al., 2005), and the latter emphasizes citizen power. The overarching point is that including the public in environmental decision making is important, and from my perspective is a necessary step in a democratic regime.

From Gibson (2006) public participation is imbued in sustainability criteria as it falls under “socio-ecological civility and democratic governance”. Thus, it is tied to core sustainability principles.

From the perspective of next-generation EA, participation plays a central role as Gibson et al. (2016) includes it as a central component. In their discussion on the topic, three points, among others, are made. The first item is participant funding, which would allow marginalized groups to better mobilize and offer feedback on relevant initiatives. The second item is the need to facilitate a dialogue between proponents and participants. In doing so, government officials would need to be re-integrated into the participation process (Gibson et al., 2016a), which would

¹ (Winfield, 2016)

improve communication and ensure a more open process. The third item is the need for a multi-stakeholder body to review regulatory matters of issue and process.

Indigenous peoples also have perceptions on westernized public participation processes. Members of the Salmon Nation who were interviewed by Hall (2008) believe that alignment with sustainability for Indigenous peoples is partially rooted in participating in the democratic process. This means that some Indigenous peoples acknowledge westernized public participation and understand that it is a valued avenue to assert themselves and educate public political leaders regarding their needs (Hall, 2008). This also points to an acknowledgement that westernized sustainability processes overlap with some Indigenous peoples' perspectives on socio-environmental relationships from an integrated worldview. In other words, it can be argued that there is an indirect linkage between public participation as a part of Indigenous integrated worldview.

Fundamentally, public participation has played a central role in impact assessment since its inception, it is an important aspect of impact assessment, is argued to be a vital component of sustainability and next-generation impact assessment in the literature, and some Indigenous peoples, specifically members of the Salmon Nation, believe that it is an appropriate vehicle to vocalize their needs to western stakeholders.

Indigenous Peoples

Indigenous peoples and the Canadian government have had a complicated relationship since colonizers first set foot in North America. Specifically for IA, there has been much turbulence in the realm of Treaty Rights, land claims, Free, Prior, and Informed Consent, and major infrastructure development causing environmental, socio-cultural, and economic impacts.

Within Canada, there is a national body that advocates for Indigenous peoples at the federal level – the Assembly of First Nations (AFN) and was an organization I worked at last year. This assembly is mandated to represent all First Nations across Canada, although there are some First Nations parties that do not agree with some AFN decisions and believe that the AFN should not exist. Nonetheless, this ties into IA because the AFN fills the advocacy gap for Indigenous peoples at the federal level, including supporting First Nations in IA related matters. The dimension of Indigenous peoples in IA, project development, PPP creation is a pressing card

that needs to be addressed further, as environmental policy related to Indigenous peoples needs to continue to be advanced and refined.

From an Indigenous perspective, sustainability includes peoples as ‘a collective body’ and their knowledge. Indigenous peoples as ‘a collective body’ means working together with local, provincial, and federal governments, non-governmental organizations, and other groups, and is necessary (Hall, 2008) to achieve reconciliation, an equitable living environment for Indigenous groups, and ecological conservation. Indigenous peoples as ‘a collective body’ means the preservation of Indigenous culture, which consists of environmentally oriented values and principles such as respect, reciprocity, and humility (Hall, 2008), and other aspects of culture such as traditional song, dance, language, and ceremonies (Hall, 2008, p. 69). Preserving Indigenous culture is also reflected in articles identified under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), specifically Articles 8, 11, and 25. Indigenous peoples as ‘a collective body’ further means respecting sovereignty and treaty rights (Hall, 2008), which matches with nearly all sixteen IA related articles (Expert Panel, 2017) in UNDRIP. Uptake of Indigenous knowledge is also included in Indigenous perspectives of sustainability (Hall, 2008). From an Indigenous perspective, their knowledge is useful, proven, has a longer-term perspective (Hall, 2008) and is wholistic. Furthermore, it should be integrated alongside western scientific knowledge in evaluation mechanisms. Thus, Indigenous perspectives on sustainability include the ‘collective body’ of Indigenous peoples and individual First nations and the various connected aspects mentioned above, as well as the incorporation of Indigenous knowledge parallel to western science in evaluation mechanisms.

There is also the dimension of traditional environmental knowledge that Indigenous peoples hold that can contribute to stronger socio-ecological systems. From the perspective of IA, this knowledge serves as a source of information to inform impact assessments and illuminates the valuable role Indigenous peoples hold as stewards of the environment.

From the literature, Sinclair et al. (2018) created a set of next-generation sustainability criteria to evaluate the Manitoba, Canada IA regime, and within those criteria, the dimension of Indigenous peoples held a spot within the eleven criteria used. The criterion was entitled “Co-governance with Indigenous Nations” and went on further to say

where Indigenous peoples may be affected, assessment and decision making processes are collaborative, consistent with the UN Declaration on the Rights of Indigenous Peoples, and reflect respectful nation-to-nation relationships (O’Riordan and Sewell, 1981a,b; United Nations General Assembly, 2007; MIAC, 2016; Imai, 2017; Papillon and Rodon, 2017, as cited in Sinclair et al. 2018, p. 168).

Most importantly, Sinclair et al. link Indigenous peoples with IA in the manner of a co-governing regime, specifically on a Nation-to-Nation basis, as each project pertains to a specific nation.

The criterion of Indigenous peoples as a central component in sustainability-based IA is further strengthened by its presence in the papers Gibson (2020) and Doelle and Sinclair (2019) who both use sustainability-based next-generation criteria to evaluate the *IAA 2019*. In both evaluations, the Indigenous dimension was used as a criterion.

Further, within the realm of environmental justice, environmental policy, and impact assessment, the Indigenous dimension plays a key role within the academic literature.

Notably, the Building Common Ground (2017) report from the Expert Panel used to inform the development of the *IAA 2019* provided sixteen articles within UNDRIP that relate directly to IA, which are articles 3, 4, 5, 8, 11, 18, 19, 23, 25, 26, 29, 31, 32, 34, and 39.

Thus, because the dimension of “Indigenous Peoples” has had a significant role in current and past debate within the academic literature, the presence of the AFN, the linkage between sustainability and Indigenous peoples ‘as a collective body’ and their knowledge, its involvement as a key component of environmental justice, its use by Sinclair et al. (2018), Gibson (2020), and Doelle and Sinclair (2019) as a component of next-generation EA, and linkage to UNDRIP articles in the Building Common Ground (2017) report, the dimension of Indigenous peoples is a highly relevant criterion to include in this sustainability study of the *IAA 2019*.

Now this essay will initiate its analysis of the *IAA 2019* by reviewing the statute and academic and grey literature. At the end of the analysis there will be a sustainability analysis given the information gathered.

Analysis

The analysis of this paper will utilize the combined methods of policy evaluation, sustainability assessment, and next-generation assessment, along with the three criteria developed for this study, to examine the *IAA 2019*. This section will first re-visit the proposed structure of analysis, the main research question, and relevant ancillary questions. Then, a table of the items of investigation will be presented, and the analysis will follow. It should also be reiterated that the reason this study has been done is because IA matters, the process which IA's undergo matters, and to achieve a sustainable future oriented world that integrates sustainability principles, the evaluation process for major development and PPP's also needs to be evaluated.

Based upon the fundamental principles of policy evaluation theory, the *IAA 2019* will be examined against three sustainability and next-generation-based criteria: 1. Strategic Assessment, 2. Public Participation, and 3. Indigenous Peoples. The various items of legislation and literature will be tested against each criterion. It should be noted that most of this review was done by analyzing key sections in the statute, while analysis from the scholarly and grey literature articles filled in points from any sections that were missed or offered additional perspective on already analyzed sections. The results will be presented on an individual criterion basis and will include a criterion specific discussion related to the research question. After the results and discussion for each criterion have been presented, a final sustainability assessment will occur incorporating all three criteria, and this will answer the research question. It should be noted that to answer the research question comprehensively, numerous other next-generation components needed to be applied in this test. Since only 3 components was used in this paper, the final assessment will only involve three components.

The main research question is, *Is the Impact Assessment Act of 2019 an effective instrument in embedding sustainability in Canada?* To effectively engage with this question, smaller ancillary questions can be asked. These questions are:

Why are each of the components present in the state that they are within the IAA 2019, provided political influences and the history of environmental policy up until this point? Further, for each criterion what does this mean for the Canadian impact assessment regime?

Does the presence of each criterion, or lack there-of, contribute to the IAA 2019 being more sustainable? In other words if the criterion exists – does it exist enough? Should it be in more

detail? Is its existence enough by itself to set the precedent for further development within that area?

Are the components integrated immediately and in the long term? Are there any trade-offs?

What does the IAA 2019 in its current state mean for the IA regime in Canada? Or in other words, how does the current IAA 2019 influence the Canadian IA regime in terms of percolation down into each province and at the international level?

Does the impact assessment regime contribute to sustainability in Canada? Or in other words, is the IAA 2019 an effective instrument in embedding sustainability in Canada? Or in other words, is there a net contribution to sustainability in Canada?

Thus, these questions are ancillary to the main research question, and can help the reader better understand the context of research this paper is involved in.

Below, a table of sources is listed (Table 5) and includes the scope of academic and grey literature reviewed in this study. Following that will be the initiation of the analysis.

Table 5 Scope of legislation and literature reviewed for this study.

Item Name	Author	Date	Academic, Grey, or Legal	Criterion Category
Ottawa's new Impact Assessment Act injects confusion into national unity	Poschmann	July 8, 2019	Grey	Sustainability
Making the Grade: A Report Card on Canada's New Impact Assessment Act	West Coast Environmental Law Centre québécois du droit de l'environnement Ecojustice Environmental Defence Mining Watch Canada Nature Canada Yellowstone to Yukon Conservation Initiative	August 1, 2019	Grey	Universal
Five Things Project Proponents Need To Know About Canada's New Impact Assessment Act	Northey, Langstaff, Côté	August 27 2019	Grey	Public participation
The New Federal Impact Assessment Act	Alderson, Gildbride, Bundock, Sanger	August 28, 2019	Grey	Universal

Briefing Note on Bill c-69: Overview of Canada's New Impact Assessment Act	Canadian Environmental Law Association	September 17, 2019	Grey	Universal
Assessment law is still too vague to achieve lasting green goals	Gibson	October 11, 2019	Grey	Sustainability Equity
The new IAA in Canda: From revolutionary thoughts to reality	Doelle and Sinclair	November 1, 2019	Academic	Universal
Indigenizing Impact Assessments?: New Legislation in Canada & BC	Hansen and May	November 21, 2019	Grey	Indigenous
Indigenous knowledge and federal environmental assessments in Canada: applying past lessons to the 2019 impact assessment act	Eckert, Claxton, Owens, Johnston, Ban, Moola, Darimont	February 13, 2020	Academic	Indigenous
An Intial Evaluation of Canada's New Sustainability-based Impact Assessment Act	Gibson	March 1, 2020	Academic	Universal
Toward 'good process' in regulatory reviews: Is Canada's new system any better than the old?	Hunsberger et al.	May 1, 2020	Academic	Universal
<i>Impact Assessment Act of 2019</i>	Canada	September 11, 2021	Legal	

Criterion #1: Strategic Assessment

Strategic Assessment is the first criterion that will be used to evaluate the *IAA 2019*. This analysis covers 9 sections which are the Preamble, section 2 (definitions), section 6 (the Purpose Statement), section 16 (planning phase decision), section 22 (factors to be considered in an IA), sections 92, 93, and 95 (regional and strategic assessments), and section 112 (regulation making provision). Sections 92, 93 and 95 will be grouped together since they are similar. For reference purposes, the criterion is as follows:

Table 6: Criteria and sub-criteria for Strategic Assessment related next-generation standards.

Criteria	Sub-Criteria
Strategic Assessments	Legislation mandates that Next-Generation based assessments occur at the regional level addressing cumulative impacts, as well as occur at the policy, plan and program level mandating assessment of federal policies generally
	Assessments at the regional and strategic levels are legislated to inform lower tiered assessments, and also there should be a mechanism for project level assessments to provide insight for changes at the strategic and policy level

This analysis will now explore each section in the order they have been presented.

Preamble

The Preamble is the first area in the statute to mention strategic assessments. There are two paragraphs that discuss strategic assessments, however the first paragraph focused on Indigenous peoples and because criterion #3 does an in-depth analysis of Indigenous related sections, the analysis for this criterion will focus on the second paragraph which is grounded in strategic assessment policy. The paragraph reads

And whereas the Government of Canada recognizes the importance of regional assessments in understanding the effects of existing or future physical activities and the importance of strategic assessments in assessing federal policies, plans or programs that are relevant to conducting impact assessments;

This statement has two halves, the first half recognizes regional assessments of existing and future projects, and the second half connects strategic assessment to policies, plans and programs (PPP). In relation to next-generation standards, this statement aligns with the inclusion of regional assessments, however cumulative impacts are not mentioned. Additionally, next-

generation standards require federal PPPs, both related to IA and unrelated, should be mandated for assessment, however this statement only focuses on PPP's related to impact assessment.² Regarding the next-generation standard of top-down and bottom-up tiering, this statement does not include any notations.

Definitions (section 2)

Doelle and Sinclair (2019) point out that neither strategic environmental assessment nor regional environmental assessment are defined. This constitutes a large gap in the statute since definitions are important for clarifying terms and concepts. Even though in the literature it is clear what the definitions of regional and strategic assessments are, not including those definitions in the legislation negatively impact the legislations' ability to govern assessments of the regional and strategic dimension. Furthermore, without a definition there are no linkages to next-generation standards.

Purpose Statement (section 6)

There is one statement out of section 6 that links to strategic assessment and is one that relates specifically to cumulative effects. The statement is

(m) to encourage the assessment of cumulative effects of physical activities in a region and the assessment of federal policies, plans or programs and the consideration of those assessments in impact assessment;

The first half of this paragraph encourages the examination of cumulative effects (CE) at the regional level, which is the ideal scale cumulative effects should be addressed according to the CE literature. The second half of this paragraph points to the assessment of PPP and links the result of that assessment to impact assessments. The second half is a bit vague, however it does seem that the PPP being assessed is IA related.

One of the weak aspects of this paragraph is that it does not 'strongly' encourage or orient the purpose of the Act to engage in mandatory regional assessments or strategic assessments. If compared to other paragraphs in the section, other paragraphs use the word

² However, there is the 2010 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals (CDEAPPPP) that governs the assessment of policy outside of impact assessment. The issue is this is not cemented in legislation. Thus, connecting the CDEAPPPP to the *IAA 2019* would cement its existence in legislation, would better align the Canadian legislative and policy regime with the literature on strategic assessments and sustainability.

‘ensure’ at the beginning of the paragraph which binds the paragraph more strongly to the legislation, whereas this paragraph starts off with “to encourage.”

In relation to next-generation standards, assessing cumulative effects at the regional level is addressed, however it isn’t fully clear if PPP outside of IA are set to be assessed. Furthermore, there seems to be mostly adequate top-down tiering, based upon the vagueness on if PPP outside of IA are being assessed, however bottom-up tiering is missing.

Planning Phase Decision (section 16)

Section 16 provides a list of factors to consider when deciding if an impact assessment is required. Paragraph (c) of subsection (2) states:

(2) In making its decision, the Agency must take into account the following factors:

...

(e) any relevant assessment referred to in section 92, 93, or 95.

Thus, if it is recommended that a project level assessment should occur from a regional or a strategic assessment, this is required to be considered in deciding if a project-level assessment should occur. Thus, this partially satisfies next-generation standards.

Factors to be considered in an impact assessment (section 22)

The factors considered in an impact assessment are covered in section 22. Subsection 22(1) states:

(1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors

Subsection 22(1) contains two paragraphs that cover strategic related aspects: 22(1)(a) and 22(1)(p). Paragraph (a) of subsection 22(1) is specific to cumulative effects and states

(a) The changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project including

...

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out ...

Thus, fundamentally this section discusses cumulative effects assessment (CEA) at the project level. In the main subsection 22(1), based upon the use of the word “must” cumulative effects must be considered at the project level. The main issue understood through the literature is that project CEA is ineffective, and the strength of cumulative impact assessment comes at the regional level.

Letter (p) is the second paragraph that includes strategic related concepts. It states

“any relevant assessment referred to in section 92, 93, or 95”.

Thus, the factors to be considered in a project level assessment must consider items drawn from regional (section 92 and 93) and strategic assessments (section 95). This is a strong item to include in the Act, and positively aligns the Act to the strategic assessment literature and checks off one aspect of the next-generation sustainability-based criterion for “strategic assessment.” The downs side is, there are no specifics as to what factors from a strategic assessment should be considered. There could be more language and detail into this, for example, alternatives assessments, sensitive ecological parameters, necessary economic requirements or important social-health factors could be factors recommended from the higher tiered assessments.

Regional and Strategic Assessments

Sections 92, 93, and 95 relate to regional and strategic assessments. This leg of the analysis will first cover sections 92 and 93 (regional assessments), and then section 95 (strategic assessments) will be covered.

Regional Assessments

Sections 92 and 93 are provisions that authorize regional assessments fully, in-part, or outside of federal lands. The sections state

(92) “The Minister may establish a committee – or authorize the Agency – to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is entirely on federal lands.”

(93)(1) “If the Minister is of the opinion that it is appropriate to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is composed in part of federal lands or in a region that is entirely outside federal lands,”

There are four notable items that are missing from the paragraphs in these sections.

The first item is the lack of assertive wording to mandate these sections. For example, section 92 states “The Minister *may* establish a ... regional assessment” [emphasis added], and section 93(1) states “If the Minister is *of the opinion* ... to conduct a regional assessment...” [emphasis added]. Both sections do not use assertive language to mandate the usage of regional assessments. Moreover, there is no criteria present to detail when regional assessments are most needed. The language is unassertive and despite the presence of sections on regional assessments, ultimately they are discretionary.

The second item missing from sections 92 and 93 is consideration of historical development in the area. The literature on cumulative effects assessment indicates the necessity to examine historical as well as current and future physical activities. These two sections present legislation to include regional assessments of current and future physical activities, but not historical. For example, the passages say,

(92) “...to conduct a regional assessment of the effects *of existing or future* physical activities carried out in a region...” [emphasis added]

(93) “...effects of existing or future physical activities...”

Notably consideration of historical physical activities is excluded. Why it is important to consider historical physical activities in a region is because, if there were decommissioned major infrastructure activities (for example a pulp mill) that has already caused adverse impacts to a downstream lake, and the impact of that pollution is still present, that should be included in the regional assessment. The lack of examination of historical physical activities in regional assessments is tied to a third item that is missing from sections 92 and 93 – cumulative environmental impacts.

As mentioned, the third item that is missing from sections 92 and 93 is inclusion of cumulative effects assessment. The main problem is that there is no wording in either section that includes “cumulative.” Both sections do imply that through a regional assessment of multiple projects, the combined effects will be considered. Although there are implied cumulative effects assessment, excluding the word “cumulative” in sections 92 and 93 does mean a weaker cumulative effects management regime.

The fourth item that is missing from sections 92 and 93 of the statute are provisions mandating that regional level assessments should inform project level assessments, as well as

that project level assessments should inform higher tiered assessments. The literature suggests (Gunn and Noble, 2009, “A Conceptual Basis”) that higher tiered impact assessments, including regional level assessments, should inform project level assessments on limits and thresholds. In a previous analysis of this statute in section 22, there is a requirement that project level assessments consider relevant regional and strategic assessments, however there should be a provision at the higher tier with a similar mandate. In addition, the literature also suggests that project level impact assessments should inform higher tiered regional assessments. Sections 92 and 93 do not include provisions regarding being informed by or informing project level assessments.

Strategic Assessments

Section 95 addresses strategic assessments. It states

95(1) The Minister may establish a committee – or authorize the Agency – to conduct an assessment of

- (a) any government of Canada policy, plan or program – proposed or existing – that is relevant to conducting impact assessments; or
- (b) any issue that is relevant to conducting impact assessments of designated projects or of a class of designated projects.

There are two notable items that are missing from section 95: 1. assertive language, and 2. provisions for strategic assessments of any policy, program, or plan.

As mentioned, section 95 does not include assertive language to authorize the initiation of strategic assessments. For example, it states: “The Minister *may* establish...” [emphasis added] The use of the word “may” does not exemplify a strong leaning toward the usage of strategic environmental assessments. It only establishes a discretionary circumstance in which the Minister may or may not choose to engage in a strategic environmental assessment. This does not speak strongly to a sustainability-oriented regime that promotes the usage of policies, plans, and programs being assessed for sustainability.

The second item that is missing from section 95 is a provision to initiate strategic assessments of PPP or other items of legislation that are unrelated to IA. In other words, section 95 mandates strategic assessments of IA related PPP but does not mandate strategic assessment of PPP outside of IA. Similar to the analysis in the preamble, this is a gap in the Act because if

strategic assessments were mandated to occur in any PPP outside of IA or environmental policy, the statute would be a strong instrument in embedding sustainability in Canadian policy across the board.

Additionally, there is no provision that mandates a tiered top-down or bottom-up approach regarding project assessments.

Regulation Making Provision (section 112)

Doelle and Sinclair (2019) and Gibson (2020) mention a regulation making provision in the statute that could guide linkages between higher tiered regional and strategic assessments and project level assessments – section 112(a.3).

Extending Analysis for “Cumulative Effects”

As an extension of the previous analysis on the exclusion of the word “cumulative” in sections 92 and 93, after doing a search for the word “cumulative” in an electronic copy of the legislation, the word “cumulative effects” is only mentioned twice in the entire document. Only in section 6 (purpose statement) and section 22 (factors considered in a project assessment) are cumulative effects assessment mentioned. What this means is the Act has not significantly progressed from historical and previously studied gaps in IA related to CEA.

Comparison to the Canadian Environmental Assessment Act of 2012

Progress has been made from the *IAA 2019* in relation to *CEAA 2012* relative to strategic assessments. In *CEAA 2012*, there is a provision on regional assessments, however the *IAA 2019* includes both the regional assessment provision and an endorsement for it (Hunsberger et al., 2020). In addition, the *IAA 2019* statute also includes a provision on strategic assessment, whereas *CEAA 2012* did not.

























Summary and Discussion

The analysis for criterion #1 evaluated the *IAA 2019* and associated academic and grey literature against the next-generation standards for Strategic Assessment. In The *IAA 2019* the sections reviewed included the major sections related to strategic assessment, and included the Preamble, Definitions (section 2), the Purpose statement (section 6), Planning Phase Decision (section 16), Factors to be Considered in an Impact Assessment (section 22), Regional and Strategic Assessments (sections 92 and 93), and Regulation Making Provision (section 112). In addition, there was an extended analysis on cumulative effects, and information related to how

the IAA 2019 compares to the CEAA of 2012. From a matrix format, the results of this analysis are in Table 7.

Prior to diving deeper into this summary and discussion, it is worth it to note that the final summative point is that the Act is a partially effective instrument in embedding strategic assessment sustainability in Canada.

Table 7: This table represents the summative scores given to provisions reviewed relevant to Criterion #1: Strategic Assessment. Scores are given to each individual section related to sub-criteria, and then an overall score is given at the bottom of the matrix.

Criterion	Sub-Criteria		Preamble	Definitions	Purpose Statement	Planning Phase Decision	Factors considered in a project IA	Regional and Strategic Assessments		(No section name)
			(No section name)	Section 2	Section 6	Section 16	Section 22	Section 92 and 93	Section 95	Section 112
Strategic Assessment	a.	Legislation mandates that Next-Generation based assessments occur at the regional level addressing cumulative impacts, as well as occur at the policy, plan and program level mandating assessment of federal policies generally								
	b.	Assessments at the regional and strategic levels are legislated to inform lower tiered assessments, and also there should be a mechanism for project level assessments to provide insight for changes at the strategic and policy level								
			Summative Score:							
										

Legend





-  A full score - full alignment with the criteria,
-  A partial score - partial or indirect alignment with the criteria
-  A zero score - there is no connection to the criteria
-  Not Applicable/Cannot test

Table 7 provides scores for each section compared to strategic assessment sub-criteria and then to the criteria as a whole.

There are some notable trends in the scores. Firstly, out of the 7 overall scores given, 6 were partial, and 1 was zero, which means that no section received a full score, and fundamentally means no section fully met Criterion #1 standards. The section that received a zero score was the definitions section because there was no definition for regional, strategic or cumulative impact assessments. Second, trends in sub-criteria ‘a’ included that out of the 5 scores given, 2 were zero and 3 were partial. Where this aspect mattered was in section 92, 93 (regional assessments) and 95 (strategic assessments), although section 92 and 93 scored zero since CEA occurred indirectly and was not mentioned explicitly. Furthermore, in section 95, the provisions only enabled assessment of PPP connected to IA, and no linkage to the CDEAPPPP was present. Third, considering sub-criterion ‘b,’ out of the eight scores given, 4 were zero and 4 were partial. Where this aspect really mattered was in section 16 (planning phase decision), and next-generation standards were respectively satisfied, since regional and strategic assessments had influence on if a project IA is required. Another area where this aspect mattered was in section 22 (factors considered in a project IA), and the “top-down” tiering concept was satisfied, however the “bottom-up” tiering concept was not perceived, nor was it perceived throughout the *IAA 2019*.

Is the *IAA 2019* an effective instrument in embedding strategic assessment sustainability in Canada? The short answer is that it is partially effective, given that six (6) out of seven (7) summative scores were partial. The statute contains most of the correct headings to support a strategic assessment regime. Given this, and the progress made since CEAA 2012, there is room for improvement within strategic assessment dimensions. The statute does provide the basic building blocks for an effective regime and can be viewed as ‘current’ in terms of Next-Generation themes. The statute is effective from a top-down approach since multiple project level provisions (sections 16 and 22) require input from regional and strategic assessments if input is available. The statute is ineffective in the management of cumulative effects since CEA is implied but not directly stated. Further, project-level cumulative effects management is mandated, however there is no requirement to view cumulative effects assessment from regional

assessments. Another area where the statute is ineffective is in facilitating assessment of PPP outside of IA. Thus, to reiterate the statute is partially effective.

From a long-term gains’ aspect, since the Act has the fundamental building blocks of Next-Generation standards in strategic assessment, long term gains can be supported by the Act. First, the presence of regional assessment provisions has long term value. Second, a key element is CEA, which is mentioned once in the preamble, is indirectly covered through regional assessment sections (92 and 93), and thus has long term value. The downside is CEA is not directly mentioned in sections 92 and 93, which complicates its application. Third, section 112 provides an avenue for top-down and bottom-up tiering regulations to be developed, which has long-term and broader level value. One key item in an effective tiering model is development of a bottom-up approach, where project level assessments can trigger or inform regional or strategic assessments. If the bottom-up approach is implemented, then combined with the already existing ‘top-down’ approach, the *IAA 2019* would encompass a full-cycle regime. The complication is these regulations are not yet developed. Thus, long term gains in strategic assessment can be supported by the Act.

How effective it will be is based upon its application, since numerous strategic assessment provisions contain weak binding language (section 6, 92, and 95). Gibson (2020) and Doelle and Sinclair (2019) also agree the Act has discretionary language. Thus, it is up to the public, advocacy groups, experts and whistleblowers to pressure the minister should these provisions be needed.

The main competing ideations found include:

CEA mentioned in the purpose statement and in project level assessments	and not ...	elsewhere in the statute including in regional and strategic assessments
Strategic assessment of PPP is present	and ...	PPP related to IA’s can be assessed, however PPP’s broadly in government are not mandated to be assessed
Regional and strategic assessments can inform project assessments	and ...	no provisions exist for project assessments informing higher tiered initiatives.
No definition for CEA, Regional assessment, or Strategic assessment		

Thus, the recommendations from this section include:

- Recommendation 1 – CEA management should be explicitly mentioned in sections governing regional and strategic assessments (92, 93, and 95).
- Recommendation 2 – PPP’s, including other items of legislation at the provincial and federal levels, should be mandated for a strategic assessment, and the CDEAPPPP should be linked to the IAA2019 in the regard.
- Recommendation 3 – Project assessments should inform strategic and regional assessments.
- Recommendation 4 – Definitions for CEA, regional and strategic assessments should be present.

In sum, from a sustainability lens, the Act is a partially effective instrument in embedding strategic assessment sustainability in Canada, with potential for long-term gains, dependant upon the application and development of strategic assessment provisions and regulations.

Criterion #2: Public Participation

Public participation is the second next-generation component that will be used to evaluate the *IAA 2019*. There were numerous sections relating to public participation in the *IAA 2019*, so for the purpose of this analysis, these sections have been categorized under major headings in the statute, or in the case of the early sections, are categorized under the label ‘Introductory Sections.’ The major segments viewed are the Introductory Sections, Early Planning Phase, Project Level Assessments, Participant Funding, Regional and Strategic Assessments, and the Internet registry. For reference purposes, Table 8 below re-states the next-generation criterion that each section will be evaluated against.

Table 8: Reiteration of criteria and sub-criteria for Criterion #2 Public Participation, that will be utilized in analysis of the IAA 2019 and associated academic and grey literature.

Criteria	Sub-Criteria
Participation for the people	Meaningful participation is sought very early in the process and incorporates the insights of deliberative democracy and collaborative rationality.

	Participation is imbued with a lens of environmental justice. In other words, does the participation element within the <i>Impact Assessment Act of 2019</i> consider marginalized socio-cultural groups? Are racialized people considered? Is Gender-based analysis used?
	Full access to all relevant information including an open and searchable database for all data collected from current and past assessments.

Introductory Sections

Public participation is presented in three aspects within the introductory headings of the statute: the preamble, definitions (section 2), and purpose statement (section 6). The following paragraphs will now discuss each item.

Preamble

The preamble includes two statements on public participation. The first statement reads:

Whereas the Government of Canada recognizes the importance of public participation in the impact assessment process, including the planning phase, and is committed to providing Canadians with the opportunity to participate in that process and with the information they need in order to be able to participate in a meaningful way.

The statement recognizes public participation as a vital component of IA, especially in the early planning phase. In addition, the language includes the word “meaningful” as it describes the participation process. The second statement states:

Whereas the Government of Canada recognizes that the public should have access to the reasons on which decisions related to impact assessments are based.

This statement is about accessing to the rationale behind why IA decisions are made and is likely referring to the Internet Registry.

Thus, the inclusion of both “meaningful” participation and allowing adequate public access to decision making rationale are positive steps as an introduction to public participation in the *IAA 2019*.

Section 2

The definitions section does not include a definition for public participation. Since public participation is a central component of next-generation standards, excluding it constitutes a gap.

There is no definition for environmental justice. Additionally, there is a definition for the ‘Internet site,’ which is referring to the Internet Registry.

Section 6

The purpose statement contains a subsection on public participation. It states:

(h) to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment.

The wording used is strong since it uses “to ensure” and “meaningful.” This statement also includes all three tiers of impact assessment.³

Summary

This major segment viewed the preamble, section 2, and section 6. Results found a strong use of language through the word “meaningful” participation, and a provision linking to the internet registry, however environmental justice-based considerations were not stated, and there was no definition of public participation.

Early Planning Phase

The early Planning Phase contains three relevant sections with public participation provisions: section 11, 14, and 15.

Section 11

Section 11 states:

The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.

As can be seen, section 11 includes provisions for meaningful participation.

Next-generation standards identify that public participation should be deliberatively democratic and collaboratively rationale. The manner in which the public may participate is one “that the Agency considers appropriate...including by inviting the public to provide comments...” Ultimately the manner of participation is discretionary, despite a recommendation

³ which is project, regional and strategic assessments.

for public commentary. The trade-off is participation early in the process for a method that is meaningful, and discretionary. Since participation occurs early, it is reasonably democratic, and dimensions of collaboration are unknown since the method is discretionary.

Regarding matters of environmental justice, it is not mentioned nor are there any directions that participation mechanisms should promote participation of marginalized and racialized groups. What this means is that those groups that are at a higher risk of experiencing adverse impacts will be less likely to participate in a meaningful way.

Internet Registry Sections

Next-generation standards also includes necessary public access to information, and numerous sections in the planning phase govern this standard, including sections 10(2), 14(2), 15(3), 16(3), 17(2), 18(2)(4) and (6), 19, and 20(2) contain relevant provisions. Each of these sections contains requirements that important information about early planning processes or decisions be posted on the Internet Site. These provisions are in-line with next-generation standards.

Project Level Assessments

Project level assessments are a major part of an impact assessment regime, and public participation plays a key role. There are two major streams a project level impact assessment can proceed through, either by the Impact Assessment Agency (the Agency) or by a review panel. Each stream has a section governing participation, section 27 and 51 respectively, and this analysis will cover each. In addition, this analysis will review the relevant sections governing public access to information.

Section 27

Section 27 constitutes the primary public participation section for impact assessments by the Agency. It states:

“The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, within the time period specified by the Agency, in the impact assessment of a designated project.”

Meaningful participation is one aspect of next-generation standards; thus, this statement fulfills that aspect. However, there are two notable gaps in section 27, which are gaps relating to

deliberative democracy and collaborative rationality, and a lack of environmental justice provisions.

The first notable gap in section 27 is missing provisions enabling deliberatively democratic and collaborative public participation. The wording in this section does say ‘meaningful,’ however it could be more specific to a collaborative process. Nadeem and Fischer (2011) suggest inviting commentary from directly effected communities via letter or phone call or communicating information to directly effected communities in an understandable language.

The second notable gap in section 27 is that there are no provisions that direct public participation mechanisms to consider environmental justice, including marginalized socio-cultural groups, racialized groups, or gender-based analysis.

Section 51

The second stream is an impact assessment by a Review Panel, and has its own public participation process, governed by section 51(1)(c). It states:

51(1) A review panel must, in accordance with its terms of reference...

(c) hold hearings in a manner that offers the public an opportunity to participate meaningfully, in the manner that the review panel considers appropriate and within the time period that it specifies, in the impact assessment...

This section aligns with two next-generation standards: meaningful participation and a democratic and collaborative process. The impact of the word ‘meaningful’ is significant⁴, as previously mentioned, and the inclusion of a public hearing is in-line with a democratic and collaborative process⁵. Notably there could be more details contributing to the democratic and collaborative process, such as communicating information to directly effected communities in an understandable language, and directly inviting communities to speak through invitational letters or phone calls, if there was a need for a translator to include a translator in the hearing, which are all ideas inspired by Nadeem and Fischer’s (2011) participation framework.

A gap in section 51(1)(c) was the absence of provisions related to environmental justice. There was no specific mention of marginalized socio-cultural groups, racialized people, or usage

⁴ This is positive because it brings relevant members of the public face-to-face with the review panel and proponent.

⁵ Furthermore, hearings will facilitate a stronger cohesion at the community level which is in line with a stronger democratic process.

of gender-based analysis to inform who participates in the public hearings. What this means is that, despite there being a provision for a public hearing, that might not mean that those marginalized groups will be represented. For example, if there is a new windmill that is being assessed, and local residents include Black, brown, white and Asian groups, and only a generalized public notice is posed, minority groups may not decide to participate. If there are signs directing participation efforts towards minority groups, they may be more inclined to participate.

Public Access Provisions

Throughout this major heading, there are numerous sections requiring important information on the IA process be posted on the Internet Registry. Sections 28(1)(4)(8) and (10), 31(2) and (4), 33(4), 36(4) and (5), 37(5) and (7), 39(4), 40(7), 53(3) and 55(2), all have some requirement of posting important information to the internet registry or making information public. The inclusion of these sections satisfies the next-generation standards for access to information.

In addition to public participation in project level assessments occurring through either stream, the legislation has other significant sections including provisions for public participation. The next item in the legislation is section 75, which governs participant funding.

Participant Funding

Section 75

Section 75 governs participant funding programming. Participant funding in IA is a welcomed asset since it provides funding to the public for participation in the early planning phase, the impact assessment phase, follow-up programming, or regional and strategic assessments. By providing funding, local communities who previously were not able to make sense of complex technical data would have the capacity to hire consultants or technical experts. A participant funding program brings the regime closer to the concepts of deliberative democracy and collaborative rationality. From a democratic standpoint, impacted communities would be able to participate more meaningfully. From a collaborative standpoint, the government is choosing to be more collaborative to help facilitate the public participation process.

From an environmental justice perspective, section 75 has both positive and negative aspects. From the positive side, participant funding provides an opportunity for marginalized,

racialized and vulnerable communities to participate in the impact assessment process. Similar to the point above, these marginalized groups would have access to money that could fund consultants and experts to help break down and interpret complex technical information. From the negative side, there are no provisions that specifically direct funding to marginalized, racialized and vulnerable communities.

Gibson (2020) points out that participant funding is not extended to impact assessments that have gone through a substitution. So, if the Minister feels that another jurisdiction is better inclined to do the impact assessment in place of the Agency, hence a substitution, the public in this scenario will not have access to funding.

Regional and Strategic Assessments

The next major section that involves public participation is section 99 which governs participation for regional and strategic assessments. It states:

99 - The Agency, or the committee, must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency or committee, as the case may be, considers appropriate, in any assessment referred to in section 92, 93 or 95 that it conducts.

This section includes the word of “meaningful” participation, however there are missing specifics on a deliberatively democratic and collaborative process, and no specifics or mentioning of environmental justice issues, including extra support for marginalized, racialized, and vulnerable communities. There are also two sections that govern public access to information of a regional and strategic assessment, which are sections 98 and 103. Inclusion of these sections satisfies next-generation standards for access to information.

Impact Assessment Registry

The last main area within the legislation involving public participation are sections 104-108 which mandate the impact assessment registry. Having an impact assessment registry that is accessible via the internet is in-line with next-generation standards.

Section 104

Section 104 cements the registry in the *IAA 2019*. It states:

104(1) There is to be a registry called the Canadian Impact Assessment Registry, consisting of an Internet Site and project files.

- (2) The Registry must be operated in a manner that ensures convenient public access to it...
- (3) For the purpose of facilitating public access to records included in the Registry, the Agency must ensure that a copy of any of those records is provided in a timely manner on request.

Section 104 ensures the registry is easily accessible to the public, which is in-line with next-generation standards. Next-generation standards require that the registry be searchable, which section 104(2) fulfills since it mandates that the registry be easily accessible.

Section 105

Section 105 mandates that a comprehensive scope of information related to an impact assessment must be included on the registry, as well as requirements for management of the site, which adds value to next-generation standards.

Section 106

The modified next-generation standards require there be access to past assessments on the registry. The only section that has provisions governing this aspect of the registry is 106(4). It says that the Agency has control over the removal of information from the site, which indicates that information can be removed from the site, and there is no information on including past assessments on the site⁶.

Other Considerations

Robert Gibson (2020) points out the discretionary nature of the phrase “meaningful” participation that occurs throughout the Act. He points out that the Agency or review panel has the authority to decide what meaningful participation constitutes of.

A 2019 report by West Coast Environmental Law Association et al. had similar findings in the public participation regiment of the *IAA 2019* compared to Robert Gibson’s and this analysis. They gave the overall public participation component with the statute a letter grade of “B,” and cited commitment to “meaningful” participation in the statutes purpose, and also cited participation in the early planning phase. The gap found was the phrase “meaningful” participation was not followed up with any substantial details and that ultimately what constituted “meaningful” participation was discretionary.

⁶ This is a gap in the public participation criterion since if past projects can be removed from the site for a region, this would prevent the public from understanding the cumulative effects of multiple projects in that region.

Comparison with the *Canadian Environmental Assessment Act of 2012*

When compared to *CEAA 2012*, progress was made in three ways: participation limits, the online registry, and deliberation. From a limitation perspective, *CEAA 2012* had stricter limits on participation because only people who had relevant experience and were directly impacted could participate which was known as the ‘standing test’ (Hunsberger et al, 2020). This affected marginalized people who were thus procedurally excluded (Stacey, 2016, as cited in Hunsberger et al., 2020). In the *IAA 2019*, limits to participation improved because a program for participant funding was created and the ‘standing test’ was removed (Hunsberger et al., 2020). For the online registry, *CEAA 2012* did not include “open data” provisions, while small progress was made in the 2019 statute which included some open data provisions (Hunsberger et al, 2020). From a deliberation perspective, in *CEAA 2012* and the *IAA 2019*, main forms of communication were public, oral, and written hearings, online submissions and comments (Hunsberger et al., 2020). However, the difference is that *CEAA 2012* was weaker due to the standing test and the short timelines for public input, while the *IAA 2019* is stronger because it consistently includes the word “meaningful” participation (Hunsberger et al., 2020 & Alderson et al., 2019).

Summary and Discussion

This analysis has gone through all of the major sections in the *IAA 2019* containing public participation provisions and compared them to next-generation standards. The major segments reviewed include the Beginning Sections, Early Planning Phase, Project Level Assessments, Participant Funding, Regional and Strategic Assessments, and the Online Registry. A summative table will be presented below and provides a more in-depth lens at how each major segment and sections measure against the next-generation criterion and sub-criteria. At the bottom of the table there is a final summative score for each major segment.

Table 9: Final summative table with scores for each major segment and corresponding section, as they compare to next-generation standards for Criterion #2: Public Participation. A final summative score is in the final row of the table.

Criteria	Sub-Criteria		Introductory Sections			Early Planning Phase		Project Level Assessments			Parti- cipant Funding	Regional and Strategic Assessm- ents	Impact Assessment Registry		
			Preamble	s. 2	s. 6	s. 11	Public Access Sections	s. 27	s. 51	Public Access Provisions	s. 75	s. 99	s. 104	s.105	s. 106
Participation for the people	a.	Meaningful participation is sought very early in the process and incorporates the insights of deliberative democracy and collaborative rationality.	●	○	●	●	—	◐	●	—	●	◐	—	—	—
	b.	Participation is imbued with a lens of environmental justice. In other words, does the participation element within the <i>Impact Assessment Act of 2019</i> consider marginalized socio-cultural groups? Are racialized groups considered? Is Gender-based analysis used?	○	○	○	○	—	○	○	—	◐	○	—	—	—
	c.	Full access to all relevant information including an open and searchable database for all data collected from current and past assessments.	◐	◐	—	—	●	—	—	●	—	●	●	—	◐
			Summative Score:												
			◐			◐		◐			◐	◐	◐		

Legend

- A full score - full alignment with the criteria,
- ◐ A partial score - partial or indirect alignment with the criteria
- A zero score - there is no connection to the criteria
- Not Applicable/Cannot test

Summative scores revealed a partial score for every major segment. The next paragraph will present notable trends in the matrix.

The first notable trend is the consistent zero score in sub-criteria ‘b’ related to environmental justice. Out of the 8 sections measured, 7 received a zero score and 1 received a partial score, which was section 75 (participant funding). Why section 75 received a partial score is because participant funding can help disadvantaged groups, thus there is an indirect link, however there is no direct linkage through wording. Notably, major areas in the statute where public participation matters, such as the early planning phase, project level assessments, and regional and strategic assessments, did not include environmental justice in the associated provisions. Additionally, marginalized, racialized and vulnerable communities were not mentioned. A lack of environmental justice specifics in the public participation process means a less equitable process, and thus the voices from those communities that may be impacted the most may not be heard.

The second notable trend in the matrix are the numerous full scores received in aspect ‘a.’ Out of the 8 sections tested, 5 received a full score, 2 received a partial score, and 1 received a zero score. The high percentage of full scores is due to the consistency of the phrase “meaningful participation” found throughout the sections. Gibson (2020) and West Coast Environmental Law et al. (2019) also had similar findings. Full scores were also found where public participation mattered, specifically in the Early Planning Phase and Project Level Assessments. The inclusion of ‘meaningful’ participation is important because it translates to a more involved public and brings higher standards of democracy. The one area where improvement could be made is in inclusion of a definition for ‘meaningful participation’ in section 2.

The third notable trend are the numerous full scores received in aspect “c.” Out of the 7 sections tested, 4 received full scores, and 3 received partial scores. Full scores were found in the most important major segments, which were the Early Planning Phase, Project Level Assessments, and Regional and Strategic Assessments. The most important partial score to discuss was given to section 106 (information management) because there was no provision for mandatory inclusion of past assessments, and it matters because it contributes to CEA public participation in the future.

If the matrix is viewed from a major segment perspective, majority of the segments have strong meaningful participation, democratic and collaborative processes, weak environmental justice provisions, and strong data access provisions.

The next major item that needs to be addressed is if the *IAA 2019* is an effective instrument in embedding public participatory sustainability in Canada? Based upon the summative scores in the matrix, it is partially effective. The areas that it is effective are in the meaningful, collaborative, and democratic regime, and in the areas of public access to information, and the areas that it is ineffective are in matters of environmental justice, including marginalized groups. There was no elaboration on what meaningful participation meant, nor was there a definition for public participation. Nonetheless, there does seem to be a commitment to govern public participation in a reasonable fashion, except for in mechanisms of environmental justice. Thus, the Act as an effective instrument in embedding public participatory sustainability in Canada only meets next-generation standards in a partial way.

The next major question is regarding long-term sustainability of federal public participation in IA. The answer to this end is, like strategic assessment, in that if the statute stays in place, and is not derogated from in the future, gaps in the policy can be improved upon. Strong language was used throughout the sections reviewed, including words ‘to ensure’ (section 6, 11, 27, 99, 104(3), among others), which means that public participation is fairly cemented in the statute. The one area of concern is the discretionary nature of the word ‘meaningful,’ so long-term effectiveness is dependent upon execution of that phrase. Based upon a comparison from CEAA 2012, the statute made progress from multiple dimensions, so the longer-term implications are positive on that end. Additionally, the inclusion of the participant funding program, review panel, registry and early planning phase signal a strong long-term regime. The factor that should be addressed is the inclusion of environmental justice wording in the public participation provisions. Thus, the Act does have long-term potential, with some areas to address.

The associated recommendations include:

- Recommendation #1: Inclusion of environmental justice provisions in public participation sections, including specifically mentioning marginalized, racialized and vulnerable groups.
- Recommendation #2: Inclusion of a definition for “meaningful participation” in section 2.

- Recommendation #3: Provision through section 106 for mandatory inclusion of past EAs on the internet registry.

Criterion #3: Indigenous Peoples

The IAA 2019 contains 28 sections relating to Indigenous peoples, and this paper has analyzed 15, which is reasonable compared to the number of sections that included Indigenous related provisions. For the purpose of this analysis, these sections have been categorized into 5 segments, where one part contains sections under a main heading identified in the Act, or in the case of the first segment, constitute the introductory sections in the statute. Each main segment has a summary and discussion at the end linking the findings to next-generation standards. The major segments are as follows: Introductory Sections, Early Planning Phase, Project Level Impact Assessments, Regional and Strategic Assessments, and Indigenous Knowledge.

For reference purposes, the criterion is displayed below.

Table 10: Reiteration of criterion and sub-criteria for Criterion #3 Indigenous Peoples, as they will be utilized in analysis of the IAA2019 and associated academic and grey literature.

Criteria	Sub-Criteria
Indigenous peoples	Co-governance - Where Indigenous peoples may be affected, assessment and decision making processes are collaborative, consistent with the UN Declaration on the Rights of Indigenous Peoples, and reflect respectful nation-to-nation relationships.
	Within the United Nations declaration, articles 3, 4, 5, 8, 11, 18, 19, 23, 25, 26, 29, 31, 32, 34, and 39 are specific to impact assessment (Expert Panel, 2017).
Indigenous peoples	Does the Impact Assessment Act hold strongly the international and national law of Free, Prior and Informed Consent?

Introductory Sections (Preamble, section 2, 3, and 6)

This major segment of the analysis covers the beginning sections of the statute including the preamble and sections 2, 3, and 6. These sections will be evaluated against next-generation standards.

Preamble

The preamble contains three statements that involve Indigenous peoples. Since the preamble is not a numbered section and its statements do not have lettered categorizations,

reference to each statement is done in an informal manner. Out of the twelve total statements, the second, fifth and sixth statement relate to Indigenous peoples.

The second statement in the preamble states:

Whereas the Government of Canada recognizes that impact assessments provide an effective means of integrating scientific information and Indigenous knowledge into decision making processes related to designated projects.

The statement mentions that Indigenous knowledge and western science should be included in impact assessments. This statement aligns with next-generation principles through building respectful nation-to-nation relationships.

The fifth statement in the preamble also relates to Indigenous peoples, it states:

Whereas the Government of Canada is committed, in the course of exercising its powers and performing its duties and functions in relation to impact, regional and strategic assessments, to ensuring respect for the rights of Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982, and to fostering reconciliation and working in partnership with them.

The statement closely resembles next-generation standards, and even goes one step above them because it mentions “reconciliation” which the criterion does not. Ultimately this aspect of the statement is in-line with the next-generation criterion through promotion of respectful nation-to-nation relationships. Furthermore, the statement encourages the Government of Canada to work “in partnership” with Indigenous peoples which is in-line with “co-governance” and “collaborative” elements of next-generation standards. The next statement in the preamble also relates to Indigenous peoples.

As mentioned, the next statement in the preamble relates to Indigenous peoples, which is statement six. It states:

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples.

This statement aligns the *IAA 2019* with UNDRIP through a commitment by the Government of Canada to implement UNDRIP’s principles. Thus, in doing so, the last element of the next-

generation-based component have been covered in the preamble, or in other words all of the elements within the component have been addressed. Moreover, committing to UNDRIP is a positive for Canadian Impact Assessment, however there is a gap. The gap is broadly committing to the United Nations principles, and not specifying which of the sixteen IA related principles should be closely followed. Particularly there is no mention of article 32 which relates to FPIC.

West Coast Environmental Law Association et al. (2019) wrote a report including an evaluation of Indigenous co-governance provisions in the *IAA 2019*. Some of their conclusions reached was similar to that of this major research analysis, and one similar item was that UNDRIP was only mentioned once in the preamble. They also found that despite mentioning UNDRIP there was no bounding requirement to follow its principles.

To summarize the analysis for the preamble, all of the statements combined add up to a comprehensive whole in alignment with next-generation standards. The gap identified is a lack of reference to UNDRIP articles specific to impact assessment, including FPIC.

Section 2

The next relevant introductory item is section 2, which consists of five definitions involving Indigenous peoples.

The first definition is “*effects within federal jurisdiction*” and defines what an effect is within a federal jurisdiction. Paragraphs (c) and (d) of this definition relate to Indigenous peoples and have a fairly comprehensive substance. Paragraph (c) reads

Effects within **federal jurisdiction** means, with respect to a physical activity or designated project,

...

(c) with respect to the Indigenous peoples of Canada, an impact occurring in Canada and resulting from *any change* to the environment on [emphasis added in *italics*]

(i) physical and cultural heritage...

The key item to note is that *any change* to the environment of Indigenous peoples is considered an effect within a federal jurisdiction.

Paragraph (d) includes “any change” to Indigenous peoples outside of environmental impacts (such as health, economic and social impacts).

Thus, to summarize, including Indigenous peoples in the definition for “effects within federal jurisdiction” is positive. What is important about this definition is its comprehensive nature as it involves *any change* to environmental, social, economic and health related aspects, physical and cultural heritage, and more. The contents of this definition are in line with next-generation standards including article 32 FPIC.

The next definition in section 2 is for an “Indigenous governing body,” and is written as follows

Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

This definition relates to next-generation standards because it adds clarity to what an “Indigenous governing body” is.

The next definition is “Indigenous knowledge”, and it is written as follows:

Indigenous knowledge means the Indigenous knowledge of the Indigenous peoples of Canada.

This definition aligns with next generation standards because it provides clarity of what Indigenous knowledge is. Furthermore, ‘Indigenous knowledge’ is one of the IA rights within UNDRIP (article 31).

The next definition is “Indigenous peoples of Canada”, and this definition is the same as what is in subsection 35(2) of the *Constitution Act, 1982*. That definition identifies “Indigenous peoples of Canada” as meaning Indian, Inuit and Metis people of Canada (Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11). Including this definition provides fundamental clarity of who Canadian Indigenous peoples are.

The last relevant definition is under the definition of **jurisdiction**. Within this definition, an *Indigenous governing body* is classified as a “jurisdiction” and is viewed on par with other authorities, such as a provincial government or an agency. Most importantly, the Indigenous governing body is defined as a “jurisdiction” if it is validated through section 35 of the *Constitution Act of 1982* under a land claim agreement. Providing an Indigenous governing body as a jurisdiction strengthens the Indigenous group when it comes to co-governance

mechanisms in an impact assessment, which makes strides towards next-generation standards. In opposition however, West Coast Environmental Law Association et al. (2019) stated that “The IAA...limits recognition of Indigenous jurisdictions to those acknowledged or created under federal law...” What this means is that unceded Indigenous groups do not have any recognition within the *IAA of 2019*.

To summarize the findings for section 2, five definitions were found to include ideations of Indigenous people, where were: **effects within a jurisdiction, Indigenous governing body, Indigenous knowledge, Indigenous peoples of Canada and jurisdiction**. As can be seen, the scope of definitions provides a comprehensive foundation for understanding various aspects of Indigenous peoples as they relate to impact assessments. However, two gaps were identified: 1. no definition for FPIC, and 2. Unceded nations are not recognized. Regarding the first gap, some of the definitions, such as **effects within federal jurisdiction**, provide the basic building blocks for incorporating provisions related to FPIC.

The next section that has provisions relating to Indigenous peoples is section 3, which relates to Indigenous rights.

Section 3

As mentioned, section 3 relates to Indigenous rights. This section reiterates fundamental rights under section 35 of the *Constitution Act of 1982* and ensures that nothing in the *IAA 2019* detracts from these rights. One gap identified is the exclusion of UNDRIP rights, including FPIC.

Section 6

Section 6 contains the statutes purposes. Four paragraphs in sub-section 6(1) include Indigenous peoples which are paragraphs (e)(f)(g) and (j). Paragraph (e) and (f) address the “collaboration” and “respectful nation-to-nation relationship” elements of next-generation standards. Paragraph (e) provides a solid contribution to both of these elements. Paragraph (f) states

(f) to promote communication and cooperation with Indigenous peoples of Canada with respect to impact assessments.

Promotion of communication and cooperation with Indigenous peoples of Canada allows a gateway to exchange information and moves Indigenous peoples closer to reconciliation. The

negative aspect is the weak language used, for example the word “promote” could be replaced by “ensure.” Furthermore, paragraph (f) uses “cooperation,” while next-generation standards use the word “collaboration.”

Paragraph (g) contains provisions that affirm section 35 treaty rights in the *Constitution Act of 1982*. Treaty affirmation in the purpose section reinforces provisions such as definitions for “(Indigenous) jurisdiction” and “Indigenous governing body.” The gap identified includes missing provisions respecting UNDRIP, including FPIC.

Paragraph (j) includes provisions that facilitate Indigenous knowledge uptake in impact assessments. Paragraph (j) uses strong language such as “to ensure” [Indigenous knowledge is used]. Furthermore paragraph (j) aligns Indigenous knowledge alongside scientific knowledge. Ultimately both aspects align with “collaborative” and “respectful nation-to-nation relationship...” elements of next-generation standards.

Summary

In summary, the introductory sections analyzed in the statute were the Preamble, definitions (section 2), Indigenous rights (section 3), and purpose statement (section 6). The preamble entirely aligned with the next-generation criterion for Indigenous Peoples, while the gap analysis showed that despite committing UNDRIP, no specific references to its articles were made. Section 2 comprised of a comprehensive scope of definitions relating to Indigenous peoples while the gap identified was a missing definition for FPIC. Section 3 protected Indigenous rights under the *Constitution Act of 1982*, however rights under UNDRIP, including FPIC were not mentioned. Section 6 (the purpose statement) contributed to the “collaborative,” and respectful nation-to-nation relationship standards, however rights under UNDRIP, including FPIC were not mentioned. Overall, there is a reasonable contribution to the element of “collaboration,” and there is a commitment to UNDRIP in the preamble. Notably, there was no specific mention of any IA related UNDRIP articles or FPIC.

Planning Phase (sections 12, 16, 18)

The next major part of the statute is the early Planning Phase and has three relevant sections linked to Indigenous peoples which are 12, 16, and 18. The next paragraphs will present findings and some analysis as they relate to each section. There will be a larger segment summary at the end.

Section 12

Section 12 is the first relevant section and specifically relates to consultation with an Indigenous jurisdiction that will be affected by a possible impact assessment. The main positive aspect is that the Agency must take it upon themselves and offer to consult. This makes strides towards FPIC because it allows an Indigenous group to prepare their resources, make an official and informed response. Further, it serves as an acknowledgement to the Indigenous group or authority, and aligns with the next-generation element of a “respectful nation-to-nation relationship...” The negative aspect is there is no definition for “consultation,” and it is not clear what consultation means.

Section 16

The next item that includes relevant provisions is section 16, specifically paragraphs (c) and (d) of subsection 16(2). Section 16 outlines provisions on deciding if an impact assessment is required and what factors should be considered. Paragraph (c) ensures that treaty rights under section 35 of the *Constitution Act of 1982* and any adverse impacts to them by a proposed project are considered. Thus, if those treaty rights are at risk of being adversely impacted, then there is an argument to initiate an impact Assessment.

Paragraph (d) requires input from Indigenous consultation to be considered as a factor for initiating a full impact assessment.

Notably, what is missing from section 16 entirely are UNDRIP rights, including FPIC.

Section 18

The last item is section 18 which contains provisions governing the initial steps that must occur should an impact assessment be required. The paragraph of interest is (b) of subsection 1. Paragraph (b) asserts that the proponent must outline how a partnership with Indigenous groups will be forged. However, the partnership is not required and is only possible if the regulation is made and the proponent wants to create a partnership. This connects next-generation standards through the elements of collaboration, reflecting respectful nation-to-nation relationships, as well as making strides for UNDRIP, including FPIC. In adding a requirement such as this, the Agency sets the tone for engagement with Indigenous groups to be a positive one.

Summary

In summary, three sections in the early Planning Phase contained provisions relating to Indigenous peoples, sections 12, 16 and 18. Section 12 mandated the Agency to take initiative in consultation with potentially impacted Indigenous groups and in doing so contributed to FPIC. Gaps included no definition on what consultation means. Section 16 included what factors should be considered when deciding if an impact assessment is required. Two Indigenous related factors were presented including impacts to Indigenous treaty rights and input from Indigenous consultation. Linkages to collaboration were made, and gaps included UNDRIP and FPIC. Section 18, specifically paragraph (b) of subsection (1), provided foundational provisions for a regulatory option to forge a partnership with Indigenous groups, should an IA be required.

The trade-off for section 12 is that the Agency must take the initiative to consult Indigenous groups, however consultation is not defined. Since a definition for consultation could be included, the trade-off is rejected, leaving the consultation initiative without a definition. The consultation initiative is inherently positive.

The trade-off for section 16 is that treaty rights are protected, and Indigenous consultation is considered, while there are no specific factors involving UNDRIP or FPIC. Since factors involving UNDRIP or FPIC can be included, the trade-off is rejected.

In relation to next-generation standards, the major segment partially aligns. Specifically, regarding the concept of collaboration, section 12 and 16 made contributions, and so did section 18, albeit weak. Regarding UNDRIP and FPIC, UNDRIP was not mentioned in any of the sections, and even though section 12 made contributions to FPIC, no directly linkages were present.

Impact Assessments (sections 22, 39, 41, and 63)

This major heading involves sections related to project level impact assessments, specifically sections 22, 39, 41 and 63. Results pertaining to each section follow.

Section 22

Section 22 outlines the factors that are considered in an impact assessment, and located in subsection (1), has five relevant paragraphs: (c)(g)(l)(q) and (r). This section will present the

statement in each section, and subsequently will present the findings as they relate to next-generation standards.

Paragraph (c) states:

the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Paragraph (c) states “the impact that the designated project may have on an Indigenous group.” This is positive because it provides a broad context that impacts can be identified under. What is missing is a specific reference to UNDRIP. UNDRIP rights are technically included in the broad statement, but without reference to them there is less likely of a chance they will be used.

Paragraph (c) also uses the words “may” or “may have” throughout the paragraph. The use of these words is weak and does not guarantee impacts to Indigenous peoples will be considered.

Paragraph (c) recognizes section 35 (*Constitution Act of 1982*) treaty rights and any adverse impacts to them. In relation to UNDRIP, there are indirect ties to articles 26 and 29 (see Appendix 1 for an in-depth analysis of these ties).

Paragraph (g) states:

Indigenous knowledge provided with respect to the designated project.

This paragraph identifies Indigenous knowledge as a factor to consider, which is collaborative. This paragraph also indirectly links to UNDRIP article 31.

Paragraph (l) states:

considerations related to Indigenous cultures raised with respect to the designated project.

This paragraph ensures communicated cultural aspects of Indigenous peoples are considered, which is collaborative. This paragraph doesn’t explicitly state its connection with UNDRIP, however articles 8 and 25 are culturally themed.

Paragraph (q) states:

any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project.

While paragraph (r) states:

any study or plan that is conducted or prepared by a jurisdiction – or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition *jurisdiction* in section 2 – that is in respect of a region related to the designated project and that has been provided with respect to the project.

Both paragraphs ensure studies and evaluations completed by Indigenous governing bodies are considered, which is collaborative. Indirect linkages to UNDRIP include articles 18, 19, 32 and 31.

Thus, collectively there seems to be provisions that work towards a collaborative relationship between authorities and Indigenous peoples. And collectively there was no specific reference to UNDRI, however in some cases (culture) linkages were clear, and other cases include indirect linkages. Additionally, there was no direct or indirect linkages to FPIC.

Section 39 (joint review panel)

In his briefing note on the *IAA of 2019*, Lindgren (2019) points out that section 39 in the *IAA of 2019* allows for a review panel (in a proposed project) to be jointly established with an Indigenous jurisdiction, however this provision is discretionary.

Section 41 (process stream review panel)

Similarly, section 41 governs the provisions surrounding appointment of members on a review panel. Subsection (1) requires the appointment of one member of the panel to be knowledgeable in Indigenous affairs, however there is no requirement for a person of Indigenous status or decent.

Section 63

Section 63 provides the factors that must be reviewed in the final decision of an impact assessment. There are 5 factors noted, one of which is Indigenous related: paragraph (d). It says

“the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the

Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act of 1982...”

This statement is the same as paragraph (c) of section 22. It includes a broad context of impacts on Indigenous groups, and adverse impacts on Indigenous treaty rights. Including Indigenous peoples in the final determination does have a significant weight, however UNDRIP is not mentioned or FPIC, and the use of the word “may” is weak language. On the note of including Indigenous peoples having a significant weight, it means more serious consideration will be directed at alternatives, impact mitigation, remedial and compensatory engagements, and collaboration and co-ownership measures with effected Indigenous groups, should and IA occur.

Summary and Discussion

In summary, this major segment reviewed sections governing project level impact assessments. The sections reviewed were section 22 (the factors considered during an IA), section 39 (joint review panel), section 41 (process stream review panel), and section 63 (final decision factors).

The concept of collaboration was compared to sections 22, 39, 41 and 63. From section 22, paragraphs specifically (g)(l)(q)(r) made contributions to collaboration. Section 39, with its discretionary provision to jointly establish a review panel with an Indigenous jurisdiction has collaborative potential. Section 41 has partial collaborative dimensions since one member of the process stream review panel must have knowledge of Indigenous affairs, although there is no requirement for a person with full Indigenous statutes. For section 63, provisions do consider impacts to Indigenous peoples and treaty rights, which the concept of “collaboration” can be linked to, however notably it used weak language. Thus, there seems to be several contributions in the direction of a collaborative and respectful IA process.

Consistencies with UNDRIP was also compared to sections 22, 39, 41, and 63. From section 22, paragraph (c), (g), (q) and (r) indirectly link to UNDRIP principles, and paragraph (l) strongly links to UNDRIP articles, however it is not explicitly stated. Sections 39 and 41 weakly and indirectly link to UNDRIP. Thus, it appears that there are numerous indirect linkages to UNDRIP, and one strong linkage to UNDRIP, however UNDRIP itself was not explicitly mentioned. Regarding FPIC, paragraphs (q) and (r) from section 22 make a partial contribution. For section 63, provisions allow for broad impacts to Indigenous groups to be included in the

final decision, which UNDRIP rights fit under, however the language is weak and there is no specific reference to UNDRIP.

Thus at large, next-generation standards were partially fulfilled in project IA provisions.

Regional and Strategic Assessments (sections 94, 97, and 102)

Sections governing regional and strategic assessments relevant to Indigenous peoples are 94, 97, and 102.

Section 94 is the first section that relates to Indigenous peoples. Section 94 requires the Agency “offer to” consult affected Indigenous jurisdictions during a regional assessment. This element is collaborative in nature, however, falls short of next-generation standards because the word “cooperate” is used. The section states: “... [The Agency] must offer to consult and *cooperate* with any jurisdiction...” [emphasis added]. Also, the section does not mention UNDRIP⁷. In terms of FPIC, offering consultation is indirectly linked, however FPIC is not stated.

Section 97 contains the second provision relating to Indigenous peoples. In this section, a regional or strategic assessment must consider Indigenous knowledge, including female Indigenous knowledge, if that knowledge is provided. This makes strides towards the element of “collaboration,” and goes a step further by specifying the knowledge of women. The provision indirectly relates to some UNDRIP principles, including FPIC, however their written linkage is absent.

Section 102 contains the last provision relating to Indigenous peoples. This section mandates that the final report to the Minister must include a rationale underscoring how Indigenous knowledge was used. This contributes to the validation of Indigenous knowledge and makes strides towards the element of ‘collaboration.’ Written linkages to UNDRIP and FPIC are missing.

⁷ Other articles of UNDRIP such as article 8 which states that “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture” were not mentioned. Thus, UNDRIP articles were not referenced as a bar to achieve during consultation for regional assessments.

Part 5 – Indigenous Knowledge (section 119)

Section 119 governs Indigenous knowledge used by a review panel on any assessment in sections 92, 93, or 95, with the main premise being confidentiality. Ensuring confidentiality in IA mechanisms makes strides towards both collaboration and article 31⁸ of UNDRIP. However, there is one negative aspect. Section 119 states

119...

(2) Despite subsection (1), the Indigenous knowledge referred to in that subsection may be disclosed if

(c) the disclosure is authorized in the prescribed circumstances.

The statement itself is vague and doesn't provide much clarity as to who can "prescribe" an authorization, however it does seem possible that disclosure can be authorized by the relevant authority if the authority believes it should be done.

An article by Eckert et al. (2020) evaluates the *IAA 2019* in relation to dimensions of Indigenous knowledge. In some of their conclusions, it was agreed that there were contributions to strengthening Indigenous knowledge provisions, and at the same time it was agreed that assurance of those provisions was not guaranteed.

Overall section 119 makes reasonable strides in alignment with "collaborative" elements, however explicit linkages to UNDRIP and FPIC were absent.

Considerations of Scholarly Articles and Grey Literature

Doelle and Sinclair (2019) have some insight into the Indigenous Peoples criterion regarding the *IAA 2019*. The main item mentioned in their article that was missed by this major research was the involvement of the Indigenous Advisory Council. This council is a body to help push the Indigenous portfolio forward throughout the IA process and is in the benefit of Indigenous peoples.

⁸ Subsection (1) of article 31 gives Indigenous peoples the right to control their Indigenous knowledge, while subsection (2) mandates that the state shall protect the right to control their Indigenous knowledge.

Gibson (2020) also evaluated the *IAA 2019*. Gibson similarly found gaps in the inclusion of FPIC. In addition, he similarly found the presence of UNDRIP in the statute, while noting that its presence could have been stronger.

One item that Eckert et al. (2020) did discuss that this major research did not, was the possibility of an Indigenous-led IA through substitution powers under section 31. A substitution for an Indigenous-led IA is a positive provision to include because if an Indigenous-led IA would happen, it would mean Indigenous empowerment. Hansen and May (2019) point out that wording in section 31 suggests multiple Indigenous groups cannot be assigned as a collective substitute, and only single Indigenous jurisdictions can be assigned.

Similar to section 31, Lindgren (2019) points out there is a similar power under section 29 entitled “delegation.” In section 29, if the relevant authority chooses necessary tasks in project level IA, including writing components of the IA report can be delegated to relevant jurisdictions, such as Indigenous jurisdictions. The positive aspect to this is that providing powers for delegation aligns the *IAA 2019* with ‘collaboration.’ It allows for the possibility of a collaboration between the relevant authority and an Indigenous jurisdiction, and this shows steps towards reconciliation with Indigenous peoples. In terms of indirect linkages with UNDRIP, section 29 relates to article 18 (decision making participation rights), article 32 (FPIC) and article 31 (Indigenous knowledge). One negative aspect is delegation is not mandatory and is discretionary on the Agencies willingness.

Hansen and May (2019) include some analysis of how dimensions of Indigenous peoples are incorporated into the *IAA 2019*. One item they talk about is if an Indigenous group does an assessment of a proposed project, content from that assessment must be used in the assessment by the western authority. This has positive implications for Indigenous groups because it means greater validation of Indigenous peoples and the knowledge and studies that they can contribute. In relation to next-generation standards, this speaks to the aspect of collaboration and UNDRIP, including the right to FPIC, however neither are explicitly stated.

Comparison with the *Canadian Environmental Assessment Act of 2012*

Regarding the dimension of Indigenous peoples, progress was made between the *IAA 2019* and its previous iteration, *CEAA 2012*. Specifically, progress was made on obstacles in Indigenous knowledge integration (Eckert et al., 2020) since the 2012 statute loosely required

uptake of Indigenous knowledge while the 2019 version had stronger requirements (Hunsberger et al., 2020). Additionally, according to Alderson et al. (2019) progress was made in the scoping phase, where additional factors considering Indigenous peoples were incorporated, including impacts on Indigenous cultures, communities, and rights. Thus, progress was made between the 2012 and 2019 versions including in uptake of Indigenous knowledge, and additional Indigenous factors identified in the scoping phase.

Component Summary and Discussion

In summary, sections in the *IAA 2019*, scholarly articles, and grey literature articles were analyzed against next-generation standards for Criterion #3. In total five major segments of the statute were analyzed: Introductory Sections, The Early Planning Phase, Project Level Impact Assessments, Regional and Strategic Assessments, and Indigenous Knowledge. All five segments contained multiple important provisions relating to Indigenous peoples. Next, a table will be presented summarizing results from the evaluation, and following that, major trends in the table will be discussed and further analysis will ensue, including the presentation of recommendations. The next paragraph will discuss summaries for each major segment.

Criterion	Sub-Criteria	Introductory Sections				Early Planning Phase			Project Level Impact Assessments				Regional and Strategic Assessments			Indigenous Knowledge
		Preamble	s. 2	s. 3	s. 6	s. 12	s. 16	s. 18	s. 22	s. 39	s. 41	s. 63	s. 94	s. 97	s. 102	s. 119
Indigenous Peoples	a. Co-governance - Where Indigenous peoples may be affected, assessment and decision making processes are collaborative, consistent with the UN Declaration on the Rights of Indigenous Peoples, and reflect respectful nation-to-nation relationships. Within the United Nations declaration, articles 3, 4, 5, 8, 11, 18, 19, 23, 25, 26, 29, 31, 32, 34, and 39 are specific to impact assessment.	●	—	—	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐
	b. Does the Impact Assessment Act hold strongly the international and national law of Free, Prior and Informed Consent?	○	◐	○	○	◐	○	◐	◐	◐	○	◐	◐	◐	◐	◐
		Summative Score														
		◐				◐			◐				◐			◐

Table 11: This is a summative table of the scores given to each relevant section tested against Criterion #3 Indigenous Peoples. At the bottom of the table there are summative scores for each major segment analyzed.

Legend	
●	A full score - full alignment with the criteria,
◐	A partial score - partial or indirect alignment with the criteria
○	A zero score - there is no connection to the criteria
—	Not Applicable/Cannot test

Summative scores for each major segment yielded partial scores. There were some trends found within the summative matrix, firstly within sub-criteria ‘a,’ then within sub-criteria ‘b,’ and finally each major segment.

The first trend apparent is in sub-criteria ‘a’ and is out of 13 sections tested, 1 received a full score, which was the preamble because UNDRIP was directly mentioned. Thus 12 sections received partial scores, mainly because indirect linkages to UNDRIP were present, however there were no direct ties. Main segments include the early Planning Phase, Project Level IA, and Regional and Strategic Assessments. In the early Planning Phase, section 16 offered factors to consider when deciding if an IA is necessary, and UNDRIP was not mentioned, however treaty rights were mentioned which are linked to UNDRIP. In Project Level IA, section 22 outlines factors considered in an IA, and there are indirect ties to UNDRIP articles 26, 29, 31, 8, 25, 18 and 19. Section 63 governed the final decision in an IA and had indirect ties to UNDRIP. Sections in Regional and Strategic Assessments had indirect linkages to UNDRIP.

The second trend is through sub-criteria ‘b’ where out of 15 sections tested, 5 received a zero score, and 10 received a partial score. Notably, out of the 4 Introductory sections tested one received a partial score, which was section 2 as there was a comprehensive scope of Indigenous related definitions. This alternatively means that the remaining 3 sections (preamble, 3, and 6) did not engage with FPIC, and that means a fundamentally weak foundation in the statute on that end. The early Planning Phase made a partial contribution to FPIC since a requirement is present through section 12 mandating the Agency “offer to consult” impacted Indigenous groups. In Project Level IA, paragraph (q) of section 22 makes an indirect linkage to FPIC, and section 63 (final decision) considers broad impacts to Indigenous peoples, which FPIC indirectly links to. Regional and Strategic Assessment sections make partial and indirect linkages to FPIC.

If the matrix is viewed from a major segment perspective, the Introductory Sections have strong co-governance provisions, and weak FPIC. The early Planning Phase and project level IA segments have partial co-governance provisions, and weak-partial FPIC provisions. Regional and Strategic Assessments and Indigenous Knowledge segments have partial co-governance and FPIC provisions. The next major item that needs to be addressed in this analysis is answering the research question through the lens of the criterion.

Thus, is the Impact Assessment Act of 2019 an effective instrument in embedding Indigenous sustainability in Canada? Based upon the partial scores given to the entirety of each major segment, the answer is that it is partially effective. The statute has a solid foundation of definitions which provides fundamental building blocks that signals effectiveness. UNDRIP is mentioned once in the beginning of the statute, however direct linkages need to be incorporated throughout the statute, specifically in sections 22 and 63 (IA factors) and in regional and strategic assessments. FPIC is not directly mentioned once. There are enough Indigenous matters in the statute that causes consistent contemplation from IA practitioners and decision makers, which leaves effectiveness to execution of the provisions. The statute consistently prioritizes section 35 treaty rights (preamble, section 2, 3, 16, 22 and 63), however UNDRIP and FPIC rights are not given the same precedent, thus in terms of Indigenous rights the Act is partially effective. Effectiveness could also be improved through language by upgrading words like ‘to promote’ and ‘may’ used in section 6, 22, and 63, or upgrading words like “cooperate” in section 6 and 94 and upgrading them to words like “to ensure.” Thus, to reiterate the statute is a partially effective instrument in embedding Indigenous sustainability in Canada.

From a long-term perspective, there is enough in the statute, including the definitions, and progress in scoping of Indigenous impacts since CEAA 2012, to signal sustainability. The key will be, like previous criteria, in preserving and improving upon the current version. Long-term viability can be addressed through improvement of consultation details in regional and strategic assessments, since broader level IA’s address impacts from a more complex perspective. Another key item is the long-term involvement of the Indigenous Advisory Council, that unfortunately this research did not do an in-depth review on.

The recommendations for this criterion are as follows:

- Recommendation #1: Directly stating UNDRIP in deciding if an IA is necessary (section 16)
- Recommendation #2: Direct linkages and commitment to FPIC are needed in sections 12, 22, 63, 92, 93, and 95.
- Recommendation #3: More consistent linkages to UNDRIP.
- Recommendation #4: One member of the panel under section 41 should be of Indigenous status, and not only “knowledgeable” in Indigenous affairs

- Recommendation #5: A requirement mandating the proponent outline how a partnership with Indigenous peoples will be forged during the planning phase section 18, instead of the current discretionary provision.
- Recommendation #6: Definition for ‘Indigenous consultation’
- Recommendation #7: Alter the current mention of UNDRIP in the Preamble to a statement that is binding to follow UNDRIP principles.

Summary, Discussion, and Final Sustainability Analysis

In sum, this analysis reviewed provisions in the *IAA 2019*, and relevant academic and grey literature articles in light of next-generation standards. The three criteria used for this analysis were Strategic Assessment, Public Participation, and Indigenous Peoples. It should be noted that in order to complete a full next-generation sustainability analysis, numerous other components needed to be considered, for example in their Next-Generation analysis of the *IAA 2019*, Doelle and Sinclair (2019) used 11 components. However due to scoping restrictions, more than three components were not possible. In this paper there was a sustainability analysis for each criterion, however since next-generation theory warrants a larger analysis from an integrated perspective, it is necessary to consider the inter-relationship between all three components in light of the research question.

The main aspects of sustainability assessment theory that this final analysis should consider are long-term gains, integrated and mutually reinforcing components, and if there are any trade-offs, net-overall gains in sustainability.

Thus, in light of the three components studied, is the *IAA 2019* an effective instrument in embedding sustainability in Canada? As mentioned, the results from each criterion yielded partial effectiveness, thus as a collective instrument, the Act is partially effective. All three Next-Generation themes supported by the literature were present in the statute, including Strategic Assessment (Sinclair et al., 2018; Doelle and Sinclair, 2019; Gibson, 2020), Public Participation (Sinclair et al., 2018; Doelle and Sinclair, 2019; Gibson, 2020), and Indigenous Peoples (Sinclair et al. 2018; Doelle and Sinclair, 2019; Gibson, 2020; Hall, 2008). This means that the IA regime has progressed in relation to IA theory, or in other words is ‘current,’ which is positive. Even though more next-generation aspects were not reviewed, uptake of these three

signals progress from CEAA 2012, and alignment with themes in environmental policy. What is also apparent is that the Government of Canada listened to the numerous studies done (ex. the study completed by the expert panel) in preparation for writing the *IAA 2019*, since all three themes were present in the expert panel survey. Thus, in terms of being a ‘current’ statute in relation to Next-Generation themes, the *IAA 2019* is current in terms of the three components studied and can be identified as a vehicle that embeds some sustainability principles in Canadian environmental policy.

Are the components integrated and mutually reinforcing? The inverse to this question is that, are there any trade-offs between the components? Or are there any competing interests? Between the components of strategic and Regional Assessments, Public Participation, and Indigenous Peoples, there are no direct competing interests. One area that there is an indirect are of improvement is the amount of attention given to Indigenous consultation, and little attention given to other marginalized, racialized and vulnerable groups, in public participation provisions. This is not to say that attention given to Indigenous consultation in overshadowing other marginalized groups, rather that it is a guide for development of provisions for other groups, albeit the attention given to Indigenous groups still needs more work. There does not seem to be any competing interests, and in some ways the inter-relationship between the three components is connected. For example, public participation occurs in strategic assessment and is also enhanced through Indigenous Peoples since in several cases consultation is mandatory. From a participant funding perspective, Indigenous Peoples and other marginalized groups can hire consultants to break down complex process and substantive information. Regional level assessments consider larger scale impacts on Indigenous groups which is beneficial. Thus, there are no competing components and in some ways they are mutually reinforcing.

In terms of long-term gains, all three components scored positively in relation to progress since CEAA 2012, so there is projected progress on that end. Strategic assessment results identify that long term gains can be viewed from R-SEA analysis, if R-SEAs are implemented are results appropriately prevent negative adverse cumulative impacts, however since cumulative impacts are not directly addressed, this could be a challenge. Public participation also has long-term potential, given that it is incorporated in the Early Planning Phase, and the inclusion of ‘meaningful participation’ throughout the statute. Where public participation does not support

long term gains is in supporting marginalized and racialized groups. From an Indigenous Peoples perspective, long-term gains are not cemented despite section 12 where the Agency must “offer to” consult, because there are numerous other weaknesses in the statute such as weak binding language and numerous missing direct linkages to UNDRIP and FPIC. Thus, from a long-term perspective, the Act is only partially effective in embedding sustainability based upon the three components studied.

The key to the statute’s effectiveness is in implementation, as was mentioned in Gibson (2020) and Doelle and Sinclair (2019). There are several provisions in the statute that are discretionary, which leaves some questions about implementation. For example, a regional and strategic assessment (section 92, 93, and 95) are discretionary; CEA is only mentioned once in the statute (section 6) and is ‘encouraged’ and not ‘required’; communication and cooperation of Indigenous peoples are ‘promoted’ and not ensured; partnerships with Indigenous groups are options (section 18) and not required. If provisions like these are utilized, then there is an effective regime, and if they are not then the statute is not reaching its full potential.

Effectiveness can also be assessed through filling in the present gaps in the statute. Notable gaps are the inclusion of environmental justice related provisions supporting racialized, marginalized, and vulnerable communities, provisions supporting inclusion of past assessments on the internet registry which will help with CEA and improve access to information, directly communicating linkages with UNDRIP and FPIC throughout the statute, developing tiering regulations in section 112(a.3), and linking the *IAA 2019* to the CDEAPPPP to cement PPP evaluation in Canada broadly. The full set of gaps and therefore recommendations found throughout this analysis are as follows:

- Recommendation #1: CEA management should be explicitly mentioned governing regional and strategic assessments (92, 93, and 95)
- Recommendation #2: PPP’s, including other items of legislation at the provincial and federal levels, should be mandated for a strategic assessment, and the CDEAPPPP should be linked to the *IAA 2019* in this regard.
- Recommendation #3: Project assessments should inform strategic and regional assessments.
- Recommendation #4: Definitions for CEA, regional, and strategic assessment should be present.

- Recommendation #5: Inclusion of environmental justice provisions in public participation sections, including specifically mentioning marginalized, racialized and vulnerable groups.
- Recommendation #6: Inclusion of a definition for “meaningful participation” in section 2.
- Recommendation #7: Provision through section 106 for mandatory inclusion of past EAs on the internet registry.
- Recommendation #8: Directly stating UNDRIP in deciding if an IA is necessary (section 16)
- Recommendation #9: Direct linkages and commitment to FPIC are needed in sections 12, 22, 63, 92, 93, and 95.
- Recommendation #10: More consistent linkages to UNDRIP.
- Recommendation #11: One member of the panel under section 41 should be of Indigenous status, and not only “knowledgeable” in Indigenous affairs
- Recommendation #12: A requirement mandating the proponent outline how a partnership with Indigenous peoples will be forged during the planning phase section 18, instead of the current discretionary provision.
- Recommendation #13: Definition for ‘Indigenous consultation’
- Recommendation #14: Alter the current mention of UNDRIP in the Preamble to a statement that is binding to follow UNDRIP principles.

Thus, if these gaps are filled, then the statute would be a more effective instrument of sustainability.

Does the statute contribute to an overall net positive contribution to sustainability in Canadian environmental policy? This question is difficult to answer because more components ideally should have been analyzed. Based upon the few components analyzed, this question cannot be adequately answered.

Therefore, in summary and as a direct response to the research question, the *IAA 2019* is a partially effective instrument in embedding sustainability in Canada because of its discretionary nature and gaps that need to be filled, its current form in relation to environmental policy themes, its progress made from CEAA 2012, and the inter-relationship between the three components.

Conclusion

In conclusion, this paper was composed of three major areas: methodology, criteria, and analysis. In the methodology section, items discussed included policy evaluation theory, sustainability assessment theory including trade-offs, and Next-Generation EA theory. One of the overarching themes in the methodologies section was the imprint of evolution between the three theories. In the criteria section, the final criteria for evaluating the *IAA 2019* were presented, following that there were the various inputs used to create the finalized criteria, and subsequent to that was historical and contextual information related to the finalized criteria, including how they were connected to the broader discourse in environmental policy. In the analysis section, the statute plus associated academic and grey literature were evaluated against each criterion and their sub-criteria. Results were presented for each criterion, and further discussion ensued including answering the research question on an individual criterion basis. After all three criteria were analyzed, a final analysis was conducted that answered the primary research question from an integrated perspective.

The answer to the research question was that the Act was a partially effective instrument in embedding sustainability in Canada.

The objectives statement in the introduction was

To utilize sustainability principles to measure the Act and explore how effective it is in embedding sustainability in Canada, and to produce knowledge in the strengths and gaps so as to improve the Act in the future, and in the present, navigate its weaknesses and utilize its strengths.

This paper has met these objectives by testing the Act, academic and grey literature against three principles of sustainability, producing an analysis in the form of results, a matrix version of the results and further discussion in answering the research question in relation to each criterion. Further, a final sustainability assessment incorporating all three components was presented, positive aspects of the Act were presented, and gaps and recommendations were presented.

There were limitations in this study and in achieving its objective, the main limitation was the few components of sustainability utilized in the test, as a comprehensive and fully

integrated answer to the main research question was not achieved as a result. Some suggestions for dealing with this limitation in future research is not to do such an in-depth look at specific connections to IA articles in UNDRIP and focus on a broader survey on if UNDRIP was or was not referenced throughout the statute. Another suggestion is to have less sub-criteria in the main criteria, which would allow for more themes in sustainability to be utilized. Another limitation was that the associated regulations were not tested, which left out information.

Future topics of research connected to this paper include a study including the regulations, a study on implementation of the *IAA 2019*, a study on how not prioritizing marginalized groups in public participation impacts those communities, a study on implementation of major projects and how the IAA is fairing in relation to Indigenous linkages.

The *IAA 2019* is the third iteration of federal impact assessment legislation in Canada and has achieved partial effectiveness in embedding sustainability in Canadian environmental policy, based upon the three components of strategic assessments, public participation, and Indigenous peoples. This study has found numerous gaps in the legislation, and in the sense of its discretionary nature, does not make it much different from its parent statute CEAA 1995. Practitioners, lobbyists, politicians, planners and developers need to work together in a ‘feet-on-the-ground’ fashion to facilitate the statutes strengths and navigate its weaknesses. Current forecasts in the environmental conditions of our world are not promising in terms of environmental degradation, the rapid rate of resource extraction and consumption, and climate change, among others. That is why the effectiveness of sustainability in this statute matters, and that it is vital to execute our IA processes in a reasonable and sustainable fashion, and most importantly when they matter and when the public feel that one is necessary.

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