July 26, 2018

Bill C-69 – Position of Professional Surveyors Canada

Professional Surveyors Canada (PSC) is the national advocacy group for Professional Land Surveyors across Canada. Our professional mandate is the protection of the public interest, and the betterment and conservation of the cadastral fabric of Canada.

PSC proposes two simple amendments to Bill C-69 that will improve the Bill in ways that will enhance Canada's management of underground infrastructure.

These two changes are:

1) Simplify the definition of the term "ground disturbance" – the current definition in the Bill is unwieldy and will lead to errors.

2) Expand the notice and registration provisions for pipelines to cover all lands affected by pipeline construction and maintenance, in particular, the prescribed area surrounding the pipeline.

These changes are discrete, focused and simple to implement. Implementing these changes will increase public safety and protect the integrity of the underground infrastructure installed pursuant to the regulatory scheme created by the Bill. Our suggested changes will also bring Canada a step closer to meeting the standards for underground infrastructure in place in other jurisdictions.

It is our belief that these proposals will have a negligible cost impact on projects and ultimately will result in a net savings through the prevention of damage to Canada's underground infrastructure.

We expand on the rationale for our suggested changes below.

Simplify the Definition for "Ground Disturbance"

The stated purpose of the proposed *Canadian Energy Regulator Act* is to ensure that pipelines, power lines and other buried energy infrastructure is constructed in a secure manner that protects people, property and the environment. To this end, the *Act* aims to ensure public safety and infrastructure integrity by defining the term "ground disturbance" and then prohibiting ground disturbances in the vicinity of infrastructure covered by the *Act*.

PSC proposes amending the definition of "ground disturbance" to incorporate a single, defined standard for all ground disturbances. As it is currently drafted, the definition of "ground disturbance" in the Bill is unnecessarily confusing because it sets out an optional ground disturbance depth depending on the activity which leads to the ground disturbance. PSC believes the better course is to treat each Canadian, and Canadian company, the same. The ground disturbance depth standard should be less than any minimum buried depth requirement that would be implemented under the statutory scheme.

A realistic and easily-understood ground disturbance standard has the potential to reduce errors which put public safety and infrastructure integrity at risk. The simple solution is to simply state a single ground disturbance depth standard for all activities.

Therefore, PSC would propose amending the definition of "ground disturbance" in s. 2 of the proposed *Canadian Energy Regulator Act* as follows:

> ***ground disturbance*** *means a ground disturbance other than one that*
>
> *(a) is caused by any activity that is specified in the orders or regulations made in respect of pipelines under section 335 or made in respect of international or interprovincial power lines under section 275;*
>
> ~~*(b) is, in relation to a pipeline, caused by cultivation to a depth of less than 45 cm below the surface of the ground;*~~ *or*
>
> *(c) is, in relation to a pipeline, caused by any* ~~*other*~~ *activity to a depth of less than* ~~*30*~~ *45 cm and that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed. (remuement du sol)*

A single definition of 45cm for all ground disturbance activity is easier to understand, treats all Canadians and Canadian companies the same, and does not impose any stress on the excavation industry or buried facility owners.

Notification and Registration on Title for Lands within the Prescribed Area of a Pipeline

PSC promotes underground infrastructure systems that are open and notorious. Bill C-69 sets out a system of notification and registration on title for lands affected by a pipeline. However, as currently drafted, the Bill does not cover all the land that is actually affected and is therefore missing a critical element.

PSC proposes expanding the notification and registration requirements to include lands that fall within the prescribed area that surrounds a pipeline. As defined in the Bill, the "prescribed area" includes lands not covered by any right of way sought and has the potential to lengthen any approval process or later claim.

Pipeline development affects more than just the land the pipeline crosses. Adjacent properties are adversely affected by the construction, maintenance, and very presence of a pipeline. Indeed, the Bill explicitly restricts the available uses of land within a prescribed area surrounding a pipeline.[1] For example, any ground disturbance within the prescribed area is prohibited without approval. This devalues the adjacent property without direct notice to the owner, and without compensation to the owner.

The Bill creates a notification and registration mechanism, but this mechanism only extends to the lands that are actually crossed by the pipeline, not the prescribed area surrounding the pipeline. This omission means that current and subsequent landowners of properties within the prescribed area will have no notice of the effect the pipeline may have on their property. Further, the prescribed area, as defined, is variable because it is based on the location of the pipe. If another pipe is added into a right of way, the prescribed area expands to include adjacent land areas not considered in the original approval process.

[1] The size of the prescribed area is not set by the proposed *Act*, but the current version of the *National Energy Board Act Regulations* defines the Prescribed Area for a pipeline as 30 metres on either side of the centerline of the pipeline.

Section 201(1) of the proposed *Canadian Energy Regulator Act* compels a company applying for pipeline approval to notify all owners of lands that the pipeline crosses. Affected property owners may then oppose the proposed pipeline. In addition, section 198 requires that approved plans, profiles and books of reference be deposited in the land registry office before an approved construction can begin. This registration provides notice to subsequent owners of affected properties.

PSC proposes that this notification and registration scheme simply be extended to include lands within the prescribed area. By including properties within the prescribed area, the *Act* will capture all the lands that are actually affected by pipeline development.

Therefore, PSC proposes that sections 201(1) and 198 of the proposed *Canadian Energy Regulator Act* be amended as follows:

> ***Notice to owners***
>
> 201(1) If a company has submitted to the Regulator a plan, profile and book of reference under subsection 199(1), the company must, in the form and manner specified by the Commission,
>
> (a) serve a notice on all owners of lands proposed to be acquired, leased, taken or used, insofar as they can be ascertained; and
>
> (b) publish a notice in at least one issue of a publication, if any, in general circulation within the area in which the lands are situated.
>
> 201(1.1) For the purposes of subsection 201(1) above, the prescribed area of the proposed pipeline shall be considered land used by the proposed pipeline.
>
> ...
>
> ***Approval***
>
> *198 Except as otherwise provided in this Act, a company must not begin the construction of a section or part of a pipeline unless*
>
> *(a) the Commission has issued a certificate in respect of the pipeline;*
>
> *(b) the company has complied with all applicable conditions to which the certificate is subject;*
>
> *(c) the plan, profile and book of reference of the section or part of the pipeline have been approved by the Commission; and*
>
> *(d) copies, certified by the Regulator, of the approved plan, profile and book of reference have been deposited in the land registry office or other office where title to land is recorded for the area through which the section or part of the pipeline is to pass; and*
>
> *(e) copies, certified by the Regulator, of the approved plan, profile and book of reference have been registered on title for all property parcels which fall within the prescribed area for the pipeline.*

These amendments will ensure that current and subsequent owners of properties which are adjacent to pipeline projects are properly consulted and notified of the effect of any new projects that will impact their land.

About the PSC

As a part of its mandate, PSC and its members have established a number of advocacy objectives on a variety of policy issues. One such initiative that PSC and its members are working on is bringing the survey and mapping of underground infrastructure in Canada into a new era of proactive management. This will ultimately benefit the public, developers, utility companies, and emergency responders, as well as government regulatory agencies.

Underground infrastructure includes pipelines, water lines, gas lines, telecommunications lines, and sewers. It is essential to the health, safety, and economic well-being of Canadians, and the effective functioning of their government.

Currently, the systems in place for dealing with underground infrastructure are a patchwork of regulatory and voluntary regimes. Federal and provincial legislation has sought to improve the system in Canada; however, there is still a long way to go. The amendments the PSC proposes here would be an important first step in moving the Canadian regulatory environment towards a more accurate and complete approach to surveying, mapping and registration of underground infrastructure.

Please feel free to contact Professional Surveyors Canada at info@psc-gpc.ca with any comments or questions on this matter.