

## Pipeline Update: New Rules, UN Report and Court Challenge to Energy East

By [Julie Abouchar](#), Partner and Certified Environmental Law Specialist ©  
Willms & Shier Environmental Lawyers LLP



May 20, 2014

*A number of news stories caught the attention of pipeline watchers last week.*

*On Monday, the UN's Special Rapporteur released his report on the rights of Indigenous people. The report followed his eight day information gathering visit to Canada in October 2013. The Report was extensive and addressed socio-economic issues. It referenced some of Canada's major resource development plans including Enbridge Northern Gateway and Kinder Morgan Trans Mountain pipeline. The Report noted the complexities of Canada's duty to consult and the lack of consistent framework for consultation. It urged Canada to put in place a framework that allows for genuine input and involvement at the earliest stages of decision making. It urged governments to maximize benefits for indigenous peoples from extractive opportunities within their lands.*

On Tuesday, the federal government announced new rules for the way pipelines are approved and run. These include \$1 billion absolute liability for oils spills, greater consultation with First nations and expanded oversight by the National Energy Board. Observers suggest that these changes are not materially new and are paving the way for the anticipated Cabinet decision on Northern Gateway next month.

The TransCanada's Energy East pipeline met its first court challenge last week when the Council of Canadians filed a motion with the Federal Court of Appeal. TransCanada's Energy East pipeline is proposed to transport oil from Hardisty Alberta to Saint John New Brunswick. TransCanada is preparing to file its full application with the National Energy Board (NEB) later this year. The NEB is conducting open houses and has developed a List of Issues. The motion has asked the Federal Court of Appeal to set aside the List of Issues. The Council of Canadians' motion raises substantive process concerns. Substantively the list does not include a consideration of the potential impacts that the pipeline may have on climate change emissions, increased oil sands production on downstream First Nations or that it is exporting unrefined oil. Their procedural concern is that the NEB has departed from its past practice of allowing interested parties to comment on the List of Issues for major projects. The Federal Court will hear from the NEB and will then decide whether or not to allow the appeal to proceed.

***[Julie Abouchar](#) is a partner at Willms & Shier Environmental Lawyers LLP in Toronto and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She can be reached at 416-862-4836 or by e-mail at [jabouchar@willmsshier.com](mailto:jabouchar@willmsshier.com).***

*The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.*

**Willms & Shier Environmental Lawyers LLP – TORONTO**

4 King Street West, Suite 900, Toronto, Ontario, Canada M5H 1B6  
T: 416 863 0711 F: 416 863 1938 [www.willmsshier.com](http://www.willmsshier.com)

**Willms & Shier Environmental Lawyers LLP – OTTAWA**

45 O'Connor Street, Suite 700, Ottawa, Ontario, Canada K1P 1A4  
T: 613 761 2424 [www.willmsshier.com](http://www.willmsshier.com)