

**Presentation Script of Canadian Construction Association
Presented by Jeff Barnes,
November 23, 2016, Calgary, AB**

Thank you, Madame Chair, and Review Panel members

My name is Jeff Barnes. I recently retired as a Vice President for Environmental Services at Stantec Consulting Ltd., with whom I remain affiliated. I have 37 years of experience across Canada and internationally in Environmental Assessment (EA) and I am here today on behalf of the Canadian Construction Association or CCA, of which I am a former Board member and long-time advisor regarding federal EA. I am also a member of the Multi-Interest Advisory Committee that is providing advice to you.

The CCA represents the non-residential side of the construction industry. The CCA has an integrated membership structure of some 70 local and provincial associations and 20,000 member firms. As a whole, the construction industry employs approximately 1.4 million Canadians and accounts for 7 per cent of Canada's overall gross domestic product.

Let me start by stating that our members were very pleased with the changes made to federal EA in 2012.

The Act made many important improvements that CCA supported regarding certainty and predictability, the lessening of duplication with other processes, and the limiting of federal EAs to areas of federal jurisdiction. Indeed, there is a lot to like.

For example, the old triggering mechanisms (proponent, funding, permits and land transfer) were replaced by a project list for "designated projects." This simplified the bureaucratically complex triggering mechanisms that frequently confounded the initiation of EAs due to uncertainty around which authorities would be responsible

authorities, often resulting in unacceptable delays to the start of the EA process, sometimes by many months or even longer.

The amended Act eliminated thousands of meaningless assessments of inconsequential projects, many that were only marginally within the jurisdictional authority of the federal government, if at all. As many screenings were duplicative of provincial and municipal EA processes, and their complementary environmental protection laws, regulations, guidelines and policies, the 2012 changes introduced a more streamlined approval process, and improved certainty and timeliness for projects being constructed by member firms.

Decisions pertaining to projects on federal lands that are not “Designated Projects” still require a form of EA to be carried out (under Section 67) by the department responsible for the management of those lands. Thus, the law maintained some standard of review by the Federal Government within its own jurisdiction without duplicating environmental reviews of other jurisdictions on non-federal lands. I will speak to some related issues later.

EA is now initiated by the filing of a “project description” by the proponent of a project on the designated project list. The information requirements for the filing are prescribed by regulation and that review must be completed in 55 days.

This has resulted in greater predictability and certainty in process for proponents and requires government to initiate EA promptly. It also introduces the possibility that designated projects could be screened out where the Minister has confidence that the project as planned would not result in significant environmental effects and/or where

other applicable laws, regulations, policies and provincial EA processes are deemed to provide adequate environmental protection.

The new Act requires the EA reviews to be completed within administrative timelines. This makes the review process more predictable for proponents and improves project planning certainty, at least in theory. The CEA Agency (the Agency) particularly has shown a proclivity for making use of “stop-clock time” in a manner that works around the intention of Parliament in the setting of timelines.

The public have opportunities to comment on the Project Description and the EA Report including iterative information request (IR) protocols, and the administrative process established by the CEA Agency, NEB and CNSC afford further opportunities for public involvement including the development of guidelines for the EA. Intervener funding is provided.

CCA RECOMMENDATIONS

I will now focus on our more important observations and recommendations to the Expert Panel within the categories you have specified—we will provide more detail in our submission.

Robust Oversight

Robust oversight has been maintained throughout the EA process through the federal permitting process and associated enforcement of Federal/Provincial/Territorial laws and regulations.

Further, CEAA 2012 established a mechanism for enforceable conditions of approval and increased the level of oversight of EA decisions to unprecedented levels.

There is no need to create additional oversight mechanisms or enforcement tools when those that presently exist are sufficient. The Agency has limited experience with using its new authority to establish and enforce conditions. More experience is required before amendments or further measures should be considered or introduced.

It's up to Federal and Provincial governments to enforce their regulations – creating additional oversight mechanisms will not solve any existing oversight problems. Ensuring authorities have the capacity to provide oversight and enforcement may be an area for improvement that your Panel might consider recommending.

CCA acknowledges there may be a requirement to establish some oversight of the administration of Section 67 for federal projects. There is a need to provide independent oversight and standards for fulfilling this responsibility with timelines. This should include incorporating a requirement for public notification that an assessment is being carried out (e.g., a project registry).

CCA believes that there is some need for guidance and oversight of the Agency regarding the fair and effective use of “stop-clock time” and their management of the IR process.

The Informational Basis for EA

CCA believes that the scientific basis of EA and the information gathered for decision-making under CEAA and CEAA 2012 are more than adequate.

EA is a project planning process, not a science research project. Critics arguing the lack of a scientific basis in decision-making are overlooking the essential nature of EA as a planning process based on a wide range of information sources including that provided by science, public engagement, and Indigenous traditional and community knowledge.

The information gathered is aimed at making an informed decision on how to plan not only an acceptable project but also a better project, that is, if approved in the public interest, balancing those interests in the face of a broad range of socio-political and environmental factors.

Officials within the Agency, and particularly the Commission and the NEB have the jurisdiction, and expertise to review a project proposal and assist decision-makers in making informed decisions regarding the adequacy of information provided, such as the need for EA, the need for a public review panel, the decision required to be made, and any conditions that should accompany a decision to approve a project.

Officials within these responsible authorities can and do request additional information, often from scientific experts within federal agencies where there are concerns about the possible consequences of a project on matters within their jurisdiction. There is a need to strengthen resources and technical capacity within the Agency in some areas, particularly in scoping and fulfilling the Duty to Consult.

Engagement of Canadians in EA

While there are opportunities for engagement, we would agree it may be necessary to expand timeframes for consultation and public comment, particularly during the review of the Project Description to better inform the decision whether to require EA or to support the identification of key issues and concerns for inclusion in the guidelines for a review.

We do feel, however, that it is important to manage the public engagement process to allow those affected by a project to meaningfully participate, while maintaining limits on participants in panel, commission and board reviews to those with something germane to the project and of relevance to the environmental effects of the specific project and their mitigation.

It is essential to limit the discussion of policy matters in project EA to the extent that the project may relate to established policy. EA should be focused on matters within the purview of proponents and the specific project under review. For example, the consideration of a project's contribution to GHG emissions should be limited to the project itself and not ancillary upstream or downstream emissions that may be caused as a result of the project proceeding.

Similarly, the consideration of cumulative effects should be limited to the extent to which the project contributes to those effects and its proponent can reasonably be expected to evaluate and mitigate its contribution to them.

The CCA would support the establishment of Strategic Environmental Assessment (SEA) and improved Regional Assessment mechanisms to address broader policy and cumulative effects matters that are beyond the reach of project EA to streamline and focus it in future. We are wary, however, of any measures that might further burden proponents in the interim while government develops these mechanisms—the current burden is already and inappropriately too great.

Use of Best Available Technologies to Minimize the Environmental Effects on the Environment

Most proponents already use best available technologies to minimize the environmental effects of a proposed project.

The assessment of alternative means of carrying out a project consider such technologies and are a reasonable consideration in project EA; however, there should be no requirement to assess alternatives to a project (e.g., a proponent of a hydro project should not have to speak to why they are not building a wind or solar farm—that is the domain of policy and best addressed by other mechanisms like SEA).

Indigenous Issues

Indigenous issues are a source of great uncertainty for many projects under review under CEAA 2012.

The issues around Duty to Consult and accommodation are complicated and tied to treaty rights and title that frequently go beyond the environmental effects of the project. CCA understands and respects this.

The CEA Agency and/or the federal government require mechanisms and processes that enable timely and predictable decisions regarding projects being reviewed under CEAA 2012. These mechanisms must acknowledge that the proponent's obligation relates to mitigating their specific environmental effects and that they should not be burdened with broader policy matters or legacy issues that are beyond their ability to resolve.

Such mechanisms need to provide the opportunity for Indigenous rights holders and the federal government to speak to the environmental effects of a project specifically and in a timely, constructive manner.

Concluding Recommendations

As some will have you believe, the sky is not falling as a result of CEAA 2012 and we most certainly continue to do good EA on projects in Canada. The CCA acknowledges there is room for improvement and we offer the following concluding recommendations.

CEAA 2012 greatly simplified the triggering mechanism for project EA and significantly improved the predictability of the initiation of assessment. Do not undo the efficiencies created by moving to a list based triggering mechanism.

Ensure that the federal EA process is mindful of provincial-territorial and municipal EAs and the legislative framework for environmental protection, and avoid creating unnecessary duplication. Harmonize with provincial-territorial and municipal EAs when evaluating the same project with the goal of “one project—one assessment.”

Facilitate issuance of permits and related authorizations by federal authorities coincident with EA approval.

Maintain current timeframes to enhance certainty of process for project reviews with possibly more time for review of the Project Description by the public to improve the effectiveness of scoping.

Provide improved oversight of EA under Section 67 including public transparency and of the Agency in the administration of “stop-clock time” and IRs.

Thank you.