



THE CANADIAN  
CHAMBER  
OF COMMERCE

LA CHAMBRE  
DE COMMERCE  
DU CANADA

The Voice of Canadian Business™  
La porte-parole des entreprises Canadiennes<sup>MD</sup>

November 8, 2016

Ms. Johanne Gélinas  
Chair of the Expert Panel for the Review of the Environmental Assessment Process  
200 Boulevard Sacré-Coeur, Gatineau, QC  
Ottawa, Ontario

Dear Ms Gélinas

Thank you for the opportunity to make this submission to the Expert Panel for the Review of the Environmental Assessment Process. Our members believe this review is being undertaken at an opportune moment, and applaud the government for engaging in this conversation with Canadians.

The Canadian Chamber of Commerce is a network of over 450 local, provincial, territorial and regional chambers of commerce and boards of trade representing a network of over 200,000 businesses. The review of Canada's environmental regulatory processes is of great importance to our members in the natural resource and transportation sectors. But it also matters to Canada's manufacturers, construction and engineering firms, financial institutions and clean technology developers; in fact, any business that supplies major projects in these sectors

Natural resources and infrastructure are major drivers of investment into and within Canada, and the clarity of the environmental review process has an important impact on these investment decisions. Ensuring that a clear, timely and effective environmental assessment process is in place will have impacts throughout the economy and on the prosperity of Canadians.

This letter consists of the Canadian Chamber's written submission to the review process. Appendix 1 is the written remarks being made to the panel at the public presentation session on November 8, 2016 in Ottawa Ontario. Appendix 2 is written responses to the questions listed under the *Suggested Themes for Discussion* portion of your website.

Please do not hesitate to get in touch with me at [kmarsh@chamber.ca](mailto:kmarsh@chamber.ca) or 613-238-4000 ext. 223 should you have questions or if the Canadian Chamber could be of any further service to panelist as you conduct your review.

We wish you the best in your ongoing work on behalf of Canadians.

Sincerely,

Katrina Marsh  
Director, Natural Resource and Environment Policy

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## **APPENDIX 1 - CANADIAN CHAMBER OF COMMERCE REMARKS TO THE EXPERT PANEL**

*Katrina Marsh, Director of Natural Resource and Environmental Policy*

*November 8, 2016 – Ottawa Ontario*

I am the Canadian Chamber of Commerce's Director of Natural Resource and Environmental Policy. The Canadian Chamber's membership consists of over 450 local, provincial, territorial and regional Chambers and Boards of trade representing a network of over 200,000 businesses of all sizes and in every industry.

This breadth of membership means that the national Chamber cannot narrowly serve the interests of a single industry, but must promote policies and projects that will support the competitiveness of Canada as a whole.

The review of Canada's environmental regulatory processes is of great importance to our members in the natural resource and transport sectors. But it also matters to Canada's manufacturers, construction and engineering firms, financial institutions and clean technology developers: any firm that supply and supports these sectors as well. Natural resources and infrastructure are major drivers of investment into Canada. Anything that impedes investment will reverberate throughout the Canadian economy.

Given these high stakes, it's worth asking what the ideal environmental assessment process would look like. This presentation is based on the high-level messages we've heard repeatedly from our business and chamber members.

First, stakeholders and Indigenous groups would operate with access to full information. Baseline information such as the health of local animal populations as well as the cumulative environmental impacts of human activity in the region would be widely available. There would be a foundation of trust among Indigenous communities, government and industry such that these communities would feel confident that their rights would be respected throughout the process. Politicians would minimize uncertainty by sending clear signals on the priorities and principals they would use to adjudicate conflicting social goals. With these policy decisions made, regulatory can focus on an independent, technical review of the project's merits.

The ideal environmental assessment would happen within a context that supports effective decision making.

Second, projects would be subject to a single regulatory review process that has clearly defined steps and timelines and where roles and requirements are well understood. Non-government stakeholders would deal with a single government agency. The environmental assessment of individual projects would roll out in predictable steps and a timely fashion, with decisions made in a transparent matter. Effective communications and consultations would ensure that even if a stakeholder did not agree with the end result, they would still be confident that the process was rigorous and fair.

The ideal environmental assessment process would be efficient and transparent.

Last, and most importantly, the environmental assessment process would result in better outcomes for Canadians. The scrutiny and feedback uncovered during the review process would improve project design, helping to mitigate potential environmental and social impacts. The environmental assessment process would act as a spur rather than a barrier to innovation, incenting project proponents to make improvements while avoiding the kind of needless bureaucratic prescriptions and delays that can prevent good ideas from being implemented.

The ideal environmental assessment would be focused on outcomes.

How close is the current process to this ideal? Many of the big challenges we are witnessing have to do with the context in which environmental assessments occur, and not necessarily the assessment process itself. Some of these big-picture issues that are impacting individual project reviews include:

- cumulative impacts on the environment or communities from the full range of human activity in a region;
- reconciliation with Indigenous peoples;
- public trust in politicians, regulators and regulatory processes; and
- overarching concerns like climate change.

These are questions that are larger than any single mine, well pad, pipeline or road, but that have a significant impact on the public acceptability of individual projects.

The federal government has a role in addressing these big picture issues, but CEAA- which authorizes the regulatory review of specific projects – should not be the primary tool it uses to do so. We cannot contract out the function of political representation and policy development to regulators.

Transforming project reviews into proxy referenda on the big policy questions of the day is asking individual firms to take on outsized responsibility for problems that their competitors, firms in other sectors, the public and government must also play a role in addressing. Complex, multifaceted problems must be addressed using holistic and systematic solutions, not one-off and narrowly focused processes like a project-based EA.

For example, the determination of Indigenous rights should occur within an ongoing program of engagement with the crown and economic development of Indigenous communities. Our report makes a few recommendations that go beyond the scope of this panel, such as establishing a commissioner of Indigenous Consultation and Accommodation within the office of the Auditor General with the mandate of reporting on the crown's constitutional duties.

When it comes to creating the right context for effective decision making, government should consider a broad range of tools, for example strategic environmental assessments, land use planning processes, or regional traditional land use studies. Greater public consultation in the government

policy development process is another such tool, such as the work being done by this expert panel. Our members are glad that the government is having this conversation with Canadians, and we hope it will help establish greater confidence in Canada's world-class environmental assessment systems.

CEAA is only one tool among many, and its focus should remain narrowly on regulatory reviews on potential environmental and social impacts of specific projects.

One change to explore is to make the political decision on a project before the regulatory review, particularly for major projects. The recent NRCan panel on the Trans Mountain pipeline process provides an example for conducting a separate consultation on the broad policy questions separate from the regulatory process. If these kinds of policy decision making processes happen before the more detailed regulatory review, any cabinet approvals could be made provisional upon successful completion of an EA and any conditions it imposes.

Putting the political decision first could minimize instances where project proponents, Indigenous and other communities and NGOs spend millions or even billions on designing and consulting on the minute details of the project, only to have that effort come to nothing. Once the decision on whether a project should be pursued is made, the EA process could better focus on the more narrow questions of what the local impacts will be and how they can be mitigated.

In terms of the second principle – an efficient and transparent environmental assessment process – we recommend that future reviews continue to move towards the ideal of a single, timely, transparent and rigorous environmental assessment process.

A duplicative, drawn out process does not lead to better outcomes for the environment or communities. Yet it does have a major impact on business costs and the appetite to invest into major projects in Canada. The World Economic Forum ranks Canada 37<sup>th</sup> in terms of the drag government regulation imposes on the economy's competitiveness. This is below many countries that are recognized leaders in environment policy and protection, such as Sweden, Germany and Norway. Rigorous environmental regulations do not have to be complex and burdensome ones.

One area that were the current process does need to be reexamined is the relationship between the environmental assessment process and the crown's duty to consult and accommodate Indigenous peoples.

Over the past year, the Canadian Chamber has heard from over 90 representatives of industry, government and Indigenous peoples either through interviews or roundtable discussions. One of the points that came out clearly in this research was the need for a federal framework on the duty to consult that would clarify key questions like:

- What are the triggers for consultation?
- When and how much of the process will be delegated to business?
- The crown's involvement on the ground; and

- timelines for all stakeholders in the process.

The framework should be flexible enough to recognize the different approaches to engagement, consultation, accommodation each community and project requires. We also ask that the federal government be more ambitious in its definitions of Indigenous capacity building and extend support accordingly.

Lastly, the EA process can also be an opportunity to make the project better. Prescribing the use of particular technologies or processes risks allowing the EA to become a barrier to innovation. Technologies may become obsolete faster than regulators can adjust. Prescribing how relationships between firms, communities and Indigenous peoples should be build can limit the emergence of new ways to build them. By focusing on the results they want to achieve, but giving the parties to freedom to decide how to achieve them, the EA process can spur innovation without getting in its way. This means recognizing that even the best paid plans must change in the list of evolving circumstances. Accordingly, the process to amend plans under an EA should also be transparent, timely and efficient.

- Providing a context that supports effective decision making.
- Ensuring that the environmental assessment process is efficient and transparent.
- And a focus on outcomes.

These are the principles we hope you will consider in your advice to government. An environmental assessment process is a crucial tool in government decision making, but it is best seen as a part of a larger process to determine the public interest. An EA process that is clear, timely, rigorous and transparent would be the best tool to provide stakeholders with the information they need on environmental impacts of major projects.

Thanks for the opportunity to speak with you today.

## APPENDIX 2 - CANADIAN CHAMBER OF COMMERCE: RESPONSES TO SELECTED GUIDING QUESTIONS FROM THE EXPERT PANEL REVIEW OF ENVIRONMENTAL ASSESSMENTS

### ENVIRONMENTAL ASSESSMENT IN CONTEXT

#### **Q1 - To what extent do current federal environmental assessment processes enable development in Canada that considers the environment, social matters and the economy?**

The current environmental assessments provide crucial information to decision makers and communities on the potential environmental and socio-economic impacts of an individual project. Our members feel that the changes made in CEEA 2012 helped to move the system towards a more timely system with greater clarity and certainty for industry without sacrificing environmental protection.

#### **Q2 - What outcomes do you want federal environmental assessment processes to achieve in the future?**

The current goal of the environmental assessment – to provide decision makers with an assessment of project-level environmental and socio-economic impacts of a particular project proposal – should not be changed. Individual projects impact, and are impacted by, a range of overarching policy issues, such as cumulative environmental impacts from human activity in a region, climate change and reconciliation with Indigenous peoples.

The federal government should play a role in addressing these policy concerns, but addressing these issues through reviews of individual projects would put an undue burden on individual firms. These are issues that require cooperation with competitors, firms in other sectors, the public and government, a level of coordination that is beyond a single firm. For example, the establishment and evaluation of Indigenous rights should ideally occur within a broader program of reconciliation with the crown and economic development of Indigenous peoples, rather occurring only once a project has been proposed and in the context of an EA review.

Complex, multifaceted problems must be addressed using systematic solutions. Other tools and processes – such as national strategies and policy development, strategic environmental assessments, or land use planning processes – are better suited to addressing the complex, interconnected nature of these issues.

#### **Q3 - How can federal environmental assessments support investor certainty, community and environmental wellbeing, the use of best available technology, certainty with respect to the protection of Aboriginal and treaty rights and timely decision making?**

In order to balance these goals, the Canadian Chamber believes that the EA process should align to these three principals:

1. *EAs would occur in a context that supports effective decision making*  
EAs would happen in a context where other policy initiatives or tools were addressing overarching questions and concerns that could not be addressed in a review of a single project. The federal government would work with other stakeholders to provide essential background information, such as the particular as treaty rights of Indigenous peoples within a region.
2. *Efficient and transparent process*  
The EA process would be required only once and have clearly defined steps and where roles and requirements were well understood by all stakeholders and Indigenous groups, including the expected timelines. Decisions would be made in a transparent matter on the basis of facts, science and traditional knowledge and traditional land use information.
3. *Focused on outcomes*  
The conditions imposed during an EA would allow for innovation by focusing on the outcomes regulators would like to achieve, rather than proscribing particular technologies and processes. The process to amend an EA plan would be transparent, timeline and clear to allow for adaptation to changing circumstances or technologies.

## OVERARCHING INDIGENOUS CONSIDERATIONS

### **Q1 - How can federal environmental assessment processes better reflect and incorporate the multiple ways in which Indigenous Peoples may interact with federal environmental assessment, including as potentially affected rights holders, proponents of development, self-governing regulators, and partners?**

We recommend that the federal government be more ambitious in its definitions of Indigenous capacity building including such options as:

- Tools to help Indigenous communities develop their own consultation guidelines for proponents based on their histories, rights and lands.
- Organizing, in cooperation with other levels of government, regional conferences, workshops, etc. for Indigenous communities to share their expertise, best practices, etc.
- Seeking the views of business and Indigenous representatives on a proponent-financed, arm's-length fund that would be available for Indigenous communities to hire the capacity they do not have, what it could/could not be used for, etc.
- Working with the provinces/territories to develop a list of suggested legal, environmental and other advisers to whom Indigenous representatives could turn for assistance if

- needed. - Assisting Indigenous communities to establish access to capital, for example, business loan guarantees and credit rating assistance.
- Helping Indigenous communities document their resources (natural, human, financial, etc).

**Q2 - How is the need to address potential impacts to potential and established Aboriginal and treaty rights best incorporated into the federal environmental assessment process?**

We suggest that the federal government more actively communicate the services available to assist proponents in obtaining background information on Indigenous peoples, their historical and current relationships with the Crown, their rights and relevant contact information.

We also recommend that the government work with businesses, Indigenous peoples and other levels of government to develop a consistent duty to consult and accommodate framework that recognizes the different approaches to engagement, consultation, accommodation each community and project requires and clearly defines:

- The aspect of the project that triggers the duty to consult and accommodate.
- If the Crown will delegate all or some aspects of the consultation/accommodation, which ones and when.
- The Indigenous peoples affected and their rights (established and/or potential).
- The level of consultation required and how it should be undertaken.
- What information the Crown will provide to businesses and Indigenous communities.
- What resources/capacity are required by the Indigenous communities and who is responsible for providing them and bearing any costs involved.
- The Crown's involvement, including:
  - Primary contact person/resource
  - Whether it will facilitate pre-consultation engagement between the proponent(s) and the affected Indigenous communities.
  - Whether it will provide advice or direction only.
  - Whether it will be "on the ground" in the Indigenous community with the proponent, on its own or not at all.
- Expectations of the affected Indigenous community(ies).
- Timelines (for proponents, Indigenous communities, and the Crown).
- How the Crown will monitor the consultation and accommodation negotiations between proponents and Indigenous communities to measure whether each met the expectations of them and met their commitments.

**Q3 - What is the best way to reflect the principles of United Nations Declaration on the Rights of Indigenous Peoples, including the principles of Free, Prior and Informed Consent and the right to participate in decision-making in matters that would affect Indigenous rights, in federal environmental assessment processes?**



We recommend that by mid-2017, the federal government should establish the framework and timelines for the review of laws, policies and operational practices related to its implementation of the recommendations of the Truth and Reconciliation Commission and the UNDRIP in its entirety. This review needs seek the perspectives of a broad range of stake/rights holders, including businesses and Indigenous communities, and address the tools to be available to each to fulfill additional obligations required of them.

**Q5 - How can the practices and procedures associated with federal environmental assessments, as well as the process itself, support the Government of Canada's goal of renewing the nation-to-nation relationship with Indigenous Peoples and moving towards reconciliation?**

The Canadian Chamber suggests bringing Indigenous and business representatives together to develop a robust framework for engagement that emphasizes building relationships as a first step, whenever feasible, before consultation and accommodation discussions focused on particular projects begin as well as what each party will be accountable for. The resulting framework must be accompanied by resources to assist the Crown, business and Indigenous communities in ensuring that engagement:

- Respects the nation-to-nation relationship.
- Reflects the rights and circumstances of Indigenous communities; and
- Provides businesses with the ground rules they need to avoid derailing potential projects due to missteps.

Beyond the environmental assessment process, we recommend establishing a Commissioner of Indigenous Consultation and Accommodation within the Office of the Auditor General with the mandate of providing semi-annual whole-of-government reports on the federal Crown's performance of its constitutional duties. In addition to assessing the Crown's risk management, the Commissioner's reports should include the number of consultations undertaken in the period reviewed, those that were conducted by the Crown, completely and/or partially delegated as well as their outcomes/status.

**Planning Environmental Assessment**

**Q1 - Under what circumstances should federal environmental assessment be required?**

The provinces are the primary owners of natural resources within Canada. Consequently, the federal EA should ideally be limited for those situations where the provinces do not have jurisdiction, including but not limited to:

- Projects on federal lands;
- Projects that impact multiple Canadian jurisdictions; or
- Projects that cross international borders.

For projects on Indigenous lands where there are establish or potential Indigenous rights, the federal government should explore joint EA reviews or other processes to ensure that their obligations are

met while respecting the principal of one project, one review. Federal support for provincial EA processes could occur through the sharing of information and expertise or else establishing guidelines and other resources to ensure consistent standards across the country.

**Q2 - For project environmental assessments, do you think the current scope and factors considered are adequate?**

Our members believe that the current scope of environmental assessments is adequate. However, there is a need to ensure the scope in CEAA, and related documents (such as Technical Guidance Documents) are consistent.

**Q5 - Who should contribute to the decision of whether a federal environmental assessment is required?**

The triggers for a federal environmental assessment should be clearly established by law and be consistently applied.

**Coordination**

**Q1 - To what extent can the Government of Canada coordinate with other jurisdictions (e.g. provincial and/or Indigenous governments) while maintaining process integrity in the conduct of federal environmental assessments?**

As a general principal, the EA process should be conducted once. Whenever similar processes exist between federal, provincial or Indigenous governments exist, governments should negotiate MOUs and other types of agreements to allow for a single EA to suffice for all levels of government.