Recommendations for the Federal Review of the 2012 Amendments to the *Canadian Environmental Assessment Act*

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Canadian Environmental Assessment Act

Under *Canadian Environmental Assessment Act (CEAA)* 2012, there are two conditions in which a project or activity will required an assessment. Regulations Designating Physical Activities outlines projects that would likely require an assessment based on the potential impacts (Canadian Environmental Assessment Agency, 2016). The Minister of the Environment may also designate a specific project to require an EA (Canadian Environmental Assessment Agency, 2016). Prior to 2012 an EA could include any of the following: screening, comprehensive studies, panel reviews, and/or mediations (Powell, 2013). There are now only two types, the standard EA or the panel review assessment (Powell, 2013). The Federal Cabinet authorizes projects based on the EA conducted by Governmental agencies or the review panel. Though the Cabinet is supplied with information and recommendations from experts ultimately the final decision is of a political and economic nature (David Suzuki Foundation, n.d.).

Timeline

Strict timelines are imposed on EA under the new *CEAA 2012*. A standard EA must be completed within 12 months. The National Energy Board EA has 18 months, and the panel review EA has 24 months (Nelson et al., 2012). While proponents are gathering information, completing studies, or answering questions, the clock is paused but resumes for the duration of public commenting (Nelson et al., 2012). A guideline that aimed to streamline and create an efficient process has created pressure and time restrictions on reviewers resulting in haphazard and hasty EA (Nelson et al., 2012). For every question that is proposed, the proponent then needs to supply more information that requires further review and public comment (Nelson et al., 2012). As the clock is running during this process, fewer tough questions have been asked.

Instead the emphasis is on making rapid decisions without the best available information (Nelson et al., 2012).

The rationale of this change was driven by a review of the old *CEAA* which found that EAs were not completed in a timely manner (Winegardner et al., 2015). The review was criticised as it provided no statistical evidence on the current timeline of assessments and no recommendations for an appropriate timeline (Winegardner et al., 2015). EAs were previously triggered by the *Navigable Waters Protection Act*. From 2003-2012, 73% of EAs triggered under *Navigable Waters Protection Act* were completed within one year which would have met the standard imposed in today's Act (Winegardner et al., 2015). In order to ensure that decisions are made based on the best available science and allowing ample time for public comment and participation, I recommend amendments be made to the timeline. This could be done by either extending the current timeframes or allowing the clock to pause during public comment periods as it does for the proponents.

Public Participation and First Nations Involvement

Public participation and engagement is the keystone to democracy (Ralston Saul, 2014). Citizens elect a Government to protect their rights and interest but in recent years confidence in this system has diminished (Ralston Saul, 2014). Gifford Pinchot defined serving the public interest as making decisions that provide the greatest good for the greatest number of people over the longest duration of time (Beirerle et al., 2002). *CEAA* used to have meaningful engagement embedded within the process. Any Canadian who wished to express their perspective on a proposed project had the right to have their thoughts heard (Nelson et al., 2012). The *CEAA 2012* restricts public participation only to those the project directly impacts and to experts (Nelson et

al., 2012). This minimalizes the opportunity for healthy debate and discussion in the EA process and does not provide the Cabinet with enough information to act in the public's interest (Nelson et al., 2012; Ralston Saul, 2014). Not only does *CEAA 2012* restrict who can engage, the timeline further limits participation. Democracy is characteristically slow (Ralston Saul, 2014). It takes time to disseminate and to respond to information. This is a process that cannot and should not be rushed for short-sighted economic gain (Ralston Saul, 2014).

Section 35 of the *Constitution Act, 1982* recognizes and affirms Aboriginal (First Nations, Inuit, and Metis) rights in Canada (Hanson, n.d.). This recognition of Aboriginal rights demands engagement efforts separate of the general public. Indians, and land reserved for the Indians falls under Federal jurisdiction (*Constitution Act, 1867*). Authorizations and permits granted under the Acts discussed in this paper have the potential to infringe upon and/or impact the rights of Aboriginals and therefore the Federal Government is the appropriate head of power. There is still not enough inclusion of Aboriginal Peoples in the *CEAA 2012* (Nowlan et al., 2016). Traditional ecological knowledge should be included alongside scientific information when assessing activities and projects (Nowlan et al., 2016).

Research and Monitoring

Funding was drastically reduced to many agencies and programs that provide ongoing research and monitoring of Canada's natural environment. Without these agencies operating at their full capacity the responsibility falls on academia, First Nations, and Non-Governmental Organizations to monitor the status of our natural resources (Winegardner et al., 2015). These other sectors may or may not have the capacity to take on this new responsibility (Winegardner et al., 2015). In Canada there remains many areas within the environment where a knowledge

gap exists (Winegardner et al., 2015). With the habitat provisions of the *Fisheries Act*, and extensive protection of water bodies under *Navigable Waters Protection Act,* Canada historically had environmental laws that were proactive (Ralston Saul, 2014). Some believe the reactionary amendments made by the Harper Government was a step back (Ralston Saul, 2014). As John Ralston Saul said in his book The Comeback (2014), "You must arrive in court carrying, so to speak, a pile of rotting, infected fish." (p. 103). Reactive environmental laws require that the crime must first be committed before heavy fines and penalties can be enforced, and unfortunately when it comes to the environment, many of those crimes alter ecosystems in ways that we cannot reverse or undo (Ralston Saul, 2014).

Reducing scientific information weakens the ability of decision makers to make ecosystem based decisions (Winegardner et al., 2015). Moving forward the *CEAA* needs to explicitly include provisions for further involvement of the scientific community, the public, and First Nations (Ralston Saul, 2014; Nelson et al., 2012; Nowlan et al., 2016). This means providing sufficient resources and information to educate the public, and increase funding to Governmental agencies and programs (Bierele et al., 2002; Ralston Saul, 2014). If these measures were included, it would better reflect the public's interest, improving decision makers' ability to create a better balance between economics and the environment.

Concluding Recommendations:

- *Fisheries Act* and *Navigation Protection Act* should trigger and go through impartial environmental assessments.
- *Canadian Environmental Assessment Act* timeline should be paused for public comment or be extended to encourage thorough environmental assessments.
- Meaningful public and First Nations engagement should be required within the *Canadian Environmental Assessment Act*.

- Increased funding for Governmental agencies and programs to improve capacity for monitoring and research.

- Stronger inclusive of science, traditional ecological knowledge, and ecosystem based decision making in the *Canadian Environmental Assessment Act*.

As the Liberal Governments' review process is underway, they have committed to incorporating public consultation and scientific evidence (Government of Canada, 2016). Hopefully this promising inclusive nature will be translated into future amendments of the *CEAA 2012*. Canada can once again have comprehensive and proactive environmental laws that sustain Canada's economy and natural environment and are worth being admired by the international community (Ralston Saul, 2014).

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