

Going Back to the Future: How to Reset Federal Environmental Assessment Law

Preliminary Submissions to the Expert Panel

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Introduction



- CELA is an Ontario legal aid clinic founded in 1970; our mandate is to use & improve laws to protect the environment/public health
- CELA is involved in numerous EA processes & EA court cases at the provincial & federal level on behalf of our clients (individuals, ENGOs, First Nations, etc.)

Overall Conclusions

1. CEAA 2012 represents an unreasonable rollback of the federal EA process & cannot be salvaged by tweaks or finetuning
2. Simply restoring CEAA 1992 is insufficient due to unresolved procedural/substantive problems
3. CECLA supports the enactment of new federal EA legislation that implements the “next generation” model which focuses on sustainability, not just impact mitigation

Issue 1: EA Triggers

- the new federal EA legislation should include a combination of **general triggers** (e.g. federal proponency, funds, lands and instruments), **specific triggers** (e.g. regulatory list(s) of nationally significant projects), and **inclusion/exclusion lists** to determine when federal EA requirements apply, and which EA “track” should be used

Issue 2: Scope of Assessment

- the new federal EA legislation should contain broad definitions of “**environment**” and “**environmental effect**,” and should expand the list of prescribed environmental planning factors which must be addressed in every EA in order to ensure sustainability

Issue 3: EA Decision-Making

- the new federal EA legislation should establish an **independent, quasi-judicial expert tribunal** that is empowered to hold public hearings and render legally binding EA decisions, subject only to a time-limited Cabinet appeal and judicial review supervision by the Federal Court

Next Steps

- the new federal EA regime must be robust, credible, participatory, and evidence-based
- fundamental change is required to meet these goals; Parliament cannot just rearrange deckchairs on the Titanic

