



December 20, 2016

Expert Panel
Review of Federal Environmental Assessment Process
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Sent via online submission at <http://eareview-examenee.ca/>

Recommendations for Making Environmental Assessments More Fair and Effective

Dear Sirs/Mesdames,

The Western and Northern Canada Affiliate (WNC) of the International Association for Impact Assessment (IAIA) would like to offer suggestions to help fulfill the parts of your Ministerial mandate in your review of environmental assessment to regain public trust in fair, robust and thorough environmental assessments. The Affiliate is submitting this letter 1) to support in principle your recently announced improvements to environmental assessment, and 2) to identify particular areas of the Canadian Environmental Assessment Act, 2012 (CEAA 2012) that are in need of changes to achieve fair and effective environmental assessment.

The International Association for Impact Assessment is the predominant professional association for people involved professionally in the practice of Environmental Impact Assessment. It is the world's leading organization of its kind, with over 1600 members in 120 countries. The Western and Northern Canada Affiliate is active in British Columbia, Alberta, Saskatchewan, Manitoba, the Yukon and Northwest territories. The suggestions below are based on internationally recognized principles of best-practice in environmental impact assessment.

Encouraging elements of announced improvements

IAIA WNC supports the federal government's strong position on climate change and looks forward to federal environmental assessment processes that ensure that climate change is thoroughly considered, by:

1. looking at baseline climate trends instead of just baseline climate conditions,
2. considering climate change as part of cumulative effects assessment, where the project affects valued components that are also affected by climate change, and

3. considering potential direct and indirect upstream and downstream climate impacts of projects.

IAIA WNC also highly commends your recent commitments of January 2016 to greater consideration of aboriginal Traditional Knowledge, public participation, and aboriginal consultation in federal environmental assessments.

Priority improvements to CEAA 2012

We have prioritized our recommendations below to focus particularly on four aspects of CEAA 2012 that have reduced the effectiveness and fairness of environmental assessment, compared to the original Canadian Environmental Assessment Act (CEAA). These deal with the following subjects:

- Participant status
- Definition of environmental effects
- Federal-provincial substitution
- Timelines

Participant status: Full participation in CEAA 2012 has been reduced to “interested parties” that are “directly affected” or have “relevant information or expertise” (S.s. 2 (2)). Under CEAA the definition of an interested party was much broader: “Any party having an interest in the EA outcome...” (S.s. 2(1)). Good EA is inherently participatory. Decision makers should weigh evidence as they see fit, but should not prevent the public from providing it. The CEAA definition is better. While IAIA WNC recognizes the importance of running efficient proceedings, legislation should encourage that this be done in an inclusive manner.

Definition of environmental effects: CEAA 2012 considers a much narrower range of environmental effects than did CEAA. CEAA 2012 appears to focus primarily on components within the authority of parliament-- fish and aquatic species, species at risk, migratory birds, and other subjects specified in Schedule 2, and resulting effects on aboriginal peoples (s. 5). CEAA used a broader definition of environmental effects, to include “any change that the project may cause in the environment” and “effects of this change on people” (par. 2(1)(a)). Good EA is holistic and considers systems. This broader definition found in the former Act is more inclusive and, quite frankly, more comprehensible to participants in the review process. It better allows EA to consider systems holistically, and is more likely to capture the full range of impacts that matter or are causes of public concern. The Government of Canada should consider not just some but all of the environmental effects of projects it approves, not just the effects that fit into the definition in CEAA 2012.

Federal-provincial substitution: CEAA 2012 defers to the Provincial process whenever possible. Subsection 32(1) says that if the provincial assessment process “would be an appropriate substitute”, the Minister is required to approve the substitution of the provincial process if requested by the province. Some provincial processes can lack the rigour of the federal EA process, especially in dealing with matters of federal responsibility such as aboriginal peoples

and (federal) species at risk or migratory birds. This can result in narrower and less effective assessments, and presents proponents with less consistency as they face a myriad of different and uneven processes for the same kinds of developments in different provinces.

For example, aboriginal considerations are an important aspect of many good environmental assessments in Canada. It is unclear if provincial environmental assessment processes include the same consideration of aboriginal issues, or that the provinces carry the same duty of aboriginal consultation as the federal government does. The decision that a provincial process is an appropriate substitute should only be made where the provincial process would include the assessment of every impact that the federal process would assess, with equal rigour. Provincial processes may weigh the predicted effects differently when reaching significance determinations, but should at least include the same questions, in order to be properly and reasonably deemed an “appropriate substitute”.

Timelines: In prescribing set time limits for parties but not for proponents (s.s. 38 (3); s.s. 43(2)), the process risks being unfair to under-resourced parties. Most EAs do not have intervenor funding, often leaving Aboriginal groups, NGOs and others in the difficult position of having inadequate time to review large amounts of technical information, while the developer is not subject to timelines. Discretion on fair timing is better left to those conducting the review. Alternatively, adequate participant funding would also solve this problem.

Timelines on Ministerial approvals are generally helpful and do not appear to affect the fairness for the process to parties.

Designated projects: Under CEAA 2012 the designated projects are listed in the Regulations Designating Physical Activities. This list leaves out many projects that used to undergo screening and are worth assessing (such as in-situ projects in Alberta’s oilsands). Greater inclusiveness is in order, to ensure that projects that may cause significant adverse impacts receive due consideration.

We urge the federal government to consider these problems with CEAA 2012 in its current review. Fixing these problems will help ensure that wise and fair decisions are made on development projects, while identifying and mitigating their significant adverse impacts. This will go a long way to regain public trust in the Canada’s environmental assessment process.

Sincerely,

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