

## Comments on the review of environmental assessment processes: Expert Panel Draft Terms of Reference

### Submitted to:

Review of Environmental Assessment Processes,  
Canadian Environmental Assessment Agency,  
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### Submitted by:

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I responded to the earlier invitation sent out in December 2015 by the Canadian Environmental Assessment Agency asking members of the public, Aboriginal groups, and environmental assessment practitioners to provide comments on the draft *Technical Guidance for assessing the Current Use of Lands and Resources for Traditional Purposes under the Canadian Environmental Assessment Act, 2012*.<sup>1</sup> I am an environmental assessment practitioner. While my comments at that time spoke to the matter of assessing the Current Use of Lands and Resources for Traditional Purposes, I believe the context for my comments are relevant to the structure and function of the Expert Panel established to conduct a review of environmental assessment processes associated with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

My comments focused on the inadequacies of the socio-economic assessment components found in most environmental assessments of proposed resource-based projects.

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<sup>1</sup> Elias, P.D. Comments on the draft *Technical Guidance for assessing the Current Use of Lands and Resources for Traditional Purposes under the Canadian Environmental Assessment Act, 2012*. Submitted Canadian Environmental Assessment Agency on 16 January 2016

With respect to Aboriginal peoples, the *Canadian Environmental Assessment Act, 2012* requires a proponent to take into account the potential effects of a proposed development on “(i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes, or (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.” (*Canadian Environmental Assessment Act, 2012*, 5(c)(ii), page 7) This very general prescription is repeated in the *Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act, 2012*. In *Prescribed Information for the Description of a Designated Project Regulations*. Similarly, the *National Energy Board Filing Manual, June 2015*, there are references to ‘socio-economic effects’, ‘socio-economic elements’ and ‘socio-cultural setting’. (*National Energy Board Filing Manual, June 2015*, page 4A-58)

Thus, while both the NEB and CEAA require an EA to discuss socio-economic and cultural conditions (elements, setting) in Aboriginal communities, I have found that both agencies set the bar very low in terms of information which will satisfy an EA. Even so, most EA’s barely manage to meet what is required by the regulators and abjectly fail to meet what is required by science. Apparently, this level of performance on the part of proponents has been deemed acceptable by the NEB and the CEAA, much to the detriment of Aboriginal communities.

At present, socio-economics and culture are trivialized in the EA’s I have reviewed. The feeble efforts put into socio-economic research by proponents is very far from exhibiting best practices in this field. It is not as though best practices are secret – they are ignored seemingly with the implicit approval of the regulators. In my role as a reviewer of EA’s on behalf of Aboriginal communities, I routinely raise criticism directed at what proponents offer as socio-economic assessments. Often, the proponent simply points at the NEB and CEAA documents and asserts that it has done what is required. And, that is that.

I am concerned that even the best-intentioned policy addressing socio-economics and culture will falter in the face of proponents of resource-based projects who seek ways and means of putting the very least effort into this necessary task. Worse, their minimalist efforts may be accepted as satisfactory by the CEAA and the NEB.

Since an EA is the prime source of information before the CEAA (or the NEB) it is vital that it be reliable, accurate and complete. Anything less must result in decisions that are not greeted with the confidence of Aboriginal communities or the Canadian public at large. At present, too many EA’s fall far short of the usual standards for good science.

Both the CEAA and the NEB do invite proponents to explore in depth the socio-economic and cultural circumstances of Aboriginal communities that might be affected by a proposed project. Table A-3 of the *NEB Filing Manual* includes a statement that “Table A-3 was designed to assist

Applicants in identifying **detailed** information needs specific to individual socio-economic elements. **The elements and circumstances described in the table are not exhaustive.**” (*National Energy Board Filing Manual, June 2015, page 4A-58. Emphasis added.*) This comment suggests the Filing Manual does not prohibit a more meaningful understanding of Aboriginal communities and concerns, or set an upper limit on what must be considered in an EA.

Usually, however, proponents do treat the very abbreviated list of ‘socio-economic elements’ mentioned in the *Filing Manual* as though it is exhaustive and that nothing more than a few readily-available statistics fully satisfies what an EA requires. This minimalist reading of the *Filing Manual* neglects a more nuanced and perceptive approach to understanding challenges the project might present to Aboriginal communities. It seems that because neither agency insists on rigour in these areas, proponents make the least effort they can get away with, knowing they will not be challenged. I am not surprised when Aboriginal leaders tell me they have little trust for the current process.

I urge Environment Canada to assign at least one person to the Expert Panel who is an acknowledged expert in socio-economic assessment of Aboriginal communities. This person will have credentials and a history of experience which supports a claim to expertise in this area. This person will also be respected as an expert by Aboriginal communities. Without such a member on the Expert Panel, I fear that Aboriginal societies and cultures will be again relegated to after-thoughts in the CEAA and the NEB assessment process.