

Review of Environmental Assessment Processes  
Canadian Environmental Assessment Agency  
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3  
[CEAA.EARReview-ExamenEE.ACCE@ceaa-acee.gc.ca](mailto:CEAA.EARReview-ExamenEE.ACCE@ceaa-acee.gc.ca)  
Sent via email

July 20, 2016

**Re: Comments on Environmental Assessment Processes: Draft Terms of Reference for Expert Panel**

Dear Sirs/Mesdames,

We welcome the review of the Canadian Environmental Assessment Act, 2012 and the opportunity to comment on the draft Terms of Reference for that review. Even prior to the changes made to the Act by the previous government in 2012, it was our conclusion, having participated in many assessments in the last two decades, that environmental assessment in Canada is deeply flawed and is not achieving the goal of creating a more sustainable Canada. We urge your government to conduct a thorough review of the Act and provide the mechanisms and funding required to conduct such a review. Other environmental organizations and scholars are making many of the points we would make, and likely more astutely and eloquently than we would, so we broadly endorse their submissions. In particular, we endorse the recommendations made by West Coast Environmental Law and Ecojustice and the analysis and conclusions drawn by Robert Gibson, Meinhard Doelle and John Sinclair and by Chris Tollefson in recently released papers.<sup>1,2</sup> Below we have focused on points that are worthy of repetition and are of particular importance to us in our work.

**Explicitly Open Mandate**

The Terms of Reference available on the review website are both broad and vague. We are comfortable with an expansive review as it would allow a comprehensive review of environmental assessment. We worry about the vagueness of the TOR as we might find ourselves surprised by further definition in the final TOR for the panel. We would ask that for the review you ensure that the full mandate is available to the public.

**Length of the Review**

We support an expeditious review but are worried that the timelines are unreasonably tight if there is to be meaningful public participation and the review goes beyond simply redressing the flaws of CEAA 2012. We would suggest adding 3-6 months to the review.

**A Full Review is Necessary to Rebuild Trust**

We repeat the analysis and conclusions drawn by organizations and scholars in the field of environmental law and policy that environment assessment is broken if its purpose is to advance environmental and social sustainability and maintain a level of public confidence in the approval process for industrial and technological activities and development in Canada. Although there may

---

<sup>1</sup> Robert B. Gibson, Meinhard Doelle, A. John Sinclair, "Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment" (2016) 29 *J. Env. L. & Prac.* 251 at 255.

<sup>2</sup> Chris Tollefson, "There are at least 10 Good Reasons Why Ottawa should Start Scratch and Redesign our Environmental Assessments Laws" (2016) *Policy Options*. <http://policyoptions.irpp.org/magazines/july-2016/canadas-current-environmental-assessment-law-a-tear-down-not-a-reno/>

not be agreement on the ultimate remedy, there is a high level of cynicism about CEAA from diverse quarters, be it the private sector, indigenous governments or environment groups. This review would be a tragically missed opportunity if it did not examine the ultimate purpose of assessments and address the growing cynicism and rebuild trust in the process and outcomes.

We fully support the emphasis the draft TOR place on engagement with Indigenous governments.

### **Independent Science**

We welcome that 'decisions based on science, facts and evidence' is prominent in the draft terms of reference. It is our experience that the wrong incentives are at play in assessments and as a result high quality, objective assessments containing good science are rare. Proponents employing consultants are motivated to diminish the impacts so as to obtain a ministerial conclusion of no significant impact and intervenors and opponents, if they have the resources to participate, are motivated to amplify the impacts. The current process is often costly for proponents, disappointing for opponents and sustainability is not an outcome. We believe there are ways to remedy this situation and reshape the incentives and we hope that the final Terms of Reference will encompass this level of change.

### **Responsible Authorities**

It was the previous Government's intent to make the Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland Labrador Offshore Petroleum responsible authorities under CEAA, 2012 in addition to National Energy Board and the Canada Nuclear Safety Commission<sup>3</sup>. EAC was alarmed by the news that these two boards might become responsible authorities. We have consistently maintained that the Offshore Boards are in a conflict of interest; e.g. the CNSOPB is responsible for 'enabling the safe and responsible development of Nova Scotia's offshore petroleum resources.' while at the same time being responsible for the 'protection of the environment' from the impacts of petroleum development<sup>4</sup>. We would request that the Terms of Reference allow for consideration of the reasons and criteria under which a government department or agency becomes a responsible authority.

### **Strategic and Regional Environmental Assessments**

We expect that the existing terms of reference include consideration of, and greater use of strategic and regional assessments but wanted to make explicit our support for full consideration of these forms of assessment in the review.

We look forward to the upcoming review and this unique opportunity to make dramatic improvements in environmental assessment in Canada.

Sincerely,



Mark Butler  
Policy Director

---

<sup>3</sup> <http://www.gazette.gc.ca/rp-pr/p1/2015/2015-06-27/html/reg5-eng.php>

<sup>4</sup> An increasing number of energy projects are being proposed for our oceans. Ensuring that CEAA takes an integrated approach to ocean activities is important.