



Hugh J. Benevides

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By e-mail only

Hon. Catherine McKenna, Minister of the Environment
Hon. Carolyn Bennett, Minister of Indigenous and Northern Affairs
Hon. Jim Carr, Minister of Natural Resources
Hon. Dominic LeBlanc, Minister of Fisheries and Oceans
Hon. Marc Garneau, Minister of Transport
Hon. Kirsty Duncan, Minister of Innovation, Science and Economic Development

Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3

Dear Ministers and to the Agency:

I write in response to the call for comments on the draft terms of reference for the expert panel on environmental assessment (EA) processes. This letter also touches on the reviews being conducted of the National Energy Board, the federal constitutional authority over the right of navigation previously protected by the *Navigable Waters Protection Act*, and the urgently-needed “restoration of lost protections” for fish habitat in the *Fisheries Act*.

Your government has indicated an intention to provide Canadians with opportunities to be involved in the review of a range of processes, laws and bodies (among which the Canadian Nuclear Safety Commission and its governing legislation is thus far most regrettably excluded; this decision should be reversed, because the environmental, health and safety implications of an unreformed CNSC are very serious).

I therefore echo the submissions of various others (see for example the submitted comments of the Canadian Environmental Law Association (CELA), West Coast Environmental Law, Ecojustice, Professor Robert Gibson et al., the Environmental Planning and Assessment Caucus of the Canadian Environmental Network,

Professor Martin Olszynski, MiningWatch Canada, etc.; I also strongly support the reasons for a new regime expressed by Chris Tollefson in "Canada's current environmental assessment law: a tear-down not a reno" at <http://policyoptions.irpp.org/magazines/july-2016/canadas-current-environmental-assessment-law-a-tear-down-not-a-reno/>).

I recommend that the expert panel ought to be given a wide mandate in terms of such questions as: what were the original purposes of EA law? Which choices were foregone in Canada as various regimes (including EARP/GO, the Cabinet Directive(s), CEAA [1992], CEAA 2012) were put in place, and have these choices taken us farther from or closer to realizing the original purposes? – and that it be free to consider a "next-generation" approach to EA that is not constrained by previous or current regimes.

The panel must not be constrained by the narrow mandate expressed in part as follows: "... review Canada's environmental assessment processes to regain public trust and help get resources to market ...". Public trust is an important element but the expert panel must first be able to take the broader view as suggested in the previous paragraph. Public trust, and a fuller range of economic options will arise after only a sound exploration of the answers to the more fundamental questions about how to conduct assessments.

Notably absent from the terms of reference are details about how the results and recommendations stemming from the reviews are to be combined. I therefore support the submissions of various groups and individuals urging public review and comment periods for the expert panel's report (possibly, one period for commenting to the panel on a draft report, and another period to review a final report and make further recommendations directly to the government).

Also crucial will be meaningful opportunities for public review and comment on the results of all four (and possibly other related) reviews and their integration. While these latter comments may exceed the scope of the draft terms of reference, now seems an appropriate time to make them.

At previous stages, we have foregone opportunities to pursue greater sustainability including more positive environmental outcomes. I refer here not only to our previous choices of assessment regimes, and the imposition of misguided regimes without consultation (referring in the latter case to CEAA 2012) but also, to decisions to severely and purposely constrain review processes (see my "Real Reform Deferred ..." paper in (2004) 13 *Journal of Environmental Law and Practice* 2, 195-226).

I therefore recommend that the terms of reference be revised as recommended here and in the excellent submissions mentioned above.

With thanks for allowing this opportunity to comment,

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh J. Benevides".

Hugh Benevides