

Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3
CEAA.EARReview-ExamenEE.ACEE@ceaa-acee.gc.ca

Submitted by email

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Response to Canada's Terms of Reference for Canadian Environmental Assessment Act expert panel

Prepared by Dr. Alana Westwood on behalf of Evidence for Democracy.

Thank you for this opportunity to comment on the draft Terms of Reference for the Canadian Environmental Assessment Act expert panel.

The Minister of Environment and Climate Change has been tasked with the crucial mission of overhauling Canada's lax Environmental Assessment (EA) regulatory structure. The CEAA 2012 has been widely recognized as being insufficient to ensure prevention of environmental harms. The [Terms of Reference](#), available for public comment, provide direction for the expert panel to tackle making recommendations to the government for revising or re-creating this important piece of legislation.

The appointment of an independent panel, with a mandate including gathering expert advice and engaging in broad public and consultation with Indigenous communities, will help ensure transparency and inclusion of the best available evidence in this process. These efforts complement Evidence for Democracy's position that governments should be transparent, accountable, and ensure decision-making is informed by evidence.

However, there are a few places where the Terms of Reference (TOR) lacks specificity, or could be expanded. Our recommendations fall into four key areas.

- 1. Provisions for independent science.** [As described by](#) Chris Tollefson, “CEAA 2012 depends heavily on the science put forward by industrial proponents and their hired consultants. It is then largely left to the community organizations, conservation groups and First Nations to bring forward scientific evidence that casts doubt on the proponent’s science. This model assumes that such groups have the capacity and opportunity to present competing science; it also assumes that the process will assess and weigh these competing scientific perspectives in a sound, fair and balanced way.”

These broad assumptions have led to great controversy based on conflicting scientific outcomes, and decisions made without clear standards for rigorous evaluation of evidence. The TOR should set out a requirement for a process by which the panel recommends a better method for the inclusion of scientific advice in EA, one that does not merely fall upon the proponent, but rather has provisions for independent research and/or cross-examination.
- 2. Expanding complementary mandates.** At present, the TOR identifies three departments whose mandates overlap with CEAA, including Transport Canada, Department of Fisheries and Oceans, and Natural Resources Canada. Omitted from this list are Agriculture and Agri-Food Canada, Health Canada, and Parks Canada. These latter three departments operate in areas affected by EA in terms of the health of human and natural systems, and should be involved in the review process as necessary.
- 3. Expert panel composition and qualifications.** The TOR specifies that the panel will be composed of at least three members with a chairperson. EA is a broad topic, including environmental, social, economic, and cumulative aspects. The practice of EA, in all jurisdictions, forms the interface of government, industry, Indigenous groups, and EA practitioners (generally natural and social scientists, but also including engineers, assessors, and other professionals). A panel of 3-4 would be too small to encompass the required breadth of background expertise. Additionally, it is unclear who will select panelists, or what qualifications they shall have. It is important that panelists have great experience and in the theory and practice of EA, and be able to tackle fundamental questions: in Canada, what are the objectives and outcomes of federal EA? Some of these elements may be addressed by the creation of a Multi-Interest Advisory Committee to inform the expert panel, which would

ideally provide their consensus advice. However, it should be acknowledged that given the diversity of professions and viewpoints within EA, consensus on such a panel is unlikely to be achieved. As such, the TOR should specify additional mechanisms by which advice could be provided to the expert panel from the committee, the standard of evidence this information will be held to, and the rigor with which it will be evaluated.

4. **Deliverables.** The TOR describes three deliverables: a final report and plans for consultation Indigenous peoples and public engagement. We recommend another deliverable, beyond the final report: a concise document which clearly specifies recommended changes or replacement for legislation and/or complementary policy. This would maximize the possibility of transferring expert advice into informed decision-making.
5. **Scientific integrity and standards during consultation.** Though the TOR describes that all public and Indigenous recommendations will be taken into account and made publicly available, it is not specified how scientific research and Indigenous knowledge (IK) will be taken into account. Evidence, subjected to suitable standards, is necessary for informed decision-making. The TOR should explicitly mandate the inclusion of robust scientific evidence and IK, and discuss how this will be considered in relation to other forms of knowledge towards the final recommendations.

Along with these recommendations, we also echo the request of [West Coast Environmental Law](#), who called for strategic-level solutions. Such higher-level capability that would allow the panel to consider if the National Energy Board and Canadian Nuclear Safety Commission should even be situated in their current role, or if this should be revised.

Finally, it must be recognized by the panel that CEAA cannot function without a culture of science integrity in the federal government. Once CEAA regulations are implemented, practitioners must carry out the best possible research on the effects of proposed projects in a transparent fashion, with results available to the public. Issues with transparency around environmental assessments for large projects have caused much controversy in Canada to date, resulting in loss of public trust.

What is required for CEAA regulations to function more smoothly is to enshrine science integrity and communication at the federal level. E4D, along with the Professional Institute of the Public Service of Canada, has [asked the federal government](#) to guarantee scientists the right to last review of their

research, to ensure the timely public release of scientific information, and to offer safeguards from scientific misconduct and protection from undue commercial influence. Implementing these measures would allow for openness through the entire life cycle of research, enhancing public trust in results and decisions concerning EAs. EA decisions are by nature an act of evidence-informed decision-making, and as such, provisions must be made to ensure the evidence is unfettered and of the highest quality.

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