

# Submission to the review the environmental impact assessment

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I appreciate the chance to participate in the discussion on improving the environmental assessment process in Canada. I have practical experience with the process, and have witnessed first-hand its current shortcomings. I have a Ph.D. in natural sciences (Biological Oceanography), and have participated in a number of environmental assessment processes, at various levels (federal, joint federal-provincial), and have seen it from various perspectives: as a member of the public commenting on the Environmental Impact Statement on the Lower Churchill Hydroproject, as a member of the advisory group reviewing Eastern Newfoundland Strategic Environmental Assessment for the Canada-Newfoundland and Labrador Offshore Petroleum Board, as well as having worked with an environmental consulting firms on preparing submissions to the request for proposals for several different environmental impact assessments.

Based on this background, I see the environmental assessment process in its current form as poorly enforced, and prone to errors, omissions and knowledge gaps. Furthermore, it seems systematically biased in favour of the proponents of the activities requiring the assessment. As a result, the outcome of the process is often viewed by the public with suspicion, as flawed and biased, a mere rubber-stamping of a process with foregone conclusions. This erodes the public trust in the environmental laws and in the democratic processes and institutions in general, and weakens the social mandate to carry out the activities regulated by this process. To address these problems, I would like to propose several actions:

## **A. Reduce the current bias favouring the proponents.**

Currently, we have a David and Goliath situation, with all the money, political influence, and research capacity concentrated on one side of the process, with the other side devoid of all of them, and reduced, in effect, to being a fig leaf to an undemocratic process. To address this I have two suggestions:

### **Recommendation 1:**

**The research and preparation of the environmental impact assessments, while still paid for by the proponent, should be awarded by a neutral, hands-off agency, like the environmental impact assessment panel.**

As it is now, this critically important part of the assessment process is fully controlled by the proponent. This unavoidably leads to the conflict of interest on the part of the consulting firm preparing the assessment, and to self-censoring of its research and recommendations in favour of the proponent. As one environmental consultant told me, on condition of anonymity, "*if I don't go easy in my assessment, this will be the last contract my firm ever gets*". Or in other words: *he who pays the piper calls the tune*. We would not tolerate such a situation in our courts, academia, or other societal institutions, so why do we tolerate them in the process that may have so dramatic environmental, social and economical implications?

Therefore, I believe that while the proponent still should provide funding for the environmental assessment, their money should be put in a blind-trust for the assessment panel to use and decide which of the consulting firms to choose, with the expertise and past performance of these firms (see recommendation 5, below), as the only criteria. This approach would separate the proponent of the project from the main environmental evaluator of the project.

### **Recommendation 2:**

**Sufficient amount of the proponent's money should be set aside to support independent evaluation of the assessment and review of applicable scientific literature by non-profit stakeholders.**

We cannot expect informed discussion of a project, if one side has its hands tied behind its back by the lack of resources. Unlike the proponents, the environmental, indigenous, and social groups are often forced to run mainly “on fumes”, relying on unpaid time and effort of volunteers, who often have to choose between using their limited time for the greater good or to earn their living. Sufficient, not merely symbolic, funding, would therefore not only make the environmental assessment process more fair, i.e., less tilted in favour of the proponents; but also more reliable, by allowing the non-profit organizations and individuals to independently search the scientific literature, to critically verify the submitted claims, and to present well-informed points of discussion. In addition, in the long term such funding may help to preserve the independent expertise within non-profit sector from the erosion effected by the previous government's cuts over the last decade. This expertise will be needed in the future environmental assessments and typically is more cost-effective than outsourcing the assessment reviews to the commercial consulting.

The funding for this should come from the same pool as the funds discussed in recommendation 1: i.e. supplied by the proponent, but administered by the assessment panel. The financial supporting of the proper airing of various viewpoints and recognition of the future, potentially costly, problems, is in the financial interest of the proponents, and, as such, should be considered a cost of the due diligence of any project.

### **B. The environmental assessment process should be given teeth.**

Currently, at the end of the process the panel issues *recommendations*, which are not binding to the proponent. The case in point may be the recommendation of the Lower Churchill Environmental Impact Statement Panel to maximize the clearance of the vegetation in the basin to be flooded for the hydro-reservoir, to reduce the methylmercury and other contamination of the water, aquatic communities, fish, and seals downstream from the project. This recommendation was rejected by the proponent, even though subsequent scientific research raised similar questions. So my suggestion is:

### **Recommendation 3:**

**Make the recommendation of the environmental assessment panel either binding, or at the very least, much more difficult to reject; then enforce their implementation.**

### **C. The need for the follow-up**

At the moment process effectively ends with the final recommendations of the assessment panel - there is no mechanism to see whether the recommendations are going to be implemented, and no way to evaluate after the fact whether the carried out assessment did work, i.e., whether it was able to identify and prevent important environmental problems or not. By not having any follow-up, we miss on the chance of learning from the past mistakes and of making the future assessments better. Therefore I have three recommendations:

#### **Recommendation 4:**

**Monitor the implementation of the environment recommendations by the proponent *after* the environmental assessment process of the proposal is concluded.**

If the recommendation are not implemented, the government regulating bodies should enforce their implementation. Furthermore, this should go on the company record, so the next time the company applies for permits for other projects, the future environmental assessment will be informed by the track-record of the company in the past projects.

#### **Recommendation 5:**

**Evaluate of the performance of the environmental consulting firms hired to prepare the environmental impact assessment report.**

If the follow-up assessment finds that the consulting firm chosen to prepare environmental impact assessment report has done a poor job, missing or deliberately omitting important potential problems that could have been identified at the time, such failures should be recorded, so such a firm will be less likely to win future contracts awarded by the environmental panels in the way suggested in the Recommendation 1 (above).

#### **Recommendation 6:**

**Learning from the past mistakes – the environmental assessment process itself.**

If the problems in Recommendations 4 and 5 are recurring – the problem may be not with the particular proponent or the hired consulting firm, but with assessment process itself. In such a case, follow-up assessment would be useful in future improvements of the environmental assessment process itself.