

The Expert Panel's Report on Environmental Assessment in Canada



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I would like to take you back to the not-so-distant past. The year is 2012, which I bemoan as the year Canada's environmental protections died. That was the year the federal government passed a 420-page omnibus budget bill. It was called "omnibus" because it did much more than present the government's financial plans. It de-limbed Canada's environmental legal tree. Bill C-38: the *Jobs, Growth and Long Term Prosperity Act* amended 60 laws and eliminated 6 others. Two thirds of this "budget" bill targeted major national environmental laws: the *Canadian Environmental Assessment Act* was replaced, protections provided by the *Fisheries Act* were stripped, the *Navigable Waters Protections Act* was diluted, the *Kyoto Protocol Implementation Act* was repealed, and amendments to the *Parks Canada Agency Act* cut staff. The irony of the bill's name shouldn't have been lost on anyone.

The 2012 changes to the *Canadian Environmental Assessment Act* (CEAA) were striking and sweeping. Coupled with substantial cuts to the Canadian Environmental Assessment Agency, the new Act guaranteed that Ottawa annually would conduct fewer and fewer environmental assessments, with little attention paid to monitoring and enforcement of project conditions. It's no wonder that sowed public skepticism about Canada's environmental protection commitments.

A New Dawn

Let's fast forward now to shortly after the federal election in 2015. Prime Min-

ister Trudeau's mandate letter to his Environment and Climate Change Minister instructed Catherine McKenna to "immediately review Canada's environmental assessment processes to regain public trust." This resulted in a review of many federal environmental laws, including Canada's environmental assessment law and processes. An expert panel was established in late 2016 which held public hearings and workshops across the country. The Expert Panel's final report – *Building Common Ground* – was released in April 2017. We expect that, after the federal government processes the public feedback it received about this report, changes to Canada's federal assessment processes will be announced in the fall.

The Expert Panel's report has some significant, forward-thinking recommendations. They go beyond resurrecting aspects of the old CEAA and focus on what is actually needed for our federal assessment processes to carry us through the 21st century. Their overall vision is important and refreshing; they call for federal assessments to be transparent, inclusive, informed and meaningful. AWA hopes the federal government remains faithful to this vision as it considers reforming the Canadian environmental assessment regime.

The first substantial proposed change concerns the purpose of federal assessments. Currently, Canada conducts environmental assessments in order to determine whether a project will have significant adverse environmental effects. However, determining that a project has

such significant adverse effects doesn't necessarily prevent it from moving forward. Adverse effects currently can be justified if a project is perceived to provide supposed benefit to society. *Jobs, growth and long term prosperity, anyone?*

The Expert Panel challenges this approach with a sustainability based Impact Assessment (IA) model. This would mean that assessments would approve only those projects which provide a net environmental, social, cultural, health and economic benefit. This would be a significant improvement, because clearly listing trade-offs and determining whether projects provide an overall benefit will help everyone to understand how decisions are made. This may in turn restore the public's trust in the process.

During their tours across Canada, the Panel found that the public currently does not trust the federal assessment process. Part of this reason, they conclude, concerns public participation. Current opportunities for the public to participate are unsatisfactory. The Panel recommends that proponents should move away from only informing the public of a proposed project, to actually collaborating with them to pursue outcomes that better suit the needs and wants of everyone involved.

The Panel's report also recommends that jurisdictions (i.e. municipal, provincial and federal governments, as well as Indigenous organizations) should cooperate to undertake a singular assessment. Such broad cooperation seems key to undertaking successfully a sustainability

based assessment.

When grappling with the topic of *what needs to be assessed*, the Panel has suggested that there should be a list of projects which will automatically require federal assessments. This would be supplemented with a provision that any projects which have the potential to impact current and future generations require an impact assessment. As well, any person or group can also request an assessment be conducted. I can understand the need to provide clarity to industry (it's pretty easy to see if your project is on a list and therefore know if it will need to be assessed), but I am concerned that a list will miss smaller projects. It is usually the cumulative impacts of projects, both big and small, that have contributed to environmental degradation in Alberta.

On this point, it is encouraging to see that cumulative impacts are being considered by the Expert Panel. It seems the Panel is trying to tackle the issue of many projects on a landscape by undertaking regional assessments. These assessments would look at a specific area, determine what the valued components of that area are, and what threats may be posed to these values. This regional approach to disturbances on the land would allow development to be considered in a way that actually looks at the bigger picture.

In this respect I would like to see more substantive commentary on how regional assessments will be done. For example, it's important for regional assessments to determine how an area looked and functioned before there was any development. Current assessments miss the impacts of past projects, which creates a problem known as a shifting baseline, where recent development create a new normal, a baseline that is blind to the changes previous developments have made to the landscape. Even areas that are physically untouched by people are still impacted by us in some way – whether it's pollution, changing climates, or noise. There also has to be some legal teeth and incentives for respecting thresholds and some

mechanisms for proponents to co-operate together. It would also be wise to include provisions requiring that, if thresholds are exceeded, development should stop and the focus should shift to recovery and restoration.

Strategic assessments join regional ones as another level of assessment recommended by the Panel. Strategic assessments are proposed to address the issue of climate change by determining the greenhouse gas emissions of a certain project or region, what impacts climate change is going to have on that landscape, and whether the area is able to cope with and accommodate those impacts. However, other than a comprehensive recommendation on how strategic assessments can be used to determine climate change impacts, the Panel's report falls short on specific recommendations on how strategic assessments will be used. It suggests that strategic assessments should be used as a guiding tool to help implement existing policies, plans and programs in a project. But it seems silent about new policies and initiatives. Strategic assessments should consider them as well to see whether they achieve net sustainability and how they fit within the broader assessment framework.

For example, a proposal in a federal budget to boost the economy by widening every road in Canada would have to be assessed and determined whether this will achieve net sustainability. A strategic assessment would consider the future of transportation, domestic and international climate change policies and agreements, and would perhaps recommend that taxpayer dollars would be better used to incentivize public transportation initiatives instead.

My biggest question might be reserved for the recommendation that, with conditions, the substitution of provincial assessments for federal or joint assessments should remain as an option. This may retain too much of the current situation where a provincial government can undertake an assessment that both the

province and the federal government will use to assess a project. The panel's conditions include insisting that the highest standards will be applied and that the federal government would still need to be actively involved in such a process. Will these conditions be enough to ensure substitution isn't another way for the federal government to abdicate its duties? I worry about this and fear that substitution may weaken the assessment process. However, I'm pleased to see that the panel thinks that the current version of equivalency – where the federal government doesn't need to be involved at all in the assessment process – is not acceptable.

Restoring public trust hinges on transparency and accountability in the process. To this end, the Panel makes a number of good recommendations. They include making assessment information permanently and publicly available, ensuring that scientific data is publicly available on a federal government database, insisting that decisions should be evidence-based, and clearly listing the decision making criteria. There are also recommendations to increase monitoring and enforcement of conditions placed on projects. All of these measures promise to increase accountability and transparency.

Finally, the Expert Panel's recommendations are just that: recommendations. Whether they are adopted by the federal government and how they are carried out in practice will ultimately determine the success of this initiative. This report isn't perfect, but it's definitely a step in the right direction. I hope the federal government achieves the Panel's vision for assessments to be transparent, inclusive, informed and meaningful as they move forward with making decisions on how to change Canada's assessment processes. 🐾