

Expert Panel Releases Its Report: A New Vision for Impact Assessment in Canada

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Upon being sworn in as Minister of Environment and Climate Change, the Hon. Catherine McKenna, received her mandate letter from the Prime Minister to, among other things, immediately begin a review of federal environmental assessment (EA) processes with the following objectives: (i) restore public trust in EA; (ii) introduce new, and fair process; and (iii) get resources to market. The Minister responded by establishing a four-person Expert Panel (Panel) on August 15, 2016 to conduct the review.

The Panel spent the Fall of 2016 traveling from coast-to-coast-to coast hearing from Canadians, Indigenous peoples, provinces, territories and key stakeholders on how to improve federal EA processes under the *Canadian Environmental Assessment Act, 2012*.

Yesterday, the Panel released its report, "A New Vision for Impact Assessment in Canada". The Report is long, (more than 116 pages), complex and has a significant number of recommendations aimed at meeting the three objectives in the Prime Minister's mandate letter.

In outlining its vision of EA, the Panel asserts that EA processes must move beyond an assessment of the bio-physical environment, to encompass all impacts likely to result from a project, both positive and negative. In doing this, what is now EA should become "impact assessment" (IA). The sustainability-based IA framework being proposed should integrate all relevant evidence that supports the outcomes within the environmental, health, social, cultural and economic pillars. The goal of IA should be to identify and address potential issues and concerns early in the design of projects, plans and policies. IA should also "contribute to the protection of the bio-physical environment and the long-term well-being of Canadians by gathering proper information to inform decision-making". At the project level, IA should lead to improved project design and ensure appropriate mitigation measures and monitoring programs are carried out. IA processes should give Canadians the confidence that projects, plans and policies have been adequately assessed.

The following are a few key highlights of the Panel's recommendations:

- ♦ The principle of "one project one assessment" is central to implementing IA. As a result, a co-operation mechanism between the different levels of government must be in place. Substitution of one IA process for another should be available on the condition that the highest standard of IA applies.

- ♦ Finding ways to enhance Indigenous participation and consultation in the IA process was identified as a key goal in the Panel's Terms of Reference. To achieve this, the Panel recommends:
 - Indigenous peoples be included in decision-making at all stages of IA, in accordance with their own laws and customs;
 - IA processes require the assessment of impacts to asserted or established Aboriginal or treaty rights and interests across all components of sustainability;
 - any IA authority be designated an agent of the Crown and, through a collaborative process, thus be accountable for the duty to consult and accommodate the conduct the consultation and the adequacy of consultation;
 - a funding program be developed to provide long-term ongoing IA capacity development that is responsive to the specific needs and contexts of diverse Indigenous groups;
 - IA-specific funding programs be enhanced to provide adequate support throughout the whole IA process
- ♦ IA legislation should require that IA provide early and ongoing public participation opportunities that are open to all. In addition, the Panel recommends:
 - the participant funding program for IA should be commensurate with the costs associated with meaningful participation in all phases of IA, including monitoring and follow-up;
 - IA legislation should require that IA information be easily accessible and permanently and publicly available.
- ♦ IA processes should be evidence-based. To this end, the Panel recommends:
 - IA legislation require that all phases of IA use and integrate the best available scientific information and methods;
 - IA integrate the best evidence from science, Indigenous knowledge and community knowledge through a framework determined in collaboration with Indigenous groups, knowledge holders and scientists;
 - IA decisions reference the key supporting evidence they rely upon, including the criteria and trade-offs used to achieve sustainability outcomes.
- ♦ The Panel recommends the creation of a single authority (moving IA functions from the National Energy Board and the Canadian Nuclear Safety Commission) that has the mandate to conduct and decide upon IAs on behalf of the federal government. To achieve this, the IA authority should be established as a quasi-judicial tribunal empowered to undertake a full range facilitation and dispute-resolution processes.
- ♦ According the Panel, a one-size-fits-all approach to project IA timelines through legislated timeframes has not met the objective of delivering cost and time certainty to proponents. Therefore, the Panel recommends that the single IA authority be required to develop an estimate the cost and time for each phase of the assessment and report regularly on the success in meeting these estimates.
- ♦ IA legislation should require regional IAs where cumulative impacts may occur or already exist on federal lands or marine areas, or where there are potential

consequential cumulative impacts to matters of federal interest. The legislation should also require the IA authority to develop and maintain a schedule of regions that would require a regional IA and to conduct those regional IAs.

- ◆ A new strategic IA model should be put into place to provide a framework on how implement existing federal policies, plans and programs relating to a project or a regional IA. In addition, IA legislation should require that the IA authority conduct a strategic IA when a new or existing federal policy, plan or program would have consequential implications for a federal project or regional IA.
- ◆ With respect to climate change, the Panel recommends that Canada lead a federal strategic IA on the Pan-Canadian Framework on Clean Growth and Climate Change to provide direction on how to implement this Framework and related initiatives in future federal projects and regional IAs.

The Panel Report seeks to meet the objectives in the Prime Minister's mandate letter and doing so find a better forward for IAs. The Report is aspirational in nature and is intended to lay the groundwork for the next step which allows for a 30-day public comment period ending on May 5, 2017.

We will keep you informed of reactions to the Panel Report and the eventual development of IA legislation in the weeks and months ahead.

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