



Seeking to Restore Public Trust – The Federal Government Launches Review of Environmental & Regulatory Processes

By [Charles Birchall](#), Partner and Certified Environmental Law Specialist.
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On Monday, the federal government announced a comprehensive review of environmental and regulatory processes. The highlights of the announcement indicate major changes are likely coming to environmental assessment in Canada:

- ◆ Establish an Expert Panel to engage in extensive consultations with Canadians, Indigenous groups and key stakeholders in order to develop recommendations for revamping *CEAA, 2012*
- ◆ Review and restore lost protections to the *Fisheries Act* and *Navigation Protection Act*
- ◆ Modernize the National Energy Board
- ◆ Review and amend northern territorial environmental assessment regimes in addition to the CEAA 2012 review.

Background

When Prime Minister Trudeau issued his mandate letter to the Honourable Catherine McKenna, Minister of Environment and Climate Change, he directed her, as a top priority, to “immediately review Canada’s environmental assessment processes to regain public trust and help get resources to market and introduce new, fair processes that would:

- ◆ Restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with provinces and territories to avoid duplication;
- ◆ Ensure decisions are based on science, facts and evidence and serve the public’s interest;
- ◆ Provide ways for Canadians to express their views and opportunities for experts to meaningfully participate; and
- ◆ Require project advocates to choose the best technologies available to reduce environmental impacts.”

In January, 2016, Minister McKenna, and the Minister of Natural Resources, the Honourable Jim Carr, took the first step in seeking to restore public trust in the environmental assessment process by announcing the following principles and plans for major projects:

1. No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty

- provisions, under the auspices of relevant responsible authorities and Northern regulatory boards;
2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence;
 3. The views of the public and affected communities will be sought and considered;
 4. Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated; and
 5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.

Monday's Announcement

On June 20, 2016, six Ministers took the next step by announcing a comprehensive review of environmental and regulatory processes focused on the following components:

- ◆ Rebuilding trust in environmental assessment processes;
- ◆ Modernizing the National Energy Board; and
- ◆ Restoring lost protections and introducing modern safeguards to the *Fisheries Act* and the *Navigation Protection Act*.

With respect to the first component, an Expert Panel (consisting of at least three persons) will be established to review federal environmental assessment processes associated with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Throughout the fall of 2016, the Panel will hold meetings and consultation events across the country in regions or communities where project environmental assessments have been recently conducted or where interest has been expressed in the review. It is expected that the Panel will engage broadly with Canadians, Indigenous groups and key stakeholders in order to develop recommendations to the Minister of Environment and Climate Change aimed at restoring public confidence in environmental assessment processes.

While Terms of Reference for the Panel are being made available for public comment, the Panel will be asked to consider the following matters raised in the mandate letters sent to Minister McKenna and the Minister of Indigenous and Northern Affairs:

1. How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with the provinces and territories to avoid duplication;
2. How to ensure decisions are based on science, facts and evidence and serve the public interest;
3. How to provide ways for Canadians to express their views and provide opportunities for experts to meaningfully participate;
4. How to require project advocates to choose the best technologies available to reduce environmental impacts; and
5. How to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects.

Dates and locations of Panel consultations will be available shortly. The Canadian Environmental Assessment Agency will also offer participant funding to Indigenous organizations, groups, communities and individuals to support their participation in the review.

In addition to Minister McKenna's review of environmental assessment processes, other Ministers will be carrying out reviews and proposing reforms to matters that intersect with environmental assessment. These include:

- ◆ Minister of Fisheries and Oceans and the Canadian Coast Guard– review changes to the *Fisheries Act*, restore lost protections and incorporate modern safeguards;
- ◆ Minister of Natural Resources – modernize the National Energy Board to ensure that its composition reflects regional views and has sufficient expertise in fields such as environmental science, community development and Indigenous traditional knowledge; and
- ◆ Minister of Transport – review changes to the *Navigation Protection Act*, restore lost protections and incorporate modern safeguards

Finally, the Minister of Indigenous and Northern Affairs, the Honourable Carolyn Bennett, has launched a process to review and amend northern territorial environmental assessment regimes. As CEAA 2012 has limited application in the Yukon, the Northwest Territories and Nunavut, matters related to northern environmental assessment regimes will be outside the mandate of the Expert Panel.

The federal government has embarked on an ambitious review of environmental and regulatory processes. Public expectations for a successful outcome are very high. As the Mining Association of Canada has noted, no less than six Ministers are engaged thus sending a clear signal that collaboration and consultation will be the cornerstones for reforms that are recommended. This view has also been echoed by Jessica Clogg, Executive Director and Senior Counsel, West Coast Environmental Law: "With tensions running high over the fate of major projects like pipelines and dams, the stakes have never been higher as the government seeks to revamp the way environmental decisions are made in Canada. Collaboration with Indigenous peoples and civil society groups will be an essential part of achieving this goal."

***Charles (Chuck) J. Birchall, B.A. (Hons.), LL.B., LL.M.**, is a partner at Willms & Shier Environmental Lawyers LLP in Ottawa and a member of the firm's Northern Team. Chuck has over 25 years of legal experience devoted exclusively to environmental law and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. Chuck provides advice on a variety of environmental compliance matters, as well as on energy law and Aboriginal consultation issues. Chuck has particular experience advising on environmental assessment issues raised by mining, oil and gas, energy and infrastructure projects. He can be reached at 613-761-2424 or by e-mail at cbirchall@willmsshier.com.*

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