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Panel Seeks Sweeping Changes to Canadian Environmental Assessment Regime

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The Expert Panel for the Review of Environmental Assessment Processes (Panel) released its recommendations regarding the federal *Canadian Environmental Assessment Act, 2012* (CEAA 2012) on April 5, 2017. Mandated to restore public trust in Canada's environmental assessment (EA) process and to get resources to market, the Panel has proposed to restructure the EA process and expand the range of issues to be assessed. The following are some of the most significant changes recommended by the Panel.

Impact Assessment (IA, not EA)

The Panel proposes that Canada's current EA regime be replaced with an "impact assessment" (IA) process that would consider much more than the environment: economic, social, cultural and health impacts would also be assessed. A proposed project would be approved only if it contributes positively to the sustainability of Canada's development.

Single Assessment Authority

The IA authority would be a single entity responsible for all aspects of assessment. The National Energy Board and the Canadian Nuclear Safety Commission would no longer be responsible for assessments.

Tiered Assessments: Strategic, Regional, Project

The IA authority would be responsible for assessments at three levels: strategic, regional and project. Strategic IAs would ensure that federal policies, plans and programs are taken into account in, and provide guidance for, regional and project assessments. Regional IAs would consider geographical areas that already have, or are anticipated to have, cumulative impacts. Regional IAs would inform individual project assessments.

Phased Project Assessments

The Panel proposes that the IA authority conduct a multi-party, in-person engagement process for each project assessment, with these phases:

- *Planning Phase*, when required studies and Indigenous consultation requirements are identified and timelines are set.
- *Study Phase*, in which the IA authority leads experts in preparing the Impact Statement for the project. Consideration of cumulative effects and climate change issues (such as greenhouse gas contribution and long-term resiliency) would be mandated.
- *Decision Phase*, in which sustainability outcomes would be expressed through clear standards.
- *Post-IA Phase*, when the IA authority would carry out compliance and enforcement activities with other jurisdictions.

Independent Evidence

The Panel recommends that proponents pay for but not generate the studies used in the development of Impact Statements. The IA authority would lead independent agencies, scientists or government experts in the collection and analysis of data.

Indigenous Consent

Mandated to reflect the principles of the United Nations Declaration on the Rights of Indigenous Peoples, the Panel recommends that the IA process be subject to the free, prior and informed consent of Indigenous peoples: "Indigenous Peoples who are impacted by a project have the right to provide or withhold consent." The Panel provides the view that such right should be exercised reasonably.

Next Steps

The federal government is accepting comments on the report until May 5, 2017. It is expected that the government's position on the report and any legislative proposals to amend CEAA 2012 would be announced later this year. We will be tracking these developments and would welcome any inquiries from you.

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