



Environmental Assessment Law for a Healthy, Secure, and Sustainable Canada

A Checklist for Strong Environmental Laws

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Canadians want strong environmental laws, and they deserve an environmental assessment process that delivers on core Canadian values related to the environment, democracy, and responsible development. This paper outlines our blueprint of what strong environmental assessment legislation must include, at a minimum, to protect those values and ensure wise decisions are made about proposed development through an effective, efficient, inclusive and robust decision making process. Strong environmental assessment (EA) laws should be based on and measured against the following key principles:

1. **Adopt sustainability as the core objective.** EA legislation should be directed, at its core, to achieving specific and measurable sustainability goals and leaving a positive environmental and socio-economic legacy.
2. **Strengthen public participation.** An effective and inclusive EA should have early and ongoing processes to meaningfully engage the public in assessments of proposed projects or policies, including demonstrated participation opportunities from the initial identification of the proposal through to monitoring, full transparency and sharing of information not only by government but also by proponents. Meaningful engagement with the public also requires that funding be provided through an independent body for multi-faceted assistance to participants and on an early and ongoing basis.
3. **Meaningfully involve Aboriginal governments as decision makers.** An EA process should respect and accommodate Aboriginal and Treaty rights, including Aboriginal title, with Aboriginal rights-holders having a meaningful role in government-to-government decision making on resource development in their territories and all aspects of environmental planning and assessment.
4. **Establish legal framework for strategic environmental assessments.** Strategic EA should systematically integrate environmental considerations into government planning and decision-making processes relating to proposed policies, plans and programs and there should be public records to demonstrate how this integration has been carried out and implemented.
5. **Establish legal framework for regional environmental assessments.** Regional environmental assessments undertaken ahead of industrial development, or a major expansion of development, should be carried out to help define the terms and requirements of subsequent project assessments as well as providing baseline data and analysis for subsequent assessments.
6. **Require comprehensive, regional cumulative effects assessments.** Create and implement a mechanism so that comprehensive, regional cumulative effects assessments are conducted based on the need to manage for sustainability and the outcomes legally integrated into decision making.
7. **Employ multijurisdictional assessment and avoid substitution.** Effective EA should require that all provinces and territories negotiate, in serious consultation with Aboriginal governments, and execute harmonization agreements with the federal government that: allow for predictable sharing of EA responsibilities; follow the highest standards and best practices; and allow for efficient administration of the process among all affected levels of government and departments.
8. **Ensure transparency and access to information.** For any EA process to be credible and transparent, all project information, including that not required by the assessor but produced by the proponent, should be readily accessible online.
9. **Make EA procedures more fair, predictable, and accessible.** Each type of EA should have predictable processes, actors, and procedures; but predictability of *process* must not be conflated with predictability of *outcome*. Even where simplified, each step in an EA should demonstrate *how* all information required to make the best decision, including that provided by Aboriginal groups and the public, is being fully considered. An efficient EA regime should provide for clear rights of appeal for affected parties and for those with public interest standing.
10. **Apply design principles throughout the EA process to ensure that focus and efficiency do not come at the expense of democratic and constitutional rights.** A successful EA regime must be applied broadly and consistently, while ensuring particular reviews are focused and efficient. Any policy or proposed project that could inhibit progress toward sustainability goals or cause significant adverse environmental impacts must undergo an EA.

Environmental Assessment Law for a Healthy, Secure, and Sustainable Canada *A Checklist for Strong Environmental Laws*

The time is right for the federal government to affirm a strong role in environmental protection – and environmental assessment in particular – if we hope to achieve the resilience and sustainability needed for the Canadian economy to thrive over time. This document outlines our blueprint of what environmental assessment laws must include, at a minimum, to protect core Canadian values and ensure wise decisions are made about proposed development through an effective, efficient, inclusive and robust decision making process. We offer these principles as a non-exhaustive checklist against which legislative proposals on this issue may be evaluated.

What is environmental assessment?

Environmental assessment (EA) is the process of identifying, predicting, evaluating and enhancing or mitigating the potential biophysical, social, human health and other relevant effects of development proposals prior to decisions or commitments being made about those proposals. EA, at its best, functions as a tool to study and evaluate the social, economic, cultural, and environmental costs and benefits of a proposed project or course of action in a forward looking way so that an informed decision can be made about whether or not to proceed with the proposal and, if so, what adjustments can and should be made in order to optimize its benefits and minimize its costs and risks. Taking an early look at possible impacts is based on the simple idea that it is less costly and more prudent to anticipate and avoid damage to the environment, health, cultures, and economic conditions before the damage occurs. Sound EA is generally considered a crucial tool in pursuing sustainable development.

Why care about environmental assessment?

When projects like oil pipelines, mines, dams, or tourist resorts are undertaken, whether large or small in scale, Canadians have an expectation that key environmental, economic, social, heritage, cultural, and health values will be protected; adverse impacts avoided or mitigated; and that broad and lasting benefits will be realized. Even small projects can have serious environmental impacts and must be appropriately designed and built.

To protect the environmental riches that Canadians enjoy and to enjoy long term benefits from the resource base that sustains our economy, Canada has established a framework of environmental laws. Though far from perfect, these laws set up a process through which Canadians can set priorities and make decisions about how, when, where or if we want to extract and process natural resources or carry out various development projects.

The tie that binds much of this framework together is the *Canadian Environmental Assessment Act* (CEAA), though EA is at times also a responsibility of other federal departments or agencies. CEAA implicates almost 50 other pieces of federal legislation, including the laws that protect our species at risk, establish and maintain our network of world renowned national parks, regulate our fisheries, and manage our wealth of natural resources – everything from bitumen to water, uranium to agricultural lands.

What are the issues and the opportunities?

Canada currently has an EA regime that has the *potential* to help us work toward sustainability goals, including long term economic gains and strategic environmental protection. The current EA process needs to be strengthened to ensure a more integrated, strategic approach among federal departments, between levels of government, and among proponents, Aboriginal groups, the public and the

government. The current EA process also needs to be strengthened to more critically evaluate, re-design, mitigate or terminate proposed projects that *do* cause significant irreparable environmental impacts: currently over 99% of proposed projects that are assessed by the federal government are approved, and there are many more that have simply been exempted from assessment as part of the federal government's economic stimulus program (though it should be noted there is no evidence this actually sped up their implementation).

The spotlight is now on the federal EA process because several large oil and gas, mining and energy projects are in the midst of the assessment process. A parliamentary committee is currently charged with the legally-required review of *CEAA*. To date that review process has been superficial, secretive and rushed.¹ The federal government has an opportunity to undertake a thorough, inclusive re-examination of how environmental assessment is done in Canada. The federal government has suggested that it may short-circuit this process even further, by limiting or aborting current pipeline assessments for the dubious reason that *too many* concerned citizens and stakeholders signed up to have their say.

There is an opportunity to make EA work more efficiently and more effectively for *all* parties involved and for environmental protection. Rushing to gut the legal requirements and arbitrarily "streamline" the process to the detriment of democratic process, public participation, and Aboriginal groups' involvement will result in more long-term delays, uncertainty, and court challenges and thus dissatisfaction on the part of industry and communities alike.

The time is right for the federal government to affirm a strong role in environmental protection – and environmental assessment in particular – that honours federal constitutional responsibilities and establishes efficient and cooperative relationships with provincial and regional EA processes.

We outline a checklist of ten principles that strong environmental assessment laws must meet in order to build a more effective, inclusive and robust environmental assessment process for Canada. We offer these as a guide for the federal government, and we will be charting their actions against these principles.

Statement of Principles

Canadians deserve an environmental assessment process that delivers on core Canadian values related to the environment, democracy, and responsible development. Strong environmental assessment legislation should be based on and measured against the following key principles:

1. **Adopt sustainability as the core objective.** EA legislation should be directed, at its core, to achieving specific and measurable sustainability goals and leaving a positive environmental and socio-economic legacy.
2. **Strengthen public participation.** An effective and inclusive EA should have early and ongoing processes to meaningfully engage the public in assessments of proposed projects or policies, including demonstrated participation opportunities from the initial identification of the proposal through to monitoring, full transparency and sharing of information not only by government but also by proponents. Meaningful engagement with the public also requires that funding is provided through an independent body for multi-faceted assistance to participants and on an early and ongoing basis.
3. **Meaningfully involve Aboriginal governments as decision makers.** An EA process should respect and accommodate Aboriginal and Treaty rights, including Aboriginal title, with Aboriginal

rights-holders having a meaningful role in government-to-government decision making on resource development in their territories and all aspects of environmental planning and assessment.

4. **Establish legal framework for strategic environmental assessments.** Strategic EA should systematically integrate environmental considerations into government planning and decision making processes relating to proposed policies, plans and programs and there should be public records to demonstrate how this integration has been carried out and implemented.
5. **Establish legal framework for regional environmental assessments.** Regional environmental assessments undertaken ahead of industrial development, or a major expansion of development, should be carried out to help define the terms and requirements of subsequent project assessments as well as providing baseline data and analysis for subsequent assessments.
6. **Require comprehensive, regional cumulative effects assessments.** Create and implement a mechanism so that comprehensive, regional cumulative effects assessments are conducted based on the need to manage for sustainability and the outcomes legally integrated into decision making.
7. **Employ multijurisdictional assessment and avoid substitution.** Effective EA should require that all provinces and territories negotiate, in serious consultation with Aboriginal governments, and execute harmonization agreements with the federal government that: allow for predictable sharing of EA responsibilities; follow the highest standards and best practices; and allow for efficient administration of the process among all affected levels of government and departments.
8. **Ensure transparency and access to information.** For any EA process to be credible and transparent, all project information, including that not required by the assessor but produced by the proponent, should be readily accessible online.
9. **Make EA procedures more fair, predictable, and accessible.** Each type of EA should have predictable processes, actors, and procedures; but predictability of *process* must not be conflated with predictability of *outcome*. Even where simplified, each step in an EA should demonstrate *how* all information required to make the best decision, including that provided by Aboriginal peoples and the public, is being fully considered. An efficient EA regime should provide for clear rights of appeal for affected parties and for those with public interest standing.
10. **Apply design principles throughout the EA process to ensure that focus and efficiency do not come at the expense of democratic and constitutional rights.** A successful EA regime must be applied broadly and consistently, while ensuring particular reviews are focused and efficient. Any policy or proposed project that could inhibit progress toward sustainability goals or cause significant adverse environmental impacts must undergo an EA.

Our 10 Principles for Effective Environmental Assessment

1. Adopt Sustainability as the Core Objective

- ✓ *EA legislation should be directed, at its core, to achieving specific and measurable sustainability goals and leaving a positive environmental and socio-economic legacy.*

EA is not just a process but a mechanism for evaluating options to achieve valuable societal goals and recognizing and working toward meeting international commitments on the environment and on Aboriginal peoples' rights.

Sustainability assessment focuses on the economic, social and environmental sustainability of a project, rather than merely determining the significance of adverse, mainly biophysical, environmental effects. Sustainability assessment is a much better approach than conventional EA for addressing and mitigating greenhouse gas emissions from a project, among other things. Sustainability assessment emphasizes *intergenerational equity* as well as *intragenerational equity*, and it provides a broader foundation for generating public and community support than biophysical environmental assessment because it encompasses the longer-term needs of communities.

One key element of sustainability assessment is the precautionary principle. The precautionary principle entails respecting uncertainty, avoiding even poorly understood risks of serious or irreversible damage to the foundations for sustainability, and designing and managing for adaptation. [Note this does not mean using “adaptive management” as a form of wishful thinking to mitigate predicted impacts post-approval rather than design – and assess – mitigation measures at the outset.] Assessing policies and projects based on sustainability and the precautionary principle also means giving greater recognition to the possibility of not just identifying mitigating measures – which EA is generally geared towards and in which it has had some success – but also seriously considering saying ‘no’ to proposed projects that do not and cannot achieve stated long term societally valuable goals and international commitments.

A strengthened EA regime should require assessment of the environmental and socio-economic sustainability of projects and not just their adverse environmental effects, possibly using the model of the *Yukon Environmental and Socio-economic Assessment Act*.ⁱⁱ

We emphasize that in both designing and conducting sustainability assessment, government must include Aboriginal rights-holders in a meaningful and substantive way, to ensure that Aboriginal peoples’ values and priorities for their traditional territories are reflected and respected in the decision making process, and that their governance rights (under both Treaty and title, depending on the circumstance) are respected.

2. Strengthen Public Participation

- ✓ *An effective and inclusive EA should have early and ongoing processes to meaningfully engage the public in assessments of proposed projects or policies, including demonstrated participation opportunities from the initial identification of the proposal through to monitoring, full transparency and sharing of information not only by government but also by proponents. Meaningful engagement with the public also requires that funding is provided through an independent body for multi-faceted assistance to participants and on an early and ongoing basis.*

Public participation has long been recognized as a cornerstone of EA. There are a number of ongoing concerns about key issues such as accelerated decision making processes, insufficient resources for participants, information and communications deficiencies, lack of participation at early stages of the decision process and weak public participation in follow-up that a new EA regime must address.

Meaningful participation, as it would apply to non-Aboriginal participants, includes the following rights:

- access to all relevant and required information;
- opportunity (time) to test and critically review and comment on the information in a two-way exchange;
- participation early in the decision cycle to allow participants to have an influence on the planning of the project;

- sufficient time for participants, proponents and regulators to review and respond to issues raised;
- sufficient notice, information sharing, discussion and exchange;
- participant assistance through adequate participant funding and through accessible Agency staff;
- development of a consultation plan to be developed together with and shared with the public; and
- timely responses from assessors, proponents and participants, with some flexibility built in for justified extenuating circumstances.

EA must ensure meaningful public participation in all stages of project planning, particularly during the initial determination of the purpose of the project and the consideration of alternatives to the project. Decisions on types or thoroughness of EA must also include the public and should be made well in advance of other irrevocable decisions about the project, its assessment process, or participant funding schedules.

Strengthened EA legislation should establish approaches to meaningful participation in addition to hearings. Internal capacity within government needs to be built for case selection and the conduct of mediation and dialogue in the EA context. Regulatory guidance also needs to be provided in relation to techniques to encourage dialogue among interested parties. Dialogue participation methods (e.g., advisory committees, task forces, community boards, mediation, and non-adversarial negotiation) emphasize ongoing dialogue and communication among project proponents, EA officials, and civic organizations, and serve important mutual learning, relationship building, and conflict resolution functions and their use should be encouraged through regulation.

Effective participation by the public requires funding. The disproportionate resources available to proponents, as opposed to Aboriginal groups and the public, necessitates the establishment of an independent funding body to provide adequate amounts of funding to allow full and meaningful participation, at all steps, to committed members of the public. Important voices and issues, including those providing scientific and technical critical analysis are essential to meaningful participation.

3. Meaningfully Involve Aboriginal Governments as Decision Makers

- ✓ *An EA process should respect and accommodate Aboriginal and Treaty rights, including Aboriginal title, with Aboriginal rights-holders having a meaningful role in government-to-government decision making on resource development in their territories and all aspects of environmental planning and assessment.*

Environmental assessment and regulatory processes that fail to adequately recognize the rights of Indigenous and Aboriginal peoples, and their inherent governance rights, are a significant source of legal conflict between Aboriginal peoples and other governments. Canada has recently endorsed the United Nations Declaration on the Rights of Indigenous Peoples.ⁱⁱⁱ Canada should respect this Declaration and ensure that its process for environmental decision making respects the commitment contained in the Declaration to obtain the free, prior and informed consent of affected Aboriginal peoples before approving resource development activities on their traditional territories and in their waters. This should be reflected in Canada's EA legislation, and a diversity of Aboriginal governments (and/or representative bodies delegated by those governments) must play a critical role in the development of any new or revised EA legislation.

The EA process needs to be reformed dramatically to allow for a participatory and fair process such that Aboriginal rights-holders are involved in a timely way, have the ability to exercise authority flowing from their inherent governance rights within the decision making process. The EA process must also provide Aboriginal groups with the funding capacity to engage in the process in a meaningful way – currently many Nations are completely overwhelmed by the number of proposed developments in their territories and do not have the capacity to properly respond.

First Nations across Canada have been clear over and over that their decision making authority over their own unceded lands (whether Treaty lands or outside of treaties), and their laws, must be respected and recognized by the Crown. Métis Nations have their own authority, also constitutionally protected. Inuit should be involved to ensure their comprehensive claims agreements' provisions are respected. By its very nature this engagement cannot be based on a static, one-size-fits-all approach, but rather should be able to dynamically accommodate different Nations, treaty rights, governance rights, and different rights-holders in relation to varying scales of projects and types of EA being conducted. A new model for EA should include mechanisms for Aboriginal review processes that run parallel to or in tandem with Crown processes, shared decision-making, and other ways for Aboriginal nations to exercise authority in relation to projects that impact various types of rights and interests – varied according to the needs of individual Nations and negotiated with the Nations concerned rather than imposed by the Crown.

4. Establish Legal Framework for Strategic Environmental Assessments

- ✓ *Strategic EA should systematically integrate environmental considerations into government planning and decision making processes relating to proposed policies, plans and programs and there should be public records to demonstrate how this integration has been carried out and implemented.^{iv}*

Strategic environmental assessment (SEA) is a type of process that has been widely implemented in Canada and other jurisdictions worldwide. It is based on regional development and land use planning initiatives. SEA can help inform decision makers and the public on sustainability and strategic decisions, assist with the search for alternatives, and enhance the credibility of decisions and the democratic process.^v An SEA process helps to optimize positive environmental effects and minimize negative environmental effects from a proposal, assists in considering the cumulative effects of a project, and functionally and effectively streamlines project level EA by eliminating the need to address issues that have been resolved at the strategic level. Requiring SEAs in certain circumstances, and with mandatory public reporting, should be an integral part of a robust EA regime.

5. Establish Legal Framework for Regional Environmental Assessments

- ✓ *Regional environmental assessments undertaken ahead of industrial development, or a major expansion of development, should be carried out to help define the terms and requirements of subsequent project assessments as well as providing baseline data and analysis for subsequent assessments.*

Regional environmental assessments (REAs) are intended to examine cumulative environmental effects of multiple developments within a region such as the Mackenzie Valley, northeastern Alberta (tar sands) or the Bay of Fundy. An advantage of this approach is that REAs should relieve pressure on individual EAs with respect to cumulative effects assessment as much of the data would have already been collected. The EA process should entrench provisions that would require use of REAs for regions that

are subject to multiple, and intense development pressures.^{vi} REAs undertaken ahead of industrial development, or a major expansion of development, help define the terms and requirements of subsequent project assessments as well as providing baseline data and analysis for subsequent assessments.

6. Require Comprehensive, Regional Cumulative Effects Assessments

- ✓ *Create and implement a mechanism so that comprehensive, regional cumulative effects assessments are conducted based on the need to manage for sustainability and the outcomes legally integrated into decision making.*

In addition to studying the impacts of an individual project, it is important to understand the cumulative effects of all industrial development in a region over time. Cumulative effects assessment (CEA) assists in long term land use, environmental, and economic planning for ecosystems and regions and can help avoid undesirable and otherwise-unanticipated effects of having multiple projects take place within the same area.

CEA should be legislatively linked to actual decision making. This concept was examined by the federal Office of the Auditor General in its Autumn 2009 report to the House of Commons on *Applying CEAA*, and its October 2011 report on assessing cumulative effects of oil sands projects (the Canadian Environmental Assessment Agency agreed with the recommendations of both of these audits).^{vii} The difficulties relate to a range of structural and regulatory issues that render cumulative effects assessments – as they are currently practiced – fairly ineffectual in the actual *management* of cumulative effects. There is a need to create a mechanism so that comprehensive, regional cumulative effects assessments are conducted based on the need to manage for sustainability. The methods of CEA would be most effectively deployed and most effective at managing for sustainability through such a mechanism.

It should be a priority for the federal government to work with the provinces, Aboriginal governments, and Northern co-management and assessment bodies to enable and establish regional cumulative effects assessment legal frameworks that can efficiently manage provincial and federal responsibilities, in a way that respects Aboriginal and treaty rights, without duplicating efforts. Once established, such frameworks will create efficiencies in addressing long term sustainability and responsible land use and resource management, and provide a great deal of information that would assist in individual project assessments. This would allow proponents to start further along the road because much of the required information needed to assess individual project's effects would already be available.

7. Employ Multijurisdictional Assessment and Avoid Substitution

- ✓ *Effective EA should require that all provinces and territories negotiate, in serious consultation with Aboriginal governments, and execute harmonization agreements with the federal government that: allow for predictable sharing of EA responsibilities; follow the highest standards and best practices; and allow for efficient administration of the process among all affected levels of government and departments.*

There can be no equivalency between federal and provincial or territorial jurisdictions. Subordinate legislation cannot replace federal responsibilities. Instead, a new approach to EA should include mechanisms to ensure that all provinces and territories enter into workable and structurally similar harmonization agreements with the federal government in serious consultation with Aboriginal governments. A new EA Act should also ensure that existing harmonization agreements should be

strengthened to ensure process certainty for proponents and the public while limiting the variation in requirements among agreements. In addition, serious work needs to be undertaken, with a high level commitment from both levels of government, to standardizing EA processes, rules, and procedures so as to facilitate more consistent harmonization.

Substitution has been promoted as another approach to interjurisdictional coordination, principally within the federal ‘family’. It is very difficult to fulfill CEAA requirements with regulatory mechanisms that have much different mandates and processes, as has clearly been borne out in those reviews where this has been attempted.

It is certainly beneficial for the federal and provincial governments to work together as long as each fulfils its areas of responsibility. However, a harmonized process^{viii} is an option only if the process is strong, improves environmental protection, and meets the requirements outlined above. Recognizing complementary and to some extent overlapping federal, territorial, provincial, and Aboriginal jurisdiction, harmonized and joint assessments are viable options and should be used more consistently, including through cooperation in the specification of application rules. It is critical, however, that the arrangements are based on the principle of harmonization *upwards* to the higher standard. Developing and implementing a common set of standards would go a long way toward this and address concerns regarding simplification. Canada and the provinces must not simplify or “harmonize down” to a lower level of environmental protection.

8. Ensure Transparency and Access to Information

- ✓ *For any EA process to be credible and transparent, all project information, including that not required by the assessor but produced by the proponent, should be readily accessible online.*

To promote accountability and credibility among the general public and stakeholders, and to contribute to broader governmental policy commitments and obligations, ready access to information provided by proponents and to any comments or information offered by participants and regulators is essential to meaningful participation. Reporting on EAs in a public registry must continue to be legally required; this is an important safeguard to assure accountability on the part of governments, proponents, and participants. Project information must be made available through a functional and reliable registry system, and proponents’ documents and studies that contain important information but that have not been required by government must also be readily available to the public. Special limited exceptions may apply to disclosure of site-specific information that could place commercial rights or value at risk.

9. Make EA Procedures More Fair, Predictable, and Accessible

- ✓ *Each type of EA should have predictable processes, actors, and procedures; but predictability of process must not be conflated with predictability of outcome. Even where simplified, each step in an EA should demonstrate how all information required to make the best decision, including that provided by Aboriginal peoples and the public, is being fully considered. An efficient EA regime should provide for clear rights of appeal for affected parties and for those with public interest standing.*

Rights of appeal and review for affected persons and the public

The ability of the public or a proponent to challenge certain decisions made throughout or at the conclusion of the EA process is very limited and, where available, a judicial review typically does not

provide an effective outcome for any party involved; it will often only create delay and uncertainty. Any new legislation should include a right of appeal for affected persons, and also for the interested public with such public interest appeals subject to accessible standing rules, constrained by the test of having to have a serious issue and a genuine interest. In general, discretionary decisions should be constrained by legislative requirements, which will provide more predictability and greater transparency in decision making – including decisions as to what sort of EA is required, the scope of the assessment, participant funding allocation, other decisions within the process, and of course the final decision on the viability of a project or plan.

Simplification

Simplification, improving predictability and consistency of the process, is desirable as long as it also improves effectiveness and fairness, and the ecological, cultural, social, and heritage objectives of an assessment, as well as sustainability goals, are still met.

Simplification in and of itself is not a viable goal if it glosses over the complexity that is inherent in making environmental decisions. For example, our scientific understanding has grown as to how projects' cumulative impacts are interconnected across landscapes; we now understand more and more about climate change; public awareness of environmental issues is deeper than in the past; and Aboriginal traditional ecological knowledge has been recognized as a critical base for understanding ecosystems and making decisions. In light of these developments and many more, while the EA process could be made “simpler”, it must be recognized that the information required to make the best environmental decisions in the public interest is necessarily complex and detailed. This is a complex area of government regulation and needs to be recognized and dealt with appropriately.

Predictability and consistency of the *process* is important, but *outcomes* should be variable depending on a project's assessed merits. While proponents and the public may complain about unpredictable process, the statistics show that outcomes for project approval in the current CEAA system are practically certain – over 99.9% approval in screenings, comprehensive studies, and review panels. While a bare statistic does not tell us about the quality of the projects themselves, it suggests that the current system is imbalanced and that environmental protection is being given shorter shrift than it ought to be.

10. Apply Design Principles to the EA Process To Ensure that Focus and Efficiency Do Not Come at the Expense of Democratic and Constitutional Rights.

- ✓ *A successful EA regime must be applied broadly and consistently, while ensuring particular reviews are focused and efficient. Any policy or proposed project that could inhibit progress toward sustainability goals or cause significant adverse environmental impacts must undergo an EA.*

A successful EA regime should have:

- requirements that apply to all undertakings that may have or contribute to significant adverse environmental effects and/or significant opportunities for progress towards sustainability independent of their size;
- such undertakings include strategic (policies, plans, programmes, regulatory and fiscal initiatives, etc.) as well as project (physical works and activities) level undertakings;

- application rules and guidance should ensure that relevant proponents and other interested parties know from the outset of deliberations (e.g. about purposes and alternatives) that assessment requirements apply;
- application rules should include means by which law-based strategic assessments may identify and specify assessment requirements for undertakings within the scope of the strategic undertaking; and
- bureaucratic processes, and agreements such as harmonization agreements, should ensure there is minimal redundancy for proponents or for the public and achieve maximum efficiency without compromising democratic or constitutional rights to participate in the process.

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- ⁱ See for example, the letters of the Canadian Environmental Network's Environmental Planning and Assessment Caucus and of West Coast Environmental Law to the Standing Committee regarding the flaws in its process. Online at: <http://wcel.org/resources/publication/letter-standing-committee-process-seven-year-review-canadian-environmental-ass>
- ⁱⁱ Robert Gibson, et. al. 2005. *Sustainability Assessment: Criteria and Processes*, Earthscan.
- ⁱⁱⁱ Robert Gibson and Selma Hassan. 2005. *Sustainability assessment: criteria and processes*, London; Sterling VE.
- Since endorsing it in November 2010, the federal government has taken the position that the Declaration is only a guidance document and that there is no obligation to review laws and policies to bring them into compliance with the standards set out in the Declaration. This position ignores that Canada is arguably already bound to obtain the consent of Indigenous and Aboriginal peoples in International law by other agreements to which Canada is a party such as the *American Declaration on the Rights and Duties of Man* and legal decisions interpreting them. See page 2 of West Coast Environmental Law, "Legal Comment on Coastal First Nations Declaration", at http://wcel.org/sites/default/files/publications/Legal%20Comment%20on%20Coastal%20First%20Nations%20No%20Tankers%20Declaration_0.pdf

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- iv Stephen Hazell and H. Benevides. "Federal Strategic Environmental Assessment" 7 *Journal of Environmental Law and Practice* 349
- v International Association for Impact Assessment. 2002. *Strategic Environmental Assessment Performance Criteria*. Online at: www.iaia.org/publicdocuments/pdf/sp1.pdf
- vi West Coast Environmental Law. 2009. "Toward a 'More Planned Approach' to IPP Projects in BC: Backgrounder on Strategic Environmental Assessment." *Law Reform Papers, IPP Project Series*. Online at <http://wcel.org/resources/publication/toward-planned-approach-ipp-projects-bc-strategic-environmental-assessment> Celesa L. Horvath and Jeffrey Barnes. 2004. "Applying a Regional Strategic Environmental Assessment Approach to the Management of Offshore Oil and Gas Development."
- vii Report of the Commissioner of the Environment and Sustainable Development, Chapter 1: Applying the *Canadian Environmental Assessment Act*. Fall 2009: http://www.oag-bvg.gc.ca/internet/docs/parl_cesd_200911_01_e.pdf
Report of the Commissioner of the Environment and Sustainable Development, Chapter 2: Assessing Cumulative Environmental Effects of Oil Sands Projects. October 2011: http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201110_02_e_35761.html
- viii For example, "BC's Throne Speech chooses one process over good process" February 2010. <http://wcel.org/resources/environmental-law-alert/bc%E2%80%99s-throne-speech-chooses-%E2%80%9Cone-process%E2%80%9D-over-%E2%80%9Cgood-process%E2%80%9D>