



Canada Ignores Concerns of Indigenous Peoples in Environmental and Regulatory Reviews

By Matt McPherson

Today, Canada released its [Discussion Paper on the Environmental and Regulatory Reviews](#) first announced in June 2016. To say that the Discussion Paper will be a disappointment for most Indigenous people who participated in these reviews is likely an understatement.

The Discussion Paper suggests that Canada's answer to the question "What did we hear from Indigenous peoples?" is "It doesn't matter because we weren't listening".

Canada proposes no significant changes to the existing environmental assessment (EA) process, and Canada proposed "changes" are likely to completely and utterly fail to meaningfully address the concerns of Indigenous communities.

At best, Canada is *considering* rolling back some Harper-era changes to environmental legislation, and making some tweaks that sound positive, but are so vague or wishy-washy that they could mean anything (or nothing).

No significant changes to current EA model

This is the main takeaway. The EA Expert Panel proposed a paradigm shift in the way that environmental assessments should be done. This kind of major shift is [desperately needed](#) to fix the current federal EA process. Canada has pretty clearly rejected most of the major recommendations of the EA Expert Panel's Report.

The process will continue to be proponent driven, on legislated timelines, with Cabinet making the final decision. There will continue to be a project list and Canada will continue to have the ability to exclude designated projects.

Contrary to the EA Panel's Expert Report, there is no shift to a sustainability model which could better capture the full impacts and benefits of projects, and there will be no independent agency leading EAs.

Where Canada is proposing smaller changes that could be positive, there is a noticeable lack of detail about how these changes will be made.

Canada seems so desperate to appear as though it is doing something that a substantial portions of the "changes" regarding the EA process are either a) already in the legislation, or b) totally inconsequential, *e.g.*

- **"Broadening the scope of assessment** to include environmental, economic, social and health impacts.." (This is already in the legislation).
- "Engaging Canadians in a **two-way dialogue** on environmental assessment and regulatory processes through better use of social media, websites, and other on-line platforms.." (Canada's plan to use Twitter more is arguably not a substantive change to the assessment regime).

Almost complete failure to address Indigenous concerns in a meaningful way

The only thing that the Discussion Paper has for Indigenous communities appears to be an extensive number of platitudes. Many of these sound positive, and even may have the potential to be mildly positive, but it is impossible to assess whether there will be any positive impact because the proposals are so lacking in substance.

Among the glaring problems are:

- Canada wants a process with early engagement that is "from the outset, seeking to achieve free, prior, and informed consent through processes based on mutual respect and dialogue". There is no specific commitment to implement UNDRIP or the principles of free, prior and informed consent (FPIC) in a meaningful way.

- No independent commission for EAs means Indigenous groups will continue to have to go to court to protect their rights.
- The definition of “public interest” that governs NEB approvals will not be changed to include the protection and respect for s. 35 Aboriginal and treaty rights.

There are other proposed “changes” Canada makes with respect to Indigenous people that could theoretically lead to positive changes for Indigenous people, but are on their face meaningless, e.g. “Clarifying roles for consultation and accommodation in regulatory processes to ensure the honour of the Crown is respected.” What exactly does that mean? The experience of most Indigenous peoples is that anytime Canada is “committed” or promises to “ensure” something it usually means the exact opposite.

There are a number of proposed changes that Canada takes from the [NEB Modernization Report](#) that may be problematic, such as creating an Indigenous consultation office in Ottawa as a remedy capacity issues Indigenous communities face in dealing with consultation and accommodation. This is a change that may sound nice but as noted in our earlier post is unlikely to actually help.

Canada’s failure to make substantial and concrete changes to a clearly broken system should be a major red flag about its commitment to address the concerns of Indigenous communities.

Is Canada actually proposing something good?

In response to detailed reports (especially for the EA and NEB Reviews) Canada has responded not with concrete proposals fleshing out the recommendations, but in many cases with vague, high-level statements. Even some of the few proposals that genuinely sound as though they could be positive have so little context and detail that it is very hard to assess whether what Canada is proposing is worthwhile.

This is especially galling when at this stage, given the very tight timelines to the introduction of legislation, it is extremely unlikely that Canada does not already have legislation drafted that is close to being in final form.

There are a number of examples of this:

- **Early-engagement:** It is not even clear how or by what mechanism proponents will be “required” to have early engagement. Will it be legislated requirement, or (more likely) will the proponent simply be required to check the box that they “attempted” early engagement?
- **Peer Review:** Who will conduct the peer review of proponent reports? Will Indigenous communities be provided funding to hire their own peer reviewers? Impacts on Indigenous rights are not the same as impacts on the environment?
- **Regional and Strategic EAs:** Doing these is essential to improving the EA system. How will they be done? When will they be triggered?
- **Improving funding for Indigenous participation:** Great. How specifically will these be “improved” to meet the needs of Indigenous nations? There is not clear commitment by Canada here to provide adequate funding.

This shouldn't be a waste of everyone's time

We will provide a more detailed analysis of the Discussion Paper and Canada's proposed changes in the coming days. The overarching conclusion is that the proposed changes to Canada's various environmental processes will likely not significantly improve the opportunities or protections for Indigenous peoples.

After all the time and resources expended by Indigenous communities to participate in an underfunded and time-crunched process, the end result should be much, much more than this. There is still time for Canada to right the ship and make a turn towards environmental processes that will allow for effective assessments, while still protecting the constitutional rights of Indigenous peoples.

It's not too late for Indigenous communities to raise the alarm and reach out to Canada to tell the federal government that when you promise **#realchange** you had better deliver.

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