

CANADIAN ENVIRONMENTAL
ASSESSMENT ACT
FIVE YEAR REVIEW

PROVINCIAL AND TERRITORIAL
INPUT

BACKGROUND REPORT

APRIL 2000

CEAA FIVE YEAR REVIEW

PROVINCIAL AND TERRITORIAL INPUT

INTRODUCTION

In 1995, the federal government proclaimed the *Canadian Environmental Assessment Act* (CEAA) which requires federal departments and agencies to conduct environmental assessments of projects involving the federal government. The legislation includes a provision that requires the federal Minister of the Environment to conduct a review of CEAA after five years. This federal review, known as the CEAA Five Year Review, is being coordinated by the Canadian Environmental Assessment Agency (Agency).

The provinces and territories share an interest with the federal government in the CEAA Five Year Review. Provinces and territories want to ensure a more efficient, fair and effective federal environmental assessment (EA) process that better recognizes and complements the provincial role in resource management and regulatory decision-making. Constitutional jurisdiction for the environment is shared between the federal and provincial/territorial governments and each government has legislation governing EA. The provincial/territorial input to the CEAA review reflects these shared responsibilities and partially overlapping jurisdictions.¹

The provinces and territories place great importance on a federal EA process that fully recognizes and responds to provincial and territorial experience and jurisdiction in EA. This fundamental interest has guided the provinces and territories since the Agency began its preparation for the review in 1998. It has been the impetus for a decision by the provinces and territories to develop and alternative to the Agency's process for input to the review.

¹ Jurisdiction for the environment arises in connection with both federal and provincial constitutional powers so that each level of government can legislate regarding EA.

In preparation for the review the Agency began to prepare several background reports in 1998. The Agency consulted with the provincial and territorial EA Administrators during the preparation of these documents using the EA Administrators' Committee as the forum for these consultations.²

Concerns among EA Administrators about the potential for major policy issues to arise in the CEAA Five Year Review were confirmed in September 1999 when the Agency tabled a draft of its discussion paper, "Review of the *Canadian Environmental Assessment Act: A Discussion Paper for Public Consultation*" at the annual meeting of the EA Administrators' Committee.

Provinces and territories were especially concerned that the draft discussion paper did not adequately reflect their respective experience with CEAA and their role in administering EA in Canada. A more thorough and balanced discussion was requested of provincial roles in EA, jurisdictional overlap and federal interference in provincial matters, harmonization and cooperative reviews, and the technical and substantive issues in the application of CEAA that at times can hinder sound EA.

The provinces and territories were also concerned about the short timeframe for the review and the restrictions this placed on the level of consultation and the opportunity to prepare a formal response to the Agency. It was also clear at the time that an appropriate government-to-government forum was needed to address provincial and territorial concerns.

To address these concerns, provincial and territorial Deputy Ministers initiated a process. The Deputy Ministers directed their respective EA Administrators to create a working-group to collaboratively analyze issues and develop joint recommendations for improvements to CEAA.³ Work on the initiative began in November 1999, culminating in this background report and recommendations to deputies in April 2000.

² The EA Administrators' Committee consists of provincial and territorial EA Administrators and representatives of the Canadian Environmental Assessment Agency.

³ While not formally participating in the provincial/territorial initiative Quebec did provide information for use in the *Trends in Environmental Assessment* paper.

Provincial and Territorial Ministers have endorsed the recommendations for changes to the provisions and implementation of CEAA arising from the provincial/territorial initiative. These recommendations are contained in the *Recommendations Report of Provinces and Territories: Changes to the Provisions and Implementation of the Canadian Environmental Assessment Act*. to be provided to the Federal Minister of the Environment.

The provinces and territories have undertaken considerable work in preparing this background report and retained a team of consultants to support this work.⁴ To provide a sound basis for the initiative, the provinces and territories prepared 45 case studies of projects that were either subject to review under CEAA and provincial EA legislation, or were subject to review under CEAA and also required some type of provincial approval (e.g., permits).

Based on the findings of the case studies, interviews with EA Administrators from across Canada, and independent research, a series of theme papers were produced and are included in this background report. The conclusions and recommendations of the provincial/territorial initiative are drawn from these theme papers. The theme papers focus on the following topics and issues:

- Provincial Jurisdiction and the Canadian Environmental Assessment Act: focuses on provincial jurisdiction and how it has been affected by the application of CEAA. The paper draws on provincial case studies and information provided by the territories, and also examines the history of provincial concerns regarding CEAA.
- Inter-Jurisdictional Cooperation in Environmental Assessment: explores the relationships between the federal and provincial/territorial governments with respect to carrying out EA and analyzes the level of inter-jurisdictional cooperation as it pertains to EA across the country.

⁴ Dr. Peter Meekison, Ms Joanne McKenna, Ms Jackie Hamilton

- Trends in Environmental Assessment: summarizes recent changes in EA in the provinces and the Yukon with a focus on proposed amendments and initiatives. It is based on a review of key published and unpublished papers on trends in EA and discussions with a number of provincial representatives proposing new initiatives and changes to their EA legislation.
- Policy Options: contains a number of suggestions and proposals for changes to CEAA. The positions advanced emerge from both the case studies and the analysis of the case studies in the other three theme papers. This paper gave rise to the recommendations for changes to CEAA contained in the *Recommendations Report of Provinces and Territories: Changes to the Provisions and Implementation of the Canadian Environmental Assessment Act*.

In support of the CEAA Five Year Review, this background report and the recommendations report deliver the provinces' and territories' collective experience with CEAA and identify common recommendations for improvements. This provincial/territorial initiative was designed to ensure that the CEAA Five Year Review benefits from the knowledge, experience and commitment that provincial/territorial governments bring to EA in Canada.

The conclusions and recommendations in this report are designed to:

- Provide provincial and territorial input into the CEAA Five Year Review through recommendations for policy and legislative changes.
- Document general provincial and territorial concerns regarding the scope and manner of application of CEAA and have the potential for CEAA to interfere with provincial sovereignty over natural resources and efficient and effective management of those resources.

- Fully explain the benefits of and impediments to effective EA within provinces and territories and to inter-jurisdictional cooperation based on an evaluation of:
 - the current approach to triggering CEAA;
 - the current approach to setting the scope of the project and the scope of the assessment for federal reviews;
 - the success and effectiveness of co-operative reviews (project assessments undertaken cooperatively when both federal and provincial reviews are required as a result of one project proposal);
 - the effects of the results of federal reviews (when provincial assessments are not required) which have implications for the broader provincial policy context or for necessary subsequent provincial legislative or policy approvals; and
 - document past and emerging trends in EA within Canadian jurisdictions and consider their implications for the future of EA in Canada.

The provinces and territories are confident that these recommendations for improvements to CEAA and for enhanced inter-jurisdictional cooperation will support the goal of high quality EA in Canada.