



# Federal Environmental Assessment Reform Summit

## Executive Summary

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Photo: Kalen Emsley



Photo: A. Wright

## Executive Summary

From May 1-3<sup>rd</sup> 2016, in response to the announcement of the Government of Canada's mandate to review federal environmental assessment processes, West Coast Environmental Law organized a Federal Environmental Assessment Reform Summit in Ottawa. Over 30 of Canada's leading environmental assessment experts, academics, lawyers and practitioners gathered to discuss, crystallize thinking, weigh options and seek to find common ground on how to fix Canada's broken environmental assessment regime.

Information on the Summit, including the Federal Environmental Assessment Reform Summit Proceedings, session topics and background materials, is available at [www.envirolawsmatter.ca/easummit](http://www.envirolawsmatter.ca/easummit).

An opening plenary and eight workshops on key issues for federal environmental assessment reform identified key principles, implementation recommendations and outstanding issues that require further investigation.

As a starting point, participants agreed that the current environmental assessment regime in Canada under the *Canadian Environmental Assessment Act, 2012* is broken. Rather, Canada needs a new regime consisting of "next-generation" assessment law, regulations and policies to deal with modern day undertakings, environmental threats and impacts.

The key principles and recommendations that flowed from the Summit workshops can be distilled down into twelve interdependent pillars of a visionary new environmental assessment regime for Canada.

## Twelve Pillars of a Next-Generation Environmental Assessment Regime

### 1. Sustainability as a core objective

**All assessments should ensure the long term health of the environment and social values, and the equitable distribution of risks, impacts and benefits.**

Next-generation environmental assessment is broad, value-driven, aspirational and inclusive. It is about advancing sustainability while protecting the things we value, and increasing fairness in the distribution of benefits and burdens. Sustainability has long been the goal of environmental assessment in Canada: next-generation environmental assessment operationalizes that goal. It asks, do proposals represent the best option for achieving equitably distributed net sustainability-enhancing outcomes? Do they advance us towards an envisioned future? The goal of all levels of assessment and decision-making is sustainability-enhancing outcomes. Underpinning concepts include the need to set limits on adverse human impacts, and enhancing resilience and justice. Sustainability-based decision-making criteria are used to guide decision-makers. Ultimately, assessments should ask: will this proposal relative to other reasonable options make the best net contribution to lasting environmental, social and economic well-being without demanding trade-offs that entail significant adverse effects?



Photo: Anton Bielousov

## 2. Integrated, tiered assessments starting at the strategic and regional levels

**Participatory and sustainability-based assessments occur at the regional, strategic and project levels, and each of those levels inform the other.**

In next-generation environmental assessment, project-level, regional and strategic assessments, and regulatory processes are tiered and integrated. Sustainability-based regional assessment of anticipated and possible stresses and opportunities, and associated development pathways, further the understanding of actual and potential cumulative effects arising from past, present and alternative future scenarios. It provides better opportunities for Indigenous peoples and the public to evaluate broad alternatives for shaping the future of their regions and clarifies regional requirements and expectations, thus easing the burden of these considerations on project-level assessments. Strategic plans, policies and programs are developed through similarly open and sustainability-based processes and linked to regional and project assessments to help ensure their net contribution to sustainability. Strategic assessments help ensure that policy needs are considered, and help avoid policy debates at the project level. Project assessments fit within the vision set at the regional and strategic levels, informed by and feeding back into those processes and outcomes. All levels of assessment are tiered and integrated, with information flowing between them as a dialogue, not a monologue. Next-generation environmental assessment recognizes that the effective design, linking and coordinating of the tiers is critical to achieving a true integration of effectiveness, efficiency and fairness in assessments. Legislation establishes the legal framework, including: when they are triggered; their processes and substantive requirements; linkages to other levels of assessment, resource management and planning; public and stakeholder engagement requirements; and provision for Indigenous co-governance of all those elements. Flexibility is built-in for case-by-case process design.



Photo: Brett Kauffmann

### 3. Cumulative effects assessments done regionally

**Cumulative effects assessment is regional, focuses on environmental health, and looks to the past, present and future.**

Next-generation environmental assessment recognizes that the most important effects are cumulative, and that effects are interactive and the results often non-linear. It presumes that impacts are cumulative and considers the impacts of smaller projects. Especially where there have been or will likely be multiple projects, other pressures and opportunities affecting the environment and communities, it assesses cumulative effects and alternative future scenarios at the regional level, setting the stage and parameters for a long-term understanding of environmental effects within a region. Cumulative effects assessments focus on ecosystems rather than human activities, and take a long-term and wide-ranging view. They look backwards at historic evidence to determine existing accumulations of effects, trajectories and directions, to present-day multiple and integrating stressors, and forward by projecting, testing and, where necessary, adjusting alternative future scenarios. Consideration of cumulative effects at the regional level shows current and possible cumulative effects, the broad alternatives for development pathways, and protective measures that would favour positive cumulative effects and reverse negative ones. As with project-level assessments, cumulative effects assessment focuses on achieving sustainability-enhancing outcomes and well-being through the application of a sustainability decision-making framework.

### 4. Collaboration and harmonization

**Jurisdictions harmonize their assessments to the highest standard, collaborating on processes and decisions wherever possible.**

In next-generation environmental assessment, jurisdictions cooperate in project-level assessment, and especially in regional and strategic assessments. All decision-making authorities are directly involved in assessment processes so they have a better sense of ownership and understanding of the issues and potential outcomes. Multi-jurisdictional processes are harmonized upward to the higher standard of assessment scope, criteria and process requirements wherever possible, with each jurisdiction actively engaged in the processes. Jurisdictions collaborate on decisions with the aim of achieving consensus, but retain distinct decision-making authority. There is a consistent, minimum, nation-wide assessment standard, with harmonized assessments guided by the key principles of understandable and accessible information, sustainability as a core objective and guiding principle, meaningful opportunities for public participation, and precaution. In recognition of both the equal legitimacy of Indigenous laws and the historical context, equivalency remains an option when Indigenous jurisdiction is involved, guided by the above principles.

## 5. Co-governance with Indigenous Nations

**Collaborative assessment and decision-making processes are based on nation-to-nation relationships, reconciliation and the obligation to secure the free, prior and informed consent of Indigenous peoples.**

In all next-generation assessments, the federal government complies with the United Nations Declaration on the Rights of Indigenous Peoples, with environmental assessment decision-making conducted on a nation-to-nation basis and in a manner respectful of Indigenous peoples' right to free, prior and informed consent. The duty of reconciliation and the Truth and Reconciliation Commission's Recommendations, as well as climate change obligations, are guiding principles. Processes like collaborative consent are iterative and adaptable to different circumstances and nations. While legislation and nation-to-nation agreements set out frameworks, they have flexibility built-in in order to adjust models for specific groups and circumstances and policy spaces for nation-to-nation dialogue.

## 6. Climate assessments to achieve Canada's climate goals

**A climate test ensures that projects keep Canada on track to meeting its climate change commitments and targets.**

To avoid the challenges of showing causal links between incremental project-specific GHG emissions and environmental, social and economic effects, next-generation climate assessment seeks to understand whether and how far the greenhouse gas emissions of a proposal will move Canada towards or away from its climate goals and its international commitments. While federal climate obligations and goals are of particular importance, local, provincial and Indigenous objectives should provide helpful context and guidance on this question. While the threshold question in a next-generation climate assessment is whether a proposal will help Canada meet its international climate change commitments, climate-related aspects of a proposal are assessed through a sustainability framework and will be expected also to serve other sustainability assessment objectives. Assessments may need to be based on more rigorous targets or outcomes than are provided for in Canada's Paris commitments. Regional assessments offer larger and more effective means of understanding the implications of greenhouse gas reductions commitments, and evaluating options for meeting them effectively, efficiently and with a fair distribution of benefits and burdens. Strategic assessments help develop plans, policies and programmes to ensure Canada meets or exceeds its commitments. The character and effects of proposed projects are then assessed in light of those strategies. The key questions in a climate test are: 1) Would this proposal help or hinder Canada's ability to meet its climate commitments while also serving other sustainability objectives; 2) What is the degree to which it is helping or hindering; and 3) Would it deliver a fair distribution of benefits and burdens?

Photo: Mike Petrucci



## 7. Credibility, transparency and accountability throughout

**Legislation sets out criteria, rules and factors to guide assessments and discourage politicized decisions. An independent body conducts assessments and the public has the right to appeal decisions.**

To have legitimacy, next-generation processes and decisions are credible, transparent and accountable. Assessments are conducted by an independent, impartial body that is guided by clear sustainability-based principles and goals. Legislation requires that to be approved, a proposal makes a net contribution to sustainability and avoids significant adverse effects. The law also sets out generic decision-making criteria to guide decisions and provides for the establishment of case-specific decision-making criteria. It sets out explicit trade-off rules and factors to guide decisions in the case of residual impacts. These criteria and rules constrain Cabinet's discretion, discourage politicization and incentivize allowing processes to play out. The legislation also establishes a meaningful public right of appeal through an independent and impartial adjudicatory body to reconsider process and final decisions, and establishes broad powers and obligations to monitor and act on non-compliance. Policy and guidelines provide guidance for the development of case-specific decision-making criteria.

## 8. Participation for the people

**Meaningful public participation is early, ongoing, accessible and dynamic. It occurs at all levels of assessment and has the ability to influence outcomes.**

In next-generation environmental assessment, the public is actively and dynamically engaged from the early stages, before proposals are submitted and strategic decisions are made, all the way through monitoring and enforcement. Public participation is not a one-size-fits-all process. Written comment periods are not enough and while hearings play an important role, the public should be involved in designing alternative engagement processes that are appropriate for the circumstances and public's needs. Assessments consider alternatives to the project, including the no-project alternative, and "need for" analyses are based on the public interest perspective. So is the elaboration of context-specific sustainability criteria for the assessment. Government is responsible for participatory processes, which at a minimum include: fair notice; disclosure; respect; a scope broad enough to encompass the full range of public interest considerations; access to information; adequate resources and education; the ability to influence outcomes; integration of public opinion and expertise; written reasons; explanations of how comments were received, considered and reflected in decisions; opportunities to test evidence; and trustworthy and independent reviewing bodies. There are opportunities for meaningful and robust oversight through appeal and review mechanisms both of the evidence upon which decisions are made, as well as the decisions themselves. Reconciliation with Indigenous peoples is a foundational principle and objective.

## 9. Transparent and accessible information flows

**All relevant information is easily accessible to the public, is shared between different levels of assessment and remains available for future use.**

Understandable and accessible information is a cornerstone of next-generation assessment. At all levels, the starting point of assessments is the identification of the information needed to form a basis for decision-making. Information is made to flow among the various tiers of assessment, from the regional and strategic level down to the project level and from the project level back up to regional and strategic assessments, and among those interested and engaged. All relevant information, including the data collected prior to the assessment baseline data, is made permanently available in an easily searchable public repository and optimally used to ensure current and future proposals make a net contribution to efforts to develop a sustainable society.



## 10. Ensuring sustainability after the assessment

**After projects are approved, the law requires robust follow-up, monitoring, adaptive management, compliance and enforcement.**

In next-generation environmental assessment, follow-up, monitoring, adaptive management, compliance and enforcement are robust, well defined and mandatory. Legislation requires follow-up and monitoring process conditions to be attached to approvals of project and strategic undertakings, and makes those conditions and mitigation measures legally binding. Guidelines provide specifics for follow-up programs and adaptive management, and clarify that adaptive management is a means of addressing uncertainty, not a mitigation measure, and is not appropriate where there is risk of irreversible or irreparable harms. Adaptive management is not feasible in the absence of adaptable design, and is not a replacement for application of the precautionary principle. The regulatory framework clarifies what types of mitigation measures can be relied upon as mitigation of adverse environmental effects, and establishes reliable means of assessing in advance whether such measures will deliver the promised results. Follow-up data for project-level and cumulative effects assessment feeds into regional and strategic assessments and proponents are required to report publicly on compliance. All information is made publicly available and there are legal mechanisms for public and Indigenous involvement in enforcement and follow-up. Time limits or conditionality are imposed on authorizations so they can be revoked where follow-up has not performed as predicted or is not effective.



Photo: Aaron Carlson

## 11. Consideration of the best option from among a range of alternatives

**Assessments consider alternative scenarios, including the “no” alternative.**

Next-generation environmental assessment recognizes that selecting the best option among feasible alternatives to meeting a particular need or opportunity is integral to wise decision-making. Accordingly, it identifies and compares alternatives to the proposal, including the “null” or “no” alternative, and alternative scenarios in determining which option among the alternatives best meets the sustainability-based decision-making criteria. Identifying and comparing among alternatives in the early stages of assessment processes provides the public with a more meaningful say in critical decisions and helps achieve sustainability-enhancing results.

## 12. Emphasis on learning

**The assessment regime fosters opportunities for learning, to ensure more informed and better decisions now and into the future.**

Next-generation environmental assessment is centred around and fosters learning. Public participation processes are designed to promote mutual learning among all parties, and are monitored and evaluated to learn from assessment processes’ successes and failures. Data from monitoring and follow-up, and lessons from adaptive management, inform future assessment and decisions, closing the circle of learning for EA. The focus is not on requiring proponents to jump through hoops, but on improved and shared understanding, and more informed and better decisions.



Many thanks to the Summit participants for their valuable contributions, and especially the workshop leaders and organizing committee. Special thanks to John Sinclair, Meinhard Doelle, Jamie Kneen, Justina Ray and Byron Williams for their thoughtful guidance, keen editorial eyes and help pulling the Summit together.







# Appendices

## Appendix A

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## Appendix B

### Background Materials

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