Environmental Assessment (ENVR 3250)

CEAA 2012: Downside Implications of the Newly Proposed Changes

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The new *CEAA* 2012 Act has been met with a lot of changes and has had a huge impact on various environmental sectors and even on the environmental processes that existed before the revamp. Firstly, the process through which the *CEAA* 2012 was introduced has been highly questionable and criticized for being too rushed and thereby breaking due procedures (Kirchhoff, Gardner & Tsuji, 2013). It did not have preliminary proposals and looked to be powered too quickly through the legislative process, with no debate about the implications of proposed changes (Kirchhoff, Gardner & Tsuji, 2013). The way the *CEAA* 2012 came about is totally in contrast to the way the *CEAA* 1995 legal document came about, where it took years to consult and draft the document (Kirchhoff, Gardner & Tsuji, 2013). It also took well over two years to guide the process through Parliament in the 1990s (Doelle, 2012). The way the document was proposed alone raises eye browse and invites critics.

Probably because of the way the *CEAA* 2012 came about, we see lacunae in its following of international precedence. The *CEAA* 2012 document solely fixes its focus on mitigation of adverse effects and has no talk about the enhancement of positive effects (Kirchhoff, Gardner & Tsuji, 2013). This is a key characteristic of more advanced environmental assessment stipulations and is very heavily followed by environmental assessment experts (Kirchhoff, Gardner & Tsuji, 2013). The academia makes an astonishing find, which sees that almost all the changes effected in the *CEAA* 2012 all appear to go counter to what is conventionally suggested in the international literature as essential requirements for an effective environmental assessment (Kirchhoff, Gardner & Tsuji, 2013). Although Canada is unique and must not follow international methods and principles ipsissima verba, its high deviance from international EA standards have proved to be a faulty bridge to walk on.

One key concern regarding the change in the new *CEAA* 2012 is the scope (Doelle, 2012). The scope of the federal assessment has been significantly narrowed, where it has been taken from a generally inclusive approach which strived to examine a broad range of adverse environmental effects

of proposed projects to one that is now only focused on just a few issues that lie within the direct regulatory authority of the federal government (Doelle, 2012). In fewer words, this simply means that there will be a lot of fewer federal EAs with a narrower scope of assessment (Doelle, 2012). Under this new *CEAA* 2012, we will see very little circumstances where a thorough assessment of projects will not be undertaken except in the case of a joint federal-provincial EA (Doelle, 2012). However, in all other conventional EA cases, the federal process will only consider certain specific issues like the impact of the project on aboriginal peoples, fisheries, aquatic endangered species and migratory birds (Doelle, 2012). The implication of narrowing the EA scope, in my opinion, reflects less emphasis on the importance of the environment and its state and more emphasis on the interest in the unhindered exploitation of environmental resources.

Also, a little bit connected to the above point of narrowing the federal EA scope, we see the federal decision makers in the new *CEAA* 2012 also narrowed down (Doelle, 2012). The *CEAA* 1995 was designed with the rationale that the federal decision makers should be able and well equipped to consider all the environmental implications of the decisions they were being asked to make about proposed projects (Doelle, 2012). To encourage this, the *CEAA* 1995 developed and utilized a flexible screening process that was imposed directly on federal decision makers (Doelle, 2012). The screening process implemented in *CEAA* 1995 applied to basically all the assessments carried out and, in such cases, could involve hundreds of federal decision-makers in the EA of a given project (Doelle, 2012). However, in the spirit of narrowing things down, we see under *CEAA* 2012 where the number of the federal decision makers involved in the EA process is drastically reduced (Doelle, 2012). We now have them limited to just three agencies, which include; the National Energy Board (NEB), the Canadian Nuclear Safety Commission (CNSC) and the Canadian Environmental Assessment Agency (CEA Agency) (Doelle, 2012). This narrowing again as stated reflects a soft-pedaling on the emphasis of the

environmental importance. This makes the process less rigorous and thereby projects can pass through far easier without any altercation.

One major change is shown in the new *CEAA* 2012 that has had huge implications and have also raised a lot of concerns both generally and individually is the constraint of public participation in federal EA process. In the new *CEAA* 2012, there is an insertion of a "directly affected" requirement for participatory entitlements in federal EA, and this is a significant change from CEAA 1992 (Fluker & Kumar Srivastava, 2016). When first seen, this new phrase was quite vague, but with a closer look, the interpretation and application of the phrase "directly affected" in other jurisdictions strongly suggested that this new provision may constrain public participation in the federal EA process (Fluker & Kumar Srivastava, 2016). Other jurisdictions in Canada have already begun to ride on the strength of this, such as in Alberta where statutory decision-makers have relied on this phrase to significantly reduce opportunities for public participation in an environmental assessment (Fluker & Kumar Srivastava, 2016). In Alberta for example, if a person wishes or seeks to be part of a project review under Alberta legislation, such a person must establish that;

i) the have a personal relationship to the project, i.e. it will affect them personally and;

ii) that there is a causal proximity between that impact and the project (Fluker & Kumar Srivastava, 2016).

In this new provision, the closer a person is to the project increases the likelihood that the person will be entitled to participate in the review process (Fluker & Kumar Srivastava, 2016). This is exactly the rationale that is being imported into the federal EA process (Fluker & Kumar Srivastava, 2016). Also, in addition to this new provision where the discretion to decide who qualifies to participate in the EA hearing is held by the panel, *CEAA* 2012 introduced time limits for the conduct of federal EA (Fluker & Kumar Srivastava, 2016). For an EA process to commence, the decision on whether a project is likely to cause significant adverse environmental effects must be rendered within 365 days from the

date upon which notice is posted to commence the process (Fluker & Kumar Srivastava, 2016). For an EA by panel review conducted by the Canadian Environmental Assessment Agency, it is 24 months, and for an EA conducted by the NEB, the board must submit its report to the Minister within 15 months of receiving a complete application from a project proponent (Fluker & Kumar Srivastava, 2016).

We will now see how the restriction of public participation affects Aboriginal people as well as other interested parties as we first consider one more issue. The UN Declaration includes several articles which clearly recognizes the necessity for any dominant state to not only respect but to promote the rights of its Aboriginal peoples as affirmed in treaties and agreements, and this also includes how Aboriginals are allowed to participate in decision-making processes that affect their traditional lands and livelihoods (UNDRIP, 2007), (Kirchhoff, Gardner & Tsuji, 2013). However, in 2012, in the *CEAA* Act, we see the federal government announced funding cuts to both Aboriginal Representative Organizations and Tribal Councils and making the argument that the cuts were meant to make funding "more equitable among organizations across the country" (AANDC, 2012b), (Kirchhoff, Gardner & Tsuji, 2013). By this, we see that all national Aboriginal Representative Organizations had a 10% funding reduction, while on the other hand, all regional Aboriginal Representative Organizations had either a 10% reduction or had funding capped at $500,000 (Kirchhoff, Gardner & Tsuji, 2013). Because of this, some Aboriginal Representative Organizations saw their funding cut by 80% - the Assembly of Manitoba Chiefs (Kirchhoff, Gardner & Tsuji, 2013). Similar to this was huge cuts for Tribal Councils (Kirchhoff, Gardner & Tsuji, 2013). In this case were all Aboriginal Representative Organizations have had their funding reduced by at least 10%, it is quite difficult to understand the argument that the cuts were needed to make funding more equitable (Kirchhoff, Gardner & Tsuji, 2013). If this were supposed to be the case, then it would have meant that some organizations were getting too much while others were not getting enough (Kirchhoff,

Gardner & Tsuji, 2013). Reducing funding for everyone in no way makes the funding program more equitable; what is instead does is reduces Aboriginal capacity for participation even more (Kirchhoff, Gardner & Tsuji, 2013). These issues of reduction in funding and streamlining participation process has greatly infringed on and hindered the right of Aboriginal people to effectively participate in the decision-making process of federal projects. This is not only a limiting factor but is also an infringement on their rights and on the rights of other interested parties or party that would at some point want to participate in a federal EA project. This again, in my opinion, is brought in to make the process less rigorous, so that projects can be allowed to go on easier for resource exploitation.

References

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