



**Environmental Assessment Program in Ontario:
Is It Time to Hit the Reset Button?**

**Ontario Association for Impact Assessment
Response to the EA Challenge from the
Minister of the Environment and Climate Change**

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Ontario Association for Impact Assessment
Response to the
Minister of the Environment and Climate Change Challenge

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Attachment 1: OAIA Members' Workshop Summary (May 30 2016)

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A. About OAIA

The Ontario Association for Impact Assessment (OAIA) is a volunteer forum for advancing innovation, development, and communication of best practice in impact assessment through the exchange of ideas and experiences among its members, and with other organizations with compatible interests. The OAIA promotes development of local, provincial, national, and global capacity for the application of impact assessment in which sound science and full public participation provide a foundation for equitable and sustainable development.

OAIA is an affiliate of the International Association for Impact Assessment, and its goals and objectives are consistent with those of that organization. In 2016 there are 108 members of OAIA.

OAIA addresses a full spectrum of impact assessment, including its environmental, social, cultural, health, safety, and economic aspects. Its membership is consequently diverse, and at any given time, may include: managers, engineers, planners, and consultants from the private sector; managers, officials, scientists, and analysts from the public sector; public interest advocates; lawyers; health professionals; educators and researchers; students; and interested citizens.

OAIA seeks to:

- improve the practice of impact assessment to better meet the needs of the 21st century, particularly with respect to its use as a tool for achieving sustainable development objectives
- develop partnerships with other organizations and institutions involved in impact assessment

- enhance multi-disciplinary cooperation in impact assessment
- expand professional development opportunities for impact assessment practitioners

OAIA activities and services include:

- organizing events that focus on important developments in the field of impact assessment
- promoting research and training in impact assessment
- promoting public understanding of impact assessment
- encouraging the development of refined approaches and methods for integrating impact assessment into society's planning, decision-making, and management processes
- contributing - on behalf of members - to public policy discussions related to the role of impact assessment in Ontario and the greater Canada.

B. Minister Murray's Challenge to OAIA

At the October 2015 OAIA Annual Conference, the Ontario Minister of the Environment and Climate Change (MOECC), the Honourable Glen Murray, challenged OAIA to obtain input from its member and respond to him on possible improvements to the Environmental Assessment Program (EA Program) in Ontario to foster better social and economic outcomes from the Environmental Assessment Act (EA Act) and its application.

This response to his challenge outlines the issues associated with the EA Act and its application and makes recommendations for improvements to achieve better social and economic outcomes from the EA Act and its application.

C. How did OAIA Address the Challenge?

Following the 2015 Conference, the OAIA Board of Directors struck a Working Group of senior EA practitioners to develop a response to the Minister's challenge and obtain OAIA membership input to that response. The group met regularly and also convened a special workshop for OAIA members in order to develop this

response to the Minister. The OAIA members' workshop was held on May 30, 2016 to obtain input from the membership so that the views expressed in the response reflect the membership as a whole. A workshop summary is attached at Attachment 1.

The Minister asked OAIA for its thoughts on improvements to the current EA process that would lead to better social and economic outcomes. The Working Group believes that there should be a balance between better social and economic outcomes so that benefits are accrued to all who may be affected by a potential project. While there was a temptation to consider opening up the EA Act and make wholesale change, it was apparent that EA practitioners felt that the foundations of the EA Act were sound and there was uncertainty as to whether there was a mandate to open up the EA Act for revision. As a result, the focus of this response is on improvement to EA practice in Ontario.

The Working Group examined the EA Act and re-affirmed that the goal of the EA Program should be to provide a decision-making process which considers the full definition of the environment as set out in the EA Act, assesses feasible alternatives to make choices based on their potential impact to the environment and allows for their implementation of the preferred alternative in an environmentally responsible manner.

The Working Group examined both current EA practices and emerging challenges that were not contemplated when the EA Act first came into effect in 1976 nor when amendments were made in 1998.

The Working Group began their deliberations by confirming that the EA Program should provide a balance between benefits and costs in decision-making on EA projects in order to achieve the best outcomes. These four key points guided the Working Group's efforts:

- ❖ Re-invigorate and re-purpose the EA Act to return to its original intent to assess the potential environmental impacts of large, complex projects that

may affect the environment and ensure that the reasons why the project are required are understood (with public input)

- ❖ Reduce duplication of the EA Program with other government programs which share similar goals to the EA Program
- ❖ Reduce duplication of purpose and process within the EA Program
- ❖ Consider the consolidation of the numerous Class EAs and streamlined processes to reduce or eliminate fragmentation within the EA Program

The OAIA Working Group drew three main conclusions from the OAIA workshop. Firstly, the OAIA members enthusiastically embraced this topic of EA reform. The event (34 participants in Toronto and 9 in Ottawa) was sold out. Secondly, OAIA members affirmed the soundness of the EA Act as a basis for moving forward with EA Program review and reform. Thirdly, there was general consensus that Ontario's EA Program, particularly with respect to how it is practiced, should be the focus of proposed enhancements and improvements.

On the topic of re-invigorating the EA Act, there were no suggested revisions proposed to the legislation. It was the general consensus of the OAIA members that the purpose and provisions found in the existing Act were strong and remained relevant. The members believe that the existing EA Act can and should provide the basis for improvements to the EA Program. For example, members support:

- Full definition of the environment
- Comparative evaluations between valued components of the environment
- Meaningful consultation and appropriate engagement with affected stakeholders, regulators and Indigenous communities
- Full disclosure of projects including construction and operation activities
- Full disclosure of anticipated project effects and impact management measures including commitments from proponents that can be monitored

- Traceable, robust and understandable account of decision-making to understand the relative importance of the advantages and disadvantages of proceeding with project
- Accounting of what comments were raised through consultation and engagement and how they were addressed (including which ones are frivolous)

The OAIA's suggested enhancements and reforms therefore generally centre around making the program better and using the existing EA Act as a foundation for doing so.

D. Opportunities for Change

With the goal of improving the positive social benefits of the EA Program while reducing the costs and consequences, the OAIA Working Group has worked to articulate opportunities for change in which EA decision-making was improved to enable all parties to realize these benefits leading to better social and economic outcomes.

With input from the workshop, the OAIA Working Group identified five themes to describe the key opportunities to improve EA Program outcomes by addressing perceived problems with current EA practice and process without making changes to the EA Act.

These five themes can be addressed by making changes to current EA practice, as well as amending existing regulations and/or guidance documents. There was general agreement amongst participants at the workshop that most problems and opportunities arise not from the EA Act itself but rather from how the process is practiced and how it is administered by proponents, review agencies and by MOECC.

The following provides an outline of the five themes. For each theme, the key concerns are highlighted and a summary of some of the suggested improvements as recommended by OAIA, are presented.

1. Efficiency of Approvals Process

The efficiency and timeliness of the planning and approval process was a concern raised by all participants.

Often to successfully comply with the EA Act, EA studies can result in large parcels of land being frozen, proponents and property owners being left in a state of uncertainty which can cause emotional stress and financial consequences. This problem is compounded when EA decision-making is slow. A few examples of this are outlined below.

Timelines for reviewing individual EAs and making decisions under the Deadlines Regulation (Ontario Regulation 616/98) and timelines for dealing with objections under Class EAs and other streamlined EA processes are rarely met. They are not followed and can sometimes be treated as minimums by ministry staff. In many cases decision timelines are extended by months and years. For example, the City of Peterborough recently waited two and a half years to be told that their Class EA Study was deficient and that an individual Environmental Assessment (individual EA) will be required to comply with the EA Act. Such a significant change to a municipal project will result in considerable costs to the proponent and the long wait left proponent and stakeholders alike in a state of uncertainty for far too long. Similarly, the Lakeview Waterfront Connection Individual EA took almost a year to approve despite receiving no negative comments from stakeholders.

More certainty around approval timelines and greater commitment by MOECC staff to the regulatory timelines in the early stages of project planning are aspects that should be investigated. For example, the Ingersoll Southwest Landfill project Terms of Reference took almost two years to approve. The proponent, stakeholders and this community were in a state of uncertainty during that time.

The cyclical nature of the mineral development industry can result in significant loss of return on investment by mining proponents when EA studies

are held up. For example, Noront Resources Eagle's Nest nickel and copper mine's Terms of Reference for its EA took over two years to approve with significant amendments. This has caused major delays in Noront's ability to complete regulatory approvals to move the project forward as well as missed opportunities for the company and Indigenous people in the area.

OAIA encourages MOECC to build its accountability as the regulator. The lack of seasoned, experienced, senior EA practitioners as Project Officers at the Environmental Approvals Branch was noted as a significant issue.

Improvements to the hiring of experienced, knowledgeable MOECC staff and their ability and willingness to provide strategic EA guidance to proponents, respond to complex issues, address consultation concerns, deal with Part II Order Requests, respond to questions about level of detail required in EA studies, scoping, etc. is a noted suggestion.

While EA is a proponent-led process in Ontario, it is not enough to place the entire burden for good quality EAs on the proponent. Proponents should expect that they can receive strategic guidance from MOECC staff that the Ministry will consistently support that advice over the long term. This concern is particularly prominent in the case of complex and controversial projects where proponents often receive mixed messages from Project Officers assigned to their file. This equally applies to straightforward Class EA studies and recurring, predictable EA projects. EA studies take time to complete and proponents of EA projects often deal with several Projects Officers as a result of high staff turnover at the Environmental Approvals Branch. If Project Officers provide inconsistent guidance to the proponent, this results in costly delays and having to go back and undertake more work.

The OAIA Working Group identified the need for an EA Program champion within MOECC to develop and support great EA planning process. This includes supporting the Project Officers by providing sufficient training, mentoring and instilling passion, confidence and a culture of excellence so that staff with experience will stay.

OAIA members believe that it is unfortunate that a “cookbook” approach has been adopted by proponents and encouraged by regulators. All EA projects have their own unique challenges; some of these require creative solutions. There appears to be little incentive at the Environmental Approvals Branch to foster more adaptive and creative applications of the EA Act and the EA process. We believe that the existing EA Act (and all Parent Class EA Documents) allow for a balance between cookbook and innovative approaches.

Also, in this regard, it was noted that both MOECC and proponents have failed to keep pace with newer public participation methods. Project Officers are not give the opportunity of visiting proposed project site and consulting with Indigenous Peoples and the public face to face. As a result, proponents are not getting the most current guidance on appropriate consultation and as a consequence they may have to repeat consultation steps causing project delays. Better public participation practice and staff involvement in it will lead to better social and economic outcomes.

The EA process in Ontario is proponent-led. In most cases, the proponent is the trigger for EA (with the exception of project triggers in some regulations). OAIA members noted that the triggers instead should be significance of potential environmental effects of a proposed project. For example, a road proposed by MTO and a road proposed by a municipality may cause substantively the same type and scale of impacts but would be addressed differently in the EA Program.

Most OAIA members noted the excess expense and time to complete the myriad studies that are expected, but not necessarily required, for an EA. It is time to get back to basics and require EAs for projects that may cause significant environmental effects. Some members believed that the EA process is focused too much on projects with minimal potential for environmental impact and/or no design alternatives. The excess focus on such projects takes away valuable resources that could be better spent on new and

more complex projects with higher impact potential. OAIA suggests that the MOECC should review whether the EA process should be applied to some projects at all.

At the same time, OAIA recommends that MOECC should review and update what information is really required to make an informed decision about a proposed project. EAs are far too long, complicated and expensive and too difficult for most people to understand. This added complication can restrict the public and stakeholders from participating effectively in the EA process. OAIA suggests that the MOECC respond to the question, *'what information is really necessary to inform decision-making?'*

Unrealistic expectations with respect to the extent of consultation (especially for routine, low impact projects) and the time and cost afforded to unopposed projects was noted as a factor that makes the EA Program inefficient.

Suggested improvements to enhance the efficiency and timeliness of the EA Program include:

- Revise MOECC review timelines under Ontario Regulation 616/98, Class EAs and streamlined EA regulations, even if it means taking a bit more time to make them more reasonable, so that they can be met with greater certainty
- Promote and enforce MOECC adherence to timelines to ensure they are respected
- Consider creation of a frivolous and vexatious provision to reduce or eliminate insincere or unwarranted objections which hold up valued projects
- Provide opportunities for MOECC staff to participate early and meaningfully in reviews of Class EA Studies
- Upgrade hiring practices and restructure MOECC review staff groups to ensure that there are seasoned staff who have relevant, hands-on EA

experience and can share it across various groups. For example, staff who have written and managed EA studies or worked for one of the review agencies on EA studies would be invaluable.

- Provide budget to train MOECC staff, proponents, review agencies and practitioners in all aspects of EA Planning and MOECC's expectations
- Provide funding for participation in the EA process
- Provide additional support to stakeholders involved in EA studies to allow for increased sharing of information early in the EA planning process with a focus on reducing or eliminating unnecessary objections
- Foster senior MOECC staff who will champion good EA practice and act as a senior resource for staff while improving efficiency of EA Program

2. Optimizing approvals under several Acts to reduce duplication

While ultimately legislative change may be required to address the concerns raised in this section, there are opportunities now to better coordinate between ministries and programs to simplify and clarify the appropriate process for decision-making.

In many instances individual projects either arise from approved government plans or policies or must seek additional approvals under multiple pieces of legislation. It is not uncommon for a proponent to be faced with a complex array of approval requirements that must be addressed while planning a project. This often causes difficulties amongst proponents, regulators and stakeholders as it becomes a challenge to determine the appropriate level of detail required for EA approval vs the other approvals.

MOECC should identify opportunities to provide senior EA Program leadership to participate in the development and review of other potentially interrelated government programs (e.g., source water protection). Furthermore, where EA projects arise from government plans or policies the lack of accountability and availability of decision-makers during project specific EA studies often complicates individual project approvals.

There may also be opportunities to remove or reduce all or some of the EA requirements for certain types of projects where approvals under other legislation are obtained using a similar evaluation process a project using similar criteria and with public input.

Suggested improvements to optimize approvals under other programs with the EA Program include:

- Dedicate MOECC staff to identify and integrate existing Ontario programs with the EA Program (e.g., Provincial Growth Plan and Municipal Class EA studies for infrastructure).
- Opportunities to initiate intra-governmental regulatory strategies, which would identify and work to minimize duplication between approval regimes, should be initiated. This could be achieved by MOECC through such means as education, coordination of activities, multi-agency meetings and job-sharing
- MOECC staff should be encouraged to work with proponents and agencies to establish criteria to address the most appropriate level of detail in EA studies (e.g., existing MOECC Noise Protocols) and then uniformly apply the criteria
- EA Program training for agency reviewers is needed
- Establish a 'one window' approach for certain types of projects that require an EA and multiple other approvals.
- Enhance MOECC and other agency decision-makers' accountability and availability to proponents undertaking EAs (e.g., cross-trained MNRF staff for Endangered Species Act and Ministry of Municipal Affairs & Housing staff for Planning Act)
- Reduce EA requirements for projects where other legislation or regulations of a similar nature apply
- Foster senior MOECC staff who will champion good EA practice and act as a senior resource for staff and lead the optimization of approvals within the EA Program

3. Clarity in the EA Approvals Processes

The EA process in Ontario is established in the EA Act. Over time numerous EA processes have been developed through regulations and through the various Class EAs for specific groups of similar projects. This has resulted in different rules for different groups of projects and for different types of proponents. While this has addressed some issues to streamline EA processes, it has created others. Now it is difficult for EA practitioners and stakeholders to understand what the actual EA process is and why there are different EA requirements for proposed projects that may have similar environmental effects. As a result, we have projects which are not undergoing an appropriate level of assessment given their proponent, project scale and location.

The use of such streamlined EA approvals processes with very different requirements has created issues of inconsistency and confusion over time since each process has its own projects, proponents, definitions, process and timelines.

Some OAIA members have suggested wholesale change to how class EAs, individual EAs and screening reviews are used and applied to projects. This should be part of a review of the EA Program and practice. The key concerns stem from a desire to see EAs applied consistently, at the most appropriate stage and with sufficient rigour to ensure consistent application of the EA Program to projects across the province.

There are larger scale plans (e.g. the Growth Plan, Municipal Official Plans, Integrated Power Supply Plan) that could be subject to the EA Act using existing EA tools such as Regional EA or Strategic EA. These could then form the basis for much of the 'alternatives to' analysis for many infrastructure projects that stem from them. Plans or programs are subject to Section 3 of the EA Act; commonly, however, the EA Program most often defaults to addressing only the resulting activities or projects and not the plans or policies

which drive their need. There needs to be greater clarity on how Section 3 of the Act can and should be applied.

Stakeholders, proponents, agencies and the public are confounded by the discrepancies in the application of the numerous Class EAs and streamlined regulations. While it is recognized that parent Class EA documents reflect the unique requirements of the class of projects for which the Class EA applies, there are aspects of the Class EA process that are consistent between Class EAs and should be applied consistently (e.g. process steps, level of assessment required, Part II Order requests). This would provide clarity and consistency to the Class EA process.

Subsection 16(1) of the EA Act potentially providing any party the opportunity to seek a Part II Order on any project, regardless of the Minister of the Environment and Climate Change's approval of them as "pre-approved" in a Class EA should be addressed. This could likely be accomplished without revisions to the existing EA Act.

Suggested improvements to bring clarity and consistency to the EA Program include:

- Re-assess the level of EA that should be undertaken by various proponents, by project scale and by location to streamline to the most appropriate process or study type
- Re-assess the value of each of the multiple types of EAs within the EA Program (i.e., individual EA, Class EA, streamlining regulations, Declaration orders, etc.) to determine the level of EA planning that should apply to each type of project (e.g., ensure a "best fit" type of EA is applied to projects, plans and programs)
- Reconsider the projects which are subject and are not subject to the EA Act and revise based on results of review as noted above
- Consider opportunities for two level application of the EA Act to both plans and programs and to projects. In this way, plans and programs could be

subject to a Regional EA or Strategic EA while activities or projects resulting from them could be assessed and screened for potential impacts and recommended impact management prior to implementation

- Review existing Class EAs for consistency of wording and implementation (this could be done with MOECC guidance and leadership as Class EAs come up for renewal)
- Foster senior MOECC staff who will champion good EA practice and act as a senior resource for staff while clarifying the EA approvals process

4. Indigenous Peoples: Issues and Consultation/Engagement

When the EA Act was enacted and revised, it did not contemplate the specific needs around consultation with Indigenous Peoples and therefore has not provided any guidance for addressing Indigenous Peoples' issues which are now fundamental to the EA Program. Today, projects must consider the relationship between proponents, the Crown and Indigenous Peoples. These considerations extend to the proposed implementation of the Truth and Reconciliation Commission, Free, Prior and Informed Consent and the United Nations Declaration on the Rights of Indigenous Peoples which are influencing how Indigenous people expect to be consulted.

The relationship between Indigenous Peoples and the Crown is dynamic. Proponents are often unable to properly scope EA project work (such as monitoring field studies, analyzing socio-economic conditions and providing meaningful consultation) in an ever-changing environment. The proponent is often seeking certainty and timeliness.

The procedural aspects of the Crown's "Duty to Consult" are often passed to proponents and are confused with EA Act consultation requirements and accommodation requests made by Indigenous Peoples. This may further complicate issues associated with the broader relationship between the Crown and Indigenous Peoples with regard to involvement in the EA process.

The current EA process/practice did not anticipate and, in its current form, does not facilitate the meaningful involvement of Indigenous Peoples under these dynamic conditions.

Changes to the process that facilitate this new relationship with Indigenous People's must be studied as part of this review.

Greater involvement by the Province in the scoping and management of Indigenous Peoples' issues and consultation and how that relates to regulatory strategy must be studied as part of any review of the EA process. Today, proponents, particularly private proponents can be caught up in extremely costly and unproductive tasks in an effort to move their projects forward in the EA Program. This is particularly true of resource development projects in northern Ontario, and must be addressed if better social and economic outcomes are to be achieved for both Indigenous people and resource development companies.

Suggested improvements to clarify Indigenous Peoples issues and their role in the EA Program include:

- Assess the special needs of Indigenous Peoples and the EA Program in a comprehensive manner to provide guidance to all parties and offer a formal clarification of relationship between the Crown and Indigenous Peoples with regard to involvement in the EA process
- Assess the special needs of Indigenous Peoples and their meaningful involvement in EA studies by being flexible and providing appropriate timelines for participation and input into the EA process. For example, provide clarification of what accommodations and engagement is appropriate given the nature of the project, anticipated effects and project timelines
- Be flexible and work with Indigenous people to customize the EA process to accommodate Indigenous Peoples' approaches to processing information so that they can fully participate

- Consider initiating a federal/provincial agreement to specify how Indigenous Peoples can participate in the EA Program in consultation with the Minister of Indigenous and Northern Affairs Canada and the appropriate Indigenous groups.
- Provide appropriate support and funding to enable Indigenous Peoples to build capacity and to participate meaningfully in the EA Program including the incorporation of Traditional Knowledge on a consistent basis
- Provide MOECC staff with support and guidance to enable them to assist proponents involved in managing and scoping Indigenous Peoples issues and involvement throughout EA studies

5. Emerging issues

Since the EA Act was enacted in 1976 and revised in 1998, a number of relevant issues have emerged as vital to the EA Program that were not contemplated when the Act came into effect. The following emerging issues need to be better incorporated into EA practice and MOECC guidance and reliable direction must be established in order to provide an even and consistent playing field for participants and achieve a balance between benefits and costs in the future.

- a. Sustainability** – when and how is it appropriate in the EA process to use greater sustainability as a goal? OAIA recommends that the review consider using this goal in place of the “betterment” goals as set out in the EA Act, Section 1.1.
- b. Climate change** – when and how is it necessary to include climate change when evaluating projects and addressing this in an EA study?
- c. Cumulative effects assessment** – where in the EA Program is the appropriate place for consideration of cumulative effects? Should this be on a regional basis, such as an airshed, or on an individual project level? Is it reasonable to expect a proponent to have access to all of the

information required to make a meaningful assessment to inform a cumulative effects assessment?

d. Participant Funding – how could a program of participant funding be initiated on a fair basis to serve the various needs of stakeholders, Indigenous Peoples and other participants in EA projects?

e. Strategic Environmental Assessment – what can be learned from other jurisdictions and their use of Strategic EA process to address plans, programs, groups of big picture projects or new initiatives that may have socio-economic and/or environmental impacts?

Suggested Improvements – Emerging Issues

- Without amending the Act, sustainability could be incorporated as a goal of the EA Program through policy and guidance documents.
- MOECC provide direction and guidance on these emerging issues so that appropriate measures may be incorporated into EA practice
- Cumulative effects assessments are better undertaken at a regional level and that additional guidance from MOECC is required.
- Provide consistent direction through MOECC guidance on how these emerging issues should be adapted for use in the Ontario EA Program

E. Application of EA Program

OAIA members considered whether the EA Act is being applied to undertakings in an appropriate manner. OAIA members made numerous suggestions articulating where the EA Program should be applied – the type of projects and proponents who would benefit from the EA Program and those who should not be subject to the EA Program.

The OAIA Working Group suggests that EA Act should apply to:

- Mining projects; identified as a hole in the provincial EA process
- Projects with potential for significant environmental effects in some or all of the following cases:
 - Projects in complex environments
 - Where there are cross-jurisdictional or cross-mandates issues
 - Where there is a need for a regional blueprint
 - Where there is a new technology
- Where there is a significant Indigenous Peoples' interest
- Where projects do not arise from an approved provincial or municipal objective
- Where, in most cases, an individual EA is currently required

The OAIA Working Group suggested that EA Act should not apply in cases where there are other approvals that fulfill the purpose of EA and where carrying out an EA study would be a duplication.

As a result of the workshop discussions, OAIA Working Group concluded that further dialogue is required with proponents, government agencies, stakeholders and reviewers in order to assess the feasibility of streamlining or stratifying the types of projects and circumstances subject to EA Act approvals.

F. Conclusions

In summary, the OAIA Working Group concluded that,

- The purpose and intent of the Ontario EA Program is to create a decision-making process to assist proponents to ensure that projects meet environmental and socio-economic goals
- The existing EA Act continues to provide a solid base for implementation of the EA Program
- The EA Program is required and, to be successful, it must be rationalized to better reflect needed certainty for all participants (e.g., proponents, reviewers, agencies, public and Indigenous Peoples)
- The EA Program review should examine what types of projects will be subject to the EA Act
- The EA Program must be modernized to better reflect emerging issues that were not considered in the EA Act
- There is a strong need to enhance and redeploy EA Program resources where they are most required
- Fostering senior MOECC staff who will champion good EA practice and act as a senior resource for staff is required to improve the EA Program

G. Recommendations

It is the recommendation of the OAIA Working Group,

That MOECC direct a comprehensive review of how the Ontario EA Program is implemented through the Ontario EA Act.

The goal of the review should be to identify both short and longer term changes that MOECC could implement to ensure better social and economic outcomes for the EA Program and which are more closely aligned with existing and emerging Ontario environmental initiatives.

This review shall examine all types of projects that are subject to and exempted from the application of the EA Act, all proponents and all regulations, procedures and guidelines now in force.

Special attention in the review should be drawn to the role and involvement of Indigenous Peoples, northern Ontario projects and administrative changes by MOECC staff that administer the EA Act.

Respectfully submitted,

Ontario Association for Impact Assessment Working Group on behalf of the
Board of Directors

OAIA Members Workshop Summary**Attachment 1**

May 30 2016 Workshop: Minister's Challenge on Reforming EA in Ontario**Workshop Summary**

At the 2015 Ontario Association for Impact Assessment (OAIA) Conference, the Minister of the Environment and Climate Change (MOECC) challenged OAIA to solicit member views and collate responses into a brief which outlines the issues and challenges associated with the Environmental Assessment Act (EAA) and its application as input to trying to understand how to get better economic and social outcomes out of the Act and its application.

Following the 2015 Conference, a Working Group of senior EA practitioners was struck to develop a response to the Minister's challenge and solicit OAIA membership input to that response. The group met regularly by conference call to discuss the Minister's challenge, develop an outline of a response and develop a workshop for OAIA members to solicit input.

On May 30, 2016 a workshop was held with OAIA members concurrently in Toronto and Ottawa to reflect on issues and challenges with EA in Ontario as it is practiced today. There were 34 participants in Toronto and 9 in Ottawa and the workshop locations were joined by video conference. The workshop was guided by a presentation and a facilitated discussion of questions arising from the presentation. The following is a summary of the information presented and received at the May 30th Workshop. A detailed account of all input received is attached.

The workshop and the deliberations of the Working Group identified 5 themes to describe the problems and opportunities with current EA practice and process. In many respects these themes address both changes to EA practice and to the Act and regulations. However, there was general agreement amongst participants that most problems and opportunities arise not from the Act itself but rather from how the process is practiced and how it is administered by MOECC.

1. **Efficiency of approvals process.** The efficiency and timeliness of the approval process was a concern raised by almost all participants. Timelines outlined in the Codes of Practice are

sometimes treated as minimums and in many cases approval timelines are being extended by months and years. More certainty around approval timelines and greater commitment by MOECC staff to the regulatory strategy and scope of individual projects at the early stages of project planning are aspects that should be investigated. In addition, the lack of seasoned, senior EA practitioners providing EA advice (Part II Order Requests, level of detail required, scoping, review timelines, etc.) particularly for complex and controversial projects is also seen as a deterrent to timely and efficient approvals.

2. **Optimizing approvals under several Acts to reduce duplication.** In many instances individual projects either arise from approved government plans or policies or must seek additional approvals under multiple pieces of legislation. It is not uncommon for a proponent to be faced with a complex array of approval requirements that must be addressed within a regulatory strategy specific to a project. This often causes difficulties amongst proponents, regulators and stakeholders as it becomes a challenge to determine the appropriate level of detail required for EA approval vs the other approvals. MOECC has an opportunity to provide senior leadership in reviewing and green lighting regulatory strategies which would identify and work to minimize duplication between approval requirements. Furthermore, where projects arise from government plans or policies the lack of accountability and availability of decision-makers during project specific EAs often complicates individual project approvals. There may also be opportunities to remove EA requirements for certain types of projects if it requires approvals under other legislation which evaluates a project under similar criteria.

3. **Clarity in the EA approvals processes.** Over time numerous EA processes have been developed. This has resulted in different rules for different types of projects and for different types of proponents. While this has addressed some issues it has created others and it is now difficult for stakeholders to understand why different rules apply to projects. As a result, we have projects which are not undergoing an appropriate level of assessment given their scale, location and proponentcy. Some participants have suggested wholesale change to how class EAs, individual EAs and screening reviews are used and applied to projects. This should be part of a review of EA practice. In addition, there are projects such as mining, and plans (e.g. the Greenbelt, Integrated Power Supply Plan) that should be subject to the Act.

- 4. Indigenous Peoples; issues and consultation/engagement. The relationship between Indigenous Peoples and the Crown is dynamic. Proponents are often unable to properly scope EA project work (such as monitoring field studies, socio-economic analysis, and meaningful consultation) in an ever changing environment. The procedural aspects of “duty to consult” are often passed to proponents and are confused with EAA consultation requirements and accommodation requests made by Indigenous Peoples. This often further complicates issues associated with the broader relationship between the Crown and Indigenous Peoples as they become involved in the EA process. The current EA process/practice did not anticipate and in its current form does not facilitate the meaningful involvement of Indigenous Peoples under these dynamic conditions. Changes to the process that facilitate this new relationship with Indigenous People’s must be studied as part of any review. Greater involvement by the Province in the scoping and management of Indigenous issues and consultation must be studied as part of any review of the EA process.**

- 5. Emerging issues. The following emerging issues need to be better incorporated into EA practice and MOECC guidance and consistent direction must be established in order to provide an even and consistent playing field for proponents**

 - a. Sustainability**
 - b. Climate change**
 - c. Cumulative effects assessment**
 - d. Participant Funding**
 - e. Strategic Environmental Assessment**

Detailed Workshop Notes

A detailed reporting of the input received during and after the workshop is provided below.

1. Goals for Improving EA Practice

Participants were presented with 4 draft goals for reforming EA as follows and asked to comment on them and identify any additional goals:

- Re-invigorate and re-purpose the EA Act to return to its original intent
- Reduce duplication with other Acts
- Reduce/eliminate administrative burden
- Re-consider/consolidate all Class EAs and streamlined processes to reduce fragmentation

What other goals should be considered?

- Reevaluate original intent of EA – is it out of date?
- Renew ability to have “teeth” (enforcement, review, oversight?)
- Review application of penalties
- Improve opportunities for consolidation
- Is proponent-led approach still appropriate? (e.g. one process/set of processes for projects by likelihood to cause impacts)
- Important investment that enjoys broad public, government and industry acceptance and understanding
- Can we learn from other jurisdictions?
- Reduce complexity of EA program – simplify!
- Very difficult to achieve consolidation of class EAs – why bother?

- Level of detail in EAs seems to be increasing and isn't prescribed well by MOECC officers
- The most important goals for changes to EA in Ontario are:
 - Supporting efficient and effective planning and decision making by:
 - Redirecting efforts towards projects with the greatest potential for impact
 - Reducing or eliminating process for projects with unlikely impact or unavoidable minor impacts, and those that are sufficiently addressed through other legislation
 - Reconsidering the approach to public consultation (i.e. scope of consultation matched to potential for negative environmental effects and number of alternatives under consideration)
 - Mandating review and decision-making timelines (including project eligibility and decision timelines for Part II Order requests)

2. Issues with the EA Act and Regulations?

Participants were presented with 5 draft issues with the EAA and regulations and asked to comment on them:

- Fragmentation; too many different types of EAs
- Uncertainty
 - Timelines
 - Part II Order Requests
- Failure to Keep Pace with Driving Issues (Climate Change, Cumulative Effects)
- Duplication with Planning Act, and other newer environmental legislation
- Proponency vs significance of potential environmental effects as a trigger for EA

What are your issues with the EA Act and Regulations?

- Failure to keep pace with driving issues (e.g. climate change)
- Standards of “significance” is challenging
- Need and justification (lack of guidance)
- Expense and time to complete studies for an EA
- Lack of familiarity with Master Plans and its use for cumulative effects
- Uncertainty about the time to review EAs and make a decision – need to build in accountability with the regulator
- Uncertainty around problem and opportunity (need & justification)
- Too much EA process on projects with minimal potential for environmental impact and/or no design alternatives
 - e.g. EA process should not be applied to replacement projects that have the same purpose, use, and capacity and are at the same location
- Overly technical public-facing documents and confusion between the different processes applied under EA (IEA, Class EA, TPAP, and other regulated EA process)
- Unrealistic expectations with respect to the extent of consultation and the ability to accommodate expectations (specifically for routine, low impact projects)
 - Additionally, consultation opportunities on numerous low-impact projects can reduce interest/ability to participate in consultation on projects with the potential for higher impacts
- Uncertainty with respect to approval decision timelines

3. Issues with EA Practice

Participants were presented with 5 draft issues with EA practice and asked to comment on them:

- MOECC: managing timelines, making tough decisions, lack of experienced senior staff
- EAA lacks a champion within MOECC to support and develop great EA planning process
- “Cookbook” approach rather than adaptable and creative application of the Act and practice
- Northern Ontario Issues – application to resource development projects
- Failure to keep pace with driving issues: Climate change, cumulative effects, etc.

What are your issues with EA Practice?

- Failure to keep pace with public participation methods and practice
- Balance between cookbook and innovation approaches (i.e. more clear guidance/standards: balance for practitioners and regulators)
- Incorporate ITK consistently and Indigenous Peoples in the EA process
- Appropriate lens, rigour being applied?
- What is EA most appropriately applied to: SEA, IPSP, Regional Plans
- EA is now a ‘political process’ because it is value-laden
- Complex for stakeholders to understand; improved MOECC guidance and leadership for Class EA renewals would lead to improved consistency and outcomes

4. EA Act should be Applied to

Participants were presented with a draft list of types of projects where EA should be applied and asked to comment on them:

- Mining projects – hole in the provincial EA process
- Projects in complex environments

- Where there are cross-jurisdictional or cross-mandates issues
- Where there may be significant environmental effects (need to define significant)
- Where there is a need for a regional blueprint
- Where there is a new technology
- Where there is significant Indigenous people's interest.
- Where projects do not arise from an approved provincial or municipal objective
- Where an individual EA is currently required

What do you think?

- Projects with potential for significant environmental effects
- Projects that have design alternatives and the preferred alternative can be influenced by public input
- New technology linked to significance
- Individual EA projects linked to significance
- Redefine I.P and EA program (I.P. separate legislation for known communities/interests)
- Two tiers: Strategic level and project level
- How do we define 'significant' and 'Indigenous Peoples interest' – need more guidance
- Indigenous people have ownership or process (implementation of UNDRIP)
- All greenfield projects
- Mining
- Infrastructure – as currently required

5. EA Act should not be Applied to.....

Participants were presented with a draft list of types of projects where EA should NOT be applied and asked to comment on them:

- Where there are municipal plans in place (need to define the acceptable type of plan)
- Where there are other approvals required that fulfill the purpose of undertaking an EA and where undertaking an EA would be duplicative

What do you think?

- Some projects that are currently individual EAs
- Some Planning Act projects where similar EA/environmental processes and decisions are made
- Broad provincial plans
- When community planning process takes cares of matters of environmental interest
- College and university campus expansions or other projects covered by building code, EPA or other existing regulatory requirements

6. If you could change the EAA what would you do?

Participants were asked to “blue sky” about what changes they would like to see to the EAA if there was an opportunity to do so. The following are their responses.

- SEA as cornerstone
- Cumulative impacts assessment included
- Shift from minimizing adverse effects to increased focus on sustainability (social/economic/IP) – contribute to sustainability test
- Participant funding

- Reorient to maximize sustainability benefits
- Environmental effects driven trigger for EA (move away from proponent-led approach (e.g. similar to federal law list))
- Combine EAA with other Acts that do similar things (e.g. Planning Act)/re-examine EA program intent per new Acts
- Harmonize federal/provincial EA programs
- Revise Class EA/streamlined EA to drop alternatives (reinvest in good quality study/engagement) especially time wasted on 2 tiers (alternatives, alternative methods)
- SEA looking at alternatives vs a study looking (second tier) project impacts
- Add frivolous and vexatious
- Stakeholders do own study
 - Stakeholder participation in fact-finding
 - Indigenous Peoples are a special case...
- Re-examine EA process north of 60
- Delete ToR – substitute collaborative process and involve regulators, but still need to have that certainty
- Take out projects that are restorative AND/or have another permitting procedure (e.g. renewable energy projects should not always be ‘exempt’)
- Add statement of benefit to EAA (e.g. public interest of infrastructure)
- Beef up socio-economic assessment
- Remove EA decisions from Cabinet and Minister (reduce political involvement)
- Where will public objectors go if they are not satisfied with process or outcome?
- Need to ensure that democratic processes are respected
- Alternatives assessment is a strength in Ontario (if done well)

- Co-production, co-decision-making with stakeholders and Indigenous Peoples
- Ask proponent to make ADM level briefings to assist in clarity in decision-making for IEA
- Provide more teeth to post EA reporting
- Statement about importance of infrastructure to Ontario's growth. (EA is about infrastructure)
 - Notion of public interest
 - Needs better socio-economic /effects impact assessment (broader/deeper consideration of positive effects)
- Projects requiring EA approval would be limited to those having the potential for significant environmental impact and/or those with design alternatives.
- Timelines for approval decisions should be mandated and where these timelines are not met by the regulator the project proceeds. Delays associated with approval decisions (including Part II Order requests) do have significant impacts on project costs, applications for federal funding, other environmental permitting requirements, etc.
- Develop specific criteria for Part II Order requests whereby requests that do not meet the criteria will be dismissed. I.e. similar to TPAP provisions. Part II Order requests should not be used to challenge established/approved policy.
- Need to clean-up Declaration Orders under the Act as it is currently ad hoc in terms of what's in and what's out – need more consistent and comprehensive approach

7. If you could change EA Practice what would you do?

Participants were asked to “blue sky” about what changes they would like to see to EA practice if there was an opportunity to do so. The following are their responses.

- Better guidance for selecting EA consultant teams – quality evaluation
- Guidance on participants' role in EA (methods to monitor and sanction participant roles (when they behave badly)

- Better define all roles throughout the EA process
- More clarity in Indigenous consultation especially for greenfield projects: it is very lengthy and costly
- When there is both a provincial and federal EA requirement, the provincial EA process is fully coordinated with CEAA such that the objective of one process, one document, one approval is achieved
- Increased flexibility with respect to consultation requirements as determined by the proponent
- EA process should not be used to require proponents to exceed policies or procedures developed/approved by other regulatory agencies (e.g. best management practices developed/approved by MNRF for protection of endangered species)
- EA should consider the broader permanent impacts and benefits of planning and infrastructure improvements and have less focus on temporary impacts associated with construction
- Require/strongly encourage oversight by professional planner in EAs to improve quality of EAs

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For further information please visit www.oaia.on.ca