

MINISTER'S CHALLENGE: IMPROVE EA PLANNING IN ONTARIO

OBSERVATIONS FROM THE OAIA 2016 CONFERENCE, OCTOBER 25&26, 2016

OAIA AND THE MINISTER'S CHALLENGE

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

At the 2015 OAIA Annual Conference, the Ontario Minister of the Environment and Climate Change 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 (the Minister's challenge).

HOW OAIA ADDRESSED THE CHALLENGE

Following the 2015 OAIA Conference, a working group of senior EA practitioners, who are all OAIA members, was struck to prepare a response to the Minister's challenge and solicit OAIA member input into the response. The group met regularly by conference call to discuss the Minister's challenge and its proposed response. The working group developed an outline for a response and held a workshop for OAIA members on May 30, 2016 to solicit input from OAIA members to ensure that the brief to the Minister was reflective of the broader membership. A document entitled "*Environmental Assessment Program in Ontario: Is it Time to Hit the Reset Button?*" summarizes those deliberations and was delivered to the Minister on October 21, 2016. This document is being re-submitted with this summary for ease of reference.

THE 2016 OAIA CONFERENCE

The Minister's challenge was the inspiration for the theme of the 2016 OAIA Conference entitled: *Environmental Assessment: Time to Hit the Reset Button*. Over 120 delegates met over a two day period in October 2016 to discuss the conference theme in nine conference sessions with 25 presentations. Topics included:

- EA Practitioner Perspective on the Promise and Custom of EA Law and Practice,
- Integrating Climate Change into EA,
- Class Environmental Assessments: What's New,
- Public Engagement in EA: What's the Story,
- Indigenous Involvement in EA: Finding A Better Way,

- Case Study: Eabametoong First Nations and their Experiences with Planning and the EA Process,
- Effective Participation in EA,
- Creating the Next Generation of EA Law and Practice, and
- Innovative Ways of Reaching EA's Intended Goals and Outcomes.

OBSERVATIONS FROM THE 2016 OAIA CONFERENCE

In general, the presentations supported and are consistent with the recommendations made in OAIA's response to the Minister's challenge submitted on October 21, 2016 – and, in a number of cases, went even further in suggesting amendments to existing legislation and regulations.

The following are key observations from the 2016 OAIA conference and are provided as a supplement to our response to the Minister's challenge.

1. While Ontario was once recognized as a leader in environmental assessment, it is clear that steps should be taken immediately to bring the EA Act, associated regulations and related processes into alignment with best practices elsewhere in Canada and internationally. (For example, examining the EU Directive to see how it has addressed strategic EIA and integrating climate change into EIA).
2. The EA Act should be amended to ensure that all projects with the potential for significant environmental effects are assessed regardless of whether they are a public or private sector projects; that is to say, that the trigger for an environmental assessment should be based on potential environmental effects rather than on the proponent and whether they are private or public. This would be consistent with other federal, provincial and territorial government approaches.
3. It was made clear that it is becoming increasingly difficult for members of the public to participate effectively in the environmental assessment process. A funding program should be made available that provides adequate funding for participants. . (For example, a provincial equivalent to the federal participant funding program under the *Canadian Environmental Assessment Act, 2012* including the funding envelope for Indigenous participation.
4. Given numerous recent court decisions, it is becoming imperative that Indigenous peoples are included in the environmental assessment process) in a meaningful way. The EA Act did not contemplate the impact of this when it was written, but should be updated to reflect this reality. Presentations at the conference suggested that there be:
 - a. Adequate and ongoing funding provided by the province to enable Indigenous people and their communities to participate in EA processes.

- b. Flexibility in the environmental assessment process to allow Indigenous communities to respond in a manner that works for them. There should be the ability to customize the process at the beginning to meet an Indigenous community's needs
 - c. Traditional ecological knowledge (TEK) is a very valuable component of an environmental assessment as community elders and users of the land have knowledge to share. Measures should be taken, including the provision of adequate and ongoing funding, that will ensure that TEK can be considered with equal importance as western knowledge in the environmental assessment process, and that the confidentiality of this information is respected.
- 5. It has been recognized that cumulative effects assessment is critical to determining, over time and space, the cumulative impacts a particular project or a series of projects may have on a region, but that the individual project level is rarely the appropriate level to conduct a cumulative effects assessment. Rather, a cumulative effects assessment should be undertaken at a regional level with individual projects benefitting from that level of work. A number of ways to achieve this were offered at the 2016 OAIA conference including:
 - a. A requirement in the EA Act for regional assessments in areas where development is occurring and/or anticipated is an important tool for addressing potential regional and cumulative impacts, including climate change. The EA Act could have triggers that require the conduct of a regional environmental assessment when (for example):
 - i. A proposed project(s) is in a region that has a unique ecological or socio-cultural value such as an endangered species habitat
 - ii. The region has already been subject to development or significant development is anticipated in a region that has never had industrial development e.g., Far North
 - iii. Cumulative effects are anticipated and are of public concern
 - iv. A proposed project(s) will likely have regional or provincial impacts, including climate change impacts beyond a certain threshold.
 - b. If there were to be a reluctance to amend the EA Act to require regional assessments, there should be the ability to undertake regional assessments as policy documents.
 - c. In either scenario, the regional assessments should be undertaken in advance of project-specific environmental assessments and information from the regional assessments should be made available to a proponent undertaking a project-specific environmental assessment.
 - d. There should be a clear understanding of who would be carrying out the regional environmental assessment. It should not be expected that a proponent undertaking a project-specific environmental assessment is responsible for a regional environmental assessment. Given jurisdiction, it is likely an important role for government and First Nations.

- e. Funding should be made available for the collection of baseline data (including TEK) and ongoing studies for a regional environmental assessment to ensure that robust science-based decisions are being made.
- 6. While the current EA Act states that environmental assessments are to be carried out for plans, programs and projects, the focus has been on environmental assessments at the project level with no guidance on how an environmental assessment is to be carried out for a government plan or program. In most cases, provincial legislation is explicitly exempt from EAA. Strategic environmental assessment is a relatively new tool that has been successfully used elsewhere to evaluate potential environmental effects of plans, programs and policies. The EA Act should be amended to make clear which types of government plans, programs or policies should be subject to an environmental assessment and under which circumstances (e.g. when they have a potential for significant environmental effects).
- 7. Greater coordination both within the provincial government and between the provincial and federal government is required to better manage and avoid duplication of environmental assessment processes. While the Canada-Ontario Agreement on Environmental Assessment Coordination already exists, it needs to be updated and strengthened particularly after the review of the current federal environmental assessment regime is complete. Ontario should explore the substitution and equivalency provisions to ensure that where possible, the Ontario process prevails and there is no duplication of process.
- 8. Several presentations at the conference commented on the lack of knowledge and training of current MOECC staff in the environmental assessment program. In order to realign Ontario's environmental assessment program with best practices from the rest of Canada and internationally, the government must adequately and consistently fund the program to ensure that MOECC staff are properly resourced and trained to carry out their duties. Staff must get the support they need to provide meaningful and innovative advice to proponents, ensure adequate consultation has taken place, and to review environmental assessment documents that are submitted for review and a decision with a critical and objective eye.

LAST WORDS

The information shared through the presentations at the OAIA 2016 conference confirm, support and go further than the response to the Minister's challenge provided to the Minister of the Environment and Climate Change on October 21, 2016.

It is apparent that there is a desire on the part of many of the OAIA members that environmental assessment in Ontario needs legislative or regulatory changes as well as improved processes and efficiencies, policies and guidance, so that it can be a leading Canadian jurisdiction in

environmental assessment and is again regarded as an investment that provides for the betterment of the people of Ontario.

Adequate funding is central to the success of any government program. There have been inadequacies with respect to the funding of the current EA program. Adequate funding will be needed to “realign Ontario’s environmental assessment program with best practices both in Canada and internationally”. Thus, for the provincial government to act effectively on any one of the above observations, adequate funding must be provided to ensure the provincial intentions become reality.