Moving Away from Self-Assessment

A Discussion Paper

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PART I
INTRODUCTION

The purpose of this paper is to review the concept of "self-assessment" as it applies to and is practiced under the *Canadian Environmental Assessment Act*. [1] It is hoped that the paper will allow the reader to assess whether and how the current self-assessment approach ought to be changed in order to improve environmental assessment (EA) in Canada.

In order to evaluate self-assessment or alternatives to it, consider the overall objectives of environmental assessment: it is a planning process intended "to assist decision-makers to ensure that the environmental implications of decisions are sufficiently understood and appropriately considered in the decision-making process," that is, before irrevocable decisions are made.[2]

This objective is consistent with the express legislative purposes and the administrative duties of CEAA:

> 4. (1) The purposes of this Act are
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> (a) to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects; … [3]
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> (2) In the administration of this Act, the Government of Canada, the Minister, the Agency

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[1] S.C. 1992, c. 37, as amended (CEAA or the Act).

[2] Meinhard Doelle, *The Federal Environmental Assessment Process: A Guide and Critique* (LexisNexis, 2008), at pp. 17-18 (Doelle).

[3] During its clause by clause review of Bill C-9, *An Act to Amend the CEAA* in 2002-2003, members of the House of Commons Standing Committee on the Environment and Sustainable Development amended s. 4 so that new paragraph 4 (1) (a) precedes the other legislative purposes. The other purposes ((b) through (d)) are supplementary to paragraph (a), and/or deal with administrative and methodological matters.

> and all bodies subject to the provisions of this Act, including federal authorities and responsible authorities, shall exercise their powers in a manner that protects the environment and human health and applies the precautionary principle. [4]

Whether a system is based on self-assessment or some other approach, the means ought to be guided by the overall objectives of EA and by CEAA's legislative purpose. This paper therefore considers the merits of self-assessment in light of the above purpose and objectives.

In Part II, the various meanings of self-assessment in the CEAA regime and how it works, are considered. In Part III, the performance of the self-assessment is evaluated. In Part IV, alternatives to the current approach are considered.

The conclusion of the paper is that self-assessment has failed and that alternatives must be considered.

PART II
WHAT IS SELF-ASSESSMENT?

"Self-assessment" is an undefined term in the *Canadian Environmental Assessment Act* (CEAA or the Act), but it is central to the approach that is currently taken in federal EA.

Self-assessment refers to roles played by both the proponent and government decision-makers. It can mean that

(a) the proponent is responsible for conducting the assessment of its own proposed project; [5] or

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[4] Note that these provisions are stronger in their environmental purpose than the general objectives of EA cited above. The other provisions of the Act should be consistent with subsections 4 (1)(a) and 4 (2), which are intended to set the tone for the rest of the Act and to provide a general guide for how it is implemented.

[5] "Self-assessment" thus sometimes refers to the fact that the proponent of an undertaking is responsible for generating the data for an EA. If the proponent of a wharf is a private sector company, for example, it may hire a consultant to compile the scientific data requested by the RA or by other federal authorities. If the proponent is a responsible authority (RA), the RA itself will have that task and in turn, it will be responsible for assessing the adequacy of the data.

(b) a government department is responsible for ensuring both that the assessment is conducted, and/or for making the decision whether the project on which the assessment is based may proceed and if so, under what conditions;

or both.

The balance of this paper focuses on self-assessment in terms of (b) above.

How self-assessment works pursuant to CEAA

In this section, the mechanics of CEAA self-assessment are set out. This requires an understanding of the meaning of "responsible authority" and the role of the RA, as well as the roles of the Minister of the Environment and the federal Cabinet in the different types of assessment.

In the current CEAA system, federal government departments [6] that make decisions linked to whether and how a federal environmental assessment is conducted, are also the judge of the quality of the assessment. In most circumstances, no other authority [7] is empowered to second-guess a department's decisions.

Departments responsible for ensuring that EAs are conducted are called "responsible authorities" (RAs) in the Act. The notion of self-assessment in CEAA is clear from the Act's definition of RA:

> ""Responsible authority', in relation to a project, means a federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted." [8]

A "federal authority" generally means the Minister responsible for a federal department, Crown corporation or agency.[9] "Responsible authorities" are thus all federal authorities responsible for EAs pursuant to the CEAA.

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[6] In this paper, "department" refers to relevant departments and agencies of the federal government.

[7] Short of the Federal Court, resort to which is extremely time-consuming and expensive.

[8] Subsection 2 (1) ("responsible authority"), *Canadian Environmental Assessment Act*.

[9] See subsection 2 (1) ("federal authority").

In all CEAA assessments, the ultimate decision, namely whether a project will be allowed to proceed and under what circumstances, will be based on

- whether any "significant adverse environmental effects" may be caused by the project;
- whether such effects are "justified in the circumstances" and in particular, taking into account
- any "mitigation measures the RA considers appropriate". [10]

Of the four types of EA that may be conducted pursuant to the CEAA (screenings, comprehensive study, review panel, and mediation), the Canadian Environmental Assessment Agency reports that as of early March 2009, just 26 comprehensive studies, 11 review panels and no mediations were underway, and that a total of 3,800 EAs in total were conducted in 2008. [11] The overwhelming majority of EAs conducted are therefore screenings, in which both the quality of the assessment and the final determination respecting the project are the responsibility of the RA.

In the case of the relatively small number of assessments subject to comprehensive study, the Minister of the Environment has somewhat more input into the quality of the comprehensive study report than in the case of screenings, but the ultimate decision usually remains with the responsible authority. [12]

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[10] CEAA, ss. 18 and 37. For recommendations on how this "central test" can be strengthened in order to ensure improved environmental outcomes, see Hugh Benevides, *Submission of the Canadian Environmental Law Association on Bill C-19, An Act to Amend the Canadian Environmental Assessment Act*. CELA Report No. 414, January 2002; and Robert Gibson, "Favouring the Higher Test: Contribution to sustainability as the central criterion for review and decisions under the CEAA", in (2000) 10 *Journal of Environmental Law and Practice* 1, 39-56.

[11] Canadian Environmental Assessment Agency, "Federal EA in Canada", February 2009 (overhead deck). In recent news reports, the total number of EAs conducted annually is said to be 7000. See for example Oliver Moore, "Conservationists see 'opportunities for abuse' in assessment exemptions" in the *Globe and Mail,* March 26, 2009 at A6. Regardless of the total number of assessments conducted, the overwhelming majority of these are screenings.

[12] See sections 21-23 and 37. According to the comprehensive study process in place since the 2003 amendments to the Act, where a project is listed on the comprehensive study list, the RA is required to "ensure public consultation with respect to the proposed scope of the project for the purposes of the EA, the factors proposed to be considered in its assessment, the proposed scope of those factors and the ability of the comprehensive study to address issues relating to the project" (subsection 21 (1)). The RA must then report to the Minister regarding the scope of project, scope of assessment, public concerns, the project's potential to cause adverse environmental effects (not limited to "significant" effects), and "the ability of the

In the case of the very small number of federal EAs that are subject to assessment by a review panel, the review panel's recommendations are referred to the RA for a decision. The RA's decision must conform with the wishes of cabinet.[13]

Thus, in terms of the ultimate decision whether a project will be allowed to proceed, only the small number of projects subject to comprehensive study in which the Environment Minister determines that significant adverse environmental effects are likely even when taking into account mitigation measures, plus those few projects subject to consideration by a review panel, are *not* conducted by way of self-assessment.

From the decision criteria in sections 20 and 37, it can be seen that federal decision-makers have a great deal of discretion in determining whether the project should be allowed to proceed, and on what basis.

PART III
IS THE SELF-ASSESSMENT SYSTEM WORKING?

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comprehensive study to address issues relating to the project." The RA must, in the same report, recommend to the Minister of the Environment whether to proceed by comprehensive study, or to refer the project to a mediator or review panel (subsection 21 (2)). The Minister of the Environment then must take the reported items into account and either refer the project back to the RA for preparation of a comprehensive study report (CSR), or refer it to a mediator or a review panel. Where, as in most cases, a CSR has been prepared, the Minister of the Environment must, in an "environmental assessment decision statement", give his opinion as to whether the project is likely to cause significant adverse environmental effects, and set out any mitigation measures or follow-up program that he considers appropriate. If the Minister's statement concludes that the project (taking into account mitigation measures) is likely to cause significant adverse effects, the decision as to whether the project may proceed is referred to the Cabinet. If the Minister's statement concludes that the project is not likely to cause such effects, the RA may proceed with the decision.

[13] The quality of the EA and in particular, its soundness from an environmental perspective is unlikely to be improved much by Cabinet consideration. While the environment minister may weigh in at the Cabinet table on the merits of the project, at the full Cabinet or at any given Cabinet committee where the results of a review panel are likely to be discussed, he is likely to be outnumbered by ministers whose departments have economic growth and development mandates, as distinct from sustainability mandates. (For the current membership of the federal cabinet and committees, see http://pm.gc.ca/eng/feature.asp?pageId=53, last accessed 9 March 2009.)

Meinhard Doelle suggests that the idea behind self-assessment is that "by being required to consider the implications of decisions they are regularly asked to make", federal decision-makers "are to become better informed about the environmental consequences of their decisions", with the ultimate result being federal decisions that better support sustainable development. Doelle also calls this objective "ambitious", in light of the fact that RAs are generally reluctant to look beyond their core mandates, and that resources and training to meet the challenges of sound self-assessment have generally been lacking. [14]

In its 2003 report [15] following its review of Bill C-9, the House of Commons Standing Committee on the Environment and Sustainable Development reviewed witnesses' testimony about self-assessment. It found that a conflict of interest existed in terms of responsible authorities' obligation to conduct assessments, while also promoting both their own business objectives (as exemplified by Parks Canada's need to attract visitors while also being required to ensure that EAs are conducted) as well as those of private sector proponents.

More generally, the Committee heard that

> "self-assessment means the department that most wants to have a project proceed is responsible for making all the key determinations, in most cases. …
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> "What changes can you bring to make a difference? Bring in some penalties for failure to observe the Act. Bring in some requirements." [16]

In addition to conventional notions of self-interest, particularly economic benefit, self-interest can also include an interest in minimizing the administrative burden (including the cost) of conducting EAs. As Doelle has pointed out, responsible authorities interested in minimizing this burden to their own advantage, have learned to make use of the discretion that is

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[14] Doelle at 203.

[15] House of Commons Standing Committee on the Environment and Sustainable Development, *Sustainable Development and Environmental Assessment: Beyond Bill C-9*, June 2003 ("Beyond Bill C-9").

[16] Quoting the then-executive director of the Sierra Club of Canada, Elizabeth May, in *Beyond Bill C-9*, at 18.

afforded them throughout the CEAA decision-making process. [17] Such discretion is available at many stages throughout the process,[18] including when and whether to make any decision at all or to delay a decision (sometimes for the good reason that the proponent, other federal authority or other jurisdiction has not provided information on which to base the decision).

In short, the committee heard that the system requires an independent, arms-length relationship between the body conducting the EA and the ultimate decision-maker. [19]

The committee went on to identify the need to replace the self-assessment system with "a system of enforceable EA decisions, possibly generated by an independent agency," concluding that if changes made to CEAA by way of Bill C-9 (which took effect in 2003) had not "improved EA performance" by the time of the seven-year review in 2010, then "the idea and process of self-assessment should be re-examined." [20]

Since the publication of Beyond Bill C-9, there is no evidence that the administration of federal EA has improved; to the contrary, the same problems persist. Two of these problems, both linked to self-assessment, are mentioned here:

- the systematic and systemic avoidance of conducting EAs by the Department of Fisheries and Oceans by way of issuance of "letters of advice", as well as "late triggering"; [21] and
- the avoidance of requirements to provide opportunities for public

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[17] Doelle at 204.

[18] For example, the RA has some or complete discretion to make the following important decisions: when the process is triggered; the scope of the project to be assessed; the scope of the assessment, including the consideration of alternative scenarios and the scope of cumulative effects; whether the anticipated adverse environmental effects of the project are "significant" and if so, whether these effects can be "justified in the circumstances," "taking into account the implementation of any mitigation measures that the RA considers appropriate": sections 20 and 37.

[19] Ibid., at 17.

[20] Ibid., at 18.

[21] See Arlene Kwasniak, "Slow on the Trigger: the Department of Fisheries and Oceans, the Fisheries Act and the Canadian Environmental Assessment Act" (2004), 27 Dal. L.J. 347.

involvement, as characterized by the *Red Chris* case. [22]

Public interest advocates see a process with few opportunities for public involvement, and no evidence that the process is resulting in improved environmental outcomes. Proponents see CEAA as imposing delays, and as lacking legitimacy.

For its part, the government plans to overhaul the CEAA. An overhead deck apparently presented by Canadian Environmental Assessment Agency staff by management in January 2009 includes the following information: [23]

- the stated "context" for "renewal" of the system includes "Recent experience to expedite funding approvals of infrastructure projects demonstrates current limitations and rigidity" [sic]; it also includes an indication that the "Minister of the Environment [has given] direction to prepare [a] bill overhauling CEAA as soon as possible"; and that there is consensus on the Major Projects Deputy Ministers' Committee "to proceed with renewal rather than wait for 2010 review by Parliamentary Committee." [24]
- "Ongoing Challenges" related to self-assessment include "late triggering"; "scoping"; "enforcement"; "diffuse accountability and administrative complexity (i.e. comprehensive study process)" [25]
- the proposed new model appears to do away with self-assessment (although the term is not mentioned) in favour of an all-projects-out-unless-in approach by way of "Project List Regulations". Only projects included on this list would be considered by the Canadian

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[22] *MiningWatch Canada* v. *Canada (Minister of Fisheries and Oceans)* (F.C.), 2007 FC 955, (2007), [2008] 3 F.C.R. 84; rev'd 2008 FCA 209. The case involves the question whether the RA can legally avoid the public consultation requirements for comprehensive study by determining a narrow "scope of project". The Federal Court of Appeal decision, in favour of the federal government, has had the result of RAs across the federal government making scope of project decisions in such a way that the project is assessed by way of a screening rather than by comprehensive study. The case has been appealed to the Supreme Court of Canada.

[23] *Renewal of the CEAA – Presentation to Agency Staff, January 20-21, 2009* [overhead deck].

[24] Ibid., slide 3. Section 32 of *An Act to Amend the Canadian Environmental Assessment Act*, S.C. 2003, c.9 requires that a Parliamentary committee undertake "a comprehensive review of the provisions and operation of the *Canadian Environmental Assessment Act*" within seven years after June 11, 2003.

[25] Ibid., slide 4.

Environmental Assessment Agency by way of a new, undefined form of "screening". There is no mention of responsible authorities, nor of any role for RAs. [26]

- The new regime is expected "to capture 200-300 projects per year." [27]
- "proponents would provide project descriptions to Agency." [28]
- The relatively few projects determined to require federal EA would be assessed by one (or a combination) of the following: the Agency; a review panel; the Canadian Nuclear Safety Commission (CNSC); the National Energy Board (NEB); and a province. Except in the case of the CNSC and NEB, the Minister of the Environment would issue a "Decision and Certificate" on completion of the assessment process. [29]

While no draft legislation has been tabled in Parliament at the time of writing, in March 2009 the federal government meanwhile published new regulations that drastically limit the application of the CEAA to projects. [30] These changes do not alter the self-assessment approach taken, so much as they entirely remove projects from the ambit of the Act.

If the government proceeds with the legislative plans outlined in the presentation deck, federal assessment will remain a self-assessment regime in the limited sense of the proponent being responsible for conducting the assessment. [31]

From the scant information available, it seems that the proposed new system would have the following characteristics:

- Responsibility for conducting the federal environmental assessment

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[26] Ibid., slide 8.

[27] Ibid., slide 10.

[28] Ibid., slide 10.

[29] Ibid., slide 8.

[30] *Regulations Amending the Exclusion List Regulations, 2007*, SOR/2009-88, March 12, 2009, and *Infrastructure Projects Environmental Assessment Adaptation Regulations*, SOR/2008-89, March 12, 2009.

[31] See part (a) of the definition in Part II, above.

would rest with the Agency, the CNSC, the NEB "and other prescribed federal boards or tribunals for projects they regulate" [sic]; a review panel or joint review panel, or with "province[s] through Substitution". [32] Depending on the circumstances, in some cases the EA would be conducted using self-assessment and in others, to a lesser degree or not at all.

- Responsibility for the EA decision and any conditions would rest with the Minister of the Environment, CNSC or NEB. [33] The decision would come in the form of an "EA Certificate" and would have input from Cabinet. [34]

The regime would no longer be a self-assessment regime in the sense that in many cases, decision-makers with responsibility for making regulatory decisions currently linked to the EA (such as the Department of Fisheries and Oceans issuing a *Fisheries Act* authorization), or federal departments providing funding for a project, would not be responsible for the EA.

It's worth noting that the federal government's system for conducting Strategic Environmental Assessment (EA of plans, programs and policies, or SEA), by means of the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, is also based on self-assessment. [35]

Canada's Commissioner of the Environment and Sustainable Development [36] reported in 2004 a low level of leadership and support for the Cabinet

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[32] Overhead deck, slide 13 ("Who is responsible for conducting EA?").

[33] Overhead deck, slide 15 ("Main elements of process").

[34] Overhead deck, slide 17 ("EA Certificate"). The process would include "Sanctions for proceeding without a preliminary screening or for violating conditions."

[35] SEA as conducted under the Cabinet Directive "is a self-assessment process, meaning that the federal department or agency that is developing a proposal is responsible for determining whether a detailed SEA is needed. … Deputy heads of federal departments and agencies are responsible for putting an effective system in place to ensure compliance with the Cabinet directive." *2008 March Status Report of the Commissioner of the Environment and Sustainable Development, Chapter 9 – Management Tools and Government Commitments*, paragraphs 9.21 and 9.22 (2008 Status Report).

[36] The Commissioner is appointed by the Auditor General for the purpose of monitoring and reporting to Parliament on federal progress "in relation to environmental and other aspects of sustainable development". See *Auditor General Act*, R.S.C. 1985, c. A-17 (as amended), ss. 15.1 and 21.1 – 23.

Directive from the central agencies of government, and recommended that one of these powerful central agencies, the Privy Council Office (PCO), "ensure that responsibilities and authorities have been assigned for central monitoring of compliance, quality control, and continual improvement of the assessment process." [37] PCO rejected this recommendation, choosing to continue to rely on self-assessment.

In the March 2008 status report, [38] the Commissioner reported that "the existing accountability framework" (based on self-assessment, which essentially means no mechanisms for accountability) is producing unsatisfactory results: departments and agencies are not monitored for compliance with the Directive, nor are their heads held accountable for their failure to comply.

In summary, the federal environmental assessment regime, consisting of project EA under the Act and SEA under the Cabinet Directive, both with self-assessment as a core principle, has been found to be

- administered by too diffuse a range of actors throughout the federal government;
- inadequately funded and resourced;
- seriously prone to conflict of interest and the abuse of discretion; and
- not complied with and in need of accountability/compliance mechanisms.

PART IV
ALTERNATIVES TO SELF-ASSESSMENT

[37] Ibid., paragraph 9.51.

[38] "The objective of the audit was to determine whether selected departments and agencies have made satisfactory progress in addressing selected recommendations, observations, and commitments made to implement the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*." See "About the Audit – Objective" in 2008 Status Report, cited above.

As described in Part III, the current government recently signaled its intention to reform federal EA. Although the proposals appear to be driven by other motivations, an intended incidental change will be the elimination of self-assessment by "responsible authorities." Instead, the government has signaled that the Canadian Environmental Assessment Agency would conduct some sort of "screening" of a proposed project in order to determine whether a federal EA was required (evidently, this determination would be entirely at the Agency's discretion). If an EA were deemed not to be required, the Agency (and not the current RA) would issue a "Statement to Proponent" to that effect. If an EA were deemed to be required, an assessment would be conducted by either: the Agency itself; a provincial authority; the Canadian Nuclear Safety Commission; the National Energy Board; a review panel such as the review panels provided for in the current Act; or some combination thereof. The process would result in the issuance of a "Decision and Certificate" (presumably to include any enforceable conditions), [39] with the ultimate decision resting with Cabinet.

One merit of the existing CEAA approach is that it provides – notably, on a purely discretionary basis – for review panels that often give the kind of attention that projects require in order to consider the significance of their environmental effects. The greater use of review panels would result in better environmental assessments.

While review panels represent the gold standard in terms of the quality of the assessment, they are currently not assigned the critical task of making the final decision. A review panel considers a project proposal in-depth and can compel information from the proponent, and from experts including the public involved in the EA, but the ultimate decision whether to allow the project to proceed and under what circumstances, belongs to the federal cabinet.

Other benefits of review panels include the independence of the panelists in most cases, and a process that includes meaningful opportunities for public involvement.

To summarize some of the problems with the current federal EA regime cited throughout this paper, it is characterized by

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[39] Overhead deck.

- no serious political commitment to EA;
- diffuse accountability, with no single body charged with the power to enforce compliance; and
- too much discretion resulting in abuse, including but not limited to avoidance of applying the act and involving the public.

A viable alternative to self-assessment in the federal EA process ought to address the above problems and:

- be at-arms-length from proponents and governments; and
- include provision for enforcement of binding decisions.

The above objectives cannot be achieved without the full commitment of the executive branch to environmental assessment.

Commitment cannot be enforced. It must arise from the realization that the achievement of sustainability [40] requires good decision-making, to which good EA is central. Regardless of whether self-assessment is used, the commitment must include providing the resources necessary to ensure the system is carried out.

Taking into consideration the above factors, as well as comparing the efficiency of building existing institutions rather than creating new ones, the Canadian Environmental Assessment Agency ought to be given the necessary capacity and powers to carry out EA in a serious way.

The approach would have the following characteristics:

- all undertakings subject to the Act would trigger opportunities for public involvement;

- minimum opportunity(ies) for the smallest scale of undertakings would include an opportunity to request further information and submit comments that the Agency would be required to take into account before proceeding to a final decision;

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[40] See the discussion of "the idea behind" self-assessment, in Part III, above.

- more involved, technically complicated and environmentally significant EAs would require lengthier timelines and greater public involvement, including assessment by review panel, whose recommendations would be binding;

- posting of the Notice of Commencement of an EA on the electronic registry and posting of other documents would allow any person, including the proponent, to request a hearing before a new Canadian Environmental Assessment Tribunal. [41]

- the decisions, including the stipulation of mitigation and follow-up measures, would be enforceable, for example through the issuance of permits or certificates by the body. [42] A breach of the permit or its conditions would constitute an offence, enforceable by public prosecutors or by the public, before the Tribunal or the courts.

Related amendments to the Act to integrate a legally mandated SEA regime should be considered. For example, use of a legally specified SEA stream will be needed where the intent of the proposed plan, programme or policy is to provide authoritative direction to subsequent decision making about projects. [43] Amendments to the CEAA would require the Agency and/or Tribunal to review and rule on the adequacy of Strategic EAs currently required by the Cabinet Directive.

Neither the federal government's recent regulatory changes, nor the changes proposed in the overhead deck referenced in Part III, would meet the above requirements or address existing problems.

PART V

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[41] The division of responsibilities and relationship between the Tribunal and the revamped Agency could be analogous in some respects to those of the federal Competition Bureau and Competition Tribunal.

[42] See the recommendation in *Beyond Bill C-9* at page 19.

[43] Further consideration of the interaction of project-level assessment with SEA can be found in Benevides, Kirchhoff, Gibson and Doelle, *Law and Policy Options for Strategic Environmental Assessment in Canada*, December 2008 (unpublished; submitted to the CEA Agency and the Regulatory Advisory Committee sub-committee on SEA).

CONCLUSIONS

In view of widespread dissatisfaction with the current CEAA, alternative approaches to federal EA as currently conducted, should be considered. Recent government proposals fail to address the current problems. They seem likely to result in a 90%-95% reduction in the total number of assessments conducted annually. The government has also signaled its intention to avoid the legislative review required by *An Act to Amend the Canadian Environmental Assessment Act*. [44] Reform of important national legislation on such a significant scale should be preceded by consultation on a scale that is proportionate to the proposed changes.

The first legislative review of CEAA culminated in legislative changes in 2003. However, Parliamentary rules were abused by the then government, in order to ensure that the scope of changes under consideration by MPs was limited. [45] As a consequence, no meaningful consideration of the merits of self-assessment took place.

Democratic principles require that proposals for reform be the subject of Parliamentary and public consultation, before taking effect. [46]

Unless and until the current legislative purposes of CEAA are amended or repealed, they ought to stand as the basis for further reform.

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[44] See footnote 24, above.

[45] See Hugh Benevides, "Real Reform Deferred: Analysis of Recent Amendments to the Canadian Environmental Assessment Act" in (2004) 13 J. Envtl. L & Prac. 195. See especially "(a) A Note About Parliamentary Process", at 198-201.

[46] The overhead deck suggests that consultations would be held with the Environment Minister's Regulatory Advisory Committee (RAC), provinces, Aboriginal groups and "stakeholders" would be conducted in February 2009. RAC meetings have been repeatedly postponed and no public consultation has taken place. Contrary to normal practice, pre-publication in the *Canada Gazette* of the new regulations was not done; instead, the final regulations were published, after they were registered. The overhead deck also suggests that "consultation on a draft bill" with "provinces and stakeholders" would be conducted "in confidence" (slide 20).