

# **Comments On "Reforming Environmental Assessment In British Columbia: A Legislation Discussion Paper"**



## **Introduction**

Since 1974, the West Coast Environmental Law Association (WCELA) has provided legal services to members of the public who are concerned about threats to the environment. WCELA and the West Coast Environmental Law Research Foundation provide legal representation, promote law reform, provide legal education, conduct research and maintain a library of environmental legal materials

Following are our responses to the recommendations set out in "Reforming Environmental Assessment in British Columbia, A Legislation Discussion Paper". This is our initial response. We look forward to continuing to participate in the public consultation process regarding the development of this legislation.

## **Application of the Environmental Assessment Process**

### **Government Recommendation**

A combination of category and threshold inclusion criteria should be used to determine those projects subject to the environmental assessment process.

### **WCELA Comments**

Yes, and the types of proposed projects which require environmental assessment must be broadly defined, with special attention given to developing appropriate procedures for timely assessment of small projects and expansions of existing operations.

### **Government Recommendation**

The environmental assessment process should apply to both public and private sector projects that fall within the inclusion criteria set in the legislation.

## **WCELA Comments**

Yes. The rationale and the environmental value of environmental assessment is the same for both public and private sector projects.

## **Government Recommendation**

All project categories currently reviewed under one of the three project review processes should be included in the proposed act.

## **WCELA Comments**

Yes, and many more types of projects should be covered as well. The project categories should not be restricted to those currently reviewed under one of the three project review processes.

## **Government Recommendation**

Legislation should provide for a staged review process. Time frames should be set out in regulation to ensure discipline through the review process.

## **WCELA Comments**

Yes, in both cases. However, time frames for public input must be reasonable and there must be provision for extensions where necessary for citizens to respond to unusually lengthy documents.

# **Scope of the Environmental Assessment**

## **Government Recommendation**

Consistent with current practice, the legislation should state that it is the proponent's responsibility to identify and manage all direct environmental impacts associated with a project.

## **WCELA Comments**

Yes, and indirect and cumulative environmental impacts as well. The scope of the assessment should include the whole "life cycle" of the proposed project, the need for and alternatives to the project, any cumulative effects from the proposed project in combination with other existing activities or projects, cultural and heritage factors and, if the project is to be approved, mitigation measures and follow-up monitoring.

## **Government Recommendation**

Indirect and cumulative regional impacts should be included in the environmental assessment process where they are considered significant by the management committee or the minister (s).

### **WCELA Comments**

No. Indirect and cumulative regional impacts should always be considered in the environmental assessment process.

## **Administration of the Environmental Assessment Process**

### **Government Recommendation**

Responsibility for administration of the environmental assessment process will be assigned to one or more provincial ministers. Advice is sought on which minister(s) should be involved.

### **WCELA Comments**

Responsibility for the administration of the environmental assessment process should rest with the Minister of Environment, Lands and Parks.

### **Government Recommendation**

An inter-ministry management committee should guide the overall review process and develop recommendations for the minister(s). A project review committee should be formed at the outset of each individual project review.

### **WCELA Comments**

An inter-ministry management committee should receive all proposed projects for the initial screening. However, the legislation should require that proposed projects that would likely cause significant adverse environmental impact must be reviewed by a panel independent of government. Citizens should have the right to insist on such a hearing, in appropriate cases.

### **Government Recommendation**

Government should develop a formula to enable cost-recovery for project reviews. The formula should reflect the scope of the environmental assessment process.

### **WCELA Comments**

Yes.

# **Decision-Making Authority**

## **Government Recommendation**

Approval should take the form of a project approval certificate.

## **WCELA Comments**

Yes, but the certificate should not replace any other necessary regulatory permits or licences.

## **Government Recommendation**

The minister(s), with the support of Cabinet, should issue an approval certificate for all projects and should determine when independent public review is required. Administrative decisions should be made with the advice of an inter-ministry management committee.

## **WCELA Comments**

No. An independent public review should be mandatory for certain classes of projects and all projects that would likely cause significant adverse environmental impacts. In addition, the minister should be entitled to require that other projects be reviewed by such a panel. Further, citizens should have a right to insist on such a hearing, in appropriate circumstances.

## **Government Recommendation**

A decision by Cabinet to issue a project approval certificate should be final.

## **WCELA Comments**

Yes.

## **Government Recommendation**

If an independent public review is conducted, regulatory permits and licences issued in compliance with the project approval certificate should not be subject to appeal.

## **WCELA Comments**

No, absolutely not. Environmental assessment is not a substitute for public input on later, more detailed permits and licences.

## **Government Recommendation**

Administrative decisions made by government officials should be subject to appeal to the minister(s).

### **WCELA Comments**

Yes.

## **Partnerships**

### **Government Recommendation**

The environmental assessment process should enable the province to work cooperatively with the federal government, neighbouring jurisdictions (provinces, states and territories), local governments, including regional and municipal governments and First Nations.

### **WCELA Comments**

Yes, as long as minimum standards are met.

### **Government Recommendation**

The legislation should enable the province to enter into interjurisdictional agreements, for cooperative or joint technical and/or public hearings with the federal government.

### **WCELA Comments**

Yes, but only if there is public notice and an opportunity to comment.

### **Government Recommendation**

Potential impacts on aboriginal sustenance and cultural activities and socio-economic implications for aboriginal communities should be included in all environmental assessments.

### **WCELA Comments**

Yes, the scope of the assessment process should be broad enough to include all potential cultural and heritage impacts on all parties affected by the proposed project.

### **Government Recommendation**

First Nations should be given an opportunity to participate as members of project review committees.

## **WCELA Comments**

Yes, and so should other relevant organizations.

## **Government Recommendation**

The legislation should enable the provincial process to be coordinated with environmental assessment processes that may be developed as treaty and self government initiatives evolve.

## **WCELA Comments**

Yes.

## **Government Recommendation**

The legislation should also provide opportunities for devolving responsibility to local governments for the environmental assessment of projects that are largely within their jurisdiction.

## **WCELA Comments**

Yes, but any delegation of responsibility for environmental assessment should be allowed only where the subordinate review is as comprehensive and effective as the provincial assessment process.

## **Public Involvement**

### **Government Recommendation**

Legislation should outline procedures for public notification, the release of documents and public consultation through the review process.

### **WCELA Comments**

Yes, and it should provide for regulations, guidelines and codes of practice to elaborate the details.

### **Government Recommendation**

A permanent environmental assessment board should be established to hold independent public reviews of projects.

### **WCELA Comments**

Yes, but it should be empowered to appoint panel members on an *ad hoc* basis, such as local citizens or individuals with expertise relevant to a project under review.

### **Government Recommendation**

An informal public hearing process is preferred.

### **WCELA Comments**

Yes, but a full range of procedures must be available for use in appropriate situations. The right to representation by a lawyer should be respected.

### **Government Recommendation**

The Board would make recommendations to the minister(s).

### **WCELA Comments**

No. A permanent board should make binding decisions, subject perhaps to an override by Cabinet.

### **Government Recommendation**

Consensus-based approaches to dispute resolution mechanisms should be formally included in the legislation.

### **WCELA Comments**

Yes, and multi-party fact finding processes should also be mandated.

### **Government Recommendation**

Assistance in the form of access to technical expertise should be provided as part of the environmental assessment process.

### **WCELA Comments**

Yes, and there should also be funding for public participants to retain appropriate technical and legal expertise, since both are available to proponents.

## **Additional Comments**

In addition to the responses to the series of questions set out in the discussion paper, we have the following comments:

1. Mr. Dale Lovick's report should be publicly released immediately upon its presentation to the minister.
2. The wording of the legislation is extremely important. A legislative committee should receive public input on the Bill.
3. The legislation should include requirements for effective follow-up monitoring in the event a project is approved. The province should also provide a clear statutory basis for the imposition, modification, monitoring and enforcement of environmental terms and conditions, including financial security provisions as one of the compliance enforcement options.
4. There should be clear links between the environmental assessment system and processes for land use planning, environmental regulation, resource management and administrative coordination (e.g., the Fraser River Estuary Management Program).
5. The provincial environmental assessment system should incorporate advanced, computerized information systems. Citizens, public libraries, academics and other users should participate in the design of the information systems to ensure reasonable mechanisms for access.