

A Blueprint for Revitalizing Environmental Assessment in British Columbia

The Minister of Environment and Climate Change Strategy’s mandate letter commits him to “revitalize the environmental assessment process” in British Columbia to “ensure the legal rights of First Nations are respected, and the public’s expectation of a strong, transparent process is met.”¹ This presents an opportunity to replace BC’s current weak environmental assessment regime with progressive new assessment legislation that can maintain public confidence and safeguard environmental, social, cultural, health and economic values.

Extensive thought has gone into proposals for a truly revitalized environmental assessment regime at both the BC and federal levels. Synthesizing from that existing work, West Coast Environmental Law, the Environmental Law Centre, Ecojustice and the Pacific Centre for Environmental Law and Litigation have collaborated to jointly put forward this paper, which presents a high-level vision of a progressive new approach to environmental assessment in BC as well as key changes needed to make it happen.

Each of the following key components of provincial assessment reform is addressed in a separate section in this paper, together forming a blueprint for next-generation assessment in BC:

- BC’s assessment regime establishes and meets substantive sustainability objectives;
- BC’s assessment regime ensures climate targets are achieved;
- First Nations’ jurisdictional authority is recognized and reflected in assessment process and outcomes;
- Jurisdictions collaborate in discharging their assessment responsibilities to the highest standard;
- Robust and informed public participation is established as a key component of assessment;
- Assessments contribute to the protection of human rights and environmental justice;
- Higher-level assessment and planning is tiered with project assessment to address strategic issues and manage cumulative effects;
- An independent body provides oversight and guidance to ensure BC’s assessment regime meets its purposes;
- All projects and activities with implications for sustainability are assessed and tracked;
- New requirements strengthen the information base and ensure evidence-based decision-making;
- New decision-making requirements promote transparent, accountable assessment decisions;
- A right to appeal decisions provides a safety mechanism to ensure accountability;
- Strengthened monitoring and enforcement ensures sustainability after the assessment; and
- Appropriate funding enables the new assessment structure and processes to succeed.

BC’s assessment regime establishes and meets substantive sustainability objectives

Assessment law has an explicit purpose: to enhance sustainability in all its senses – environmental, economic, social, cultural and health – without exceeding ecological limits. Sustainability-based criteria apply to guide assessments and their outcomes.

Key changes include the following:

- A new assessment statute recognizes that the purpose of assessment is to enhance sustainability in all senses – environmental, economic, social, cultural and health – without exceeding ecological limits.²
- Legislation clearly defines a “sustainability test” for assessment decisions, including sustainability-based decision-making criteria and trade-off rules.³ The law must do more than set out procedural steps – it should require that the project actually meets *substantive* sustainability goals.⁴ Legislated sustainability-based decision-making criteria and trade-off rules guide decision-makers and de-politicize assessment decisions.⁵
- Rigorous standards clarify how mitigation and compensation measures will be considered in assessments, and guide determination of whether mitigation and compensation measures are acceptable in addressing impacts.⁶
- Assessments consider a range of alternatives, including the “no” alternative, in determining which option best meets sustainability-based decision-making criteria and avoids unacceptable trade-offs.⁷ Through early engagement, the assessment regime enables collaborating jurisdictions and the public to shape the alternatives that will require consideration in the assessment.
- Legislation requires that assessments apply the precautionary principle in order to ensure that, whenever there are uncertainties about potential impacts or the ability to mitigate them, the assessment applies the most cautious approach to anticipating and preventing impacts. In keeping with the precautionary principle, legislation applies rigorous criteria to clarify and limit the circumstances in which adaptive management and potential future mitigation measures may be considered in addressing any uncertainties.⁸

BC’s assessment regime ensures climate targets are achieved

Assessment decisions must be consistent with BC doing its share to meet the Paris Agreement commitment to limit global temperature rise to well below 2 degrees Celsius above pre-industrial levels, and cannot impair BC’s ability to meet its legislated greenhouse gas reduction targets.

Key changes include the following:

- Consistent with its purpose to enhance sustainability, assessment legislation recognizes that a purpose of assessment is to assist BC in doing its share to meet the Paris Agreement commitment to limit global temperature rise to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

- Sustainability decision-making criteria require that assessment outcomes cannot impair BC’s ability to meet its legislated greenhouse gas (“GHG”) reduction targets.⁹
- Legislation and policy provide practical tools to ensure that assessment outcomes are consistent with BC doing its share to meet the Paris Agreement commitment. For example, whether through a regularly-updated strategic assessment or other mechanism, BC should establish a provincial carbon budget (a budget of GHGs that can be emitted within a budget period) that is consistent with BC doing its share to meet the Paris Agreement commitment. Sustainability decision-making criteria should require that a proposed project be demonstrated to be consistent with BC’s carbon budget, once established.¹⁰
- Assessments include mandatory consideration of a project’s full life-cycle contribution to GHGs, including upstream and downstream GHGs.¹¹
- The assessment regime establishes stringent requirements for projects to mitigate GHGs to the maximum extent practicable.
- Assessments require consideration of how more stringent future climate action to meet global Paris Agreement commitments may affect the economic outlook of a proposed project.

First Nations’ jurisdictional authority is recognized and reflected in assessment process and outcomes

First Nations are clearly recognized as jurisdictions with decision-making authority regarding assessment processes, outcomes and follow-up consistent with the *UN Declaration on the Rights of Indigenous Peoples*.

Key changes include the following, in a manner determined through government-to-government dialogue with First Nations and in addition to other key changes that arise in those discussions:

- Legislation recognizes the role of First Nations as decision-makers regarding assessment process and outcomes.¹²
- Legislation recognizes that a purpose of all levels of assessment is to ensure that decisions are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*, and uphold Aboriginal title and rights.¹³
- Legislation requires and enables government-to-government agreements between the province and affected First Nations regarding the conduct and outcomes of assessments.¹⁴
- The assessment regime provides appropriate, mutually-agreed mechanisms for dispute resolution between the Province and First Nations.
- Legislation establishes mechanisms to recognize and apply Indigenous-led assessment and studies,¹⁵ in a manner that clearly sets out how outcomes from Indigenous-led assessments and studies will apply.

Jurisdictions collaborate in discharging their assessment responsibilities to the highest standard

All jurisdictions collaborate in carrying out their assessment responsibilities to the highest standard. Legislation establishes an early engagement phase to foster cooperation among jurisdictions on the assessment process and enable early public input.

Key changes include the following:

- Each jurisdiction is responsible for ensuring that its assessment and decision-making obligations are upheld through cooperation and collaboration. Substitution and equivalency as between federal and provincial processes is not permitted.¹⁶
- Legislation establishes an early engagement phase during which BC offers to engage with all relevant jurisdictions, as well as the public, to determine key issues such as a framework for interjurisdictional cooperation, the assessment scope, alternatives that will require study, and assessment-specific decision-making criteria and trade-off rules, before any project design elements are finalized.¹⁷ The early engagement phase results in a government-to-government agreement on the conduct of the assessment, informed by public and stakeholder input.¹⁸
- Legislation enables and encourages the province to harmonize its assessment obligations with other jurisdictions in a single process, while ensuring that provincial assessment standards and requirements may not be weakened or circumvented through harmonized assessment. The same principle would apply to federal and Indigenous assessment.¹⁹
- The body to conduct an assessment is determined in the government-to-government agreement on the conduct of assessment, and could consist of an independent review panel,²⁰ a joint assessment team with representatives from each jurisdiction, the impacted First Nation(s), or another agreed-to mechanism.

Robust and informed public participation is established as a key component of assessment

Public participation, including through assessment hearings, is enshrined in a new assessment law. The public plays an integral role in all levels of assessment through early, ongoing and deep public participation, informed by easy and comprehensive online access to information from assessments, monitoring and compliance.

Key changes include the following:

- Early and ongoing public participation is required by legislation at all levels of assessment.²¹ Mere review and comment opportunities are insufficient.²²
- Legislation enables dynamic public participation and dialogue formats according to the circumstances, while establishing appropriate minimum standards.²³
- The body conducting the assessment – not the proponent – is legislatively responsible for leading public engagement.²⁴
- The public is consulted on the means of participation in an assessment.²⁵

- Legislation establishes public hearings as a default component of the assessment process, while providing mechanisms to allow the body conducting the assessment to dispense with public hearings where appropriate, with reasons, following initial public engagement.
- Legislation requires that information and submissions relating to all levels and stages of assessments are easily and permanently accessible to the public (with some exceptions such as culturally-sensitive information) on a searchable online database.²⁶
- Legislation requires timely posting of all relevant information and documents, as well as easy-to-digest public summaries of key technical information.²⁷
- Legislation establishes a public interest advocate to provide support and resources to public participants and affected community members.²⁸

Assessments contribute to the protection of human rights and environmental justice

Assessment law includes in its purposes the protection of human rights under domestic and international law, including the rights of women and Indigenous peoples, and incorporates human rights obligations and environmental justice in the assessment process.

Key changes include the following:

- Assessment law includes in its purposes the protection of human rights under domestic and international law, including the rights of women and Indigenous peoples.²⁹
- The key factors an assessment is required to consider reflect all aspects of sustainability – environmental, economic, social, cultural and health – in a manner that incorporates human rights obligations. For example, factors to consider in an assessment should include gendered social impacts of a project, and thorough assessment of public health impacts and risks.³⁰
- Assessment standards and policies contribute to environmental justice by providing guidance to meaningfully engage socially marginalized or vulnerable populations in assessments and ensure that they do not bear a disproportionate share of project impacts and risks.

Higher-level assessment and planning is tiered with project assessment to address strategic issues and manage cumulative effects

Higher-level assessment and planning addresses big-picture regional and strategic issues up front, such as how to effectively manage cumulative impacts in a region, in order to establish management requirements that apply to project assessments and provincial decisions.

Key changes include the following:

- Legislation recognizes that a purpose of assessment is to effectively manage the cumulative impacts of human activities on sustainability.³¹

- Legislation establishes requirements and triggers for conducting and periodically updating regional assessments,³² for example when a new type of development or significantly increased intensity of development is proposed in a region, when a region shows a significant decline in ecological or human health benchmarks, when a petition from the public demonstrates significant concern,³³ or at the request of a First Nation³⁴ or the federal government³⁵ to collaborate in a regional assessment.
- Regional assessments evaluate cumulative effects and identify management objectives and ecological limits based on best available science and Indigenous knowledge. Strategic-level direction flowing from regional assessment is legally established and applied in a binding, consistent way to project-level assessment and operational decision-making, and serves as an input to land use or marine planning.³⁶
- Legislation establishes a process, in concert with First Nations and based on public input, to identify regions for regional assessment, prioritizing areas of greatest risk or concern.³⁷
- Legislation compels a rigorous and comprehensive assessment of cumulative impacts of projects. Where an up-to-date regional assessment is not complete, legislation provides for an “off-ramp” mechanism whereby a project-level assessment may be suspended and upgraded into a regional assessment.³⁸
- Legislation establishes triggers for strategic assessments in circumstances where provincial policies, plans or programs have implications for sustainability, or where broader policy gaps are identified. Strategic assessments evaluate existing or contemplated government policies, plans or programs to ensure that they meet sustainability objectives and uphold outcomes from regional and project-level assessment.³⁹
- Legislation ensures that project assessments and regulatory decision-making are tiered with and guided by higher-level planning and assessment to manage cumulative impacts effectively. Higher level assessment and planning addresses big picture regional and strategic issues up front to establish a “traffic light” approach for whether a proposed project may proceed to assessment, and to set management requirements that apply to project assessments and provincial decisions.⁴⁰

An independent body provides oversight and guidance to ensure BC’s assessment regime meets its purposes

A body, independent from the interests of proponents and the provincial government, is established to provide oversight, support and guidance to ensure the assessment regime is meeting its purposes, including through higher-level assessment and planning.

Key changes include the following:

- Legislation establishes an independent body (called a “Sustainability Authority” for the purposes of this paper) tasked with providing oversight, support and guidance to ensure the assessment regime is meeting its purposes.⁴¹
- The basic functions of the Sustainability Authority include:

- facilitating and supporting regional assessments, which may intersect with facilitating or supporting land use planning processes;
 - developing standards and policies to foster strong assessments and provide guidance to the Environmental Assessment Office as well as assessment participants; and
 - conducting periodic reviews of the performance of the assessment regime in light of its purposes, and making recommendations as appropriate.
- To ensure that the Sustainability Authority carries out its oversight tasks impartially and possesses the diverse legal, cultural and technical expertise needed to be effective, the Sustainability Authority is established as an independent arms-length body, reporting to the Legislature and the First Nations Leadership Council, which includes an equal number of members nominated by the BC Government and First Nations.⁴²

All projects and activities with implications for sustainability are assessed and tracked

The types and scope of projects and activities that are subject to mandatory assessment increases significantly in order to meet sustainability objectives. Legislation also establishes a set of basic process requirements for provincial regulatory approvals, which apply regardless of whether an undertaking is subject to assessment, in order to assist in managing cumulative impacts.

Key changes include the following:

- Legislative mechanisms increase the types and scale of projects and activities that are subject to mandatory provincial assessment, in order to meet sustainability objectives. For example, assessments should be required for all mines, including placer mines, an array of oil and gas developments, including gas wells, and the current threshold for assessing hydroelectric projects should be significantly lowered.
- Legislation guards against “project-splitting” by broadly considering activities that constitute a project to include all interconnected, ancillary, incidental and phased activities.⁴³
- Legislation identifies a broad array of provincial regulatory decisions that must follow a set of basic process requirements regardless of whether the regulated undertaking is subject to an assessment, in order to help manage cumulative impacts and ensure that all such undertakings can be tracked. The basic process requirements include:
 - applying sustainability decision-making criteria set out in the assessment legislation;
 - applying management objectives and any other requirements from an applicable regional or strategic assessment; and
 - providing public notice and registering the regulatory permitting information on a central, publicly-accessible online database.

New requirements strengthen the information base and ensure evidence-based decision-making

Assessments ensure that evidence comes not only from the proponent, but also from the knowledge of Indigenous peoples (with safeguards for culturally-sensitive information), local communities, government and independent scientists, and others with relevant information and expertise. Assessment studies and underlying data are subject to peer review. These requirements are resourced by proponent funding contributions.

Key changes include the following:

- Assessments operate on the principle that a proponent must match the amount it spends on its own experts and studies by contributing an equivalent amount to a fund that provides resources for studies to be conducted by assessment participants and First Nations, and to fund review of proponent evidence. (This is distinct from funding for governance costs borne by First Nations in an assessment, discussed separately).
- Assessments commit in an explicit and transparent way to rely on Indigenous knowledge, community knowledge and best available Western scientific information. Legislation ensures that participants in an assessment have an opportunity to submit evidence.⁴⁴
- Legislation ensures assessment studies and underlying data are subject to rigorous peer review by provincial, First Nations and independent subject-matter experts.⁴⁵
- The early engagement phase results in initial identification of needs, roles and responsibilities for undertaking studies.⁴⁶ The body conducting the assessment is legislatively empowered to make further directions as needed during the assessment for the preparation and review of evidence, in order to ensure a well-informed assessment.⁴⁷
- Legislation confirms Indigenous ownership of Indigenous knowledge and includes provisions to protect Indigenous knowledge from unauthorized use, disclosure or release, recognizing that some Indigenous knowledge may not be appropriate to publicly disclose.⁴⁸
- Legislation and supporting policy set out rules and guidance to help address the risk of bias in evidence, particularly where the proponent's contractors or employees provide evidence regarding the proponent's project.⁴⁹ For example, such rules and guidance should address: obligations on a proponent to disclose when it has received conflicting expert opinions; obligations on an expert to disclose any potential conflict of interest; circumstances where qualified experts (who are registered professionals subject to practice standards, codes of ethics, etc.) should be used; standards for attributing evidence to qualified experts; and guidance on undertaking more rigorous fact-finding procedures in an assessment when there is disagreement among experts.⁵⁰
- Legislation ensures that assessments can access and use existing information from other assessments and monitoring.⁵¹
- Legislation specifies key factors that an assessment must consider such as, for example, mandatory worst case scenario evaluation to consider low probability yet potentially catastrophic impacts.

New decision-making requirements promote transparent, accountable assessment decisions

Decision-makers must provide reasons for assessment decisions that meet clear requirements, including addressing specific criteria for how the decision meets sustainability objectives, identifying the evidence relied upon, and addressing how public input was considered and how it influenced the decision.

Key changes include the following:

- Decision-makers must provide reasons for decisions that meet clear legislated requirements.⁵²
- Reasons for decisions are required to address how all sustainability decision-making criteria were applied in reaching the decision and, where applicable, to explain how trade-off rules were applied to justify any trade-offs.⁵³
- Reasons for decisions are required to identify the evidence relied upon by the decision-maker.
- Reasons for decisions are required to address how public input was considered and how it influenced the decision.⁵⁴

A right to appeal decisions provides a safety mechanism to ensure accountability

Both procedural and final assessment decisions are subject to a right of appeal in order to ensure accountable and thorough assessments.

Key changes include the following:

- Legislation provides for appeal of interim (procedural) and final assessment decisions to ensure accountability and thorough assessments.⁵⁵
- Legislation clearly and broadly delineates the types of decisions that may be appealed.⁵⁶

Strengthened monitoring and enforcement ensures sustainability after the assessment

Monitoring and compliance programs are expanded, strengthened and subject to robust oversight that is independent from proponents, in order to ensure assessment requirements are achieved and updated in an ongoing manner as necessary. Indigenous monitoring and public involvement are key elements of monitoring regimes.

Key changes include the following:

- Legislation establishes mandatory monitoring and follow-up programs, with minimum standards.⁵⁷
- Legislation provides for legally-binding follow-up and monitoring conditions to be attached to all project assessments that result in approval.⁵⁸

- Legislation requires follow-up and monitoring of regional and strategic assessment conclusions and outcomes, which informs mandatory periodic updates of regional assessments.
- All follow-up, monitoring, compliance and enforcement data are required by legislation to be easily and permanently accessible to the public in a consolidated database (with the exception of culturally-sensitive information), and there are requirements on proponents and regulators to post such information.⁵⁹
- Legislation ensures a prominent role for First Nations in monitoring and enforcement, in a manner determined with First Nations, including recognition and financial support for Indigenous guardian programs.⁶⁰
- Legislation provides for robust oversight of monitoring and compliance that is independent of proponents and includes mechanisms to enable public involvement.⁶¹ For example, this oversight role could be led by the Sustainability Authority proposed above.
- Legislation provides for a process to amend project conditions based on outcomes of monitoring and compliance.⁶²
- Legislation provides a broad range of tools to enforce project assessment conditions and suspend or revoke approvals.⁶³
- Legislation requires periodic quality assurance audits of the assessment regime.

Appropriate funding enables the new assessment structure and processes to succeed

Assessments receive ample, stable and apolitical funding to accomplish their objectives, with funding contributions from proponents to cover costs related to assessment of their proposals.

Key changes include the following:

- Ample, stable and apolitical funding is provided to enable robust assessments, including funding to support: the conduct and oversight of regional and strategic as well as project-level assessments; strengthened monitoring and enforcement; improved public participation, including legislatively-required participant funding to provide First Nations and communities with adequate expert and legal assistance; greater accessibility of information; government and independent peer review; and First Nations capacity regarding government-to-government engagement as well as the conduct, oversight, monitoring and enforcement of assessments at all levels.⁶⁴
- Legislation requires funding contributions from proponents, in a consistent and transparent manner, to cover costs related to assessments, including costs borne by Indigenous jurisdictions.

The commitment to environmental assessment reform in BC represents a major opportunity to bring into force new assessment legislation that furthers sustainability, advances reconciliation and involves the public in decisions that affect their communities. In order to be effective and meaningful, BC's promised environmental assessment reform must significantly overhaul the current regime in a manner that addresses key issues in this paper as a package, and incorporates a commitment to continuous learning as a defining feature of environmental assessment.⁶⁵

Endnotes

¹ British Columbia, Office of the Premier, Mandate Letter to the Minister of Environment and Climate Change Strategy (18 July 2017),

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² Johanne Gélina, Doug Horswill, Rod Northey and Renée Pelletier, *Building Common Ground: A New Vision for Impact Assessment in Canada; The Final Report of the Expert Panel for the Review of Environmental Assessment Processes* (2017),

online: <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc028> [“Gélina, Building Common

Ground”] at 19-21; Rachel S. Forbes, Stephen Hazell, Jamie Kneen, Josh Paterson and John Sinclair, *Environmental Assessment Law for a Healthy, Secure and Sustainable Canada: A Checklist for Strong Environmental Laws* (West Coast Environmental Law, February 2012), online:

<<https://www.wcel.org/publication/environmental-assessment-law-healthy-secure-and-sustainable-canada-checklist-strong>> [“Forbes, Environmental Checklist”] at 5 (Principle 1); Mark Haddock, *Environmental Assessment in British*

Columbia (Environmental Law Centre, November 2010), online:

<http://www.elc.uvic.ca/documents/ELC_EA-IN-BC_Nov2010.pdf>; [“Haddock, EA in BC”] at 61, Recommendations 17-18.

³ Gélina, *Building Common Ground*, *Ibid* at 63; also see at 41-47

⁴ Haddock, EA in BC, *Supra* at 56.

⁵ Anna Johnston, *Federal Environmental Assessment Reform Summit Proceedings* (August 2016), online:

<https://www.wcel.org/sites/default/files/publications/WCEL_FedEnviroAssess_proceedings_fnl.pdf> [“Johnston, EA Summit”] at 9; see also, Haddock, EA in BC, *Supra* at 21

⁶ Haddock, EA in BC, *Supra* at 54-60

⁷ Johnston, EA Summit, *Supra* at 12.

⁸ Haddock, EA in BC, *Supra* at 51-52

⁹ British Columbia, *Climate Action Plan 2016* (August 2016),

online: <https://climate.gov.bc.ca/app/uploads/sites/13/2016/10/4030_CLP_Booklet_web.pdf> at 5; Gavin Smith, Anna Johnston and Hannah Askew, *Why It's Time to Reform Environmental Assessment in British Columbia* (West Coast

Environmental Law, January 2018), online: <<https://www.wcel.org/sites/default/files/publications/2018-01-bc-eareform-background-web-final.pdf>> [“Smith, Time for Reform”] at 12.

¹⁰ Generally consistent with the approach recommended in Gélina, *Building Common Ground*, *Supra* at 83-85.

¹¹ Erin Gray and Rosanna Adams *Blind Spot: The Failure to Consider Climate in British Columbia's Environmental Assessments* (Environmental Law Centre on behalf of Sierra Club BC, September 2015) online:

<<http://www.elc.uvic.ca/publications/blind-spot-the-failure-to-consider-climate-in-british-columbias-environmental-assessments/?hilite=%27blind%27%2C%27spot%27>>.

¹² *Environmental Assessment and First Nations in BC: Proposals For Reform; Discussion Paper* (First Nations Energy and Mining Council, August 20, 2009), online:

<<http://fnemc.ca/?portfolio=ea-proposals-for-reform>> [“FNEMC, Proposal”] at 3-4, 15.

¹³ For the text of BC's commitment to UNDRIP see: Office of the Premier, Mandate Letter *Supra*; also see Smith, Time for Reform, *Supra* at 17.

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- ¹⁴ FNEMC, proposal, *Supra* at 3, point 2; see also Johnston, EA Summit, *Supra* at 8; Jessica Clogg, Gavin Smith, Deborah Carlson and Hannah Askew, “*Paddling Together – Co-Governance models for Regional Cumulative Effects Management*” (West Coast Environmental Law, June 2017), online: <<https://www.wcel.org/sites/default/files/publications/2017-06-wcel-paddlingtogether-report.pdf>> [“Clogg, Paddling Together”].
- ¹⁵ Johnston, EA Summit, *Supra* at 44. For summaries of recent Indigenous led assessment: Stk'emlupsemc Te Secwepemc Nation, *Honouring Our Sacred Connection to Pípsell: Stk'emlupsemc te Secwepemc says Yes to Healthy People and Environment, SSN Ajax Decision Summary*, online: <https://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary_0.pdf>; Squamish Nation, *Squamish Nation Process / Woodfibre LNG Project Update* (Newsletter, Issue 4), online: <http://www.squamish.net/wp-content/uploads/2016/11/SN_Newsletter_V3_26Oct2016-01288844.pdf>; Tsleil Waututh Nation, *Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal* (2015), online: <<https://twnsacredtrust.ca/assessment-report-download/>>.
- ¹⁶ Smith, Time for Reform, *Supra* at 20.
- ¹⁷ Gélinas, Building Common Ground, *supra* at 58-61; Haddock, EA in BC, *Supra* at 28 and 36-40, specifically recommendation 10.
- ¹⁸ FNEMC, Proposal, *Supra* at 2; Jessica Clogg and Anna Johnston “*Recommendations for BC Environmental Assessment Office (EAO) Review of Public Participation*” (West Coast Environmental Law, November 24, 2014), online: <https://www.wcel.org/sites/default/files/publications/2014%2011%2024%20EAO%20public%20participation_WCEL%20comments_0.pdf> [“Clogg, Public Participation”] at 3; Smith, Time to Reform, *Supra* at 19; Forbes, Environmental Checklist, *Supra* at 2.
- ¹⁹ Forbes, Environmental Checklist, *Ibid* at 9.
- ²⁰ Haddock, EA in BC, *Supra* at 20: “Independent review panels should be utilized more frequently, particularly for controversial projects. There should be an open and transparent process for appointing panel members and developing the panel terms of reference.”
- ²¹ Gélinas, Building Common Ground, *Supra* at 38; Smith, Time for Reform, *Supra* at 11: see “Public Participation: too little, too late.”
- ²² Haddock, EA in BC, *Supra* at 40, Recommendations 10-12.
- ²³ Clogg, Public Participation, *Supra* at 3.
- ²⁴ Smith, Time for Reform, *Supra* at 7, 18-19.
- ²⁵ Forbes, Environmental Checklist, *Supra* at 6; Johnston, EA Summit, *Supra* at 10.
- ²⁶ Gélinas, Building Common Ground, *Supra* at 41; Johnston, EA Summit, *Supra* at 10.
- ²⁷ Gélinas, Building Common Ground, *Ibid*.
- ²⁸ *Ibid* at 54.
- ²⁹ Amnesty International Canada, *Submission to Federal Review of Environmental Assessment Processes* (December 2016), online: <http://eareview-examenee.ca/wp-content/uploads/uploaded_files/amnesty-canada-submission-december-2016.pdf> at 5.
- ³⁰ *Ibid* at 4, 9-10.
- ³¹ Forest Practices Board, *Board Bulletin, Volume 13: The Need to Manage Cumulative Effects* (February 2013), online: <<https://www.bcfpb.ca/wp-content/uploads/2016/04/013-Volume-13-Information-Bulletin.pdf>> at 3: “to the extent that there is an issue, there is no one to tell—there is no decision maker when it comes to cumulative effects of multiple developments.” See also British Columbia, Office of the Auditor General, *Managing The Cumulative Effects Of Natural Resource Development In B.C.* (Report) (Office of the Auditor General British Columbia, May 2015) online: <<https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Cumulative%20Effects%20FINAL.pdf>> [“BC Auditor General, Mining Compliance”] at 5: “...neither legislation nor other government directives explicitly requires this ministry (Ministry of Forests, Lands and Natural Resource Operations), or any other government ministry or agency, to manage cumulative effects when authorizing the use of natural resources.”
- ³² Gélinas, Building Common Ground, *Supra* at 76-81; Clogg, Paddling Together, *Supra* at 87-89; Andhra Azevedo “*EA Reform: Starting off on the Right Foot*” (Environmental Law Centre on behalf of Nature Canada, December 2016), online: <<http://www.elc.uvic.ca/ea-reform/?hilite=%27andhra%27>> [“Azevedo, Starting off on the Right Foot”] at 3.
- ³³ *Ibid* at 10, recommendation 6.

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- ³⁴ Johnston, EA Summit, *Supra* at 62.
- ³⁵ Azevedo, Starting off on the Right Foot, *Supra* at 3.
- ³⁶ Gélinas, Building Common Ground, *Supra* at 76-81; Azevedo, Starting off on the Right Foot, *Supra* at 2-3; see also Canadian Council of Ministers of the Environment, *Regional Strategic Environmental Assessment in Canada: Principles and Guidance* (Winnipeg; Canadian Council of Ministers of the Environment, 2009) at 6; Haddock, EA in BC, *Supra* at 16-27.
- ³⁷ Gélinas, Building Common Ground, *Supra* at 80; Azevedo, Starting off on the Right Foot, *Supra* at 12, recommendation 7.
- ³⁸ Azevedo, Starting off on the Right Foot, *Supra* at 9.
- ³⁹ Gélinas, Building Common Ground, *Supra* at 81-82; Azevedo, Starting off on the Right Foot, *Supra* at 2-3.
- ⁴⁰ Haddock, EA in BC, *Supra* at 27, recommendation 6.
- ⁴¹ FNEMC, Proposal, *Supra*.
- ⁴² *Ibid* at 4, 40.
- ⁴³ For a discussion see e.g.: “Groups challenge the failure of B.C.’s environmental assessment office to do its job,” (Ecojustice, April 3, 2013), online: <<https://www.ecojustice.ca/pressrelease/groups-challenge-the-failure-of-b-c-s-environmental-assessment-office-to-do-its-job/>>.
- ⁴⁴ Gélinas, Building Common Ground, *Supra* at 44-45.
- ⁴⁵ *Ibid* at 42, 61.
- ⁴⁶ *Ibid* at 60.
- ⁴⁷ *Ibid* at 44.
- ⁴⁸ Smith, Time for Reform, *Supra* at 8; Clogg, Paddling Together, *Supra* at 56.
- ⁴⁹ BC Auditor General, Mining Compliance, *Supra* at 14, see recommendation 1.12 – though the recommendation is developed in the context of mining specifically, its underlying principles are relevant to qualified experts involved in EAs.
- ⁵⁰ Haddock, EA in BC, *Supra* at 44, Recommendations 13 and 14.
- ⁵¹ Johnston, EA Summit, *Supra* at 12.
- ⁵² Gélinas, Building Common Ground, *Supra* at 52.
- ⁵³ *Ibid* at 52, 66; Johnston, EA Summit, *Ibid* at 9.
- ⁵⁴ Johnston, EA Summit, *Ibid* at 10.
- ⁵⁵ *Ibid* at 9-10; Smith, Time for Reform, *Supra* at 8.
- ⁵⁶ Johnston, EA Summit, *Ibid* at 9; FNEMC, Proposal, *Supra* at 17-18; Forbes, Environmental Checklist, *Supra* at 10.
- ⁵⁷ Gélinas, Building Common Ground, *Supra* at 69; Johnston, EA Summit, *Supra* at 11.
- ⁵⁸ Gélinas, Building Common Ground, *Ibid* at 68; Johnston, EA Summit, *Ibid*.
- ⁵⁹ Gélinas, Building Common Ground, *Ibid* at 70-71; Johnston, EA Summit, *Ibid* at 10.
- ⁶⁰ Gélinas, Building Common Ground, *Ibid* at 70; Clogg, Paddling Together, *Supra* at 78.
- ⁶¹ Gélinas, Building Common Ground, *Ibid* at 70; FNEMC, Proposal, *Supra* at 29.
- ⁶² Gélinas, Building Common Ground, *Ibid* at 68; Haddock, EA in BC, *Supra* at 51-52, 69.
- ⁶³ Gélinas, Building Common Ground, *Ibid* at 71.
- ⁶⁴ *Ibid* at 31, 40.
- ⁶⁵ Johnston, EA Summit, *Supra* at 13.