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Response to the Expert Panel Review of Environmental Assessment Processes Final Report, Building Common Ground: A new Vision for Impact Assessment in Canada

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PREPARED BY: CANADIAN ENERGY PIPELINE ASSOCIATION

INTRODUCTION

The Canadian Energy Pipeline Association (CEPA) represents Canada's 11 major transmission pipeline companies who transport 97 percent of this country's daily natural gas and onshore crude oil production with a longstanding operational safety record having achieved a 99.999% safety record over the last decade. CEPA member companies directly employ 34,000 Canadians across the country, generating a total of $2.9 billion in labour income which further supports families and local economies across all of Canada. In 2015, the transmission pipelines contributed $11.5 billion to our nation's gross domestic product (GDP) and are projected to add $175 billion to Canada's GDP over the next 30 years. Our member companies propose to invest more than $50 billion in pipeline infrastructure projects in Canada over the next 5 years.[1] Our interest in the outcome of this review and the related NEB Modernization review is profound.

CEPA, on behalf of our member companies, fully participated in the Expert Panel for Review of Environmental Assessment Processes as well as the related National Energy Board Modernization, *Fisheries Act* and *Navigation Protection Act* reviews. In these processes, the transmission pipeline industry sought a process for integrated project review that is fair and transparent, coordinated, clear, efficient, comprehensive and based on science, fact and evidence and conducted by the best placed regulator, which, for transmission pipelines, is the National Energy Board ("NEB"). In particular CEPA recommended that processes should avoid duplication, outline clear accountabilities, be based on transparent rules and processes, ensure procedural certainty for project proponents, allow meaningful participation and balance the need for timeliness and inclusiveness.

CEPA is alarmed at the sweeping recommendations contained in the Expert Panel for Review of Environmental Assessment Processes Final report, *Building Common Ground: A New Vision for Impact Assessment in Canada*, (the Panel Report) released on April 5, 2017. Although the Panel said they were "not proposing the creation of something entirely new",[2] the recommendations, if fully implemented, would represent a complete and fundamental change to the way projects are reviewed in Canada. While many of the recommendations are sound and reflect needed updates to processes, including expanding the informal options for public participation, encouraging more meaningful engagement early in the process, encouraging greater use of strategic assessments that would inform project-specific assessments and measures that would promote greater transparency, CEPA views many of the recommendations as unworkable or impractical.

In the Prime Minister's mandate letter to the Minister of Environment and Climate Change, the Minister was asked to review environmental assessment processes to achieve three objectives: (1) to restore public trust; (2) to introduce new, fair processes; and (3) to get resources to market. Respectfully, CEPA does not believe the proposed recommendations would accomplish these objectives.

A regulatory framework that lacks process certainty, results in excessive timelines or imposes duplicative levels of review without a corresponding benefit will reduce Canada's competitiveness, threaten our ability to get our resources to markets and affect the credibility of regulatory processes. If risks associated with regulatory processes prove to be unmanageable and too unpredictable, investors will no longer be prepared to invest in getting Canadian resources to market. This will negatively impact current and future investment in resource development and eliminate the benefits that these projects could provide to Canadians.

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[1] Canadian Energy Pipeline Association, "*Taking Action on our Commitment to Canadians: 2016 Pipeline Industry Performance Report",* online: www.aboutpipelines.com.

[2] *Building Common Ground: A New Vision for Impact Assessment in Canada*, Expert Panel Review of Environmental Assessment Processes, p. 12.

CEPA is concerned that the overall effect of the Impact Assessment (IA) processes as proposed in the Panel report would:

1. Create an unsatisfactory Governance structure and Decision-making framework;
2. Introduce uncertainty;
3. Implement impractical and unworkable processes;
4. Result in inconsistencies with the Constitution; and
5. Compromise the effectiveness of lifecycle regulation of pipelines.

1. GOVERNANCE AND DECISION-MAKING FRAMEWORK

The Panel recommended far-reaching changes that would set up a new agency to oversee an entirely new process for consensus-based project reviews, with a quasi-judicial process to resolve issues that are not resolved through collaborative efforts. It would be a completely new approach to how assessments are conducted and how decisions are made. The proposed Impact Assessment Commission (IAC) would have quasi-judicial authority and powers and be responsible for every aspect of a project, including many responsibilities that are currently and properly undertaken by the project proponent or, in the case of transmission pipelines, by the NEB. This includes:

- **Planning phase:** The IAC would appoint a multi-stakeholder Project Committee that includes all interested parties (anyone seeking to be involved in the process) and a Government Committee of subject matter experts, including Indigenous governments. As proposed, these committees would help design a project-specific review process, identify alternatives to the project, develop a project-specific sustainability test, identify project-specific studies and enter into agreements with other jurisdictions including Indigenous jurisdictions to attempt to establish a coordinated process;

- **Study phase**: The IAC would conduct the actual Impact Assessment ("IA") and appoint and manage consultants to prepare the studies;

- **Consultation and accommodation**: The IAC would conduct the consultation and accommodation process with Indigenous peoples, including ultimately determining whether the consultation is adequate;

- **Decision phase:** The IAC would make the final decision on the assessment it conducted itself about whether and how the project should proceed, subject to appeal to the GIC (Cabinet); and

- **Monitoring and lifecycle oversight phase:** The IAC would oversee the project's lifecycle, have the ability to ensure that sustainability outcomes are met through mandatory monitoring and follow-up programs, and be able to amend and enforce conditions and suspend or revoke approvals.

The net effect of this would reduce the project proponent to bystander status in its own project, infringe upon provincial jurisdiction and in some cases move decision making authority about broader public policy issues that are the beyond the scope of a single project from the purview of duly elected representatives into project-specific regulatory processes.

The Panel also recommends moving assessments from the three existing Responsible Authorities that currently oversee environmental assessments to an entirely new quasi-judicial decision maker that would conduct an impact assessments and then make a decisions on whether a project proceeds or not. The focus of assessments would also change from identifying adverse environmental impacts to

determining whether a project positively contributes to sustainability. All of this would be done in a collaborative consensus-based process.

The proposed sustainability test and requirement to balance broad, undefined trade-offs of the five pillars of sustainability would require this process and this new decision-making body to make decisions regarding broader public policy that fall more properly into the political arena, not project-specific assessments. While the public interest test in the current NEB integrated review process is an existing model that requires the NEB to balance socio-economic, safety, and environmental matters, the experience of CEPA member companies is that a quasi-judicial process is **not** the appropriate venue to address the broader public policy issues. The regulatory review process was never designed, and cannot be designed, to deal with the policy issues that are beyond the scope of a single project. In CEPA's view, the current process lacks an appropriate venue to address broader policy issues and this deficiency is a large reason why public confidence in the NEB and in environmental assessment processes is perceived to have diminished. The Panel's proposed model would not address this problem, but would exacerbate it.

CEPA believes that the net effect of the Panel recommendations would insert these broader issues squarely into the IAC's project review and in fact would result in developing policy on a project-by-project basis. Similar to what happens today, this would be unsatisfactory for all parties involved, result in inefficient processes that cannot resolve these complex public policy issues, ultimately lead to appeals to democratically elected government on every project and, in the end, would provide too much uncertainty and risk for investors.

That is precisely why CEPA proposed a two-part review for Major Pipeline projects during the CEAA Panel Review and the NEB Modernization review. The two-part review would separate out the broader public policy issues from the well-established, standard technical review of the project. [3] In Part one of the process the project would be considered in the context of the broader public policy matters that determine whether the project is within the national interest and policy framework of the government and **if** a project should proceed. In Part two, a project-specific assessment would consider **how** a project could proceed. It would place decision-making where it belongs – Part one would be a government decision and Part two would be a decision by the NEB, a quasi-judicial regulatory body.

CEPA believes that the two-part review process would set the foundation for increased public trust in the federal environmental assessment process and the NEB review process. Specifically, the implementation of the first part would separate the broad public policy issues from the project-specific EA or IA, provide a transparent and public venue to debate these issues and allow project assessment to achieve its intended purposes. The successful implementation would require the government to take action to fill in those policy gaps that are currently being debated in the context of project and pipeline specific regulatory reviews. The two-part review process itself does not fill these policy gaps but rather, provides a more appropriate forum to discuss where individual projects fit into broader policy considerations, while at the same time reduce capital risk due to uncertain regulatory processes for project proponents.

CEPA strongly recommends that the government, before responding to the CEAA Panel recommendations, should also understand and consider any recommendations from the NEB Modernization Panel. Those recommendations are not anticipated until May 15. CEPA believes that the public consultation period and timeline by which the government intends to respond to the CEAA Panel report is premature and would not give due consideration to the NEB Modernization Panel recommendations that could relate to the NEB's current authority to conduct EAs on many energy projects and would not acknowledge the input from the participants who contributed to that process.

[3] See Canadian Energy Pipeline Association Submission to the National Energy Board Modernization Expert Panel, March, 2017, at 6-8, online: http://www.nebmodernization.ca

2. UNCERTAINTY

Project proponents and their investors require clear and transparent processes to provide the degree of certainty needed to make investment decisions that can involve spending hundreds of millions of dollars simply to get through the regulatory review process. Prior to filing for a project review, pipeline project proponents must complete complex route-specific environmental, socioeconomic and engineering assessments, finalize complicated commercial negotiations, secure shipper commitments and conduct extensive engagement with Indigenous groups, private landowners and other affected communities and stakeholders. All of this project feasibility assessment work must be done in advance of the initial regulatory submission. This requires the proponent to make significant financial commitments long before the regulatory process even begins. To be able to do this, project proponents need to clearly understand the process and the regulatory requirements they must meet.

CEPA believes that many of the recommendations in the Panel Report would be counter to how proponents must plan projects and be able to make investment decisions. Many of the Panel's recommendations would lead to a confused process and uncertainty that ultimately could result in investment opportunities moving to other jurisdictions, specifically:

- The current approach to EA assesses whether a project is likely to cause significant adverse environmental impacts and whether those impacts can be justified. Under the Panel proposal, the approach would move to a new sustainability test that assesses whether a project would result in environmental, social, cultural, health and economic benefits (the five pillars). Although similar to the existing NEB public interest test, without a definition of sustainability, the new test would introduce substantial uncertainty into the process. CEPA agrees with the Panel's observation that "sustainability is a term that has different meaning to different people in different contexts".[4] It is subjective and inherently unpredictable. Based on the Panel's current recommendations, applying a sustainability test would require project specific sustainability tests to be developed by consensus among groups that have fundamentally different views on sustainability. The sustainability tests could be different for each project and would not be known until well into the process. Furthermore, if consensus is reached, the tests would be subjective, because sustainability means different things and trade-offs between the five pillars would be different to different people. Because proponents would not know the tests it has to meet, the criteria that would be considered and who will be deciding, the proposed sustainability test would create considerable uncertainty and unacceptable risk to project scoping and timelines.

- The process envisioned in the proposed three phases (Planning, Study and Decision) represents a significant departure from the current process. Each phase would be led by the IAC, not the proponent. The process, as proposed, would in many cases reduce the proponent to a bystander and add layers of uncertainty to project proponents. By removing the proponent from much of the planning and analysis work, it would be difficult for a proponent to know whether a project is economically feasible or would be altered by the Committee to a point where it no longer meets the original purpose from a commercial perspective. Specifically:

    - **Timelines:** The proponent would not know the timelines for each stage of the review until well into the process, after project-specific timelines are developed in the Planning stage. This approach poses considerable ambiguity around the timing of project development. It also makes it commercially impractical since the proponent would not be able to predict with reasonable confidence when a project would be put

[4] Building Common Ground, *supra* note 2, at 20.

in service. The current process has already created significant timing uncertainty – the proposed process would compound that and is simply unworkable from a commercial perspective.

- **Alternatives:** The goals of the proposed Planning process include identifying alternatives that would require studies - this isn't project assessment. Pipeline projects are based on specific requirements – getting commodities from point a to point b. The only feasible alternative analysis is the routing and associated engineering, environmental and construction requirements. This kind of routing and construction requirements assessment already exists in the NEB assessment process for pipelines. Assessment of alternatives would be better suited to regional IA than project IA.

- **Studies:** The proponent would not know what studies it would need to conduct until after the Planning stage, resulting in cost and timing unpredictability. The type and scope of the studies is a significant financial investment in the front-end planning for a project. Today, the proponent directs the timing of environmental studies and can ensure that the consultants it selects have sufficient capacity, resources and qualifications to conduct the work. It would lose this control under the Panel's proposal. The IAC would unlikely have the capacity and expertise, or funding, to undertake or direct project design and mitigation, thereby jeopardizing projects that are under assessment.

- **Cooperation:** The proponent would not know the specific approach to federal-provincial cooperation until it is determined on a case-by-case basis in the Planning stage. CEPA members' experience is that jurisdictional uncertainty is a leading cause of regulatory delays due to lack of clarity of responsibilities. This cooperation needs to be scoped out.

Project planning, construction and operations are interlinked. The proposal to have the new IAC or assessment team conduct the assessment rather than the proponent would give the IAC complete control over the planning and construction execution of a project. Proponents are best positioned to understand the complex inter-relationships between planning, construction, operation and retirement of a pipeline and impact on the environment, among other things. Proponents rely on a combination of outside contractors and their own experience and expertise. Proponents have extensive expertise in project managing all of these interlinked elements. If any of these elements are out of sync, it is detrimental to construction execution and would have a negative impact on the environment and safety. Making the proponent a bystander in the process would eliminate the party that has the most knowledge and information.

3. IMPRACTICAL AND UNWORKABLE PROCESSES

CEPA believes that many of the Panel recommendations are impractical or unworkable, specifically:

- **Consensus:** The proposal for collaborative multi-stakeholder committees that seek to achieve consensus on procedural and substantive issues will lead to unworkable processes. As project proponents, CEPA member companies would all like to achieve consensus on project development, but that is not practical. There are simply too many views around development to ever reach consensus. Finding consensus is particularly challenging for linear infrastructure projects that can extend over thousands of kilometres and affect diverse local, regional and national interests. These major pipeline projects can raise issues of broader public policy that

are beyond the scope of an individual project. The NEB in particular, has found itself in the midst of these polarizing debates which are not any more likely to be resolved in a consensus-based process. While collaboration, inclusion and engagement are feasible and CEPA can support many of the recommendations for public participation, a process that moves only by consensus is not workable, especially for long, linear projects such as pipelines.

- **Quasi-Judicial:** While CEPA supports the regulator being a quasi-judicial commission, a quasi-judicial process is completely inconsistent with the proposed types of collaborative multi-stakeholder consensus-based processes. A quasi-judicial regulator has the rights and privileges of a superior court. As such, its decisions are legally enforceable. As a quasi-judicial regulator, its processes must be grounded in fairness and transparency and be based on principles of administrative law, natural justice and procedural fairness. This requires that project proponents have the ability to address comments and arguments made, present evidence, understand evidence and test it. This requires that decisions are based on evidence as opposed to opinions and positions that are not subject to testing through cross examination or response by a project proponent. The collaborative, consensus based process envisioned is difficult to reconcile with quasi-judicial processes.

- **Standing:** CEPA supports the creation of more informal opportunities for public participation in the process. However we are concerned that the elimination of standing requirements at all levels of the processes, including formal opportunities Intervenor status, is not practical. Removing the standing requirements for formal hearings would allow any party full participation rights. This is not procedurally fair to the project proponent or those who clearly have an interest in and deserve meaningful participation because they are directly affected by a proposed project. There are recent examples in Canada where the absence of a standing requirement has led to highly inappropriate participation that had no probative value with respect to the issues to be decided. CEPA supports a process that offers public participation opportunities that are inclusive while recognizing the need to maintain procedural fairness, use of science and fact-based evidence and fixed timelines. An inclusive approach to public involvement that allows for timely decisions can be accomplished where scalable and flexible levels of involvement are accommodated.[5]

- **Crown Consultation:** The Panel recommended that the IAC should be an agent of the Crown responsible for Crown consultation and accommodation with Indigenous groups. This should be considered with caution. Any implementation of the Panel recommendations regarding the IAC and the duty to consult must be consistent with any direction provided by the Supreme Court of Canada's anticipated decisions in *Hamlet of Clyde River* and *Chippewas of the Thames*.

  The duty to consult is a Crown duty but, in practice, governments can and do rely heavily on proponents and regulatory processes to fulfill Indigenous consultation and accommodation requirements. CEPA supports the Federal government delegating to or relying upon proponents to fulfill certain aspects of the duty to consult and supports the integration of Indigenous consultation into existing regulatory processes to the extent possible. This makes sense because proponents are best able to explain and answer questions about their projects and put in place measures that avoid and minimize impacts on Indigenous or treaty rights. It also makes sense to integrate Indigenous consultation into review processes to the extent possible to avoid unnecessary duplicative processes. That said, there needs to be much greater clarity about the roles and responsibilities in consultation and accommodation as between the Federal government, industry, Indigenous groups and regulatory bodies such as

[5] See CEPA Submission to the NEB Modernization Panel, supra note 3, at 36-37.

the NEB. It is currently unclear where the roles of the Federal government and proponents begin and end. The Federal government's participation also often comes too late in the process and is not sufficiently coordinated or aligned with consultation efforts by proponents. [6]

- **One project one assessment:** The Panel supports the concept of one project, one assessment and suggests that substitution is still an option for co-operation. In practice, however, substitution would not likely occur unless provinces adopt an equivalent type of sustainability assessment, collaborative consensus based processes and the principles of the *United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP) as interpreted by the Panel. Provinces are unlikely to adopt similar processes, for the reason that they are impractical and unworkable. As currently exists, provinces would still likely conduct their own environmental assessments resulting in duplication, inefficiencies and often conflicting project conditions.

- **Social License:** CEPA is also concerned that the Panel's Report references the need for "social license" as justification for its sweeping changes to the environmental assessment process. Social licence has often become a proxy for "unanimous support" which is not a realistic goal. Social licence does not have a legal or even generally accepted meaning. Using the term social licence, as opposed to the long standing regulatory and legal term "Public interest" is problematic; there is no ability for proponents, or opponents for that matter, to clearly identify when "social license" has or has not been achieved. Having such an amorphous term used as the justification for sweeping changes leads to lack of clarity of goals for the changes.

4. INCONSISTENCIES WITH THE CONSTITUTION

CEPA believes that some of the Panel recommendations are inconsistent with the constitutional division of powers and the duty to consult with and accommodate Indigenous people. Specifically:

- **Coordination with Provinces:** The Panel Report recognizes that a sustainability test focused on whether a project contributes a net benefit to the environmental, social, economic, health and cultural well-being of current and future generations presents challenges for federal jurisdiction.[7] For the sustainability model to work, the Panel acknowledges that 'this means that the full implementation of a sustainability model for federal IA will benefit from, if not require, coordination among jurisdictions.'[8] The Panel recommends cooperation agreements should be negotiated with provinces in the project planning stage and that any cooperation agreements must reflect sustainability based IA model and incorporate the principles of UNDRIP.[9] However, it remains to be seen whether provinces would agree to management of their natural resources and their jurisdiction under that model.

  Recognizing that provinces may not always co-operate, the Panel suggests that the project proponent could then be required to sign a compliance agreement with the IAC to enforce conditions that are outside of federal jurisdiction. This means of circumventing the Constitution and limits of Federal jurisdiction is problematic for project proponents who may

[6] For CEPA's full analysis of the roles and responsibilities in Crown consultation and accommodation, see CEPA submission to the NEB Modernization Panel, *Supra note 2,* at 25-33.

[7] Building Common Ground. *Supra,* note 2 at 64.

[8] *Ibid.*

[9] Building Common Ground. *Supra,* note 2 at 25.

then be placed in the awkward position of having to comply with conflicting Federal and provincial requirements.

- **UNDRIP:** The Panel recommendations on how to reflect the principles of UNDRIP are inconsistent with Canadian constitutional law. The Panel Report recommends that all Indigenous peoples who are affected by a project should have the right to withhold consent. If consent is withheld, it must be exercised reasonably, reasons given and some form of dispute resolution would then be available to review the reasonableness of saying no to a project. [10] This is inconsistent with Supreme Court of Canada decisions, which do not give Indigenous groups a veto over project development.[11]

  CEPA believes that any incorporation of UNDRIP, and specifically the principles of 'free, prior and informed consent' (FPIC) into project review processes should be done in a way that is consistent with our constitutional framework and Supreme Court of Canada jurisprudence on Indigenous and treaty rights. This needs to take into account that Indigenous and treaty rights, like all constitutional rights in Canada, are not absolute. If FPIC is incorporated into the IA process, it should be interpreted as the objective of consultation when the duty to consult is triggered but not an absolute requirement or veto. Adopting the Panel recommendation would introduce enormous uncertainty into project development, especially for linear pipeline projects that require consultation with a large number of Indigenous groups with varying interests and overlapping lands.

  In addition, the Panel recommendations would create further complications if some Indigenous groups along a linear project consent, whereas others withhold their consent.

5. LIFECYCLE REGULATION

The Panel recommended that the NEB no longer be a Responsible Authority for assessment of new projects. Instead, the new IAC would conduct the IA on all projects, including pipelines, make the decision whether a project proceeds or not, be able to impose outcome-based conditions, have the ability to ensure that sustainability outcomes are met through mandatory monitoring and follow-up programs and be able to enforce conditions and suspend or revoke approvals. The Panel bases this recommendation on the incorrect presumption that regulation and assessment are two quite distinct functions that require different processes and expertise. The Panel Report also references the *perception* that the NEB is biased as a supporting rationale for moving the EA to a separate, new regulatory agency. This alleged bias is based solely on statements made to the Panel and has no basis in fact.

For pipelines, the NEB already oversees the full life-cycle of a pipeline from the planning and approval process, construction, operations, maintenance and finally abandonment. Each step, including the current environmental assessment, is part of an integrated process, overseen by the full range of expertise required to ensure that pipelines are designed, constructed, maintained, operated and abandoned or decommissioned safely.[12] The strength of this entire system is that it covers the full life-cycle of all pipelines under the jurisdiction of the NEB. Given the specific expertise required and the continuity of life-cycle oversight, having the IAC or a separate department or agency involved in

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[10] Building Common Ground. *Supra,* note 1 at. 29.

[11] The Supreme Court of Canada has recognized that even established rights, including Indigenous title, can be infringed if certain requirements are met. While the Court held in *Tsilhqot'in* that consent must be obtained once Indigenous title is established, the absence of consent is only a veto at law in cases of unjustifiable infringements of established Indigenous and treaty rights.

[12] Canadian Energy Pipeline Association Submission to the National Energy Board Modernization Expert Panel, *supra* note 3.

any of these steps, including the EA and project decisions, would compromise the effectiveness of full life-cycle regulation and Canada's world class pipeline safety regime. The overall result of introducing another agency would heighten uncertainty, reduce the efficiency of regulatory processes, create duplication and potentially lead to disjointed or contradictory conditions of a pipeline project.

The Panel Report does not indicate what role the NEB would have going forward if its recommendations are fully implemented. Which regulatory authority would oversee existing pipelines? Does the NEB continue to approve smaller scale projects for which it also undertakes the environmental assessment? [13] For the transmission pipeline sector, this is critical. CEPA fundamentally disagrees with the Panel recommendations to unwind the lifecycle nature of the NEB or sever decision-making authority from life-cycle oversight. These are vital questions that must be addressed and reconciled in law. It will require a fuller evaluation of the NEB's overall role and accountabilities than is provided in the Panel Report and must be considered in the context the NEB Modernization Panel report recommendations.

CONCLUSION

CEPA knows that the Minister will consider the serious, wide-ranging implications of the Panel's recommendations with great care. CEPA has offered the views of its member companies based on their direct experience in investing, building and operating the energy infrastructure that supports the Canadian economy and the everyday lives of Canadians. Project proponents and their investors will evaluate the feasibility of developing resource projects in Canada against other investment options. In doing so, they need to understand the processes, what tests and criteria must be met, the length of time to obtain regulatory approval, the overall cost and ultimately the risk that projects will be denied or uneconomic at the end of that process.

The investment climate for energy development in Canada has already been strongly affected by the regulatory delays of some major infrastructure projects. The recommendations in *Building Common Ground: A New Vision for Impact Assessment in Canada* would introduce even more risk and uncertainty into regulatory processes. The net effect of the wide-reaching proposals would be impractical and unworkable, create unmanageable uncertainty, are inconsistent with the Constitution, would compromise the effectiveness of life-cycle regulation of pipelines by the NEB and establish a decision making framework that will, similar to today, insert broader public policy issues into a quasi-judicial process that is not equipped to resolve those issues.

It is our view that implementing the full sweep of the Panel proposals will therefore not serve to meet the three objectives of the review of environmental assessment processes, namely to restore public trust, introduce new, fair processes and to get resources to market. We believe that a more practical approach that would serve to build public confidence and meet the Minister's mandate would be to find practical solutions to improve existing processes, building on the key principles of transparent, inclusive, informed and meaningful environmental assessment that were identified by the Panel as fundamental to rebuild public confidence. CEPA will be providing further suggestions on how to achieve this once the NEB Modernization Panel submits its recommendations to the Minister of Natural Resources on how to modernize the NEB. As an industry that has been regulated by the NEB for nearly 60 years, it is premature to provide our views on how the government could implement more practical and workable solutions to solve the underlying problems identified by the Panel. This can only be done once the recommendations from the NEB Modernization process are known and understood.

[13] Section 58 applications under the NEB Act.