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May 5, 2017

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change
Environment and Climate Change Canada
200 Sacré-Coeur Boulevard
Gatineau QC K1A 0H3

Dear Minister:

RE: Expert Panel on Environmental Assessments Processes Report

Rigorous environmental protection can go hand-in-hand with a competitive natural resource industry. In your mandate letter, the Prime Minister asked you to review the federal environmental assessment (EA) process with the aim of: restoring public trust; introducing new, fair processes; and getting resources to market. These are laudable goals to which the Canadian Chamber of Commerce fully subscribes.

However, the Canadian Chamber is deeply concerned that if they are adopted, the recommendations made in the Expert Panel Review of Environmental Assessment Processes report would, in fact, make the expressed goal of getting Canada's natural resources to market much more difficult. We believe the recommended approach would lead to an unworkable system that would significantly decrease investment in Canada's resource sectors. This matters not just to the companies proposing projects, but also to the workers, suppliers and indigenous partners who would benefit from the opportunity natural resource and infrastructure projects provide.

The Canadian Chamber has submitted comments to the letstalkea.ca website. However, the issue is of such importance to our members that I wanted to ensure you were personally aware of the Chamber network's concerns. Unfortunately, you were unable to join our Board meetings on November 28, 2016 in Ottawa and March 20, 2017 in Montreal and we have so far been unable to schedule a meeting in person. Accordingly, I thought it might be helpful to convey our views in writing. Below I have included our position on some of the main areas of the Expert Panel Report.

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Project Impact Assessment Process

The Canadian Chamber is deeply worried that the proposed Impact Assessment Process will lead to an overly complex system that is unable to reach decisions in a timely manner, resulting in the exodus of investment dollars from the Canadian economy.

Basing every step of the IA process on consensus is simply not realistic. If adopted, it would essentially mean the end of investment in large-scale resource and infrastructure projects in Canada, as none of these proposals would enjoy the support of all Canadians. Instead, the IA process should aim to engage with Canadians to ensure transparent and evidence-based decisions. Towards that end, we believe that an enhanced public registry for projects, as well as an improved planning phase, should be adopted. That said, whether or not a legislated planning phase would help to improve outcomes of a EA or IA process will largely depend on how the idea is implemented. Government should consult widely with the private sector on the scope and requirements of a planning phase.

The Expert Panel outlines only one process which would be extremely burdensome for smaller projects or requests to modify or expand existing structures. Subjecting smaller scale proposals to this complex review process would prevent millions of dollars of investment in Canada's economy. A workable IA system would require more detailed thought on how the process would run, as well as the development of less intensive review process for projects that have a smaller potential for adverse impacts.

Participation in environmental or impact assessment processes is a costly and time consuming endeavor. Certainty on how long these processes will take is essential to providing an environment that supports investment. It is unclear that the Expert Panel's proposed approach to flexible timelines will produce greater certainty for business. We ask you to consider the use of timelines in addition to the measures suggested by the Expert Panel.

Federal Impact Assessment

The idea of moving from an environmental assessment to a process that looks at a wider range of impacts and federal interests is worth consideration. Should you choose to move towards an impact assessment (IA), we ask that you proceed in a transparent manner and engage in extensive consultation with industry on the scope of the impacts to be included in this new process. It is essential that any federal IA process respect constitutional divisions of responsibility, and not unilaterally impose on areas of provincial or territorial jurisdiction.

That said, we fear that implementing the Expert Panel's recommendations without careful consideration would greatly expand the types of projects subject to both a federal and a provincial environmental or impact assessment process. This would lead to duplication of efforts that would

increase the cost and uncertainty of the assessment process, materially harming Canada's investment environment without improving outcomes for the environment, communities or human health.

We ask that you retain the use of a carefully constructed project list to determine what projects will be subject to a federal IA process. This list must recognize the need to apply criteria consistently and to limit layering a second environmental assessment process on top of provincial processes to cases where the federal government has a clear responsibility to do so. While we recognize the need for Ministerial discretion in triggering projects, our members are concerned that having a federal IA triggered by legislated criteria would lead to uncertainty and increased use of litigation, and should not be adopted.

Cooperation among jurisdictions

In a federal system where responsibilities are divided among various levels of government, cooperation among different levels of governments is essential to an efficient and timely process. The Expert Panel Report rightly emphasizes the principle of "one project, one review" to ensure that the IA or EA process is not fragmented, inefficient and inconsistent. We support the concept of a "Cooperation Arrangement" outlined in the report and any measures to coordinate and harmonize processes between federal and provincial governments.

However, the proposed expansion of the federal government's review processes into areas of provincial jurisdiction will cause friction that may make cooperation between the federal and provincial/territorial governments more difficult. In developing new impact assessment legislation, it is essential that the federal government remain within the boundaries laid out by the constitution. Seeking to impose conditions on areas outside federal jurisdiction through measures like contract law will potentially put project proponents in the position of having to comply with contradictory requirements, an impossible burden on industry.

Considerations Affecting our Indigenous Peoples

In Canada's advanced economy, the stability and predictability of our laws and regulations that respecting the rights of citizens and the environment is a competitive advantage to our businesses and prospective foreign investors. A glaring exception is the opaque approach of the Crown to the execution of its duty to consult and accommodate. This lack of clarity is unacceptable. It is unfair and harmful to all concerned: business, Indigenous peoples and the Crown itself. Unless addressed, our customers will dismiss us and get what they need elsewhere, leaving behind the businesses, Indigenous communities who have invested in and/or would benefit from their projects and all other Canadians.

The Canadian Chamber agrees with the Expert Panel Recommendation that "the fulfilment of this duty must occur under a collaborative framework developed in partnership with impacted

Indigenous Groups”. We recommend that this framework be flexible enough to recognize the different approaches to engagement, consultation and accommodation in each community, but that it provide consistent and clear definitions and requirements around:

- The aspect of the project that triggers the duty to consult and accommodate.
- If the Crown will delegate all or some aspects of the consultation/accommodation, which ones and when.
- The Indigenous peoples affected and their rights (established and/or potential).
- The level of consultation required and how it should be undertaken.
- What information the Crown will provide to businesses and Indigenous communities.
- What resources/capacity are required by the Indigenous communities and who is responsible for providing them and bearing any costs involved.
- The Crown’s involvement, including:
 - primary contact person/resource;
 - whether it will facilitate pre-consultation engagement between the proponent(s) and the affected Indigenous communities;
 - whether it will provide advice or direction only;
 - whether it will be “on the ground” in the Indigenous community with the proponent, on its own or not at all.
- Expectations of the affected Indigenous community(ies).
- Timelines (for proponents, Indigenous communities and the Crown).
- How the Crown will monitor the consultation and accommodation negotiations between proponents and Indigenous communities to measure whether each met the expectations of them and met their commitments.

The Canadian Chamber agrees with the Expert Panel recommendation on funding programs to support indigenous participation and capacity development in the IA process. Business has a role in this respect, but requirements on individual businesses must be proportional to the size of the business and the requirements of the consultation. We recommend an ambitious approach to defining Indigenous capacity-building that includes such options as:

- Tools to help Indigenous communities develop their own consultation guidelines for proponents, based on their histories, rights and lands.

- Organizing, in cooperation with other levels of government, regional conferences, workshops and other vehicles for Indigenous communities to share their expertise, best practices, etc.
- Seeking the views of business and Indigenous representatives on a proponent-financed, arm's-length fund that would be available for Indigenous communities to hire the capacity they do not have and on what it could/could not be used for, etc.
- Working with the provinces/territories to develop a list of suggested legal, environmental and other advisors to whom Indigenous representatives could turn for assistance if needed.
- Assisting Indigenous communities to establish access to capital, including business loan guarantees and credit rating assistance.
- Helping Indigenous communities document their resources (natural, human, financial, etc.).

In addition to funding capacity-building for indigenous communities, we recommend that the government more actively communicate the services available to assist proponents in obtaining background information on Indigenous peoples, their historical and current relationships with the Crown, their rights and relevant contact information.

Public Participation in Impact Assessment

Meaningful public participation and consultation are important to ensuring a transparent process that takes the communities' concerns into account. We support the idea of greater transparency, including the creation of a more comprehensive public registry. However, the Expert Panel's proposal to make the IA process open to all is deeply problematic. It fails to account for the fact that there are some individuals who are not invested in a fair, transparent and fact-based assessment process, but who oppose certain kinds of projects under any conditions, or who would use the EA/IA process as a forum for policy discussions beyond the scope of the project review.

A completely unfettered process based on consensus building would grant a few individuals the power to use the IA process to delay projects, perhaps indefinitely. In some cases, allowing politicized opposition – as opposed to technical, scientific or traditional knowledge – to determine outcomes would conflict with the principle of a fact-based decision making process based on clear rules and principle. To ensure a fair and efficient process, it is important to limit participation to those with unique information, expertise or traditional knowledge that is directly relevant or those communities that would be most impacted by the project.

Governance Model

The Canadian Chamber agrees that a quasi-judicial tribunal that is arms-length from the government and generally outside of the broader public policy debate would be best placed to provide

transparent, fact-based decisions. However, we are concerned that the consensus-based, inclusive approach outlined elsewhere in the Expert Panel's Report is fundamentally incompatible with how a quasi-judicial tribunal operates.

We are concerned that separating the impact assessment role from life-cycle regulators like the National Energy Board and the Canadian Nuclear Safety Commission would in fact create a one-project, two-review system that would add costs and delay without improving environmental outcomes. For example, pipeline projects would need to undergo one process with the IA authority, and then the NEB would need to assess whether or not the project is up to code. Life-cycle regulators like the NEB have responsibility for construction, operations and ultimately retirement of projects. In conducting this role, they would be collecting much the same information on the environmental and social impacts of the proposed project as the IA authority, leading to duplication and increased costs. The goal must be to be transparent, fact-based and efficient. We must avoid introducing a sclerosis that renders the whole process superfluous.

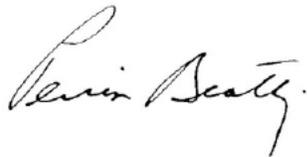
Regional and Strategic Impact Assessment

Strategic and regional environmental or impact assessments can help provide information that would be of use to individual project reviews, such as baseline environmental information or an understanding of the scope and nature of indigenous rights. These exercises could also provide Canadians with additional opportunities to make their voices heard on policy issues outside the scope of an individual project review. Our members support the greater use of these tools by governments, with one caution. Unless they are clearly distinct from the project review process, regional and strategic environmental assessments could become yet another layer on an already complicated process and cause significant uncertainty and delay. It is essential that individual project reviews not be delayed due to a pending or potential regional and strategic assessment, and that the costs of these non-project reviews be covered by governments.

Minister, I thank you for your attention to this matter. We would be very pleased to expand on any of these issues or to speak more generally about how to ensure a productive collaboration between government and the private sector on environmental issues. Please be assured that you have a standing invitation to meet with our Board of Directors and that I would be pleased to meet with you directly at any time.

In the interim, I invite your staff to contact the Canadian Chamber's Director of Natural Resource and Environment Policy, Katrina Marsh, should you have any questions on these positions. She can be reached at kmarsh@chamber.ca or 613-238-4000 ex 223.

Sincerely,

A handwritten signature in black ink that reads "Perrin Beatty". The signature is written in a cursive style with a large initial 'P' and a long tail on the 'y'.

Perrin Beatty
President and CEO
Canadian Chamber of Commerce

Cc:

The Honourable Jim Carr, P.C., M.P.
Minister of Natural Resources

Ron Hallman,
President, Canadian Environmental Assessment Agency

The Honourable Bill Morneau
P.C., M.P., Minister of Finance