

**SUBMISSION BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE GOVERNMENT OF CANADA REGARDING THE
*DRAFT DEVELOPING A STRATEGIC ASSESSMENT OF CLIMATE CHANGE***

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**Prepared by
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I. INTRODUCTION

This is the submission of the Canadian Environmental Law Association (“CELA”) in relation to the Government of Canada’s *Draft Strategic Assessment of Climate Change* (“SACC”).¹

While the SACC aims to ensure that the climate change implications of federal projects are assessed in a manner consistent with Canada’s climate change commitments, CELA concludes that the strategy, as drafted, does not achieve this goal. For the reasons described below, the SACC unnecessarily constrains the scope of review to project-level assessments, and inappropriately excludes downstream effects and a project’s existing emissions from calculations of net harm and emission intensity.

II. BACKGROUND

CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues. For example, CELA has participated in various administrative and legal proceedings under *CEAA 2012* and its predecessors, *CEAA 1992* and the *Environmental Assessment and Review Process Guidelines Order*.

On the basis of our decades-long experience in assessment matters, CELA has carefully considered the draft SACC from a public interest perspective. Our recommendations below, build on CELA’s related concerns about other elements of the *Impact Assessment Act (IAA)*, including our submissions to the Standing Committee on Environment and Sustainable Development² and Environment Climate Change Canada (ECCC) regarding the revised Projects List³.

¹ See online: <https://www.strategicassessmentclimatechange.ca/> (“Strategic Assessment”).

² CELA’s written submission to the Standing Committee is posted at: <https://www.cela.ca/proposed-IAAappropriate-amendments>. See also <http://www.cela.ca/collections/justice/canadian-environmental-assessment-act>.

³ See: <https://www.impactassessmentregulations.ca/8866/documents/16609/download>.

III. RESPONSE TO DRAFT STRATEGIC ASSESSMENT OF CLIMATE CHANGE

1. Quantification of GHG emissions from a project are too narrowly defined

CELA reiterates its opposition to *SACC*'s approach to quantifying a project's GHG emissions as it fails to consider downstream emissions.⁴ This constricted approach to quantifying GHG emissions severely undermines the purpose and value of any assessment to determine whether a project is compatible with Canada's greenhouse gas reduction targets in the *Paris Agreement of the United Nations Framework Convention on Climate Change* (herein, the Paris Agreement).

To evaluate a project's overall sustainability and its contribution to (or interference with) Canada's commitments, it is necessary to not only consider the direct GHG emissions produced by the proposed project, during its construction, conversion, operation and eventual decommissioning, but also the emissions generated (or carbon sink impairments) during the extraction of raw materials, their processing and transportation, before being utilized by the proposed energy infrastructure. In addition, the assessment process should also consider the GHG emissions (or carbon sink impairments) that may be indirectly stimulated or facilitated by the approval and implementation of the project.

In 2016, the federal government established two expert panels vested with restoring public trust in the federal environmental assessment processes and its institutions: the environmental assessment Expert Panel (herein, "CEAA Expert Panel") and the National Energy Board Modernization Panel (herein, "NEB Modernization Panel"). On this issue, the NEB Modernization Expert Panel found that in determining whether a project was aligned with the national interest, the assessment should include a "climate test for upstream and downstream activities (including considerations of any relevant emissions targets or caps) (emphasis added)."⁵

We recommend the draft *SACC* be revised to align with the recommendations and observations of the Expert Panels and include downstream effects in its quantification of GHGs.

2. Exemptions to SACC weaken Canada's response to climate change commitments

While CELA supports the notion of a strategic assessment of climate change, we question the ability of the *SACC*, as drafted, to effectively enable Canada to meet its climate change commitments while providing "consistent, predictable, efficient and transparent considerations of climate change" in the impact assessment process.⁶

First, the *SACC* only applies to projects undergoing a federal impact assessment (IA). In other words, the *SACC* is limited to projects listed on the *IAA* Project List regulation. As CELA has previously submitted

⁴ Strategic Assessment, p i.

⁵ Natural Resources Canada, "Forward Together – Enabling Canada's Clean, Safe and Secure Energy Future" (2018), p 22 [**NEB Modernization Report**].

⁶ Strategic Assessment, p i

to ECCC, the Project List regulation is too narrowly framed to capture the full range of projects that may produce environmentally significant adverse affects, including GHG emissions. This approach perpetuates the *CEAA 2012* approach of developing a regulatory list prescribing a relatively small number of project types that may trigger an *IA* under the Act. However, as the *IAA* Project List has further increased the thresholds for many designated project types (especially in the mining, pipeline and transportation sectors), this further limits the range and number of projects which will fall within the scope of the *SACC*.

Secondly, the application of the *SACC*, which is already truncated by the *IAA* Project List, is further narrowed because the *SACC* will not assess GHG emissions from the original design capacity of a facility. Thus, for replacement or expansion projects, the *SACC*'s net GHG emission calculation will only consider GHGs created by its additional capacity. As the approval of federal projects has not historically required a quantification of GHG emissions, this is a gap which must be remedied. Accounting for a federal project's existing emissions in addition to emissions from the expansion or refurbishment must be brought forward in the *SACC*. Failing to do so not only misrepresents a project's net emissions, but underestimates the project's emission intensity and potential environmental impact. CELA submits that the equations for both the "Emission Intensity Calculation" and the "Net GHG Emissions" should be revised to include the emissions of a project's original design, in addition to any emissions caused by replacement or expansion activities.

Lastly, the most objectionable aspect of the *SACC* is the failure of ECCC to provide any rational, technical, sound or science-based justification for the proposed scope of the *SACC*. This was an oversight noted by CELA in its comments on the *SACC Discussion Paper* which has not been remedied in this draft. The underlying evidence or analysis which led to ECCC's decision on the scope, application and quantification of GHGs within the *SACC* should be publicly disclosed and included within the policy and technical guiding documents of the *SACC*.

CONCLUSION

CELA is disappointed that our comments on the *SACC Discussion Paper*, including recommendations that climate assessment include downstream GHG emissions and that it not be limited to project-level assessments, have not been reflected in this draft of the *SACC*.

Canada is on track to miss meeting its international climate change mitigation commitments. Canada's climate change record cannot improve if we continue to make decisions about GHG-intensive projects without accurately understanding their impacts on our overall GHG emissions reductions goals.

Accordingly, the *SACC* must be strengthened in order to advance the purposes of the *IAA*, which supports a comprehensive and inclusive application of climate considerations in impact assessments. The *SACC* unjustifiably constrains the scope of climate assessment by considering only designated projects on the *IAA* Project List regulation and excluding downstream effects and original design-basis emissions from GHG net and emission intensity calculations.

Thank you for the opportunity to provide comments and we trust they will be taken into account as ECCC considers further revisions to Canada's SACC.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Kerrie Blaise".

Kerrie Blaise, Counsel