

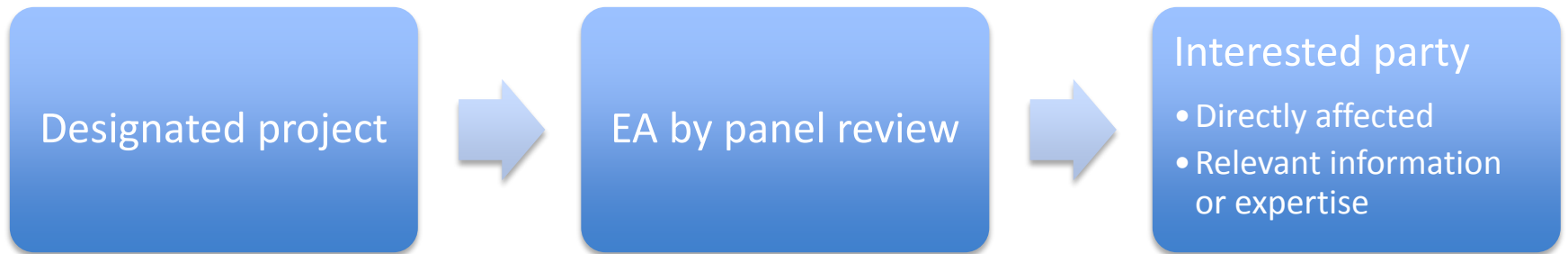


UNIVERSITY OF  
**CALGARY**

FACULTY OF LAW

**A Study of Public Participation under the *Canadian Environmental Assessment Act 2012***

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- documentation to establish the EA process;
- terms of reference for the EA;
- Direction from panel on how to participate in the EA
- applications to participate submitted to panel
- submissions by project proponent or a person seeking to participate on the interpretation of the statutory provisions in CEAA 2012 concerning public participation
- rulings by a review panel on participatory entitlements in the EA process.

- Open pit mining operation for gold and copper proposed by Taseko Mines to be located in the traditional territory of the Tsilhqot'in First Nation in central British Columbia
- EA panel was constituted in May 2012
- The panel submitted its EA report in October 2013
- Minister issued a decision statement in February 2014 declaring the mine is likely to cause significant adverse environmental effects which are not justified in the circumstances.

- Heard from approximately 300 persons
- Granted interested party status to all 51 applicants for full participatory status
- Interested parties included Amnesty International, Council of Canadians, and Wilderness Committee
- Panel read interested party provisions as analogous with public interest standing exception
- Taseko Mines objection dismissed

- Consortium of operators led by Shell Canada applied for approval to expand an open-pit bitumen mining and processing operation near Fort McMurray in northern Alberta
- EA panel was constituted in September 2011 as a joint panel by agreement between Alberta and the federal government
- panel submitted its EA report in July 2013
- In December 2013 the Minister issued a decision statement declaring that the oil sands expansion project is likely to cause significant adverse environmental effects which are justified in the circumstances
- the project operators have yet to decide whether to proceed with construction of the expansion project.

- Panel received approximately 850 applications to participate – granted interested party status to 16 persons
- Interested parties included the federal government, the regional municipal government, several environmental groups, first nations, other industry operators in the region, and several individuals who do not reside in the area
- panel noted that a large number of persons who applied to participate either did not properly complete the application to participate form or failed to satisfy the panel their submissions would be relevant to the EA. These persons were excluded from the panel review.
- Panel did not provide an interpretation of applicable provisions in CEAA 2012
- Panel did receive opposing submissions on the issue from the project proponent and a coalition of environmental groups

- BC Hydro applied for approval to construct and operate a large dam and hydroelectric generating station on the Peace River near Fort St John, British Columbia
- The EA review panel was constituted in August 2013 as a joint panel by agreement between British Columbia and the federal government
- The panel submitted its EA report in May 2014
- In November 2014 the Minister issued a decision statement declaring that the Site C Clean Energy project is likely to cause significant adverse environmental effects which are justified in the circumstances
- Project construction is underway





- Panel heard from approximately 1170 persons
- All persons who submitted a comment on the pre-panel EIS and an additional 170 applicants to the panel itself were granted interested party status with full participatory entitlements – although most limited participation to a written or in person submission to the panel
- Interested parties included numerous social or environmental organizations and individuals who might otherwise have been excluded from the EA process by a more restrictive application of the interested party test.
- No interpretation of applicable provisions in CEAA 2012
- No objection to participation from project proponent

- Proposal by Kinder Morgan to add approximately 1000 kilometres of new oil pipeline and related infrastructure to a re-activated existing line between Edmonton, Alberta and Burnaby, British Columbia, as well as upgrade a marine terminal.
- Kinder Morgan submitted its application to the NEB in December 2013 for approval under the *National Energy Board Act* to construct and operate the pipeline.
- Written submissions have been ongoing between hearing participants, Kinder Morgan and the review panel in 2014 and 2015.
- The panel will hear oral submissions later in 2015 and is expected to issue its EA report by January 2016.

- Panel received 2118 applications to participate in the EA process,
- The panel granted interested party status to 1650 persons – but distinguished 400 interveners with full participatory status and 1250 persons the lesser entitlement of an opportunity to submit a letter of comment on the project
- The panel dismissed the remaining 468 applications to participate – mostly individuals
  
- The panel invited submissions from Kinder Morgan on applications to participate and any replies from participants.
- the panel rejected the view that the interested party provisions in CEAA 2012 be read as analogous with the public interest standing test analogous
- The more specific, detailed and proximate the participant's interest, expertise, or knowledge was to the project, the more likely the person was granted full participatory entitlements as an intervener.

- It is difficult to conclude from this study that the new provisions in CEAA 2012 have produced a significant decline in public participation in the federal EA process

- CEAA 2012 places the onus on the public to demonstrate entitlement to participate and invites sophisticated legal argument by project proponents to limit public participation
- Inconsistency in the interpretation and application of CEAA 2012 provisions
- Entitlement to participate under CEAA 2012 is a matter of discretion for the panel



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Questions/Comments?

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