

CPAWS Presents to the Expert Panel for Environmental Assessment

By: Shaun Fluker, Kristina Roberts, and Drew Yewchuk

Case Commented On: [Expert Panel Review of Environmental Assessment Processes](#)

The Expert Panel charged with reviewing Canada's environmental assessment regime continues to hear presentations on recommended amendments to the federal environmental assessment process (Professor Martin Olszynski published his presentation to the Panel in an earlier [post](#)). The University of Calgary's [Public Interest Law Clinic](#) was retained to advise and assist the [Canadian Parks and Wilderness Society](#) (CPAWS) [Southern Alberta Chapter](#) and National Office in making recommendations to the Panel. On November 23, 2016, Professor Shaun Fluker together with Anne-Marie Syslak, the Executive Director of CPAWS – Southern Alberta, co-presented to the Panel on behalf of CPAWS. This submission focused exclusively on the current state of the federal environmental assessment process in Canada's national parks under the *Canadian Environmental Assessment Act 2012*, [SC 2012 c 19 s 52](#), a process which is perhaps best summarized as non-transparent, unaccountable, and completely discretionary. What follows is an excerpt from the CPAWS presentation to the Panel.

Thank you for the opportunity to present to you today. I'm Anne Marie Syslak, Executive Director of the Southern Alberta Chapter of the Canadian Parks and Wilderness Society, or CPAWS.

I'm joined today by Shaun Fluker, Professor of Law at the University of Calgary. Shaun is going to speak directly to our recommendations on legal reform to the environmental assessment process.

CPAWS is Canada's public voice for parks and wilderness. We are a national charity that, for over 50 years, has worked to protect Canada's wild spaces, and to make sure our existing parks are well protected.

National parks are our most treasured wild places in Canada. They are supposed to provide the highest standard of protection for Canada's most iconic landscapes. Where Europe has its great cathedrals and castles – Canada has our magnificent national parks.

The Canada National Parks Act requires that ecological integrity be the first priority in park management. You would think, then, that the highest standard of environmental assessment would be required for all projects proposed within national park boundaries. It is not.

CEAA 2012 left a gaping hole in the national park management system by removing the legal requirement for Parks Canada to conduct environmental assessments for projects in our parks.

Under CEAA 1992, all projects in national parks required environmental assessments, at least at the screening level. And because of their impact on sensitive alpine ecosystems, all ski area

development proposals were subject to comprehensive studies. Since CEAA 2012 was enacted, environmental reviews have basically been left to the discretion of Parks Canada.

The only situation where an environmental assessment is now legally required in a national park is if Parks Canada determines that there is likely to be significant environmental impacts. Yet since 2012, Parks Canada has NEVER concluded that any project proposal in a national park will likely result in significant environmental impacts, even major developments like the proposed near doubling of the Lake Louise Ski Resort into legally protected wilderness used by threatened grizzly bears and home to federally-listed endangered white-bark pine. So no legal requirement for an EA of a MAJOR development in a national park and World Heritage Site. This is a problem that needs to be fixed.

Prior to 2012, this project and others as we will outline in our full submission would have been subject to mandatory comprehensive studies under CEAA 1992, as well as rigorous and transparent public review processes.

Yet under CEAA 2012, these kinds of large-scale projects are gaining approval despite major ecological concerns. They are being approved based on seriously flawed environmental reviews, with no transparency, and with terrible public consultation processes. They are even going through despite overwhelming public opposition.

Losing the legal framework for environmental assessment in our national parks has exacerbated the development pressures, particularly in Banff and Jasper, and is allowing incremental development to proceed that threatens the ecological integrity of our parks and the public trust in Parks Canada's management of them. We are looking to this review panel to consider recommendations under CEAA specific for national parks and federal protected areas to strengthen this legislation and support the Canada National Parks Act's priority of putting ecological integrity first in the management of our most protected areas.

As just emphasized, national parks should require the highest level of environmental assessment with an overall objective of helping to ensure the Minister and Parks Canada adhere to their legislated mandate that the maintenance or restoration of ecological integrity be the first priority in all parks decision-making.

If there is a general theme to this presentation, it is that the current environmental assessment process in Canada's national parks has allowed for major projects with significant environmental impacts to be approved with no transparency and flawed public consultation. Despite the legislated ecological integrity mandate, we note that Parks Canada's own policy guiding environmental impact assessment for the parks fails to even mention the term 'ecological integrity' let alone incorporate it as an objective in the environmental assessment process.

Dear Mr. Olszynski:

This is further to your request, under the *Access to Information Act*, for:

"Pursuant to Section 67 of CEAA, 2012, Parks Canada "must not carry out a project on federal lands, or exercise any power or perform any duty or function conferred on it...that could permit a project to be carried out, in whole or in part, on federal lands, unless (a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or (b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances under subsection 69(3)." Please provide a copy of the records containing such determinations ((a) and (b)) since this provision came into force (2013)."

Please be advised that a detailed review of Parks Canada record holdings has been conducted and there were no instances where a project was determined to be likely to cause adverse environmental effects and was referred to the Governor in Council. Is this the only category of projects in which you were interested in receiving or are you also seeking information on projects that were assessed and found unlikely to cause adverse environmental effects? If you are interested in information on the latter, the Agency could provide you with a list of projects for which environmental assessments were conducted. Please advise accordingly.

ATIP response from September 21st, 2016

As alluded to - There has not been one environmental assessment process conducted under *CEAA 2012* for a project in a national park since the legislation was enacted. All assessments have been administered by Parks Canada using its internal assessment policy. The result is that decisions with significant impacts to ecological integrity in the national parks are being undertaken without any public input or transparency, and it is unclear how or whether the environmental assessment process serves the Minister's overarching mandate to maintain or restore ecological integrity as the first priority in national parks decision-making.

Indeed under *CEAA 2012* there is no mandated environmental assessment for projects in national parks. What *CEAA 2012* provides is section 67 which specifies that Parks Canada must determine whether a project located in a national park is likely to cause significant adverse environmental effects. If a project is considered likely to cause significant adverse environmental effects, the Governor in Council must then determine whether those effects are justified in the circumstances in order for the project to proceed.

Via an access to information process we have learned: (1) there have been no instances where Parks Canada has determined a project is likely to cause adverse environmental effects and was referred to the Governor in Council under section 67; and (2) that Parks Canada has determined a total of 1533 projects were unlikely to cause significant adverse environmental effects under section 67 between January 1, 2013 and October 30, 2016.

Parks Canada EIA Requirement Checklist

The upshot here is that environmental assessment in the national parks is entirely a discretionary matter for Parks Canada under *CEAA 2012* to determine under its own policies. The reality under *CEAA 2012* is that many projects that one would reasonably expect to have significant ecological impacts have been approved by Parks Canada without undergoing any transparent environmental assessment process with little or no public scrutiny. Parks Canada's own checklist contemplates the possibility of no EIA for a parks project, and there is no transparency on which projects even received this internal non-legislated review.

Our overall recommendation to this panel will be outlined in detail in our written submission, and it will have both a process and a substantive aspect to it. On process, we submit that some form of the legislated inclusion list from CEAA 1992 be restored for national parks and that major projects be subject to a minimum legislated process similar to what CEAA 1992 outlined in its comprehensive study list. On substance, we submit there be a link between the environmental assessment process and the legislated ecological integrity mandate for national parks and that at a minimum this requires the legislation to prohibit any approval for a project with significant adverse environmental impacts in a national park.

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