



Globalis Group

***Bringing a Project Through the
Regulatory Process: The
Canadian Experience***

TREM

Washington D.C., USA

March 23, 2011

Overview

- Setting the stage: Canadian federal vs. provincial jurisdiction
- *Canadian Environmental Assessment Act EA process*
- *Aboriginal Consultations*
- *Major Resource Projects Initiative (i.e. the red-tape killer)*

Canadian Constitution 101

- Canadian constitution spells out areas of jurisdiction
- Federal government:
 - Defence*
 - Fisheries
- Provincial government
 - Mining
 - Forestry
- Areas not specifically articulated are shared jurisdiction
 - Environment
 - Industry

Key Implications

- Resource extraction itself is under provincial jurisdiction
- Environmental implications are not
- Key timeline determinant in regulatory process remains environmental assessment
- Federal-provincial coordination of regulatory processes can make/break a project

Canadian Environmental Assessment Act

*A federal law that requires
consideration of environmental
effects of proposed projects
before any actions are taken
to allow them to proceed*

When Does the *Canadian Environmental Assessment Act* Apply?

- Federal funding
- Federal proponent
- Federal lands (includes Aboriginal reserves)
- Specific “Law List” trigger

Law List Trigger Examples

- Large scale mining projects:
 - Subsection 35(2) of the *Fisheries Act*
 - Section 5 of the *Navigable Waters Protection Act*
 - Paragraph 7(1)(a) of the *Explosives Act*

Types of EA under the Act

Screening

Comprehensive Study

Review Panel

Comprehensive Study Steps

- Submission of project description (*Proponent*)
- Project Specific Guidelines and Scoping Document (*Canada and Saskatchewan*)
- Environmental Impact Statement (*Proponent*)
- Comprehensive Study Report (*Canada*)
- EA Decision by Minister (*Canada*)
- Course of action by federal department(s)

CEAA Requirements for Public Participation (Comprehensive Study)

- Notice of Commencement of comprehensive study
- Public comment on the project and the conduct of the comprehensive study
- Public participation during conduct of the comprehensive study
- Public comment period on final comprehensive study report

Aboriginal Consultations

- Recent decisions from Supreme Court of Canada have determined that the Crown has a “duty to consult” First Nations, Métis and Inuit
- Federal and provincial crowns are separate but both represent the head of state*
- Does not preclude private sector negotiations and impact benefit agreements

Key Supreme Court Cases

- ***Haida Nation case*** (*Haida Nation v. British Columbia (Minister of Forests)*), [2004] 3 S.C.R. 511
- ***Taku River Tlingit First Nation case*** (*Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*), [2004] 3 S.C.R. 550
- ***Mikisew Cree First Nation case*** (*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*), [2005] 3 S.C.R. 388)

Accommodation Measures

- Crown consultation includes potential accommodation measures
- Private sector projects that require federal/provincial actions (almost all resource projects) will be affected
- Government actions cannot be taken until this stage is complete*
- Private sector – Aboriginal agreements can satisfy this requirement

Accommodation (Government) Measures

- Consultation may result in accommodation measures to prevent or minimize impacts of activities on Aboriginal Interests
- Accommodation will likely flow through licensing requirements
- Opportunities for potential impacts to rights to be mitigated exist through licensing

Major Resource Projects Initiative

- Budget 2007: “...to cut in half the average regulatory review period for major resource projects”
- Applies to large resource projects subject to a comprehensive study, panel review or complex multi-jurisdictional screening

Major Resource Projects Initiative

- Major Resource Management Office (MPMO) – point of entry into the federal regulatory system
- Service standards for timely and predictable regulatory process (Project Agreements)
- Transparency – regulatory process is tracked publicly against milestones
- Major resource projects

Rare Earth Minerals Projects

- Significant media and political coverage recently
- Canadian deposits:
 - Northwest Territories, Yukon, Labrador, Ontario, New Brunswick, Manitoba and Saskatchewan
- Exploration companies in Canada:
 - Avalon Resources, Quest Rare Minerals, Matamec, and Great Western Minerals

References

Amiel Blajchman – (416) 294-2379

amielb@globalisgroup.org

[@globalisgroup](#)

Globalis Group website: www.globalisgroup.org

CEAA website: www.ceaa-acee.gc.ca

MPMO website: www.mpmo-bggp.gc.ca