

## **Multi-Jurisdictional and Polycentric Environmental Assessment Workshop: A Once-in-a-Generation Law Reform Opportunity**

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**Objective: To establish a multi-jurisdictional and polycentric environmental assessment (EA) regime in Canada.**

### **Background:**

The Canadian EA regime is broken. At a time when the Canadian economy is both increasingly sluggish and unsustainable, we have an obligation – and perhaps a once-in-a-generation opportunity – to fundamentally reform EA to enable it to finally live up to its promise of promoting good decision-making. This task is even more pressing in light of Canada’s new international commitments under the Paris climate change agreement to reduce economy-wide absolute greenhouse gas emissions. Among the many priorities of meaningful EA reform (moving beyond project-level assessments, focusing on positive contributions to sustainability, avoiding costly trade-offs among interdependent economic, ecological, and social objectives), we focus on the overarching need for multi-jurisdictional cooperation and polycentric decision-making. Any serious effort to move from project-level EA focused on biophysical impacts towards fully integrated strategic and regional assessments (SEA and REA) and sustainability-based assessments calls for a polycentric model capable of facilitating collaborative experimentation among multiple jurisdictional actors, including the federal government, provinces, municipalities, First Nations and Indigenous peoples, NGOs, Academia, project proponents and industry groups, and the Canadian public.

### **Law Reform Challenges:**

The purpose of this workshop is to critically discuss the challenges of reforming the Canadian EA regime. In our view, the following six challenges merit close examination:

1. Overcoming the legal and political obstacles to meaningfully integrating the federal government and relevant provincial governments, municipalities, Indigenous communities, and other stakeholders into EA processes and decision-making.
2. Reanimating the concept of “cooperative federalism” in the context of a multi-jurisdictional and polycentric EA to facilitate comprehensive environmental reviews. And, closely related, reconciling a reinvigorated cooperative federalism

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with the existing EA continuum ranging from joint assessment to delegation, substitution, and equivalency.

3. Determining how the core elements of EA – design, information gathering and processing, public participation, initial decision-making, and post-decision implementation, monitoring, and review (including judicial review) – will fit and operate in a multi-jurisdictional and polycentric EA regime.
4. Conceptualizing and institutionalizing the relationship of tiered decision-making processes, including REA, SEA, project-level EA, and post-EA decision-making in a multi-jurisdictional context.
5. Rethinking how the traditional measures of EA outcomes – effectiveness, efficiency, and fairness – can be operationalized and interpreted in the context of a multi-jurisdictional and polycentric EA regime that holds government decision-makers accountable.
6. Determining whether and how *sustainability assessment* (e.g., a net contribution to sustainability test) fits into a reformed, multi-jurisdictional and polycentric EA regime.