



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

Your Role in an Assessment by a Review Panel:

A Guide for Chairpersons and Members



Canada

Canadian Environmental Assessment Agency

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Assessment by a Review Panel:**

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Chairpersons and Members**

July 2001

Prepared by the
CEAA Operational Policy Working Group

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1. PURPOSE OF THE GUIDE

This guide has been prepared for chairpersons and members of review panels established under the *Canadian Environmental Assessment Act* (the Act) and its related *Ministerial Guideline: Procedures for an Assessment by a Review Panel*. The guide is intended to serve two purposes:

- to have potential review panel chairpersons and members consult it before accepting their appointment - so they can have an overview of what is expected of them during a panel review and have a general understanding of the panel review process
- to have review panel chairpersons and members use it as an introduction to the more detailed briefings and orientation by the Canadian Environmental Assessment Agency (the Agency) that they will receive upon appointment

The objectives of this guide are to provide:

- a brief orientation to the Act and panel review process
- a review of the duties and responsibilities of the review panel chairpersons and members
- general guidance on review panel chairpersons' and members' activities throughout the panel review process

The guide has been developed with the assistance of former chairpersons and members of past review panels. They reviewed the guide and provided advice on key issues to be addressed.

Note

Many panel reviews now are conducted jointly with another federal authority (such as the National Energy Board) or another jurisdiction (such as a province). Although the fundamental requirements set out in the Act (such as the issues to be addressed and the need for public participation) must still be met in a joint panel review, many of the details with respect to review panel member responsibilities and the panel review process will differ from those outlined in this guide.

The Agency will provide members with specific guidance on their roles and responsibilities, and on the panel review process to be followed for joint panel reviews.

2. OVERVIEW

2.1 The Canadian Environmental Assessment Act

The Act came into force in January 1995, replacing the *Environmental Assessment and Review Process Guidelines Order* that had been in effect since 1984.

2.1.1 Purposes of the Act

As stated in section 4 of the Act, the purposes of the Act are:

- “(a) to ensure that the environmental effects of projects receive careful attention before responsible authorities take actions in connection with them;*
- (b) to encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;*
 - (b.1) to ensure that responsible authorities carry out their responsibilities in a coordinated and efficient manner with a view to eliminating unnecessary duplication in the environmental assessment process;*
- (c) to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and*
- (d) to ensure that there be an opportunity for public participation in the environmental assessment process.”*

The Act sets out responsibilities and the environmental assessment process of projects involving the federal government. It applies to projects for which the federal government has a decision-making authority either as proponent, land manager, source of funding or regulator.

2.1.2 Environmental Assessment Types

The Act establishes a number of environmental assessment types, depending on the nature of the project, the uncertainty related to the significance of possible environmental effects and/or when public concern warrants.

- Most projects are assessed by means of a screening; if designated by the Agency, a class screening (which is intended to streamline the screening process) may be used for screening of projects in the same category.

- Larger projects that have the potential for significant adverse environmental effects may require a more detailed assessment through a comprehensive study. The projects requiring this type of assessment are described in the *Comprehensive Study List Regulations*.
- Public reviews by a mediator or a review panel, appointed by the Minister of the Environment, are required when a project has unknown or potentially significant adverse environmental effects and/or where public concern warrants.

2.1.3 Guiding Principles

The Act is founded on the three following fundamental principles:

Environmental assessment as a planning tool

The environmental assessment process should be applied as early in the project's planning stages as practicable, and before irrevocable decisions are made, so that environmental factors are incorporated into decisions in a way that promotes sustainable development.

Self-directed assessment

The responsible authority, which is a federal department with a decision-making authority under the Act on the project, is given a measure of discretion when conducting the assessment through a screening or comprehensive study.

Public participation

Public participation contributes to the effectiveness of the environmental assessment and to the overall public trust and confidence in the environmental assessment process.

2.1.4 Factors to be Addressed

Under the Act, all environmental assessment types must include a consideration of:

- the environmental effects of the project, including effects of malfunctions or accidents and cumulative effects likely to result from the project in combination with other past or future projects and activities
- the significance of the residual adverse environmental effects
- any comments received from the public
- mitigation measures that are technically and economically feasible

In addition, while optional for screenings, comprehensive studies, mediations and panel reviews must consider:

- the purpose of the project
- alternative means of carrying out the project that are technically and economically feasible, and the environmental effects of any such alternative means
- the need for and requirements of any follow-up program
- the capacity of renewable resources that are likely to be significantly affected by the project to meet present and future needs

Additional factors also may be considered, including the need for the project and alternatives to the project, under any type of environmental assessment.

2.1.5 The Agency

The Act established the Agency to replace the Federal Environmental Assessment Review Office. The Agency reports to the Minister of the Environment, but operates independently of all federal departments and other agencies, including Environment Canada.

The Agency's objectives are to:

- administer and promote compliance with the federal environmental assessment process
- advocate high-quality environmental assessment, through leadership, training and research
- promote uniformity and harmonization in the assessment of environmental effects across Canada, with federal departments, provinces, territories and Aboriginal groups
- ensure opportunities are provided for public participation in the environmental assessment process

The Agency provides administrative support for mediators and review panels.

2.2 The Federal Panel Review Process

A review panel is appointed with the objective of reviewing and assessing, in an impartial and objective manner, a project that may have the potential for causing significant adverse environmental effects or where public concern warrants. Such projects may be referred by the responsible authority¹ to the Minister of the Environment for panel review.

A review panel's membership consists of non-governmental officials who are unbiased, free of any conflict of interest and have relevant knowledge or experience.

¹ Some projects may have more than one responsible authority.

Panel reviews are advisory rather than decision-making processes. Review panels submit recommendations to the Minister of the Environment and to the responsible authority. The latter, in turn, must seek Cabinet approval of the government's response to the review panel's recommendations.

In conducting a panel review, the review panel must:

- ensure that the information required for the environmental assessment is obtained and made available to the public
- convene public hearings in a manner that offers the public an opportunity to participate
- prepare a report setting out the rationale, conclusions and recommendations of the review panel, including any mitigation measures and follow-up program, as well as a summary of comments received from the public
- submit the report to the Minister of the Environment and the responsible authority
- be available to clarify the report, should the Governor in Council make such a request, once the report has been officially submitted

2.2.1 Ministerial Guideline

All review panel members should consult the *Ministerial Guideline: Procedures for an Assessment by a Review Panel*. The Ministerial Guideline seeks to improve the efficiency and consistency of the panel review process by establishing specified time periods for the different phases of the panel review. For example, the timeline for the panel review of a project from its referral to the submission of the report of the review panel has been set at a maximum of 396 days. This does not include the time required for the proponent to prepare the environmental impact statement or to supply additional information that is deemed necessary.

The procedures also include measures to promote public participation in the process, providing time for participants to prepare for scoping meetings to identify the environmental issues, information assessment meetings to discuss the adequacy of the environmental impact statement, hearings, and opportunities for direct questioning. Review panels may also choose to prepare supplemental procedures for the conduct of public hearings in accordance with their terms of reference.

2.2.2 Cost Recovery

In August 1998, the *Environmental Assessment Review Panel Service Charges Order* (the Charges Order) received Governor in Council approval and was published in the *Canada Gazette*, Part II, giving the Minister of the Environment legal authority to recover certain costs incurred by the Agency for review panels, and listing the schedule of fees. The Charges Order seeks to establish a fair, transparent and accountable system for cost recovery for review panel services. Its key features are:

- only the costs directly attributable to the conduct of the environmental assessment can be recovered from the proponent; indirect costs such as overhead, general administration and ministerial support services are not recoverable by the Agency
- a cost-estimate document is signed by the Agency and the proponent prior to the environmental assessment
- costs incurred by the review panel are carefully tracked and reported, and may be verified through an independent third-party audit

The Agency will manage all cost-recovery initiatives for review panels, independently of the review panel.

2.2.3 Participant Funding Program

The Participant Funding Program was established in 1990 to provide financial assistance to members of the public and organizations to prepare for and participate in panel reviews. Funding is provided to assist groups and participants, for example:

- hire experts to review documents and help prepare submissions
- attend public hearings
- defray travel costs associated with participating in public hearings
- inform and consult their membership

The participant funding program is administered directly by the Agency, independently of review panels.

Funding is normally made available in two phases to assist interested participants in activities associated with the panel review. The first phase is to assist with the scoping of the issues. The second phase is to assist in the examination of the EIS submitted by the proponent and participation in the hearings on the proposed project.

The review panel chairpersons and members should be aware of the funding process, because the requests for funds usually exceed the amount made available, and participants at public hearings may offer comments to the review panel about the allocations made. The review panel chairperson may need to explain the participant funding process and its independence from the review panel.

2.2.4 Public Registry

Under the Act, a public registry must be established for every environmental assessment to facilitate convenient public access to records relating to the assessment.

For a panel review, the public registry contains all records produced, collected or submitted for an assessment by a review panel, such as correspondence, all documents received by the review panel, public comments and hearings transcripts.

The public registry is managed by the review panel secretariat. Typically, a public registry is maintained in an office near the project site and at Agency headquarters. In addition, listing of key public registry documents is also maintained in the Federal Environmental Assessment Index, on the Agency's Web site.

2.2.5 Involvement of Aboriginal People in Panel Reviews

Panel reviews conducted under the Act are an important means of determining the implications of projects on Aboriginal people and their activities. They also provide Aboriginal people with opportunities to be involved in the environmental assessment process.

In panel reviews involving Aboriginal issues, the review panel's terms of reference may provide direction on involving Aboriginal people and on incorporating traditional ecological knowledge (TEK) into the panel review. TEK refers to a knowledge of the environment, ecological systems and cultural values, and is rooted into the culture and lifestyle of traditional resource users. Aboriginal people have acquired and applied TEK over generations as the foundation of their cultures. This information has generally been transmitted orally from generation to generation. It is considered to be the intellectual property of and held in common by Aboriginal people. When TEK is presented to a review panel, it is subject to the same scrutiny as any other testimony.

In developing its operating procedures, the review panel also will need to demonstrate sensitivity to Aboriginal cultural values and preferences, and to consider whether special measures are needed to facilitate the participation of Aboriginal people.

In consideration of the above, the review panel secretariat will be able to provide advice on such questions as:

- scheduling the location and timing of community meetings
- selecting a community liaison person, if needed
- the need for special hearing procedures

2.3 The Federal Decision-Making Process

The review panel officially submits its report to the Minister of the Environment and to the responsible authority and the report is made public shortly thereafter. Following the submission of the report, the responsible authority should make every effort to respond to the panel report within 60 days of receipt of the report. The responsible authority submits the proposed government response for Cabinet's consideration and once approved by the Governor in Council, the response is made public.

3. ROLES AND RESPONSIBILITIES

This section explains:

- the role of the Minister of the Environment in panel reviews
- the Agency's support for panel reviews
- the responsibilities that the review panel must assume during the panel review process

3.1 The Minister of the Environment

The role of the Minister of the Environment with respect to panel reviews involves:

- receiving or making the project referral
- determining whether the public review should be conducted by a mediator or a review panel
- selecting and appointing a review panel
- determining the terms of reference for the panel review (in consultation with the responsible authority)
- receiving and making public the report of the review panel

3.2 The Agency: The Review Panel Secretariat

The Agency will appoint, from among Agency staff, a review panel secretariat² (the secretariat) to support the review panel throughout the panel review process. Shortly following the appointment of the review panel, an orientation session is held and is presented by the review panel manager (the panel manager) and senior Agency representatives. This orientation session focuses on the Act and the panel review process.

The Agency will prepare draft guidelines for the preparation of the environmental impact statement prior to the review panel's appointment. The Agency will also be responsible for developing the preliminary budget for the panel review.

A good working relationship among the review panel chairperson and members, the secretariat and, in particular, the panel manager is essential to the effectiveness and efficiency of a panel review.

² As referred to in this guide, the "review panel secretariat" includes the review panel manager.

The secretariat under the leadership of the panel manager will be responsible for the following:

Provide general advice and coordination

The secretariat addresses the review panel's needs within the context of the Agency's responsibility, providing general advice and all support services. The secretariat also will initiate and manage contracts for any services that are determined to be essential to the conduct of the panel review, such as technical advice. In addition, the secretariat can support the review panel by making available other services that it needs to conduct and to conclude its work. This could include for example:

- serving as the main point of contact between the review panel and the other participants in the panel review
- designing and implementing a public information program
- providing regular financial information
- verifying the factual content of the panel report to ministers
- coordinating the provision of editing services

Provide communications and media relations

The panel manager should be the main point of contact for the media; however, this decision should be made with the review panel chairperson on a case-by-case basis. The secretariat usually will draft public announcements for consideration by the review panel. Other matters, such as the development of a communications plan for the panel review, usually will be discussed in principle by the review panel and implemented by the secretariat. The Agency's communications staff are available to provide support to the secretariat in the drafting of media documents such as news releases, media lines, Qs & As, etc.

In communicating to the public, the spokesperson should be as open as possible regarding the panel review process, while declining to comment on substantive issues. The review panel must not be seen to have reached substantial conclusions prior to the release of its report.

Provide procedural and financial advice

The panel manager is the senior Agency representative on the secretariat and manages the secretariat. The panel manager acts as the liaison with the review panel, the public, the media, the stakeholders, the panel secretariat and the Agency. The review panel should look to the panel manager for advice on the panel review process and on administrative and financial procedures, including, if required, clarification of its terms of reference.

The secretariat provides support to the review panel in the following areas:

- *Technical analysis* (includes technical and analytical support)
 - assists in finalizing the guidelines for the preparation of the environmental impact statement
 - assists in assessing the adequacy of the environmental impact statement
 - assists in assessing all public comments and submissions
 - prepares review panel chairperson and members for public hearings
 - provides technical support during the public hearings
 - assists in the writing of the report of the review panel
- *Information management*
 - operates the information office of the review panel
 - liaises between the review panel, the secretariat and the public
 - maintains the public registry
 - answers general queries
 - assists in the conduct of public hearings
- *Administrative assistance and support*
 - arranges travel and accommodation
 - reserves rooms for public hearings
 - arranges for translation services
 - arranges for temporary office services for review panel chairperson and members
- *Communication support*
 - communication advice to the review panel and the secretariat
 - manages media and public relations
 - manages the production of the report of the review panel
 - prepares public
 - develops strategic communications products such as news releases, media lines, Qs & As, etc.
- *Financial management*
 - assists in reviewing and updating the budget schedule
 - provides financial and administrative services to the review panel

3.3 The Review Panel: Chairperson and Members

3.3.1 Review Panel

The overall role and responsibilities that the review panel must assume during a panel review are explained below. Additional responsibilities that the chairperson must assume are explained in section 3.3.2.

All review panel members including the chairperson are responsible for:

- working to ensure that the panel review is impartial, transparent, equitable, unbiased and free of any conflict of interest
- sharing responsibility to conduct review panel business in a professional, collaborative, problem-solving, timely and cost-effective manner
- acquiring a detailed understanding of the project, its effects on the environment and public concerns about it, and how the report contributes towards the federal decision-making process
- attending and participating in all review panel meetings, public hearings and other activities, as well as contributing to meaningful discussions of pertinent issues
- contributing toward the objectives and the goal of producing a consensual report that addresses the key issues raised in the terms of reference

Conduct of the review panel

All persons appointed to membership on review panels are expected to conduct themselves in a manner that is in keeping with the high public profile of the review panel and with the basic principles of the environmental assessment process - impartiality, transparency and equity³. It is also important to note that members of a review panel are accountable to the Minister of the Environment.

Under the Act, members of the review panel have immunity from legal proceedings in respect of their involvement in the assessment by the review panel⁴. In the case where a court challenge may be launched on the panel review process or on the report of the review panel, members are immune to these legal proceedings.

³ Chairpersons and members of federal review panels are subject to part 3 of the Conflict of Interest Code developed by the federal Ethics Counsellor, the provisions of which are attached to the letter of appointment.

⁴ Subsection 35(6) of the Act states that "no action or proceeding lies or shall be commenced against a member of a review panel for or in respect of anything done or omitted to be done, during the course of and for the purposes of the assessment by the review panel."

With respect to the operations of the panel review, the review panel chairperson and members are expected to remain objective and impartial and so must:

- behave impartially and fairly toward all participants in the panel review
- demonstrate respect for all participants
- operate in a dignified, honourable, equitable and transparent manner
- not make oral or written communications about substantive issues associated with the panel review with anyone except other review panel members and the secretariat
- not communicate in private about matters under review with anyone except other review panel members and the secretariat
- respect the fact that internal deliberations of the review panel are confidential
- avoid informal contacts with the proponent and stakeholders, or other panel review participants

With regard to personal affairs, each review panel member including the chairperson must:

- ensure that his/her pecuniary interests do not conflict or appear to conflict with his/her official duties as a review panel member
- disclose all business, commercial, political or financial interests that might conceivably be construed as being in actual or potential conflict with his/her duties as a review panel member on a specific project
- be unbiased relative to the project prior to his/her appointment and throughout the course of his/her official duties
- advise the Agency of any possible conflicts of interest or biased views prior to letting his/her name stand as a potential member

The Agency will investigate these matters in identifying candidates to be recommended to the Minister of the Environment.

Annex A includes guidelines on conflict of interest and bias which the Agency uses when selecting potential review panel chairpersons and members.

Public values

Public participation is a defining feature of the panel review process and it is through this process that values, that the public holds with respect to a project, will be identified, e.g., state of the environment, lifestyle issues, human health issues, changes in the local economy. It can help identify important environmental effects, promote the credibility of the panel review, and contribute to better understanding and acceptability of any eventual decision on the project.

The integration of public values into the panel review may be considered one of the most important benefits of the review panel's work. To help integrate public values into the panel review, review panel chairpersons and members should:

- display considerable sensitivity to the cultural differences among different segments of the public
- ensure that the information submitted is relevant to the project being reviewed and is not frivolous in nature
- determine what the public values are concerning the environmental and directly related effects of the project
- develop sound conclusions and recommendations that take into account public values with respect to these effects

In addition to the importance of incorporating public values into the environmental assessment, review panels should proceed expeditiously and with awareness of the cost implications for participants as well as the review panel. More broadly, a review panel's information requirements and provisions made for public participation can significantly affect the costs for stakeholders, including the project proponent. The review panel should consider these implications when determining how the panel review should proceed.

Review panel confidentiality issues

Review panel deliberations often require frank exchanges among review panel members exploring alternative ways to characterize and resolve issues. To ensure that individual review panel members will feel free to express their views, such exchanges must be confidential. Care should be taken to provide individual review panel members with the freedom to change their positions on issues as new information becomes available.

The deliberations of review panels must be confidential to ensure that their conclusions and recommendations are not disclosed to the proponent, the media, the public or other parties until the Minister of the Environment releases the report. Thereafter, comments to the public by the review panel, if any, should focus on explaining the conclusions and recommendations in its report, rather than on the deliberation leading to them. The review panel chairperson, in particular, should take care to present the review panel's conclusions and recommendations rather than his/her own views.

Panel members' personal notes, taken during the course of the panel review (including during deliberations), are not subject to disclosure under the *Access to Information Act* or the *Privacy Act*.

Any member of the Agency staff who is brought into the review panel's confidence must do nothing to compromise the confidentiality of the review panel's deliberations - even after the Minister of the Environment releases the report of the review panel.

Access to legal counsel

Although panel reviews are non-judicial in nature, the review panel may need, over the course of a panel review, legal advice on various issues relevant to the review panel's mandate, such as questions on panel review procedures. The Agency will ensure that the review panel has access to legal counsel, if necessary.

3.3.2 Review Panel Chairperson

The review panel chairperson plays a pivotal leadership and management role in the environmental assessment conducted by a review panel. Additional administrative and leadership responsibilities, and key duties the chairperson has over other members of the review panel are as follows:

Ensure an impartial, transparent and unbiased assessment

The review panel chairperson assumes an essential leadership role in this area, and it is expected that his/her behaviour will reflect these values. Leadership would include such responsibilities as:

- preparing, in consultation with the panel manager, the agenda for all meetings
- conducting the meetings in a democratic and professional manner to enable all review panel members to express their opinions and suggest creative solutions to issues presented before them
- ensuring that the review panel's deliberations maximize the opportunity for consensus building, e.g., full participation by each member, review panel members being asked for their views on all key issues, controversial issues being discussed and dissenting views taken seriously, and areas subject to dispute being reanalyzed in an attempt to find common ground

Of particular importance is the need to chair public hearings in a thoroughly fair, considerate and efficient manner. During the public hearings, the review panel is "under the spotlight" and is exposed to the greatest degree of scrutiny from the public and media. The review panel chairperson must demonstrate that the review panel is interested in hearing from anyone who has something to say on a matter within its terms of reference.

Conduct an informed assessment

The review panel chairperson is responsible for ensuring that an informed assessment of the project and its potential environmental effects is conducted. To do so, the review panel chairperson must acquire a detailed understanding of the panel review process, the factors to be considered by the panel review and how the report contributes to the federal decision-making process.

A review panel acquires the knowledge needed to conduct an informed assessment which includes:

- holding scoping and information assessment meetings
- issuing guidelines for the preparation of the environmental impact statement (EIS)
- reviewing the proponent's EIS
- requesting additional information from the proponent, if necessary
- using expert information from the responsible authority and other federal authorities
- analyzing all public comments and submissions
- conducting hearings

Manage the panel review process effectively

The review panel chairperson is responsible for ensuring that the panel review process is managed effectively by, for example:

- overseeing the development and administration of the review panel work plans (including the time schedule) jointly with the panel manager and in consultation with the review panel
- promoting an efficient operation, avoiding unnecessary expenditures and respecting the allocated budget
- making every reasonable effort to conclude the panel review on schedule
- assuring accurate and timely communications between the review panel and the panel review participants
- maintaining a professional, collaborative, problem-solving relationship with other review panel members and the secretariat
- providing feedback to the panel manager on administrative issues and technical expertise
- planning and producing a consensual report that addresses and abides by the terms of reference

4. KEY STEPS IN THE PANEL REVIEW PROCESS

This section reviews the activities of the review panel during the major steps in the panel review process.

4.1 Preparing for the Panel Review

Before the review panel is appointed, the Agency will prepare for the panel review.

4.1.1 Determination of Panel Review Requirements

The Ministerial Guideline recommends that the responsible authority provide the Agency with a minimum 60-day notice that a referral to a panel review is likely. The Agency then determines whether a joint review is required with another federal authority or provincial government, whether a substituted process may be used to review the proposal, or whether mediation may be appropriate.

4.1.2 Establishing the Review Panel's Terms of Reference

The terms of reference, outlining the government's expectations of the issues to be addressed in the panel review, are determined by the Minister of the Environment in consultation with the responsible authority. The terms of reference usually contain:

- a project description
- a reference to the scope of the project pursuant to section 15 of the Act
- a reference to the factors and the scope of the factors to be considered pursuant to section 16 of the Act
- an outline of time lines, should these be different from those contained in the Ministerial Guideline
- issues that are not to be examined in the assessment by the review panel, such as government policy on matters related to the proposal
- the language requirements for the environmental impact statement and the guidelines for its preparation

The draft terms of reference are distributed to interested parties, including the proponent, in advance of the review panel's appointment. They are released for a minimum 30-day public comment period before being finalized. Potential review panel members also consult the draft terms of reference prior to accepting their appointment.

In conducting a panel review, the review panel may wish to seek clarification of some part of the terms of reference. Should the review panel require clarification or a minor amendment of its terms of reference, the chairperson should make those requests in writing to the President of the Agency. Requests for substantive amendments must be made to the Minister of the Environment.

4.1.3 Developing the Panel Review Budget

The Agency will develop the preliminary budget for the panel review. The secretariat will present the budget to the review panel. It is the secretariat's responsibility to finalize it and to ensure that the allocated budget is respected. Should further funding be required due to unforeseen circumstances - such as undertaking a longer panel review than anticipated, thus incurring additional expenses - the review panel chairperson should discuss this with the secretariat who would then address the issue with the Agency.

4.1.4 Appointment and Orientation of the Review Panel Chairperson and Members

Appointment

Under the Act, review panel chairperson and members must be unbiased and free from any conflict of interest relative to the project, and have knowledge or experience relevant to the anticipated environmental effects of the project. Review panel chairperson and members also must have strong analytical skills and be able to work as part of a team.

Review panel chairperson and members are appointed by the Minister of the Environment in consultation with the responsible authority, on the basis of recommendations from the Agency. A news release from the Minister usually announces the appointments and the review panel's terms of reference.

Two key documents are provided to the review panel upon its appointment: the review panel's terms of reference, which are provided by the Minister of the Environment, and the draft guidelines for the preparation of the EIS, which are provided by the Agency.

Orientation

During its first meeting, the review panel is briefed on the Act and on the basic procedures of the panel review process. It is essential that the review panel acquire, at the very beginning, a clear understanding of its mandate. The first meeting will cover a number of issues, including:

- an outlook of the panel review process steps and timing
- the terms of reference
- role of the secretariat
- media relations

- legal issues
- guidance material
- budget
- other administrative details

This briefing usually is provided by the panel manager and senior Agency representatives. The panel manager usually will approach the review panel chairperson beforehand to discuss the agenda for the briefing session and other matters to be raised at the first meeting.

As part of its orientation, the review panel also may want to schedule a visit to the project site. This visit, arranged by the secretariat, is an opportunity for the review panel chairperson and members to familiarize themselves with the project's design, individual components and geography. Private site visits should not be contemplated by the review panel, i.e., site visits which may involve interaction with the proponent only.

4.2 Developing the Review Panel's Operational Procedures

4.2.1 Purpose of the Operational Procedures

The first document normally released by the review panel is the detailed operational procedures for the panel review which may be supplemental to the Ministerial Guideline, but must be consistent with it. The operational procedures elaborate upon the general panel review principles and process, and inform the proponent and interested members of the public how the review panel intends to function. They also include the key elements of the public participation program developed by the review panel.

Recognizing the unique circumstances of each panel review, the secretariat will prepare a draft of the operational procedures, based on past experience in other assessments by review panels. The draft will be examined by the review panel, and a final version adopted for publication after it has been approved by the review panel. The operational procedures usually are released shortly after the review panel's first meeting.

4.2.2 Public Participation Program

The public participation program helps the review panel focus all the elements of public participation into one document, identifying opportunities for public participation during the panel review, such as:

- the consultation sessions on the draft guidelines for the preparation of the EIS and on the EIS
- any panel-proponent information sessions
- the hearings

In facilitating these opportunities, the review panel must consider the role of an information officer (if required), translation requirements which may be referenced in the review panel's terms of reference and the seasonal, economical, social and cultural considerations of the communities most affected by the project. For example, seasonal activities may affect the timing of public hearings and cultural considerations may affect the procedures for public hearings.

4.3 Finalizing the Guidelines for the Preparation of the Environmental Impact Statement

4.3.1 Purpose of the Guidelines

The guidelines for the preparation of the EIS are essentially instructions and advice to the proponent for preparing a report on the environmental effects of the proposed project. The guidelines establish the issues that the proponent must address, such as:

- how to describe and assess these issues
- how to structure the EIS
- the language requirements for the EIS

They can also serve to communicate to the proponent and all other participants, the approach that the review panel intends to take to the panel review - for example, the approach the review panel will take in dealing with specific issues, (e.g., TEK or sustainable development). The EIS guidelines must be clear, practical and relevant to the decision at hand. They must flow directly from the review panel's terms of reference. And they must be thorough and focused without being overly prescriptive so as to provide flexibility to the panel review process.

While the guidelines for the preparation of the EIS provide a framework for preparing a thorough report, it is the responsibility of the proponent to provide sufficient data and analysis to allow evaluation of the environmental effects of the project - by the review panel, the public and the regulatory agencies.

4.3.2 Draft Guidelines for the Preparation of the Environmental Impact Statement

Usually, Agency staff will prepare draft guidelines prior to the review panel's appointment, in consultation with the responsible authority. The Agency will make the draft guidelines available for public comment at the time of referral or shortly thereafter, for a period of 45 to 90 days. This review period provides an opportunity for the public, government agencies, industry and the proponent to comment before the draft guidelines are finalized by the review panel and issued to the proponent.

The review panel should avoid issuing all-inclusive guidelines that try to address every issue identified. This leads to an unnecessary expenditure of time, money and energy by participants on issues that do not have any real potential to affect project decisions. An issue should be included

in the guidelines if the information generated in studying that issue is likely to be essential to addressing the review panel's terms of reference. Clear guidelines reduce the chances of delays arising from deficiencies in information during the documentation review stage. The secretariat may be able to advise the review panel on ways of focusing the guidelines on key issues. Guidelines from previous panel reviews will be available from the secretariat for consideration by the review panel.

4.3.3 Scoping Meetings

"Scoping" is identifying the environmental and related issues that should be examined in the environmental assessment. It is intended to ensure that the issues to be studied in the panel review fairly represent the concerns of the interested parties. Scoping meetings are usually held to prepare the guidelines on issues likely to influence the conclusions and recommendations of the review panel. These meetings are usually held as early as possible.

Shortly after its appointment, the review panel will receive written comments from interested parties on the draft guidelines. Should there be a delay in establishing the review panel, the Agency will submit to the review panel upon its appointment the draft guidelines together with the comments received. The review panel will then decide on the need for scoping meetings taking into account comments received on the draft guidelines and the length of time these were available for public examination.

The timing and location of these meetings, to be determined by the review panel, should take into consideration communities that could be affected by the project, interested parties, their location and time availability, local culture and customs of affected communities, and the need to complete the panel review in a timely and cost-effective manner. The review panel is required to provide 45 days advance notice of the meeting.

Scoping meetings should be carefully planned to avoid confusion with the other types of meetings (e.g., information assessment meetings, technical meetings, hearings). Various approaches are used to carry out scoping meetings. The Agency usually prepares draft guidelines and publishes them. The review panel then holds meetings to discuss the requirements at which participants identify issues that were overlooked in the draft guidelines and these may be added to the final guidelines.

If the review panel decides to hold scoping meetings, procedures should be developed by the review panel to ensure that participation is fair and equitable for all participants. Scoping meeting procedures should be similar to hearings procedures, but less formal. For example, it is helpful for presentation documents to be presented in advance but this should not be mandatory. Time periods for each presentation should be limited but some flexibility should be allowed. The secretariat can provide guidance on the appropriate procedures.

4.3.4 Final Guidelines

Based on its review of the draft guidelines for the preparation of the EIS, and on comments received from the proponent, government departments and agencies, environmental groups, members of the public, and others, the review panel will finalize the guidelines. Once the guidelines are finalized, the review panel will issue them to the proponent and make them public.

In some cases, the proponent may seek to clarify an aspect of the guidelines or to confirm its understanding of the requirements. The secretariat may be able to respond to such requests.

4.4 Reviewing the Environmental Impact Statement

4.4.1 Preparing the Environmental Impact Statement

The proponent is responsible for producing the EIS. This may involve conducting original research, as well as any other work that is undertaken to produce the information requested by the review panel. The EIS should address:

- the purpose of the project
- alternative means of carrying out the project
- the project's likely environmental effects and the significance of residual effects
- mitigation requirements
- public concerns
- the need for follow-up
- any other matter determined to be relevant to the panel review, such as need for the project and alternatives to the project

The EIS will serve as the basis for the panel review of the proposed project by the review panel, the public and other interested parties. The EIS should also include an executive summary.

The Ministerial Guideline states that within 90 days of receiving the guidelines for the preparation of the EIS, the proponent should provide the review panel with a written schedule for preparing the EIS. The length of time that the proponent takes to prepare the EIS depends on the requirements of the guidelines, and the ability and resources of the proponent to collect the information.

Meanwhile, the review panel should prepare itself and come to an agreement on the procedures to be used in conducting the review of the EIS. This includes clarifying the role of the analyst and/or technical experts and review panel members' lead responsibilities for specific sections of the EIS based on individual expertise.

The review panel may ask the proponent to distribute the EIS which is especially desirable when timelines are tight and recipients are located in remote areas. When this occurs, the secretariat will monitor the distribution and should ensure that the review panel receives copies prior to general distribution.

4.4.2 Use of Technical Experts

The review panel should depend, as far as possible, on its own technical expertise and that of the government departments that have specialist knowledge or responsibilities relevant to the project. In preparing to review the EIS, the review panel may consider retaining the services of independent non-government experts to provide advice on certain subjects within the review panel's terms of reference.

The secretariat can advise and assist the review panel in effective means of soliciting technical advice from government departments. Any advice received from government departments is part of the public record and must be obtained in a way that recognizes the impartiality of the review panel.

The review panel should consider hiring technical experts from outside the government where advice from such experts is regarded as absolutely essential in responding to its terms of reference and where the review panel chairperson is satisfied that the required expertise cannot be obtained within the public service. These individuals should be hired only for the purpose of advising on the adequacy of core information provided to the review panel by the proponent, or to provide another opinion on a key subject where there is significant disagreement among experts. Experts could also be used to provide the review panel with an orientation on certain subjects. For example, they could provide a workshop for the review panel and panel review participants on a highly specialized subject affecting the panel review. Experts, however, must not be engaged to conduct original research or to complete the EIS.

The list of experts retained by the review panel will be made public by the review panel. All documents obtained or created by the experts will be made publicly available upon receipt by the review panel, with the exception of information subject to solicitor-client privilege.

4.4.3 Information Assessment Meetings

While the proponent is preparing the EIS, or where the EIS has previously been made available, the secretariat will consult with interested parties on the schedule and location for information assessment meetings. These meetings are required under the Ministerial Guideline. Normally the session is held after the period for public comments on the EIS is over, so that the review panel can consider the public submissions when developing its questions for the information assessment meetings.

The main objective of these meetings is to assist the review panel in determining the adequacy of the information submitted by the proponent by offering a forum, precise and focused in nature, for clarifying the information contained in the proponent's EIS. For example, the review panel may have questions about the validity of the methodology used by the proponent in conducting a study. If such questions cannot be answered by the proponent at the information assessment meetings, the review panel may issue a request for additional information or may prepare questions to be asked at the hearings.

All information assessment meetings are open to the public and to federal and provincial representatives who may benefit from the questions and responses exchanged between the review panel and the proponent. However, these meetings are not intended to replace or supplement the hearings, and should not be used to raise issues other than those related to EIS technical information.

In terms of procedures, the information assessment meetings can be divided into different topics that reflect subjects of interest. The proponent may be invited to describe the project and its environmental effects, as related to the topic of the meeting. The remaining time in each meeting may be used by the review panel to ask questions for clarification. Questioning usually is carried out in an informal manner and should be restricted to matters of clarification based on technical data or descriptions in the EIS. While other participants generally act as observers at these meetings, the review panel may establish procedures that enable it also to seek clarification about the EIS.

Following completion of information assessment meetings, the review panel determines whether it has adequate information to proceed to hearings. In doing so, the review panel should consider its own detailed review of the documentation, the written comments of the public, government departments, other governments and technical experts, written exchanges between the interested parties, and the discussions held during information assessment meetings.

Detailed comments on the merits of the opinions and conclusions of the proponent should be made at the time of the hearings rather than during the information assessment meetings.

4.4.4 Determining the Adequacy of the Environmental Impact Statement

In the past, review panels have determined "adequate information" as information that meets the guidelines and is sufficient to support meaningful discussion of the issues at hearings.

If the review panel determines that the EIS contains only relatively minor deficiencies and is assured that the proponent will be able to respond to them prior to hearings, it may proceed to schedule the hearings. The review panel will need to be cautious as it is possible that the supplementary information will not be available before the hearings begin or that other participants will request additional time to review the new information.

If the review panel determines that the EIS lacks essential information, it should direct the proponent, publicly and in writing, to provide the missing information before proceeding to the hearing phase. This additional information will then be made available for review by the public, and the review panel will determine whether it now has adequate information to proceed to hearings.

Where the project design has changed subsequent to the submission of an EIS and the review panel concludes that the change in the project design falls outside the project described in the review panel's terms of reference, the review panel will inform the Minister of the Environment of this and seek direction. In deciding if the project has changed significantly, the review panel should remember that the environmental assessment process occurs early in the planning stages of a project, and minor changes to the project may occur as the proponent listens to public comment and plans the project's development.

In the event the review panel was appointed only after preparation of the EIS, review panel chairperson and members will need to determine if the information is adequate before proceeding with hearings.

4.5 Conducting Hearings

Once a review panel determines that it has adequate information to proceed to hearings, it will issue a hearing notice of at least 45 days prior to the commencement of the hearings. Hearings provide the main opportunity for participants to raise issues and convey their views about the project to the review panel.

4.5.1 Preparing for Hearings

The review panel must decide on the location(s) for the hearing sessions (unless specified in a project-specific agreement) and plan for an appropriate period of time at each location, taking into account the costs and time involved. The secretariat will prepare a draft schedule for the review panel's consideration, based on the level of interest demonstrated by previous contact with stakeholder and on the past experience of the Agency.

Prior to scheduling the hearings, the secretariat should consult with interested parties on the timing and location(s) for the hearings. This could be in the form of a pre-hearing conference or could be a written or oral exchange. The timing, location, and format of the hearings will take into consideration communities that could be affected by the project, interested parties and their location and time availability, local culture and customs of Aboriginal, rural and remote communities, and the need to complete the panel review in a timely and cost-effective manner.

The review panel is responsible for ensuring that information required for the assessment is obtained and made available to the public. If necessary, the review panel can summon witnesses and order the submission of essential documents and materials for review. However, such action should rarely be required and should be considered only after consulting the secretariat on all other alternative means of obtaining the information.

The review panel chairperson and members have an obligation to prepare for the hearings carefully by reading the materials and deciding which questions need to be answered at the hearings. Discussing the issues at the review panel's planning meetings helps the members prepare for the hearings and identify those issues that are particularly important.

As part of their duties, the review panel chairperson and members should read the entire EIS. However, in the past, some review panels have chosen to ask review panel members with expertise in certain areas to brief the other members on the implications of those particular sections of the EIS.

At the direction of the review panel, the secretariat may assist in these preparations by developing a draft list of questions that should be asked at the hearings, if the issues are not raised by other participants.

4.5.2 Types of Hearings

A review panel may hold community, general, and technical hearings. All three kinds of hearings are open to the public.

Community hearings

Community hearings are similar to "town hall" meetings, in that they encourage full and open participation of people living in or adjacent to the area potentially affected by the project. Presentation priority is given to local residents and registration is usually optional.

General hearings

General hearings, usually held in larger urban centres near the project, provide the opportunity for organizations, businesses or individuals to make presentations to the review panel on any aspect within the scope of the panel review (unless the review panel has designated a specific subject for that session). It is recommended that the review panel require prior registration of presenters and ask for written presentations in advance (e.g., 10 days) so that the review panel and all participants have an opportunity to review the subject matter before the hearings. At these hearings, the review panel may also designate certain times and dates for the discussion of particular issues and announce future hearings.

Technical hearings

Technical hearings provide an opportunity for interested persons to give a presentation on specific technical or scientific issues. The specific topic for each technical session is identified during the hearings schedule. As with general hearings, it is recommended that the review panel require prior registration of presenters and ask for written presentations in advance. It is sometimes advisable to request that abstracts of the presentations be submitted before final scheduling. This provides the review panel with an opportunity to group presentations that relate to specific issues.

4.5.3 Hearing Procedures

Since the inception of the federal environmental assessment process, hearings have been held in a way that facilitates public participation in the panel review. They directly involve individuals, communities and citizens' groups in issues that traditionally come under the authority of elected officials. Hearings allow participants to exchange and make available to the review panel relevant information and, where possible, to promote consensus rather than to adjudicate differences. This includes determining the problem areas of a proposal, as well as its justification, and examining environmental issues from their own point of view.

Hearings encourage discussion of contentious issues and allow the proponent a public forum in which to respond. These discussions lead to better understanding of the project, its potential environmental effects and other issues raised in the panel review.

Hearings shed new light on certain technical aspects of the proposal, and reveal dimensions that may have escaped the proponent or the responsible authority. Perhaps most importantly, they also allow the review panel and the government decision makers to define the values the population associates with the project.

The review panel's responsibility is to hear, investigate, analyze, draw conclusions and make recommendations relevant to its terms of reference, all of which are fundamentally influenced by the public's involvement in the panel review as a whole and, in particular, in the hearings.

Hearings provide a forum in which expert opinions may link with the judgments or the choices of society. Above all, the hearings involve consultation, not decision making. The review panel also must ensure that the hearings are fair and respect the principles of natural justice and procedural fairness (see Annex B).

Hearings are non-judicial but structured. All participants should be treated with respect. The general nature and specifics of the hearing procedures are issued by the review panel in its operational procedures document.

Hearings are to be public unless the panel is satisfied that “specific, direct and substantial harm would be caused to the witness” (s.s. 35(3) of the Act) by the disclosure of certain evidence. If an in-camera hearing is held, the review panel chairperson should summarize the information for the public record, if he/she is able to do so in a manner that would not be harmful to the witness and would not mislead the public. (In-camera hearings during panel reviews are extremely rare.)

For any type of presentation, the review panel procedures should specify a time limit.

Special hearing procedures are sometimes developed for Aboriginal communities where a less formal procedure is required or requested by the community. The secretariat, who has responsibility for all the logistical arrangements, can help the review panel determine appropriate procedures in consultation with the Aboriginal community.

As is the case with other documents considered by the review panel, hearing documents and transcripts are maintained on the public registry. It should be noted that the review panel cannot receive any new documentation following the close of hearings. As a result, the review panel should ensure that it has all the information it needs before it concludes its hearings and begins report writing. Should new information be presented during the hearings, the review panel should consider officially closing the hearings sometime after the final hearing as to enable participants to make final comments on the new information.

4.6 Preparing the Report

4.6.1 Writing the Report

After the hearings are finished, the review panel will meet as soon as possible to discuss the content of its report. The secretariat may have prepared some documents in advance that would assist the review panel (e.g., a list of key issues discussed at hearings).

In general, the report must set out the concerns raised in the hearings and the rationale, conclusions and recommendations of the review panel relating to the environmental assessment of the project, including any mitigation measures and follow-up program, and a summary of the comments received from the public. All recommendations must respond clearly and directly to issues and information requirements set out in the review panel’s terms of reference. It is important to note that the review panel’s recommendations can be implemented only within the constitutional and legislative capabilities of the governments to which they are addressed. Finally, it is recommended that the report include an executive summary and a complete project description, including site map.

The secretariat is available to assist in drafting the report under the direction of the review panel. As part of its functions, the secretariat will ensure that the report is consistent with the review panel's terms of reference and the Act. While individual review panel members may, on the basis of their expertise, be asked to draft sections of the report, this procedure may create problems. It may lead to stylistic unevenness in the report and even cause difficulties in reaching consensus if writers become too attached to the text they have drafted.

Review panels must take the time to thoroughly review the text to ensure clarity of expression and to avoid ambiguities. Once the report has been signed by all members of the review panel, its content cannot be modified in any way without the consent of the review panel.

The report is entrusted to the secretariat to arrange for professional editing, translation and printing. The review panel must ensure the accuracy of the information contained in its report and can rely upon the secretariat to arrange for verification of the factual content of the draft text. The review schedule must allow sufficient time for these activities, while ensuring that the report is submitted in a timely manner.

During the period prior to its public release, when the report is confidential, the Agency is responsible for ensuring that the report remains confidential and secure.

4.6.2 Submitting the Report

Once the report is printed, the review panel submits its report to the Minister of the Environment and to the responsible authority. Upon submission, the report becomes the property of the Minister of the Environment and the responsible authority, and remains confidential until the Minister of the Environment decides to release it to the public.

The report should be sufficiently clear to speak for itself. Occasionally, however, with the consent of the President of the Agency, the Minister of the Environment and the responsible authority, it may be useful for the review panel chairperson to hold a press conference at the time of release. The purpose would be to draw attention to the main conclusions and recommendations of the review panel, particularly where the report is lengthy or complex. There should be no reference to internal review panel discussions leading to the conclusions and recommendations.

After the report is publicly released, the responsible authority develops a response to the report and determines a course of action with respect to the project, subject to the approval of the Governor in Council. The Governor in Council may seek clarification from the review panel on any of the recommendations set out in the report, prior to approving the responsible authority's response.

The release of the responsible authority's response to the report brings to a conclusion the work of the review panel. The Agency sends a letter to the review panel chairperson and members formally notifying them that the review panel has been disbanded.

4.7 Evaluating the Panel Review

The Agency has adopted the practice of evaluating each assessment by a review panel shortly after the review panel submits its report. The President of the Agency may ask the review panel chairperson and members to analyze the effectiveness of the review panel's terms of reference and the operational procedures. The Agency also may invite the review panel chairperson to make a presentation to Agency staff and departmental representatives on the lessons learned throughout the panel review.

An opportunity may also be given to participants to evaluate the panel review process. The Agency considers the evaluations and determines what, if any, procedural modifications are desirable. All this information is kept on the public file for the use of future panel reviews.

ANNEX A

GUIDANCE ON CONFLICT OF INTEREST FOR MEMBERS OF REVIEW PANELS AND PARTICIPANT FUNDING REVIEW COMMITTEES

Objective

This guidance is provided to potential members (members) of review panels and participant funding review committees so that public confidence in the integrity of individuals appointed by the Minister of the Environment or the President of the Canadian Environmental Assessment Agency (the Agency) may be enhanced.

The *Canadian Environmental Assessment Act* (the Act) requires in paragraph 33(1)(a) that the Minister of the Environment appoints panel members who are “unbiased and free from any conflict of interest relative to the project” subject to panel review. While there are no similar requirements governing the appointment of members of participant funding review committees, the Agency applies the same criteria to the appointment of these members.

Definition

Conflicts of interest may be real, perceived or potential. A “real” conflict of interest may be defined as a situation in which a member has a private or personal interest sufficient to influence the objective exercise of his or her official duties. A private or personal interest could be financial or it could be providing a special advantage to an individual or organization. A “perceived” conflict of interest is one in which a reasonable person would think that the member’s judgment is likely to be compromised. A “potential” conflict of interest involves a situation that may develop into a real conflict of interest.

“Bias” may be defined as a preconceived opinion which could result in a highly personal distortion of judgment and would thus interfere with the ability to perform official duties objectively.

Principles

Conflict of interest and bias are often not black and white. Because they encompass situations where an actual conflict of interest or prejudice exists, and also situations which create the appearance of conflict or bias in the eyes of reasonable people, three general principles should guide your conduct.

Ethical standards: You should act honestly and ethically. You should consider carefully whether you, as a member, would have a preconceived, highly personal opinion for or against a project. If you are aware of such a bias, you should inform the Agency and/or withdraw your

name as a potential candidate for panel or committee membership. It is paramount that public confidence and trust in your integrity, objectivity and impartiality are maintained.

Public scrutiny: You should perform your official duties and arrange your private affairs so that they will bear the closest public scrutiny.

Public interest: You should arrange your private affairs in a manner that will prevent real, potential or perceived conflicts of interest from arising between your private interests and your official duties and responsibilities. If such a conflict does arise during the course of your official duties, it should be resolved in favour of the public interest.

Identifying Real, Perceived or Potential Conflicts of Interest

A conflict of interest situation will arise if you have a direct pecuniary interest in the outcome of the panel review, either personally or through an immediate family member.

Affiliating yourself with any entity that has a direct interest in the outcome of the panel review could also create a conflict of interest situation.

Accepting any incidental gifts and hospitality (e.g., lunches, dinners) offered by interested parties to the panel review could affect or appear to affect the impartial nature of the panel review process.

Avoiding Conflicts of Interest and Perceptions of Bias

In order for the public to have confidence in the integrity of the panel review process, objectivity and impartiality must be maintained.

Prior to your appointment, you could minimize the possibility of conflicts and perceptions of bias by ensuring that your private interests have not and will not conflict with your official duties as review panel member. For example, if in the course of your own private business, prior to your appointment as a member, you provided advice to a client which subsequently could be viewed as potentially influencing the outcome of the panel review of the project, you could have a real or perceived conflict of interest. You should advise the Agency of this prior to letting your name stand as a potential member.

You should be unbiased relative to the project prior to your appointment and throughout the course of your official duties. You should not enter into any arrangements that might be construed as being in actual or potential conflict of interest or that might give the impression that you are biased, either towards or against the project. Maintaining review panel and committee confidences, throughout the panel review or committee process and after the panel review has been completed, will also reduce the possible perception of conflict and will enhance public trust in the entire environmental assessment process.

ANNEX B

PRINCIPLES OF NATURAL JUSTICE

There are legal requirements governing proceedings such as those of a review panel. The violation of these legal requirements by a review panel (or by one of the panel members) may be a basis for the court to set aside the decisions that will be made by the responsible authorities in consideration of the panel report. In such a case, the review panel may have to reconvene in order to then fully comply with the applicable legal requirements. When so ordered by the court, it may even be necessary to conduct a new panel review, with new panel members. In some circumstances a panel member may also be prohibited from participating further in a panel review.

Duty To Act Fairly

One of the most important legal requirements governing the proceedings of a review panel is that a panel must not do anything which is procedurally unfair.

In the context of a panel review, this first means, as per section 33 of the Act, that panel members must be unbiased and free from any conflict of interest relative to the project (see Annex A).

The duty not to do anything which is procedurally unfair also means that every person must be given an adequate opportunity to be heard before a decision affecting his or her interests is made.

It is difficult to define, in the abstract, what an adequate opportunity to be heard is, and it will depend on the particular circumstances of each case. In the context of a panel review, this will generally include, without necessarily being limited to, the two following principles:

- The issues must be decided on the basis of the evidence presented to the panel (orally or in writing) and disclosed to all parties. Evidence cannot be collected after the hearing has closed, and without allowing parties to see it and reply to it. This does not preclude members from applying their expertise to the evidence which forms the record of the hearing, but they cannot add to it. If any evidence (e.g., studies, reports) comes to the attention of the panel, and if the panel intends to take this into consideration, it should be made available to the parties for comment.

- All individuals must be given an equal and fair opportunity to respond to anything which may be contrary to their interests.

Duty not to Exceed the Jurisdiction

Another important legal requirement governing the proceedings of a review panel is that in fulfilling its mandate, the panel must stay within, and not exceed, its jurisdiction. The source of a review panel's jurisdiction is the Act and the panel's terms of reference. Generally speaking, a review panel cannot do anything that would be directly contrary to the Act or to the terms of reference. If the Act and the terms of reference are silent on a specific issue, the panel may however do whatever is necessary for fulfilling its mandate, provided that it is not otherwise prohibited by any other law, that it is consistent with the objects of the Act and of the terms of reference, and that it is not unreasonable. Administrative law gives tribunals, boards or panels such as a review panel broad discretionary powers, but does draw boundaries around conduct which violates norms. For example, the panel is permitted to consider a very broad range of evidence, but not something that would be clearly irrelevant for the purpose of fulfilling its mandate.

Conclusion

Any breach of the panel's duty to act fairly, or any excess of the panel's jurisdiction, may have major consequences for all the participants in the review. For example, judicial review proceedings are costly, and decisions of the court may be rendered after considerable delay. To minimize the risks of breaching the panel's duty to act fairly, or of exceeding the panel's jurisdiction, openness and transparency and the ability to be heard are key. If in doubt, it may be prudent to seek legal advice on how you should govern yourself.