

Questionnaire for the

**REPORT OF CANADA ON THE IMPLEMENTATION  
OF THE CONVENTION ON ENVIRONMENTAL  
IMPACT ASSESSMENT IN A TRANSBOUNDARY  
CONTEXT**

in the period 2006–2009

**Information on the focal point for the Convention**

Name and contact information:

Mr. Yves Leboeuf

Vice-President, Policy Development

**Information on the point of contact for the Convention**

Name and contact information (if different from above):

Ms. Elaine Feldman

President, Canadian Environmental Assessment Agency

**Information on the person preparing the report**

- |       |                  |  |
|-------|------------------|--|
| i.    | Country          | Canada   |
| ii.   | Surname          | Aubry  |
| iii.  | Forename         | Gerald   |
| iv.   | Institution      | Canadian Environmental Assessment Agency   |
| v.    | Postal address   | 22 <sup>nd</sup> Floor, Place Bell Canada, 160 Elgin Street, Ottawa,<br>Ontario, Canada, K1A 0H3 |
| vi.   | E-mail address   | gerald.aubry@ceaa-acee.gc.ca   |
| vii.  | Telephone number | 613-957-0604   |
| viii. | Fax number       | 613-957-0897   |

Date on which report was completed: June 2010

# PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

*In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.*

## Article 2

### General Provisions

#### DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2.2).*

The Canadian Environmental Assessment Act

2. *Indicate any further measures to implement the provisions of the Convention that are planned for the near future.*

#### TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

3. *Describe your country's national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2.2):*

- a. *Describe the EIA procedure in your country and indicate which steps of the EIA procedure include public participation;*

See response to question 6 a.

- b. *Describe how the different steps of the transboundary EIA procedure set out in the Convention fit into your country's national EIA procedure;*

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure (notification, consultation between Parties, public participation, etc.). Also list the authorities responsible for the domestic EIA procedure, if they are different;*

The President of the Canadian Environmental Assessment Agency acts as Canada's Point of Contact for notification under the Convention. Other authorities would be identified on the basis of the transboundary nature of the proposed project and its associated transboundary environmental effects.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases? If so, name it. If not, does your country intend to establish such an authority?*

The Canadian Environmental Assessment Agency would collect information on transboundary EIA cases related to the implementation of the Convention.

4. *Does your country have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

Canada would initiate consultations with the government authorities in the neighbouring jurisdictions. The discussions would focus on the following areas of cooperation:

- Information sharing on the project and its potential environmental effects;
- Legislative or regulatory requirements for the conduct of environmental assessment procedures;
- Public communication and participation requirements/opportunities in the environmental assessment procedures;
- The technical review of the environmental information;
- The possibility of joint hearings;
- The timing and announcements of decisions; and
- Follow-up requirements.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

5. *Is appendix I to the Convention transposed into your country's national legislation? Does your country's legislation already cover the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), and if so, how? Please describe any differences between the national list and appendix I to the Convention. Please explain how your country interprets terms such as "large" and "major" used in appendix I (including in items 4, 8, 11, 14, 16, 17 and, as appropriate, 22).*

Canadian Environmental Assessment Act (CEAA) applies to a wide range of proposed projects that are commensurate to those listed in Appendix I to the Espoo Convention. CEAA also applies to many other types of projects that are not listed under Appendix 1. If a Responsible Authority is involved in a proposed project (see response to question 6.a., below), that Responsible Authority is required to consider the environmental effects of the proposed project whether these effects take place in or outside of Canada.

6. *Please describe:*

- a. *The legislation and, where appropriate, the procedures your country would apply to determine that an "activity", or a change to an activity, falls within the scope of appendix I (art. 2.3), or that an activity not listed should be treated as if it were (art. 2.5);*

For the purposes of implementation of the Espoo Convention, the Canadian Environmental Assessment Act (CEAA) is the federal legal instrument that applies to the examination of the transboundary environmental effects of proposed projects as well as domestic effects. CEAA sets out the responsibilities and procedures for the environmental assessment of proposed projects involving the federal government. Under section 5 of CEAA, an environmental assessment of a project is required before a federal authority (federal minister, department or agency) exercises one or several of the following powers, duties or functions: proposes a project, contributes financially to a project, sells, leases or transfers control of land to enable a project to be carried out; or issues a specified federal permit or license that is included in CEAA's Law List Regulations. When the foregoing conditions apply, the federal authority is deemed under section 11 of CEAA to be a "Responsible Authority" and must ensure that an environmental assessment of the proposed project is conducted as early as possible and before irrevocable decisions are made regarding the proposed project.

Under CEAA, four types of environmental assessment are available: screening, comprehensive study; mediation; and panel review, as detailed below:

Under a screening, a Responsible Authority (as defined 2 paragraphs above) systematically documents the environmental effects of a proposed project and determines the need to eliminate or minimize (mitigate) harmful effects; to modify the project plan; or to recommend further assessment through mediation or panel review. The extent of public participation in a screening, if any, is determined on a case-by-case basis by the Responsible Authority and would take place prior to the Responsible Authority exercising any power, function or duty in respect of the project (see paragraph 2, above).

Screenings will vary in time, length, and scope of analysis, depending on the circumstances of the proposed project, consideration of the existing environment, and the likely environmental effects. Some screenings may require only a brief review of the already-existing information and a short report; others may need new background studies and be as extensive as a comprehensive study under CEAA. The Responsible Authority must consider whether a follow-up programme for the project would be appropriate, and if so, design and ensure its implementation.

Large-scale and environmentally sensitive projects usually undergo a more extensive assessment called a comprehensive study. The Comprehensive Study List Regulations under CEAA identify the projects for which a comprehensive study is required (It should be noted that the types and categories of projects identified under the Comprehensive Study List Regulations are commensurate with those listed under Appendix 1 of the Espoo Convention). Public participation in a comprehensive study is mandatory and must be initiated by a Responsible Authority regarding the scope of the environmental assessment, including the factors proposed to be considered, the scope of those factors, as well as the ability of the comprehensive study to address issues relating to the project. Following these consultations the Responsible Authority issues a report to the Minister of the Environment regarding the scope of the assessment, public concerns in relation to the project, the potential of the project to cause adverse environmental effects, and the ability of the comprehensive study to address the issues relating to the project. The Responsible Authority also makes recommendations to the Minister as to whether the project should continue on the comprehensive study assessment track, or should instead be referred to mediation or an independent panel review. The Minister then determines, taking into account the Responsible Authority's report and recommendations, whether the project will continue to be assessed as a comprehensive study or instead be referred to a mediator or independent review panel.

If the assessment continues as a comprehensive study, the project may not be subsequently referred to a mediator or review panel. The Responsible Authority must provide a further opportunity for the public to participate in the conduct of the comprehensive study itself. In addition, once completed, the comprehensive study report is subject to a public comment period of at least 30 days. The Minister of the Environment, after taking into account the comprehensive study report and any public comments, then issues a decision statement on whether the project is likely to cause significant adverse environmental effects. At this time, the Minister of the Environment may set out mitigation measures and requirements for a follow-up programme. The Minister also has the authority to request further information or require that action be taken to address public concerns. Finally, the Responsible Authority must design a follow-up programme for projects that have undergone a comprehensive study assessment and ensure its implementation.

It should be noted that under CEAA, it is the Responsible Authority that determines the scope of the factors to be considered in the context of screening and comprehensive study. The factors that must be considered are the following factors:

- the environmental effects of the project, including environmental effects of malfunctions or accidents that may occur in connection with the project, and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- the significance of these environmental effects;
- comments from the public received in accordance with the Act and its regulations;
- technically and economically feasible measures that would mitigate any significant adverse environmental effects of the project;
- any other matter relevant to the screening or comprehensive study that the RA or, in the case of a comprehensive study, the Minister, may require.

In addition to the above factors, the comprehensive study must address:

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

Where it is considered that a project may cause significant adverse environmental effects, or where warranted by public concerns, a project may be referred to the Minister of the Environment for a review by a panel appointed by the Minister. Panel reviews offer large numbers of groups and individuals with different points of view a chance to present information and express concerns at public hearings. The Minister of the Environment establishes the terms of reference for the panel review after consulting with the Responsible Authority and other parties as appropriate. The factors that must be considered in a public review are the same as those for a comprehensive study. The panel report is submitted to the Responsible Authority and the Minister of the Environment. A government response to panel recommendations is considered by the federal Cabinet. Subsequent courses of action taken by Responsible Authorities must be consistent with the Cabinet's direction.

For each type of environmental assessment described above, a Responsible Authority or the Minister of Environment must by law consider the following environmental effects of a proposed project:

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(a) of the Species at Risk Act,
- (b) any effect of any change referred to in paragraph (a) on:
  - (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage,
  - (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or
  - (iv) any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance, or
- (c) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada; (Respondent's emphasis; see definition of "environmental effect" under CEAA).

In addition to the above, section 47 of CEAA provides authority to the Ministers of the Environment and of Foreign Affairs, upon receipt of a request or a petition, or at their discretion, to jointly refer a proposed project to mediation or a review panel if they deem that the project may cause significant adverse transboundary effects across international boundaries. The referral of a proposed project to mediation or panel review can only take place when there is no federal involvement in the project as described in paragraph 2 above. Moreover, the Ministers cannot refer a project for review by a mediator or review panel under this provision if an arrangement has been reached between the Minister and all interested provinces on another manner of conducting an assessment of the project's international transboundary effects. The Minister of the Environment typically requests the Canadian Environmental Assessment Agency (the Agency) to review requests and petitions made under section 47 and to make recommendations on whether or not proposed projects should be referred to mediation or review panel. This investigation usually involves the Agency seeking advice from expert federal authorities on the nature of the transboundary effects of the project. Consultations may also take place with officials in other jurisdictions.

*b. How your country conducts transboundary EIA cooperation (through points of contact, through joint bodies or within bilateral or multilateral agreements);*

To date, Canada has not been required to apply the requirements of the Convention for proposed projects within its jurisdiction. In the event of the application of the Convention, Canada would take steps to cooperate with officials of the potentially affected party through the appropriate bodies and mechanisms for the purpose of exchanging information and assessing transboundary environmental effects.

*c. How a change to an activity is considered as a "major" change;*

The Canadian Environmental Assessment Act, through which the Espoo Convention is implemented, incorporates a definition of "project" that includes for the consideration of environmental effects resulting from changes to a project. Under section 2 of Canadian Environmental Assessment Act (CEAA), the definition of project reads as follows:

"(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b);"

This definition requires a Responsible Authority to consider the environmental effects of a proposed modification to a project to which CEAA applies. Large-scale project modifications that are likely to have adverse environmental effects and to which CEAA applies are usually subject to a Comprehensive Study under CEAA, while a screening level assessment would apply to minor project modifications unless these have been excluded from assessment requirements. As noted in the preceding response (see 6.a.) a Responsible Authority is required to consider the environmental effects of a project whether these effects take place in or outside of Canada. As such, if the project proposal is a modification to an existing project, under CEAA, the Responsible Authority would have to give consideration to transboundary effects of the modification proposal.

- d. *How such an activity, or such a change to an activity, is considered “likely” to have a “significant” adverse transboundary impact (art. 2.3 and 2.5, and the Guidelines in appendix III).*

Under the Canadian Environmental Assessment Act (CEAA), when a Responsible Authority is involved in a proposed project (see response to question 6-a), the Responsible Authority proceeds either with a self-directed screening or a comprehensive study of the proposed project to determine whether it is likely to cause significant adverse environmental effects. These requirements of CEAA apply to a broad range of projects covered by the Inclusion List Regulations and the Comprehensive Study List Regulations that support CEAA. The types of projects covered by the Comprehensive Study List Regulations are generally commensurate with those listed under Appendix I to the Espoo Convention.

The Canadian Environmental Assessment Agency has developed a reference guide for Responsible Authorities that sets out a framework for deciding whether a project is likely to cause significant environmental effects under CEAA. These guidelines are issued under section 58 of CEAA. The reference guide can be consulted at the Agency’s Web site at <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=3939C665-1&offset=30&toc=hide>

The concept of significance is extremely important in CEAA. One of the stated purposes of CEAA is “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” (Reference: section 4 (c) of CEAA).

As noted above, a central test under CEAA is whether a project is likely to cause significant adverse environmental effects. All decisions about whether or not projects are likely to cause significant adverse environmental effects must be supported by findings based on the requirements set out in CEAA.

The details below briefly outline the considerations that a Responsible Authority must undertake when proceeding with an environmental assessment.

The definitions of “environment” and “environmental effect” are the starting point when considering whether a project is likely to cause significant adverse environmental effects. CEAA defines the environment as:

“the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);” ( Reference: section 2(1) of CEAA).

Environmental effect means, in respect of a project,

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(a) of the Species at Risk Act,
- (b) any effect of any change referred to in paragraph (a) on:
  - (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage,
  - (iii) the current use of lands and resources for traditional purposes by Aboriginal persons, or
  - (iv) any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance, or
- (c) any change to the project that may be caused by the environment,

whether any such change occurs within or outside Canada (Reference: section 2 (1) of CEAA) (Respondent's emphasis).

Bearing in mind these key definitions, the Canadian Environmental Assessment Agency has developed the following framework for guiding Responsible Authorities and the Minister of the Environment in determining whether environmental effects are "adverse", "significant", and "likely" within the context of CEAA. It should be noted that the framework does not exclude the consideration of other criteria such as the general criteria listed under Appendix III of the Espoo Convention.

The framework consists of three general steps:

Step 1: Deciding Whether the Environmental Effects are Adverse

Step 2: Deciding Whether the Adverse Environmental Effects are Significant

Step 3: Deciding Whether the Significant Adverse Environmental Effects are Likely

Each step consists of a set of criteria that Responsible Authorities and the Minister of the Environment should use to address these three questions, as well as examples of methods and approaches that can be applied. The Responsible Authority and the Minister apply the criteria to information provided by the proponent. This information is generally provided in the form of an Environmental Impact Statement.

Step 1: Deciding Whether the Environmental Effects are Adverse

The Canadian Environmental Assessment Agency guidance material lists the major criteria that should be used to determine whether environmental effects are adverse. Obviously, the relative importance of individual characteristics will vary depending upon the context of the particular environmental assessment in question. The criteria are listed in the table below.

Step 2: Deciding Whether the Adverse Environmental Effects are Significant

The Canadian Environmental Assessment Agency's guidance material also outlines several criteria that should be taken into account in deciding whether the adverse environmental effects are significant. These are:

- Magnitude of the adverse environmental effects;
- Geographic extent of the adverse environmental effects;
- Duration and frequency of the adverse environmental effects;
- Degree to which the adverse environmental effects are reversible or irreversible; and
- Ecological context.

Step 3: Deciding Whether the Significant Adverse Environmental Effects Are Likely

Finally, the Canadian Environmental Assessment Agency's guidance material recommends that when deciding the likelihood of significant adverse environmental effects, there are two criteria to consider:

- Probability of occurrence; and
- Scientific uncertainty

Once a Responsible Authority completes the screening process, it must make a determination on whether to exercise its powers in relation to the project or to require the project to be subject to further assessment by mediation or a review panel. This determination is based on consideration of the significance of the adverse environmental effects taking into account the implementation of mitigation measures as well as the public concerns in relation to the proposed project. It should be noted, however, that at any time during a screening, a Responsible Authority can refer the project to the Minister of the Environment for mediation or panel review, if the Responsible Authority considers that the proposed project may cause significant adverse environmental effects or if warranted by public concerns about the project. Early in the comprehensive study process, following public consultation, the Minister of the Environment is required to determine if the project should continue



on the comprehensive study assessment track or instead be referred to a mediator or independent review panel. The Minister's decision must take into account a report and recommendations from the Responsible Authority that describes, among other things, public concerns about the project, potential for adverse environmental effects and the ability of the comprehensive study process to address issues related to the project.

If the assessment continues as a comprehensive study, the project may not be subsequently referred to a mediator or review panel. The Responsible Authority must provide a further opportunity for the public to participate in the conduct of the comprehensive study itself. In addition, once completed, the comprehensive study report is subject to a public comment period of at least 30 days. The Minister of the Environment, after taking into account the comprehensive study report and any public comments, then issues a decision statement on whether the project is likely to cause significant adverse environmental effects. At this time, the Minister of the Environment may set out mitigation measures and requirements for a follow-up programme. The Minister also has the authority to request further information or require that action be taken to address public concerns. Finally, the Responsible Authority must design a follow-up programme for projects that have undergone a comprehensive study assessment and ensure its implementation.

Where it is considered that a project may cause significant adverse environmental effects, or where warranted by public concerns, a project may be referred to the Minister of the Environment for a review by a panel appointed by the Minister. Panel reviews offer large numbers of groups and individuals with different points of view a chance to present information and express concerns at public hearings. The panel report is submitted to the Responsible Authority and the Minister of the Environment. A government response to panel recommendations is considered by the federal Cabinet. Subsequent courses of action taken by Responsible Authorities must be consistent with the Cabinet's direction.

In addition to the above, section 47 of CEAA provides authority to the Ministers of the Environment and of Foreign Affairs, upon receipt of a request or a petition, or at their discretion, to jointly refer a proposed project to mediation or a review panel if they deem that the project may cause significant adverse transboundary effects across international boundaries. The referral of a proposed project to mediation or panel review can only take place when there is no federal involvement in the project. Moreover, the Ministers cannot refer a project for review by a mediator or review panel under this provision if an arrangement has been reached between the Minister and all interested provinces on another manner of conducting an assessment of the project's international transboundary effects.

The Minister of the Environment typically requests the Canadian Environmental Assessment Agency to review requests and petitions made under section 47 and to make recommendations on whether or not proposed projects should be referred to mediation or review panel. This investigation usually involves the Agency seeking advice from expert federal authorities on the nature of the transboundary effects of the project. Consultations may also take place with officials in other jurisdictions.

## CANADIAN CRITERIA FOR DETERMINING WHETHER ENVIRONMENTAL EFFECTS ARE ADVERSE

Changes in the Environment:

- Negative effects on the health of biota including plants, animals, and fish;
- Threat to rare or endangered species;

- Reductions in species diversity or disruption of food webs;
- Loss of or damage to habitats, including habitat fragmentation;
- Discharges or release of persistent and/or toxic chemicals, microbiological agents, nutrients (e.g., nitrogen, phosphorus), radiation, or thermal energy (e.g., cooling wastewater);
- Population declines, particularly in top visual amenities (e.g., views);
- The removal of resource materials (e.g., or resources; peat, coal) from the environment;- Transformation of natural landscapes;
- Obstruction of migration or passage of wildlife;
- Negative effects on the quality and/or quantity of the biophysical environment (e.g., surface water, groundwater, soil, land, and air).

Effects on people resulting from environmental changes:

- Negative effects on human health, well-being, or quality of life; Increase in unemployment or shrinkage in the economy;
- Reduction of the quality or quantity of recreational opportunities or amenities;
- Detrimental change in the current use of lands and resources for traditional purposes by Aboriginal persons;
- Negative effects on historical, archaeological, palaeontological, or architectural resources;
- Decreased aesthetic appeal or changes in predator, large, or long-lived species;
- Loss of or damage to commercial species;
- Foreclosure of future resource use or production;

## PUBLIC PARTICIPATION

7. *Does your country have its own definition of “the public” in national legislation, compared to article 1(x)? How does your country, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your country’s public as required in article 2, paragraph 6?*

As noted in the response to question 6(a), the Canadian Environmental Assessment Act provides several opportunities for public participation in environmental assessment. These opportunities are not limited only to Canadians, but extend as well to the public and authorities of an affected Party.

## Article 3

### *Notification*

#### QUESTIONS TO PARTY OF ORIGIN

8. *Describe how your country determines when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure does your country usually notify the affected Party (art. 3.1)*

For some activities, notification would be provided during the initial planning stages of the environmental assessment under the Canadian Environmental Assessment Act when, for example, the likelihood of significant adverse transboundary environmental effects may be obvious based on the initial information provided by the proponent of the activity. For other activities, notification would be provided during the preparation of the environmental

assessment itself, when more information about the likelihood of significant adverse transboundary environmental effects becomes known to the federal Responsible Authority. Scoping occurs both with and without public participation. Under the Canadian Environmental Assessment Act, public participation at the scoping phase is mandatory for the comprehensive study process and panel reviews. In both instances, arrangements are made by the Responsible Authority or the Minister of the Environment to make the scoping documents publicly available. As described above, in response to question 6(a), the extent of public participation in screening, if any, is determined on a case-by-case basis by the Responsible Authority and would take place prior to the Responsible Authority exercising any power, function or duty in respect of the project.

9. *Does your country provide any information to supplement that required by article 3, paragraph 2?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

10. *Does your country use the format for notification (as decided by the first meeting of the Parties, decision I/4, in document ECE /MP.EIA/2)? If not, in what format does your country normally present the notification?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Despite this situation, Canada would consider using the format in whole or in part as appropriate.

11. *Describe the criteria your country uses to determine the time frame for the response to the notification from the affected Party (art. 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

This would be determined on a case by case basis but as a general rule sufficient time would be provide to allow the potentially affected party time to make informed decisions about its participation in the EIA procedure including the identification of supplementary information needs.

12. *Describe when your country provides relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in article 3, paragraph 5. Already with the notification, or later in the procedure?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

13. *How does your country determine whether it should request information from the affected Party (art. 3.6)? When does your country normally request information from the affected Party? What kind of information does your country normally request? How does your country determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (art. 3.6)?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

14. *Please describe:*

- a. *How your country cooperates with the authorities of the affected Party on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

Although Canada has had no requirement to date to apply the Espoo Convention, Canada would undertake to communicate and consult with the point of contact of the affected Party to seek advice and develop arrangements for the identification and notification of the public in the affected area.

- b. *How your country identifies, in cooperation with the affected Party, the “public” in the affected area;*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

- c. *How the public in the affected Party is notified (what kinds of media, etc are usually used). What is normally the content of the public notification?;*

Appropriate means of communications would be employed such as: newspaper advertisements, Internet postings, mail notification to stakeholders and, where circumstances warrant, local radio or television notices. A flexible approach is taken in light of Canada’s diverse cultural and geographical make-up, allowing for appropriately tailored communications strategies.

Although Canada has had no requirement to date to apply the Espoo Convention, Canada would provide public notification in a manner consistent with the information elements set out in Table 3 of the decision of the Meeting of the Parties regarding the format for notification (ECE/MP.EIA/2).

- d. *Whether the notification to the public of the affected Party has the same content as the notification to your country’s public. If not, describe why not. At what stage in the EIA procedure does your country normally notify the public of the affected Party?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question. Canada notes, however, that it would expect all of its external communication materials to be consistent regarding information content regardless of public location.

15. *Does your country make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and as listed on the Convention website ([http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm))?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question. Canada notes, however, that in the event of the application of the Convention, Canada would take steps to notify in a timely manner the duly identified Point of Contact of the potentially affected party .

#### QUESTIONS TO AFFECTED PARTY

16. *Describe the process of how your country decides whether or not to participate in the EIA procedure (art. 3.3)? Who participates in the decision-making, e.g. central authorities, local competent authorities, the public, environmental authorities? Describe the criteria or reasons your country uses to decide.*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

17. *When the Party of origin requests your country to provide information relating to the potentially affected environment, how does your country determine what is “reasonably obtainable” information to include in its response? Describe the procedures and, where appropriate, the legislation your country that would apply in determining the meaning of “promptly” in the context of responding to a request for information (art. 3.6)*

Canada has no experience in this regard given that it has not been required to apply the Espoo Convention in an operational context. In practice, however, Canada would undertake to transmit the requested information to the Party of origin without undue delay once the collation of the information had been completed by Canada.

18. *Please describe:*

a. *How your country cooperates with the authorities of the Party of origin on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

b. *How your country identifies the “public” in the affected area;*

Canada would work closely with the Point of Contact and officials of the potentially party to determine the public and stakeholder groups likely to be interested in the project and the transboundary EIA procedure. Such work would include discussions on the development of joint public communications strategy to ensure that the public of the affected party is made aware of the project and the EIA procedure.

c. *How the public is notified (e.g. what kinds of media, etc., are usually used). What is normally the content of the public notification?;*

See response to question 14 c.

d. *At what stage in the EIA procedure does your country normally notify its public?*

See response to question 6 a.

## **Article 4**

### ***Preparation of the environmental impact assessment documentation***

#### **QUESTIONS TO PARTY OF ORIGIN**

19. *What is the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II)?*

See response to question 6 a. factors that must be included in an assessment

20. *Describe your country’s procedures, if any, for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4.1).*

See response to question 6 a. factors that must be included in an assessment and legal environmental effects consideration. In addition, the Agency has recently published an operational policy statement on the establishment of the scope of project in relation to which an environmental assessment is to be conducted. Under the policy statement, the scope of project to be assessed must include at a minimum, and will generally coincide with, the project as proposed by the proponent.

The operational policy statement can be consulted at: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=C3BD5DA2-1>

21. *How does your country identify “reasonable alternatives” in accordance with appendix II, paragraph (b)?*

The Agency has developed an operational policy statement to provide clarification to federal authorities and proponents when considering the following factors under the Canadian Environmental Assessment Act:

- "need for" the project (paragraph 16(1)(e));
- "purpose of" the project (paragraph 16(2)(a));
- "alternatives to" the project (paragraph 16(1)(e)); and
- "alternative means" of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means (paragraph 16(2)(b)).

The operational policy statement can be consulted at: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=5C072E13-1>

22. *How does your country identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to appendix II, paragraph (c), and how does it define “impact” in accordance with article 1(vii)?*

Yes the Canadian Environmental Assessment Act specifies which project and environmental elements should be considered for each type of assessment level under the Act. See response to question 6 a.

The term "impact" is not defined in the Canadian Environmental Assessment Act. The central test in the Act is whether a project is likely to cause significant adverse environmental effects. This determination is an objective test from a legal standpoint, which means that all decisions about whether or not projects are likely to cause adverse environmental effects must be supported by findings based on the requirements set out in the Act. Further information on this central concept can be found at: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=3939C665-1&offset=30&toc=hide>

In addition, see response to question 6 d.

23. *Does your country give the affected Party all of the EIA documentation (art. 4.2)? If not, which parts of the documentation does your country provide?*

Yes, subject to any personal privacy or access to information requirements, Canada would generally provide all of the EIA documentation.

24. *How does your country cooperate with the authorities of the affected Party on distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible? How does the competent authority in your country (as the Party of origin) deal with the comments (art. 4.2)?*

The determination of the transfer and reception of the information would be made on a case-by-case basis in consultation with the Point of Contact of the affected Parties, or other responsible government officials as appropriate.

25. *Describe the procedures and, where appropriate, the legislation that define the time frame for comments provided “within a reasonable time before the final decision” (art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

The Canadian Environmental Assessment Act provides several opportunities for public participation in environmental assessments. The Act has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. These opportunities for public participation are not limited only to Canadians, but extend as well to the public and authorities of affected Parties.

26. *What material does your country provide, together with the affected Party, to the public of the affected Party?*

The public of the affected Party has access to the same wide range of documentation that is publicly available to Canadians within the context of an environmental assessment under the Canadian Environmental Assessment Act. The documents range from: public notices, project description documents, scoping documents for the environmental assessment, the environmental analysis documentation prepared by the proponent, the environmental analysis documentation prepared by government officials, the screening report, comprehensive study report, the mediation report, the public review panel report, the decisions of the Responsible Authorities and/or the Minister of the Environment in relation to the environmental assessment procedures and the project itself, and follow-up or monitoring programme documentation.

27. *Does your country initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

The public of the affected Party, public authorities, organizations or other individuals can come to Canada to participate, subject to the normal Canadian entry requirements. Canada would not seek to limit the participation of the affected Party's public in a joint hearing, if hearings were held in Canada. Normal Canadian entry requirements would apply, however, to those individuals wishing to enter Canada to participate in the hearing sessions in Canada.

#### QUESTIONS TO AFFECTED PARTY

28. *Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of the words "within a reasonable time before the final decision", this being the time frame for comments (art. 4.2)?*

While Canada has no specific legislation for the determination of "reasonable time before the final decision", as noted earlier, the Canadian Environmental Assessment Act provides several opportunities for public participation in environmental assessments. CEAA has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. These opportunities for public participation are not limited only to Canadians, but extend as well to the public and authorities of affected Parties.

29. *How does your country cooperate with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

30. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the*

*affected Party, with the legislation of the Party of origin, with ad hoc procedures, or with bilateral or multilateral agreements?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

## **Article 5**

### ***Consultations***

#### **QUESTIONS TO PARTY OF ORIGIN**

31. *At which step of the EIA procedure does the consultation in accordance with article 5 generally take place? Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of “undue delay”, with regard to the timing of the entry into consultation? Does your country normally set the duration for consultations beforehand? If there seems to be no need for consultation, how does your country determine not to carry out consultations?*

The Canadian Environmental Assessment Act provides several opportunities for public participation in environmental assessments. The Act has been structured so as to ensure that such participation takes place well in advance of any final decision about a proposed project. While Canada does not yet have operational experience with the application of the Espoo Convention, the timing of consultation would likely occur in a manner that is consistent with domestic requirements, that is, well in advance of any final decisions.

32. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

The consultations would involve, as a minimum, officials of the federal government and depending on the circumstances and the issues at hand officials at the provincial and municipal levels of government, and possibly Aboriginal representatives. The participants in the consultations would vary depending on the complexity of the issues involved in the consultation initiatives. The participants may include senior level government officials for the Department of Foreign Affairs and International Trade, the Canadian Environmental Assessment Agency, the federal Responsible Authority under the Canadian Environmental Assessment Act, and technical professionals from federal expert government departments. Other participants could include provincial and municipal government officials, Aboriginal organizations and/or experts. Project proponents may also be called upon to become a participant in the consultation.

#### **QUESTIONS TO AFFECTED PARTY**

33. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means does your country usually communicate in consultations, for example by meeting or by the exchange of written communications? How does your country indicate if there is no need for consultations?*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

## **Article 6**

### ***Final decision***



## QUESTIONS TO PARTY OF ORIGIN

34. *For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?*

Under the federal EA system, the EA decision affects the "course of action" decision that may be taken by a federal responsible authority. The course of action is the exercising or performing (or not exercising or performing) of any power, duty or function that would permit the project to be carried out wholly or partially. For example, courses of action include providing funding, providing an interest in land, or granting a license.

35. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity (art. 6.1)?*

See response to question 34

36. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6.1)?*

Although Canada has had no requirement to date to apply the Espoo Convention in an operational context, Canada would likely give equal consideration to the comments received from the public and authorities of an affected Party.

37. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (art. 6.2)*

The Canadian Environmental Assessment Act requires that for each screening, comprehensive study, mediation, and review panel undertaken a report on the environmental effects of the proposed project be prepared. The report will contain the findings and conclusions concerning the environmental effects of the project and will serve to inform the decision(s) to be taken by the Minister of the Environment and/or a federal responsibility authority in regard to a proposed project. These reports are publicly available. Generally the report will address the following subject areas:

- The description of the proposed project (activities included in the project and when these are to be carried out);
- Project alternatives (alternative means of carrying out the project, and/or alternatives to the project);
- The scope of the environmental assessment (scope of the project assessed, factors considered in the environmental assessment, scope of the factors considered);
- The public consultation programme (how was public input solicited, who was consulted, what information came forward from the public, how was this information incorporated in the environmental assessment process);
- Description of the existing environment (general environmental context, environmental components in the study area, the relationship among environmental components, sensitivities to disturbance, potential environmental hazards to the project);
- Predicted environmental effects of the proposed project (effects of the project on environmental components, environmental changes on: human health, socio-economic conditions, physical and cultural heritage, the current use of lands for traditional purposes by Aboriginal persons, cumulative effects of the project, effects on the sustainable use of renewable resources, effects of the environment on the project, effects of possible malfunctions, methods used to predict effects);

- Mitigation measures (planned mitigation measures, effectiveness of planned mitigation measures);
- Determination of the significance of the environmental effects (are the residual environmental effects adverse, significant and likely to occur?);
- Follow-up programme (objectives of the follow-up programme, elements of the follow-up programme, responsibility for the implementation of the follow-up programme);
- Conclusions and recommendations (recommendation about the project, outstanding issues and concerns, conditions for approval).

38. *If additional information becomes available according to article 6, paragraph 3, before the activity commences, how does your country consult with the affected Party? If need be, can the decision be revised? (art. 6.3)*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

## Article 7

### *Post-Project Analysis*

39. *How does your country determine whether it should request a post-project analysis to be carried out (art. 7.1)?*

The determination would be made on a case-by-case basis and would be based on the degree of potential injury to Canada taking into account the mitigation measures for the proposed project.

40. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how does your country inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to article 7, paragraph 2?*

The determination on the ways and means to communicate the information would be made on a case-by-case basis. The responsibility for the communication of the information would vary depending on the circumstances and issues at hand. Generally, the responsibility could rest with one of the following: the Department of Foreign Affairs and International Trade (for the Minister of Foreign Affairs), the Canadian Environmental Assessment Agency (for the Minister of the Environment), the Responsible Authority under the Canadian Environmental Assessment Act, and the President of the Canadian Environmental Assessment Agency.

## Article 8

### *Bilateral and multilateral agreements*

41. *Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

No.

42. *Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No

## Article 9

### *Research programmes*

43. *Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.*

The Canadian Environmental Assessment Agency has a programme in place to support research and development in the field of environmental assessment. The purpose of the programme is to help the federal government meet future challenges and improve the practice of environmental assessment in a manner that is relevant, credible, efficient, and encourages innovation and excellence. To date, research reports have been produced in the following areas of study:

- Climate Change and Environmental Assessment;
- Follow-Up;
- Regional Environmental Effects Frameworks; and
- Significance.

Further information on the Agency's research and development programme can be obtained at the following Internet site: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=C22469E0-1>

### **Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment**

44. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

There are no immediate plans to ratify the first amendment.

45. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

There are no immediate plans to ratify the second amendment.

46. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

Canada has adopted a non-legislated approach to implement SEA at the federal level. As such, there are no plans to ratify the Protocol on SEA.

## **PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2006–2009**

*Please report on your country's practical experiences of applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.*

### CASES DURING THE PERIOD 2006–2009

47. *Does your country's national administration have information on the transboundary EIA procedures that were under way during the period? If so, please list these procedures,*

*clearly identifying for each whether your country was the Party of origin or the affected Party. If your country does not have any experience of applying the Convention, why not?*

No projects in Canada have required the application of the Convention with another Party to the Convention. In addition, Canada has not been notified by another Party of any projects under the Convention.

48. *Does your country object to the above list of transboundary EIA procedures being included in a compilation of such procedures to be made available on the website of the Convention? (Indicate “yes” if you object.)*

N/A

49. *Are there projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

N/A

50. *Provide information on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

N/A

#### EXPERIENCE OF THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE IN 2006–2009

51. *If your country has had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

N/A

52. *How has your country interpreted in practice the various terms used in the Convention, and what criteria has your country used to do this? Key terms include the following: “major change” (art. 1 (v)), “a reasonable time” (art. 3.2(c), art. 4.2), “promptly” (art. 3.6) and “a reasonable time frame” (art. 5). (Do not provide references to answers to earlier questions 6 (b), 11, 13, 25 and 31.) If your country experiences substantial difficulties interpreting particular terms, does your country work together with other Parties to find solutions? If not, how does your country overcome the problem?*

N/A at this time.

53. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of “lessons learned” in order to help others.*

- a. *How in practice has your country identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?;*

N/A

- b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How does your country determine how much information to include in the EIA documentation?;*

N/A

- c. *What methodology does your country use in impact assessment in the (transboundary) EIA procedure (e.g. impact prediction methods and methods to compare alternatives)?;*

See response to questions 6 a. and 21

- d. *Translation is not addressed in the Convention. How has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?;*

N/A

- e. *How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (e.g. have there been complaints from the public about the procedure?);*

N/A

- f. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?;*

N/A

- g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public;*

N/A

- h. *Has your country carried out post-project analyses and, if so, on what kinds of project?;*

N/A

- i. *Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g. contact points, joint bodies, bilateral agreements), institutional arrangements, and how practical matters are dealt with (e.g. translation, interpretation, transmission of documents, etc.);*

N/A

- j. *Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet" ?;*

N/A

- k. *Identify the most common means of applying the Convention (e.g. through focal points, joint bodies, multilateral agreements).*

N/A

## CO-OPERATION BETWEEN PARTIES IN 2006–2009

54. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?*

N/A

## EXPERIENCE IN USING THE GUIDANCE IN 2006–2009

55. *Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented:*

a. *Guidance on public participation in EIA in a transboundary context;*

N/A

b. *Guidance on subregional cooperation;*

N/A

c. *Guidelines on good practice and on bilateral and multilateral agreements.*

N/A

## CLARITY OF THE CONVENTION

56. *Has your country had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in part one above or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which your country encounters when applying the Convention.*

Canada has had no requirement to date to apply the Espoo Convention in an operational context. Therefore, Canada is not in a position to respond to this question.

## AWARENESS OF THE CONVENTION

57. *Has your country undertaken activities to promote awareness of the Convention among stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

Yes. The Canadian Environmental Assessment Agency has informed the Canadian Environmental Network about the existence of the Convention. The Canadian Environmental Network Web site describes the Network as follows: "The Canadian Environmental Network (RCEN) facilitates cooperation and networking among non-profit, non-governmental environmental organizations across Canada and internationally..... With over 600 member groups from rural and urban communities across the country, the RCEN is made up of Canadians from the entire spectrum of career paths and interests."

58. *Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so? What relevant legal or administrative developments are proposed or ongoing?*

N/A

SUGGESTED IMPROVEMENTS TO THE REPORT

*59. Please provide suggestions for how this report may be improved.*

\* \* \* \* \*