



Federal Environmental
Assessment Review Office

Bureau fédéral d'examen
des évaluations environnementales

OPERATING MANUAL
FOR
**ENVIRONMENTAL ASSESSMENT
PANEL CHAIRS**

PREFACE

This manual is organized into three parts: an introduction; a discussion of the activities of a panel review; and guidance on panel relationships and responsibilities, and on administrative matters.

Part 2, “Activities in an Panel Review”, identifies the major phases of an environmental review by a panel under the federal environmental assessment process, discusses the events that normally occur within each phase, and points out the need to accommodate provincial or territorial requirements during jointly administered reviews,

Part 3, “Panel Relationships and Responsibilities”. includes sections on guiding principles, panel-participant relations, and management of panel activities.

The Federal Environmental Assessment Review Office will periodically revise and update this document. Please contact the panel manager if you have questions or comments concerning the manual.

(Aussi disponible en français)

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PART 1

INTRODUCTION

1.1 PURPOSE

The purpose of the manual is to provide interim guidance to chairs of environmental assessment panels in carrying out their duties and responsibilities during public reviews under the federal Environmental Assessment and Review Process Guidelines Order (the Guidelines Order), for the remainder of the effective period of the Order.

Most public reviews, under the Guidelines Order and in the future, will be joint reviews conducted in cooperation with a province or a territory. Such reviews must meet the legal requirements of both the federal and provincial environmental assessment processes. This manual recognizes that fact and deals with it to the extent possible, given that process details vary considerably from province to province. For the most part, however, the manual provides guidance on matters related to the federal process. Further guidance during a joint review is normally provided through a set of operational procedures developed under a federal-provincial agreement pertaining to that review.

1.2 THE ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS

The Environmental Assessment and Review Process (EARP) was implemented in 1974 and is now based on the EARP Guidelines Order (1984), which has been determined by the Supreme Court to be a law of general application. The scope of application of the process is also related to the jurisdiction of the Government of Canada as defined in the Constitution.

The EARP is intended to ensure that the environmental and related social effects of all projects (called "proposals" in the Guidelines Order) for which a federal department is the decision-making authority are fully considered. Responsible (decision-making) departments must ensure that initial assessments of projects are conducted. Where the effects of a project are significant and not mitigable with known technology, or if public concern about the proposal is such that a public review is desirable, the project is to be referred to the federal Minister of the Environment for a public review by a panel.

When proclaimed, the Canadian Environmental Assessment Act (CEAA) will replace the Guidelines Order, thereby establishing a new regime for the federal environmental assessment process. Public reviews by panels will remain an important component of the new process and will continue to be conducted in much the same way as they are conducted now. Following the proclamation of the Act, a revised version of this manual will be produced to reflect certain procedural changes -- mostly minor -- required by the Act.

The Federal Environmental Assessment Review Office (FEARO) is responsible for administering the EARP. Except for offering advice on matters of procedure, FEARO does not become involved in the initial assessment phase of the process, since that is intended to be a self-directed component of departmental project planning. In a public review, however, FEARO supports the panel. To coordinate the delivery of the support to the panel, FEARO appoints a panel manager (called an "executive secretary" in the Guidelines Order). FEARO's choice for this appointment is determined on the basis of past experience with a panel, perhaps dealing with assessment of a similar type of project, and demonstrated ability to manage a project of similar complexity.

The panel can rely on full access to the resources of FEARO and, where necessary, those of other federal departments. The panel manager will arrange, upon request, to provide the panel with advice or assistance of an administrative, analytical, scientific, financial, communications or legal nature. The panel chair should regard the panel manager as the contact person for access to all of these services.

- The particular services offered by FEARO are discussed in greater detail later in this manual.

Under the Act, once proclaimed, FEARO will be replaced by a new Canadian Environmental Assessment Agency having similar but broader responsibilities at various stages of the environmental assessment process. Since FEARO has already begun to transform itself into the new administrative body, the term "Agency" is used throughout the remainder of this manual to include FEARO.

1.3 THE ROLE OF PANELS IN GOVERNMENT DECISION-MAKING

Environmental assessment, within the federal context, is a part of the planning process leading to the making of environmentally sound decisions by the Government of Canada about projects in which it has a decision-making responsibility.

In cases where a project may have significant environmental effects that are not mitigable with known **technology**, or where there is high public concern, an environmental assessment panel is appointed by the Minister of the Environment to provide the government with environmental information and advice 'that will assist in making decisions about the project in question. Terms of reference for the panel, identifying the scope of issues which should be examined, are established by the Minister of the Environment in consultation with the Minister of the department having decision-making responsibility for the project.

The Guidelines Order states that the members of a panel shall be unbiased and free of any potential conflict of interest relative to the proposal under review, and free of any political influence. This indicates clearly that a panel is obliged to operate independently of any influence by the proponent of the project, government or other interested parties, with regard to its deliberations on substantive issues. This enables a panel to view the project and its effects from a perspective that is different from those of the proponent and the government.

Panels have a unique opportunity and responsibility, therefore, to contribute to good decisions on projects by providing sound- and relevant conclusions and recommendations to ministers on the environmental and related social issues raised in the terms of reference.

1.4 PARTICIPANT FUNDING

Participant funding is a mechanism used in environmental reviews to allow participants who lack resources to participate more effectively than they could otherwise afford to. The federal participant funding program is administered directly by the Agency, not by environmental assessment panels, in order to avoid any possible suggestion of bias. An independent funding administration committee is created for each review to advise the President of the Agency in allocating the available funds. Once the allocation is granted, the funding administration committee is disbanded.

Panels should be aware, however, of the process and procedures for dealing with participant funding because the requests for funds always exceed the amount made available and participants may offer comments to the panel about the allocations made. The chair and the panel manager, in particular, should take considerable care to explain the participant funding process and to pass on any questions or concerns about it to Agency officials who are responsible for its administration. It should be pointed out that the panel bears no responsibility whatsoever for the participant funding process, and has no influence on the total

amount of funds made available to review participants, or the selection of recipients.

The times at which participant funding is made available is a question of some importance to the panel in conducting a review. The panel manager will keep the panel informed of the progress and decisions related to the participant funding for the review. In scheduling events for which participant funding is to be made available, the panel should allow sufficient time, wherever possible, for the administrative functions related to the funding program to be carried out. Otherwise, participants will not know, at the time of the event, whether they will be successful in applying for funds. This could result in criticism of both the panel review and the funding program.

PART 2

ACTIVITIES IN A PANEL REVIEW

2.1 PHASES OF A PANEL REVIEW: A!! OUTLINE

A typical public review by a panel (commonly known as a “panel review”) is divided into five major phases:

- initiation and orientation;
- preparation of guidelines;
- review of the environmental impact statement;
- public hearings; and
- report writing.

These phases are shown in Figure 1 and are briefly described below:

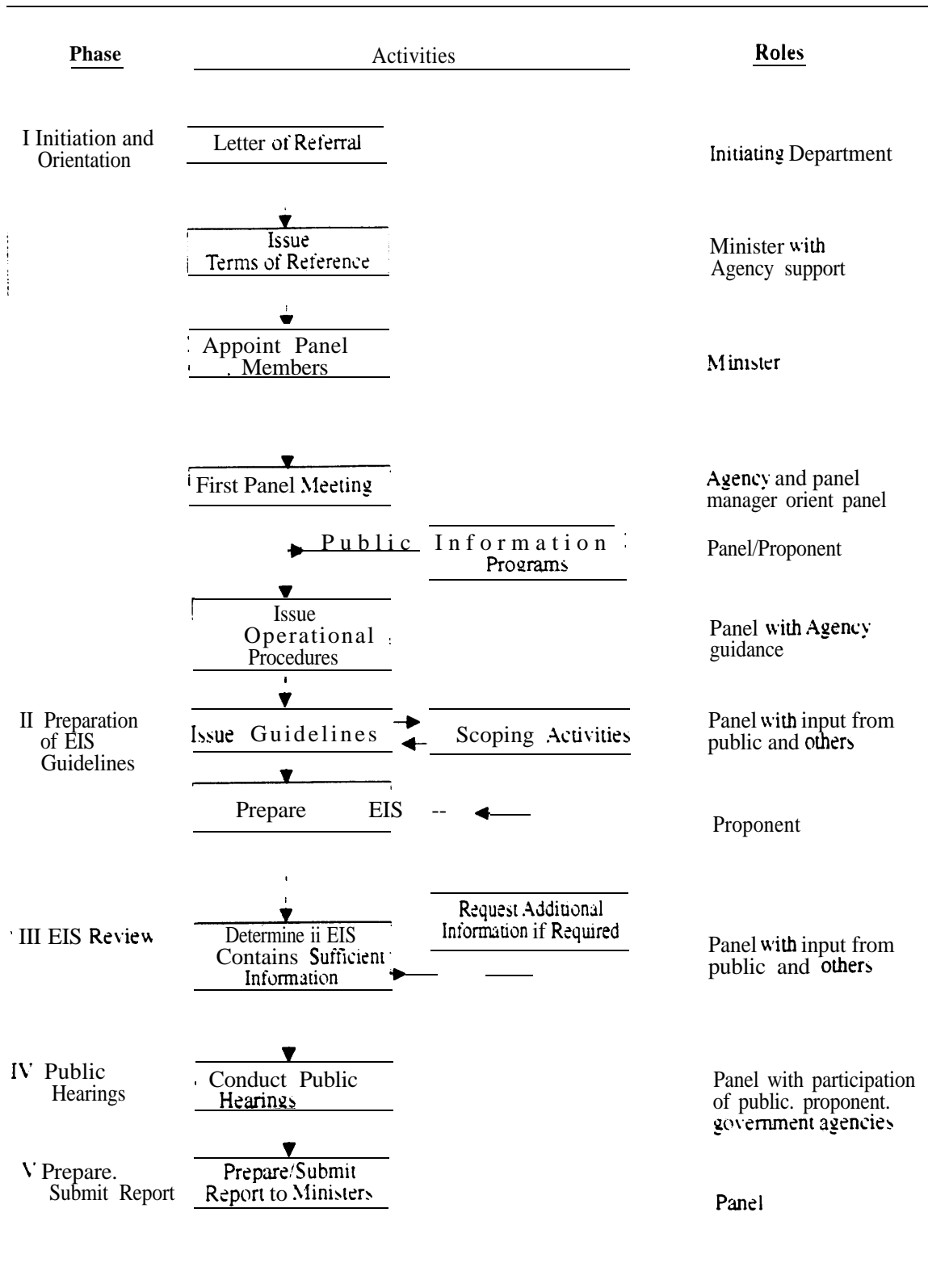
(a) Initiation and Orientation

Following the referral of a project for a public review, the Agency recommends candidates for panel membership to the Minister of the Environment, and also gives advice on appointing the panel and setting its terms of reference. The latter are drafted in consultation with the initiating department, which is ultimately seeking the advice. The panel manager convenes the first meeting of the panel, at which the panel is briefed on its mandate, duties and responsibilities. Public information programs are initiated by the panel manager and should also be conducted by the project proponent. The panel issues detailed operational procedures for the review, elaborating on the basic procedures required under the Guidelines Order or established as Agency policy. These basic procedures may have to be varied in a joint review.

(b) Preparation of Guidelines

In most panel reviews, the proponent is required to prepare and submit an environmental impact statement (EIS), presenting the proponent’s views concerning the environmental and related social consequences of the project under review. Whenever an EIS or equivalent information is required, the panel determines, in consultation with the public, the nature and scope of the issues to be addressed and presents its requirements to the proponent in the form of guidelines. These guidelines must conform to the panel’s terms of reference. In some review, the panel may be appointed only after the proponent has prepared an EIS; in such cases, this step will be omitted.

Figure 1
Responsibilities During Various Phases of Panel Review



(c) Review of the Environmental Impact Statement

When the proponent submits its EIS, the panel examines it to determine the adequacy of the information contained in it relative to the requirements stated in the guidelines. In doing so, the panel makes the EIS available to the public and to government departments, and invites comments. If the panel finds that the EIS lacks essential information, which cannot be provided later during the hearing process, it normally asks the proponent to provide the missing information before it proceeds to conduct the next phase of the review. A judgement call is usually needed at this stage, and the panel must weigh the disadvantages of a major delay of the process against the usefulness of the missing information in order to fulfil its mandate. If it has been appointed only after the EIS was prepared, it is especially important for the panel to establish that the information available responds to its requirements before proceeding with public hearings. ..

(d) Public Hearings

When the panel decides that sufficient information has been submitted by the proponent, it holds public hearings for the purpose of receiving the opinions of the interested public regarding the environmental and related social effects of the project, the content of the EIS and any other matter related to the project and included in the panel's terms of reference.

(e) Report Writing

Upon completion of the hearings, the panel begins to prepare its report to the government, containing: information on the proposal; an analysis of the information provided by the public; conclusions about environmental and related social effects; and recommendations related to the advice that the government was seeking through the terms of reference.

* * *

Environmental assessment procedures in Canada vary from one jurisdiction to another. In a joint review it is usually necessary to modify the process in order to meet the requirements of both governments and to take into account the particular environmental assessment processes in that jurisdiction.

The following pages present further details on each of the major phases of a panel review sometimes indicating where changes may be needed to accommodate a jointly-administered review.

2.2 INITIATION AND ORIENTATION

Before the panel is appointed, several events occur in the early part of this phase of the review. While the panel is not involved in these matters, they are discussed here in order to provide the chair with a good understanding of the activities that establish the review.

(a) The Letter of Referral

The initiation and orientation phase of the panel review begins with the receipt by the Minister of the Environment of a letter from the minister responsible for a decision on the proposal, requesting that a panel review be initiated. This referral letter states the outcome of the initial assessment of the project, explains why a panel review is being requested, and sometimes suggests in very general terms what the scope of the panel's terms of reference might be. This letter "sets the stage" for the review and becomes the first item to be placed on the public file.

If the project is also subject to a provincial environmental assessment process, the registration document submitted to the provincial environment minister and the federal referral letter together form the basis of discussions between FEARO and the provincial environment department to create an agreement on conducting a joint public review.

(b) The Terms of Reference

The terms of reference for the panel review are determined by the Minister of the Environment in consultation with the minister responsible for the assessment of the proposal. This document presents the nature and scope of the review to be undertaken by the panel and represents the agreement between the government and the panel. It indicates as clearly as possible what the Minister (and the government) expects the panel to address in the review and what the panel report should cover.

The terms of reference normally include a statement of the matters to be dealt with in the review, an outline of the procedures to be followed and an anticipated time frame, particularly for those portions of the review that are under the control of the panel. The time frames of work items beyond the control of the panel, such as the preparation of the EIS by the proponent, are usually not included.

In some cases, the terms of reference also specifically exclude issues that are not to be examined in the panel review, such as government policy on matters related to the proposal.

In a joint federal-provincial review, the terms of reference are normally established as part of the agreement governing the conduct of the review. In doing so, it is customary to incorporate issues that relate to either federal or provincial jurisdiction, or to both,

Candidates for appointment to a panel are advised of the general content of the terms of reference before agreeing to have their names put forward to the Minister. Having agreed in advance to the scope of their mandate, the appointed panel members are expected to conduct the review in accordance with the terms of reference.

In conducting a review, it may happen that the panel may wish to seek clarification of some part of the terms of reference or to suggest a change in them. In the former case, the panel manager may be able to provide clarification to the satisfaction of the panel. If not, only the Minister of the Environment (together with the provincial minister in the case of a joint review) has the authority to provide a definitive clarification or to make a change. The panel chair would, therefore, have to write to the Minister about the matter, keeping in mind that the correspondence must be placed on the public file.

Any panel chair desiring further details on the process of preparing terms of reference for panel reviews is welcome to request a copy of the *Operational Manual for Panel Managers*, now being developed by the Agency.

(c) Selection and Appointment of the Panel

Candidates for appointment to panels are identified by the Agency in accordance with the criteria stated in the EARP Guidelines Order, after which recommendations are made to the Minister of the Environment. Persons are normally chosen from outside the public service.

The Minister makes the final choice, appoints the panel members, and provides the panel with its terms of reference. A ministerial press release usually announces the appointment and publishes the terms of reference.

In selecting panel members for a joint review, the Agency and the provincial Environment Department collaborate in identifying qualified candidates to be proposed to their respective ministers.

In constituting a panel, the Minister usually attempts to achieve a balance of expertise and to create a group of individuals who can work as an effective team and can exercise good judgement regarding the all-important public input, in addition to

considering technical information. Candidates are always nominated on the basis of their personal qualifications and never as representatives of stakeholders.

Further details on criteria and other matters related to the selection of panel members are found in the *Operational Manual for Panel Managers*.

Immediately upon its appointment, the panel assumes the responsibility for directing the course of the review. It is from this point on, that this manual is intended to provide guidance and assistance to the chair in carrying out his or her duties and responsibilities.

(d) First Meeting of the Panel

The first meeting of the newly-appointed panel will normally include a presentation by the President of the Agency. It is essential that the panel acquire, at the very beginning, a clear understanding of its mandate and the context within which it has been issued. The President, as the Head of the Agency responsible for the administration of the EARP, provides the panel with a clear explanation of its terms of reference and describes the administrative, financial and other parameters within which the panel is expected to operate. This includes the code of conduct developed by the Agency for panel members, which each member is required to sign as a condition of his or her contractual engagement.

Equally important, the President can provide the panel with a clear understanding of how its work fits into government decision-making and elaborate on what the government expects from the process. If there is any uncertainty, he will seek to provide clarification of the terms of reference.

In some cases, the President may have a preliminary meeting with the panel chair to discuss administrative issues before meeting with the entire panel.

In joint reviews, some provinces also have built such a meeting into their processes; in these cases, the meeting may occur simultaneously or at a different time.

Immediately after its meeting with the Agency's President (usually on the same occasion), the panel is briefed on the Guidelines Order and on the basic procedures of the panel review process as established through experience since 1973 and published by the Agency. This briefing is usually provided by the panel manager and a senior manager from the Agency. In a joint review, it includes details of the provincial EA process as they relate to the panel review.

In addition to the briefing, time is allocated for discussion of the detailed procedures to be used by the panel in directing the review. This is discussed in the next section.

The panel manager will normally approach the chair beforehand to discuss the agenda for the briefing session and the other matters to be raised at this first meeting.

(e) Operational Procedures

The Guidelines Order requires that the panel establish detailed operational procedures for the review on the basis of, and elaborating upon, the basic panel review procedures published by the Agency.

The panel manager will prepare a draft based on past experience in other panel reviews and recognizing the unique circumstances of the present review. The draft will be examined by the panel and a final version adopted for publication after it has been approved by the panel and by the President of the Agency.

For a joint review, the draft would include detailed procedures essential to the requirements of the provincial EA process. Indeed, some federal-provincial public reviews are based largely on the provincial review process, supplemented by other procedures required to satisfy the requirements of federal legislation.

(f) Public Information

In the first phase of a panel review, there may be a need to provide the interested public with information on the review. The actual need will depend largely on whether an initial assessment of the project has already been conducted by the responsible department and, if so, the extent to which the public was involved in that assessment.

Information on the project is best provided by the proponent. Indeed, the Guidelines Order assigns to the proponent the responsibility to implement a public information program to explain the project and its potential environmental and related social effects. While the EIS will address the latter part of this requirement, it is desirable to ensure that the proponent makes information on the project available to the public at this time to enable the public to contribute effectively to the forthcoming exercise of identifying the issues to be examined in the review.

The panel usually depends on the panel manager to deal with the proponent and the responsible department to see that the proponent's public information responsibilities are met, and normally does not need to become directly involved.

In addition, the Guidelines Order requires each panel to conduct a public information program to advise the public of the review and to ensure that the public has access to all relevant information that it may request. The panel manager will set up appropriate mechanisms to accomplish this, including:

- creating and maintaining a mailing list of review participants;
- arranging for publication of ministerial and panel announcements concerning the review;
- setting up **and** maintaining a public file;
- holding public meetings as appropriate (conducted by the panel manager);
- responding to media and other inquiries about the process and procedures of the review; and
- other items as needed.

In a joint federal-provincial public review, specific public information activities required under provincial EA legislation may have to be undertaken at this time. The provincially-appointed panel manager will carry out such responsibilities.

The panel manager will keep the panel informed at all stages of this information exercise and will ensure that any specific requirements of the panel are implemented whenever possible.

2.3 PREPARATION OF GUIDELINES

At the beginning of some panel reviews, only a limited quantity of information is available to the panel on the project and its potential environmental effects. It is, therefore, customary for the panel to request the proponent to prepare and submit an EIS (or an equivalent body of information), and to provide the proponent with a set of guidelines for that purpose.

In other cases, a substantial body of information may have been produced prior to the initiation of the panel review (in an initial assessment, for example, or an EIS). It may not be necessary, in such cases, to issue any guidelines. The panel proceeds, instead, to review the existing information.

Preparation of the EIS guidelines, when they are required, is a major item of work for the panel. The panel's first substantive task is to identify what information requirements must be met for the proper conduct of the review. Although not specifically required by the EARP Guidelines Order, panels may consult the interested public in the course of determining their information requirements.

(a) Scoping

The exercise of identifying and assigning priority to environmental and related **social** issues that might be examined in the assessment is known to EA practitioners as “scoping”.

The purposes of scoping are twofold. The first purpose is to ensure that the issues to be studied in the review and addressed in the EIS fairly represent those that the affected people believe should be so considered. The second purpose, which may conflict with the first, is that all issues considered in the review should, on their own merits, **warrant** study and presentation in the EIS. The main criterion for making such a decision (and hence writing the EIS guidelines) may be stated as follows:

An issue should be included in the EIS guidelines, if the information . . . generated in studying that issue is **likely** to be essential to addressing the terms of reference.

Sometimes, public concern can heighten the apparent importance of an issue. Panels must be very careful in judging the merits of issues where public concern appears to lack any basis. A panel risks damaging its credibility (and that of the review process), if it either blindly accepts unfounded concerns or dismisses out of hand concerns that are genuinely felt in the community.

Scoping may be carried out in a variety of ways. Public meetings are the most commonly used technique. In conducting scoping meetings, some panels have prepared draft information requirements, published them and then held meetings to discuss the requirements. Others have held meetings at which participants were asked to help identify issues that the panel then used to prepare guidelines.

Other approaches to scoping can also be productive. A visit by the panel to the project site can greatly increase the panel’s appreciation of possible environmental issues, and in any case is virtually essential to the panel’s work. In arranging a site visit, the panel must provide for some degree of participation by representatives of the interested public, to avoid possible concern that the panel is meeting privately with the proponent or any other party.

The panel manager can contact organizations that have already demonstrated interest in the environmental review and invite them to submit briefs presenting their concerns. This can be done either by attending public meetings or by any other means acceptable to the panel.

In addition, panel members should review existing documentation about the project to gain a better understanding about possible issues. Such documentation must be made available in the public file maintained by the Agency.

Regardless of how the scoping exercise is carried out, the following have been identified as fundamental requirements for effective identification of issues:

- early and sufficient information about the project must be made available;
- participants must be identified and involved in the scoping exercise as early as possible;
- there must be real opportunities for participants to be heard and they must be able to present their opinions on what is important to be studied; and
- efforts to rank the issues should be made.

It cannot be emphasized too strongly that the main purpose of the scoping exercise is to prepare guidelines that will focus the environmental review on issues likely to influence the conclusions and recommendations of the panel. There is a general tendency of panels to write all-inclusive guidelines that address every issue identified. That tendency should be resisted as it leads to the expenditure of time, money and energy by participants on issues that do not have any real potential to affect project decisions.

Panels should note that EIS guidelines, though essential to the success of most panel reviews, are secondary in importance to a panel's terms of reference. As the name implies, this document is a guide to the proponent in preparing information to be presented to the panel. Its content is based on the panel's understanding of the issues at a particular time. A degree of flexibility must be built into the review, with respect to the panel's requirements for information. Later in the review, the panel may decide that a particular item requested in the guidelines is not essential to its work, or that some other information -- not requested in the guidelines -- is needed from the proponent. In the latter case, the new information requirement would have to relate to a subject within the terms of reference.

(b) Writing the Guidelines

The EIS guidelines should be prepared on the basis of the results of the scoping exercise. The panel manager produces a draft for review and approval by the panel. This will help to ensure consistency in guidelines format from one review to another, and assist the panel to focus the guidelines appropriately.

When they have produced a satisfactory draft, panels customarily make it available to the interested public for review and written comment. for a period of at least 30 days.

Following the review of the draft, the panel examines any comments received and produces the final version. The finished guidelines document is then transmitted to the proponent and copies are made available to all participants in the scoping exercise and to other interested parties.

2.4 REVIEW OF THE ENVIRONMENTAL IMPACT STATEMENT

(a) Production of the Environmental Impact Statement

The responsibility to produce the EIS rests with the proponent of the project under review. This includes the conduct of any original research that may be needed, as well as any other work that is undertaken to produce the information requested by the panel in its guidelines. This is the most time-consuming and expensive step in the public review, and the major duty of the proponent. It may not be possible, at the beginning of the work, for the proponent to estimate the time that it will take to produce the EIS; because of this uncertainty? no time limit is suggested for this activity and it is not included in any time frame that may be identified for the panel in its terms of reference.

The proponent must supply sufficient copies of the EIS and supporting documents, according to the circumstances of the review. Such details are normally worked out between the panel manager and the proponent's representatives.

Any communications between the proponent and the panel, at this or any other phase of the review, must be by written correspondence that is placed on the public file. The proponent submits only a finished version of the EIS; the panel does not review any draft material.

(b) Preparing to Review the EIS

While waiting for the EIS to be submitted, the panel should prepare itself and come to an agreement on the procedures to be used in conducting the review of the EIS.

Panel members will probably want to obtain and read certain important reference documents related to the type of project under review and the possible environmental and related social effects. If the volume of such literature is very

large, the panel manager will assist the panel by arranging for analysis of lengthy documents in order to focus attention on the most important material.

At this time, depending on the nature of the project and the issues, the panel may foresee a need to obtain technical information or advice to assist it in understanding certain subjects. Part 3, section 3.3(d) of this manual provides guidance on obtaining technical assistance.

(c) Conducting the EIS Review

When the environmental impact statement (or other information from the proponent) is received by the panel, it is made public for review and is also circulated to relevant government agencies. After a suitable time (at least 60 days) for these reviewers to comment and make written submissions to the panel, and for the panel itself to review the documentation, the panel must determine the adequacy of the information presented relative to the requirements of the guidelines and the panel's current knowledge of the issues. Essentially, the panel must determine whether the information content of the EIS is sufficient to form the basis of the public hearing phase of the review.

The panel should distinguish clearly between "complete information" (whatever that may be) and information that is sufficient to enable it to move on to the next phase of the review. It may be necessary to point out this distinction to the public.

The matter of scientific or technical soundness is sometimes raised during the review of an EIS. For example, either the panel or an interested party may question the validity of the methodology used by the proponent in conducting a study. While the focus of the EIS review should be on the adequacy of its information content, serious technical flaws must not be ignored.

A satisfactory EIS is one which meets the criteria outlined below:

- it is focused on the key issues that need to be addressed in order to make a decision about the proposed project. This means it responds satisfactorily to the EIS guidelines and provides information that is scientifically and technically sound; and
- it is clearly and coherently organised and presented to facilitate public understanding.

If the panel determines that the EIS meets these criteria, it will proceed to schedule the hearings. The panel may also proceed to schedule hearings if it is assured that the proponent will be able to respond to relatively minor deficiencies in

the EIS before the hearings take place. However, if the panel decides that the EIS does not meet these criteria, it should advise the proponent (publicly and in writing) of the changes or additional information required to meet the criteria and should not proceed to public hearings until the matter is dealt with to the panel's satisfaction. For example, if the panel is convinced that studies conducted to support a substantial section of the EIS were invalid, thus severely limiting the usefulness of that section, it may request the proponent to rectify that situation before announcing the hearings.

In this connection, it should be noted that the availability of participant funding makes it possible for interested parties to engage qualified persons to examine the scientific and technical soundness of the EIS.

2.5 THE PUBLIC HEARINGS

(a) Preparing for the Hearings

Supplementary operational procedures are usually issued for the public hearings; these are in addition to the general operational procedures discussed earlier in connection with the "Initiation and Orientation" phase of the review. The panel manager will submit to the panel a draft of the supplementary procedures, based on experience gained in previous panel reviews.

The public hearings are the *raison d'être* of the panel review. Everything that precedes them merely serves to ensure that the hearings are held in an effective and productive manner. In this context, the hearings provide the main opportunity for participants to convey their ideas and the reasons for their ideas about the proposal. Panel members must not allow their minds to be made up about issues until the hearings are finished and the final information is received.

Panel 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 panel's planning meetings helps the panel prepare for the hearings and identify those issues that are particularly important. At the direction of the panel, the panel manager can assist in these preparations by:

- preparing a draft list of questions to be asked at the hearings; and
- providing an analysis of the issues, based on consultation within and outside the Agency.

The panel must decide on the location(s) for the hearings sessions and plan for an appropriate number of days at each location, taking into account the costs involved. The panel manager will prepare a draft schedule for the panel's

consideration, based on the level of interest demonstrated by participants in the scoping exercise and on the past experience of the Agency.

All logistical arrangements for the hearings are made by the panel manager. This may include consideration of special arrangements where hearings are to be held in aboriginal communities.

(b) Conducting the Hearings

Public hearings under the Guidelines Order must be conducted in a “non-judicial and informal but structured manner”. Over the past 20 years, they have acquired an enviable reputation for fairness and approachability.

Part 3 of this manual offers guidance on the conduct of public hearings. within the section dealing with panel-participant relations.

2.6 REPORT WRITING

(a) Panel Meetings to Determine Report Content

After the hearings are finished, the panel will meet as soon as possible to discuss the content of its report to the ministers. It is especially during this and the following panel meetings that the panel chair will be called upon to show leadership and promote consensus among the panel members. More on the subject of consensus appears later in this manual.

Once the panel has determined the conclusions and recommendations in general terms, it must then proceed to write the report, that is, to compose the specific wording needed to convey the panel’s message effectively.

The panel report must contain an analysis of the comments received from the public as well as the conclusions and recommendations of the panel relating to the environmental and related social effects of the project and any appropriate mitigation measures or follow-up requirements.

The report is entrusted to the panel manager to arrange for professional editing, translation and printing. The review schedule must allow sufficient time for these activities, while ensuring that the report is submitted in a timely manner. Once printed, the report is transmitted to the Minister of the Environment and the minister responsible for the assessment of the project. In the case of a joint federal-provincial review, the report is also submitted to the provincial environment minister and

sometimes to another provincial minister as well. At that point, the report becomes the property of the ministers and remains confidential until they decide to release it.

Once the panel has submitted its report, the public review has ended and the panel ceases to exist.

(b) Report Writing Responsibilities

There are different ways of approaching the writing of the panel report, but there is a significant responsibility for writing assigned to the panel manager in any case. In one approach, panel members themselves do the drafting of the report after deliberating and reaching their conclusions and recommendations in principle. In another, panel members determine what conclusions and recommendations they wish to express and delegate the responsibility for drafting to the panel manager. In either case, it is the panel itself that must determine and be satisfied with the final wording of the report. Panels must take the time to thoroughly review the text to ensure clarity of expression, thereby avoiding ambiguities. Once the report has been signed by the panel, its content will not be modified in any way without the consent of the panel. No employee of the Agency has the authority to change anything in a signed panel report. At the same time, the Agency will support the panel manager in coordinating the printing process to assure high quality in the appearance of the final product. During the period prior to its public release, when the report is confidential, the Agency will ensure that it is kept secure.

While preparation of early drafts of the report may be delegated to the panel manager based on clear and explicit instruction by the panel, responsibility for the final report and for the recommendations in it cannot be delegated. Even if the panel members decide to draft the report themselves, it is very common for the panel manager to coordinate the drafting of introductory and descriptive material while the panel members draft the sections dealing with the substantive issues.

Especially when panel members prepare initial drafts of the report, it is possible for members to become attached to their own individual writing styles. This pride of authorship, as understandable as it may be, is undesirable and unworkable because typically there are many changes in wording between the first drafts and the final version of a panel report. Most of these changes represent improvements in the overall report and those drafting the report should expect changes. The panel manager has access to the services of editors and technical reviewers if the panel so wishes. Panels are encouraged to use these services, since maintenance of consistently high editorial quality of panel reports is important to the Agency and the review process. Editors should be engaged early enough in the report-writing

process, that they can become familiar with the material and thus perform their services promptly.

In drafting its recommendations, a panel should ensure that they are carefully and fully presented and follow clearly from the analysis presented in the report. The recommendations should also be practical, that is, capable of being implemented

It goes without saying that each of the recommendations contained in the panel's report must deal with subject matter that is within the terms of reference for the review. Any comment on a subject outside the terms of reference should be conveyed to the government by some other means.

The panel is obliged to ensure the accuracy of the information contained in its report and can rely upon the panel manager to arrange for verification of the factual content of the draft text.

Panels should also review examples of previous panel reports as a guide but must decide themselves on what is best for conveying the judgements they are making. While editorial and graphical consistency of presentation in the panel reports creates a better image of the federal environmental assessment process and so is desirable, a panel should feel free, in exceptional cases, to choose an alternate format that presents its ideas more effectively. The format selected must take into account measures that avoid unnecessary costs associated with publication of the report.

A panel report stands on its own. Many readers will not be aware of the particular context or circumstances. Effective communication of the conclusions and recommendations of the panel is, therefore, extremely important if others are to understand the ideas presented. Accordingly, while recognizing the importance of timely information, panels should take the time necessary to do a good job of writing the report so that its content is clear and the report effective. Experience has demonstrated that the use of deadlines helps to ensure that this phase of the review does not take longer than necessary.

PART 3

PANEL RELATIONSHIPS AND RESPONSIBILITIES

3.1 GUIDING PRINCIPLES

(a) Duties of Panel Chairs and Members

The Agency has prepared a list, attached as Annex A, that highlights the duties and responsibilities of panel chairs and members. Many of these duties are discussed in the following sections.

(b) Code of Conduct for Panel Chairs and Members

The Agency has also prepared a Code of Conduct that establishes standards of behaviour for panel chairs and members. A copy of this code is attached as Annex B.

3.2 PANEL-PARTICIPANT RELATIONS

(a) Public Values and the Panel Review Process

As part of its review of environmental assessment, the Agency formulated its own mission statement:

To provide effective means of integrating environmental factors into federal planning and decision-making in a manner that takes into account public values and the goal of **sustainable development**.

While the procedural steps described earlier - such as developing operational procedures, scoping, and conducting public hearings - help set the stage for public participation in the review, they are not sufficient to incorporate public values into the assessment. Pursuit of this goal requires that a panel:

- be absolutely convinced that the integration of public values is essential and represents the main value added from the panel's work;
- display considerable sensitivity to the cultural differences among different segments of the public;

- assess the relevance of all submitted information, to ensure that it relates to the project being reviewed, and is not frivolous in nature;
- carefully analyze input provided by the public to determine what the basic public values are concerning the environmental and related social effects of the project; and
- develop sound conclusions and recommendations for ministers on these effects that reflect the prevailing public values about them.

(b) Guidelines for the Conduct of Public Hearings

Panels stage public hearings to understand public views about the environmental and related social effects of specific projects. It is important that these hearings be, and appear to be, fair yet focused. The panel chair plays a leadership role in managing public hearings. The following guidelines identify ways panels can conduct fair hearings which are on topic:

- develop and distribute rules of procedure before the hearings so that the parties will know how to participate in the review including the public hearings phase. Operational procedures published by the panel meet this goal;
- facilitate participation through appropriate logistics;
- ensure that interested parties obtain relevant documents, such as EIS reports, before the hearings so that they can participate in the public meetings, recognizing that a well-informed public is more apt to participate in a constructive way;
- manage public hearings in an impartial manner so that all participants understand that the panel is not favouring any of the interested parties. For example, the panel must maintain an arms-length and open relationship with the proponent and other stakeholders. Similarly, the nature and style of panel members' questions to the proponent should not suggest bias in favour of or against the proponent;
- facilitate effective public participation in the hearings by:
 - (i) opening them with a short presentation by the panel chair:
 - introducing the panel and outlining its terms of reference and how they govern the scope of the public review;
 - indicating the purpose of this particular meeting and describing the procedures to be followed so that the parties present can participate in the hearing; and
 - outlining the order in which the parties will present - likely starting with the proponent's description of the project and its salient environmental and related social effects:

- (ii) clarifying the roles of the various participants to avoid confusion. This may mean indicating to the participants that it is the proponent's job to explain, and answer questions about, the project and its environmental effects;
 - (iii) demonstrating respect for and interest in the various presentations yet, if required, diplomatically reminding participants who are well off-topic what the subject being reviewed is; and
 - (iv) creating a relaxed atmosphere within the non-judicial structure of the hearings, so that reticent or apprehensive parties can make their presentations without distress;
- develop a good balance between conflicting demands for a timely, yet full, review of key issues at public hearings; and
 - ensure, in a diplomatic way, that the participants observe the rules and procedures established for the hearings.

(c) Communications and Media Relations

There are many aspects of communications that need to be dealt with throughout the review. While most of these matters can be handled by the panel manager, some involve decisions by the panel. All of these decisions need to be communicated to the public. The panel manager will normally seek advice on the content of detailed announcements from the chair and make use of the Agency's communications expertise on the details. Other matters, such as the nature of announcements and the development of a communications plan for the review will usually be discussed in principle by the panel and implemented by the panel manager with occasional advice from the chairperson. The communications staff of the Agency is available to the panel manager to provide necessary support.

The panel must not be seen to have reached substantial conclusions prior to the report having been released. Thus, the principles governing media relations are that one should be as open as possible regarding review procedures while declining to comment on substantive issues.

It should be agreed from the beginning that the chairperson and the panel manager are to be the only media contacts for the panel.

Dealing with the media is a skill which the primary spokesperson should possess. Basic principles include the following:

- treat all media representatives with respect and try to work with them to provide the information they are seeking and that you can properly provide;

- try to provide the information in a **useable** form (e.g., short accurate quotes for radio and television news, more full description for print media representatives);
- generally speaking, treat everything you say as being “on the record” and for quotation;
- avoid the use of jargon and be prepared to explain the work of the panel simply and honestly;
- when a question cannot be answered, explain why;
- be certain you understand the question before attempting to answer it;
- always show respect for the process and participants in the process: and
- do not allow frustration or perceptions of bias to appear in such interviews.

The communications staff at the Agency is available to the panel manager to provide assistance in dealing with the media.

Panel chairs will be most likely called upon to do interviews when the panel is announced, during hearings, and when the panel report is released.

Interviews upon panel announcement may be the most difficult. The chair will not have met with the panel and must help the media understand and present the process without committing to procedures that are not yet developed.

At the hearings, the procedures and process should be explained fully in order to help the media, but substantial issues must not be discussed in a manner that could be construed as compromising the panel and the process.

After the report is released, the former panel members may comment on the substantive issues including the conclusions and recommendations. But fairness to one’s fellow panel members requires that confidential panel deliberations not be discussed. One should also remember that the panel report itself should explain these issues quite fully. The former panel chair, especially, should, at that time, take care to present the panel’s (as opposed to his or her own) conclusions and recommendations carefully based on the report.

3.3 MANAGING PANEL ACTIVITIES

(a) Confidentiality of Panel Discussions

There are at least two reasons why panel discussions are confidential. First, panel deliberations frequently feature frank exchanges among panel members exploring alternate ways to **characterize** and resolve issues. This give-and-take process is an essential step in achieving consensus among panel members. It requires that such exchanges be confidential so that individual panel members are not subsequently identified with positions that they considered, and so can feel free to express their points of view. Second, the deliberations of panels must be confidential to make sure that their conclusions and recommendations are not disclosed to the proponent, the media, or the public until ministers release their report.

Needless to say, any member of the Agency staff who is brought into the panel's confidence is bound by the same rules of confidentiality.

(b) Achieving Consensus

One of the most valuable advantages of panel reviews is that panel members bring different perspectives and complementary areas of interest and expertise to the process. Panel reviews thus enable panel members to benefit from their different backgrounds and outlooks in collectively assessing the environmental implications of projects. The quality and credibility of panel reports are also enhanced by the joint deliberations and consensus conclusions and recommendations of panel members. Conversely, should a panel review deteriorate into fractious and unresolved debates among its members, then both the specific environmental assessment being conducted and the integrity of the environmental assessment process, would suffer.

The panel chair plays a leadership role in creating a working environment that fosters collegial fact-finding and problem-solving by panel members. Of course, a collegial atmosphere does not mean that there will not be differences of opinion among panel members: indeed, frank questioning of the basis for another panel member's position frequently clarifies issues and helps identify areas of agreement.

Chairs that effectively discharge this leadership role typically employ an array of techniques to achieve consensus: These include:

- informing and reminding other panel members that collegial decisions reached through consensus are a fundamental goal of the panel;
- using a problem-solving, professional approach in dealing with issues and inviting other panel members to do likewise;
- focusing discussions and deliberations on areas of agreement rather than dwelling on incidental differences among panel members;
- if necessary, guiding panel discussions to ensure that panel members are able to state and explain their case for a particular position;
- determining whether differences of opinion among panel members are based on critical information gaps and, if required, taking steps to fill this void; and
- in general, assuming the role of facilitator and conciliator in resolving differences of opinion on key points among panel members.

Of course, since panel chairs **recognize** that consensus-building is a slow and challenging process, they frequently must find effective means to keep the review on schedule yet ensure that panel deliberations culminate in full support among members for the panel's conclusions and recommendations.

In cases of difficulty, the panel manager can obtain professional assistance for a panel that finds itself unable to reach consensus.

(c) The Role of the Panel Manager

An essential part of successful panel operations is effective teamwork between the panel and its panel manager. The following points clarify the panel manager's role:

- the Agency bears the responsibility for the administration of the **EARP**, including the provision of administrative, logistical and financial support to each panel;
- the continuous contact between the Agency and the panel, which is necessary to carry out the Agency's responsibility, is provided by the panel manager. It is therefore necessary to have the panel manager (or an alternate) present at every meeting of the panel;
- the panel manager addresses the panel's needs within the context of the Agency's responsibility, providing general advice and coordinating all support services. The panel manager can find answers and solutions to a wide variety of questions and problems that may face the panel. He or she will also initiate and manage

- contracts for any services that are determined to be essential to the conduct of the review, such as technical advice;
- the panel should look to the panel manager for sound advice on process and on administrative and financial procedures, including (if required) clarification of its terms of reference, and should pay close attention to that advice;
- more broadly, the panel manager supports the panel by making available other services that it needs to conduct and conclude its work, for example:
 - designing and implementing a public information program;
 - providing regular financial information;
 - verifying the factual content of its report to ministers; and
 - coordinating the provision of editing services; and
- the panel manager is the main point of contact between the panel and the other participants in the review.

(d) Sources of Technical Information

Conducting a panel review that includes a focused examination of the key scientific issues can raise the question: Who can and should supply the information required to understand key technical points central to the review? The following guidelines are intended to help panels answer this question:

- most of the technical information that the panel will use in carrying out its mandate will normally be presented to it by the proponent. The panel should never attempt to do, or ask governments to do, work that is the responsibility of the proponent; under very rare circumstances, however, a panel may have to consider looking elsewhere for essential information;
- the panel should focus its attention on information presented to it by the proponent and by other participants in the review;
- the 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. The panel manager can advise and assist the panel in effective means of soliciting technical advice from government departments;
- the panel should consider hiring technical experts from outside the government only where advice from such experts is regarded as absolutely essential to the panel in responding to its terms of reference and where the panel chair is satisfied that the required expertise cannot be obtained within the public service; and
- technical experts should be hired only for the purpose of advising on the adequacy of core information provided to the panel by the

proponent, or to provide another opinion on a key subject where there is significant disagreement amongst experts. They should never be brought in to do original research or to complete the EIS.

In addition, there are several administrative points to be followed when buying or using technical information. These include:

- all advice received from technical experts is placed on the public file so that other participants may have the opportunity to review and comment on it; and
- costs associated with the hiring of technical experts must be borne within the allocated budget. Contracts for the services of technical experts are to be managed by the panel manager. In this regard, there are government regulations and practices, based on principles of prudence and probity, associated with the contracting of services; the panel will depend on the advice of the panel manager in this matter.

(e) Budgeting

There are two basic principles that apply to budget control over panel operations. These are the principles of panel independence and prudent use of public funds. The Agency is responsible for the allocation of public funds (in addition to its other responsibilities) while the panel chair is responsible for carrying out a thorough and independent review of the project. The challenge to determining a suitable budget for an environmental review by a panel is that the complexity of the review often cannot be predicted with certainty at the beginning of the process. Some flexibility in both the budget and the control mechanism is therefore necessary and that requires close cooperation between the panel and the Agency to make it work. The following approach is suggested as a reasonable way of handling budgetary matters.

Before the panel is appointed, the Agency will allocate a preliminary budget figure for the review. This information will be conveyed to the panel chair at the time of his or her briefing with the President of the Agency. Then, very early in the review, the panel chair, having consulted with the panel, should discuss any changes needed with the President or a delegate. As a result of that discussion, a budget will be established for the review, which meets both the requirements of the panel for a proper review and the responsibility of the Agency to ensure prudent use of public funds.

The responsibility for managing the review within the allocated budget is shared between the panel chair and the panel manager. It may be necessary

occasionally to make trade-offs between possible expenditure items in order to achieve this important objective. The role of the panel manager in this financial management process is to keep track of all expenditures and to provide regular financial reports to both the panel chairperson and the Agency. Decisions on specific expenditures are made by the chairperson within the approved budget. These expenditures are executed by the panel manager, taking into account relevant Treasury Board and Agency financial guidelines.

Budgetary responsibility is also tied into the timing of the review in two important ways. First, if delays in the review affect either its cost or the ability of the panel to complete the review in accordance with its terms of reference, then both the Agency and the Minister must be so advised -- the Agency because of budget changes and the Minister because the terms of reference (specifically time frames) may need to be altered. Second, the budget allotted for the review will reflect the government's fiscal year. If a particular panel activity is delayed from one fiscal year, to another, the budget for that activity should not be assumed to move automatically from one year to another. Specific measures have to be taken to accomplish this.

Under unusual circumstances, a panel may feel that changes in the process are required to make the review more effective. For example, hearings may need to be extended because the extent of public concern or the complexity of certain issues was underestimated. Where such changes are likely to have the effect of increasing the budget requirements for the review, it is essential that the panel chairperson and the panel manager review the changes. Provided that strong justification is provided, the Agency will seriously consider the request and attempt, where possible, to accommodate the panel.

(f) Legal Counsel

The federal environmental assessment process is designed to be easily accessible to all interested parties. Panels want to hear directly from the participants, how they believe the project under review may affect them or their environment. Procedures for public meetings and hearings are made simple and relatively informal, to encourage direct participation. There is no sworn testimony and no cross-examination of speakers. The informal nature of the process means that there is no need for a panel or other participants to engage legal counsel to speak on their behalf.

Occasionally, a panel may find itself in need of legal advice relating to some aspect of its work. Such advice should be sought through the panel manager. In the event that legal **advice** is needed, the panel manager will take the necessary steps to ensure that the panel receives it.

ANNEX A

DUTIES OF PANEL CHAIR AND MEMBERS

Panel Chairs

Panel chairs play a pivotal leadership and management role in the environmental assessments conducted by panels.

Key duties of panel chairs include the following:

- ensure that the panel review is independent, impartial, transparent, and treats all participants equitably. The panel chair assumes an essential leadership role in this area, since it is expected that his or her behaviour as chair will epitomize these values. The Code of Conduct (Annex B) elaborates on these requirements;
- conduct an informed assessment. The chair needs to acquire a detailed understanding of the terms of reference, the project, its potential impacts and related public interests and concerns, and how the report contributes to the government's decision-making processes. To the extent possible, the chair is expected to require the proponent to provide the information necessary for the review. A panel acquires the knowledge needed to produce an informed assessment by holding scoping sessions, issuing guidelines, reviewing the EIS, requesting additional information from the proponent, if necessary, and conducting public hearings;
- manage the review process effectively. Specific duties include:
 - overseeing the development and administration of the panel workplans jointly with the panel manager and in consultation with the panel;
 - developing the budget in collaboration with the panel manager and conducting panel business in a cost-effective manner in order to work within the budget;
 - making every reasonable effort to conclude the panel review on time; and
 - assuring accurate and timely communications between the panel and the review participants as well as the media;
- establish and maintain a professional, collaborative, problem-solving climate for panel operations:

- chair the public hearings in a thoroughly fair, considerate and efficient manner. It is at the hearings that the panel is exposed to the greatest degree of scrutiny. Here, more than at any other time of the review, the chair must demonstrate that the panel is interested in hearing from anyone who has something to say on a matter within its terms of reference; and
- plan and produce a consensual panel report for ministers that addresses and remains within the terms of reference.

Panel Members:

- will adhere to the Code of Conduct so that the review is independent, impartial, transparent, and equitable;
- share responsibility with the panel chair to conduct panel business in a professional, collaborative, problem-solving, timely, and cost-effective manner;
- will acquire a detailed understanding of the project, its impacts, public concerns about it, and of how the panel report contributes federal decision-making processes;
- will attend and participate in all panel meetings, hearings, and other activities as well as contribute to meaningful discussions of pertinent issues; and
- will contribute to the preparation of a consensual panel report to ministers that addresses the key issues raised in the terms of reference.

ANNEX B

CODE OF CONDUCT FOR PANEL CHAIR AND MEMBERS

All persons appointed to membership on environmental assessment panels are expected to conduct themselves in a manner that is in keeping with the high public profile of the panel and with the basic principles of the environmental assessment process, i.e., independence, impartiality, transparency and equity. Public perception in this respect is just as important as the reality of the situation.

The standards presented below are provided merely to remind the panel chair and members of the norms of behaviour that they must adhere to as a matter of course. They are not intended to limit in any way the independence of the panel's work.

In particular, with respect to the operations of the review, the panel chair and members must:

- behave impartially and fairly toward all participants **in the 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 review with anyone except other panel members and the panel manager;
- not communicate in private with anyone except other panel members and staff; and
- respect the fact that internal deliberations of the panel are confidential.

With regard to their personal affairs, the panel chair and members must:

- ensure that their pecuniary interests do not conflict or appear to conflict with their official duties as panel members:
- 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 panel member on a specific project (the conflict of interest guidelines issued by the Agency spell out what kinds of financial arrangements would likely constitute a conflict of interest). Failure to disclose actual or potential conflicts of interest can result in termination of a panel member's appointment; and

- not be seen to have partisan political affiliations. A panel appointment is conditional upon the panel member's agreement not to seek political office nor openly support a party or candidate, not only during the term of appointment, but for a period of six months thereafter.

In providing contracted services to the government, the panel chair and members are subject to the Treasury Board Conflict of Interest Code and must, therefore:

- perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity, and impartiality of government operations are conserved and enhanced;
- act in a manner that will bear the closest public scrutiny, an obligation that is not simply discharged by acting within the law;
- arrange their private affairs to prevent real, potential, or apparent conflicts of interest;
- not solicit or accept transfers of economic benefit;
- not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person; and
- not knowingly take advantage of information obtained in the course of their official duties and responsibilities and that is not generally available to the public.