

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

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FOREWORD

Since the mid-seventies, the Canadian government and most provincial governments have passed measures (laws, orders in council, regulations) subjecting certain types of development and construction projects to environmental impact assessment procedures. These measures all provide for public participation in evaluating environmental impact. Hundreds of projects have been reviewed under these procedures and in several dozen cases there has been formal public participation within the framework of public hearings provided for in the government measures.

Thanks to a grant from the Social Sciences and Humanities Research Council of Canada, in 1981 we were able to undertake a study to assess citizen participation in these public hearings on the environment. The initial goal was to conduct a thorough study which would assess public participation in three ways. We began by identifying the public participants in hearings on the environment; we then examined the major themes addressed by the public; finally, we focussed on the public participants' formal requests to decision-makers. We hoped that this approach would provide at least partial answers to each of the three following questions: Who participates in public hearings on the environment? What are citizens' major reasons for participating in the evaluation of environmental impact? What influence do the public's formal requests have on decisions to approve, with or without conditions, the implementation of the projects reviewed under the environmental impact assessment procedure?

In order to conduct this analysis in a thorough and exhaustive manner, we had to make certain procedural choices. We began with all proposals reviewed under the federal, Quebec, and Ontario procedures, and of these we selected all cases in which the evaluation process included public hearings on the environment—a total of 42 projects. In order to identify and select the participants in public hearings, we began with all participants and we eliminated official representatives of government departments or agencies, the proponent, and private companies with a direct or indirect interest in the project. In all, we identified 1,948 public participants. The analysis of their presentations was based entirely on the written briefs submitted to the boards responsible for conducting the public hearings. These briefs are detailed and complete texts. Furthermore, they were written without constraints, free of the interruptions and digressions which the presence of other speakers produces at public hearings. The analysis of the public's formal requests focussed on nine proposals referred to public hearings—three each for the federal, Quebec, and Ontario procedures. The cases were chosen on the basis of their potential to provoke a large number of requests, whether this was because a large number of briefs was submitted to the board, because major population centres were affected, or because numerous complex issues were raised involving different levels of government. Requests were collected from the briefs submitted and also from the complete verbatim transcripts of the public hearings. The effect of the public's requests was traced through the board reports' recommendations and proposed conditions to the projects' official authorization in orders in council and letters of agreement.

The analysis was conducted in a systematically comparative way at every level of investigation, using the three chosen methods. There are no significant differences among the environmental impact assessment procedures in terms of the types of public participants, their presentations, and their requests, although there are some minor variations among the procedures before and after the public hearing. Consequently, the presentation of the analysis will rarely indicate differences among the procedures and will generally focus on public participation in evaluating environmental impact.

The first three chapters of this study will deal with the general problem of public participation in assessing environmental effects, the specific question of assessing this participation, and the formal process established by the environmental impact evaluation procedures to govern public participation. Chapters IV, V and VI will deal with, in order, the analysis of the types of public participants, the participants' presentations, and the types of requests made. Chapter VII will present a more detailed and substantive analysis of the requests made at hearings on major urban waterway and waterfront projects. Finally, Chapter VIII seeks to gauge the effect of the requests on the boards' reports and the government decisions.

We would like to thank the staff of the Bureau d'audience publique sur l'environnement (Quebec), the Environmental Assessment Board (Ontario), and the Federal Environmental Assessment Review Office (Ottawa) without whom this study could not have been completed. They gave us free access to their files and made it possible for us to identify the public participants, to assemble the texts of all the briefs submitted, and to read the tens of thousands of pages of hearing transcripts.

INTRODUCTION

Public hearings on the environment are among the most formal opportunities for public participation in the decision-making process concerning major development projects in Canada. The federal government and most provincial governments have produced explicit legal texts requiring public participation in environmental impact assessment procedures. These legal texts are supplemented by explicit regulations and procedural rules governing the mechanisms of public participation. In most cases, administrative agencies with some measure of autonomy and degree of neutrality are responsible for applying the procedural rules and administering the mechanisms.

Each of these public hearings enacts a kind of social drama which, in large measure, overflows the bounds of the formal procedural rules. It cannot be said that all the hearings are entirely oriented toward a quest for objectivity, which could serve as a basis for consensus and lead to a single judicious decision that all participants could support. The public hearing is, rather, essentially a strategic game conducted on the basis of a previously existing relationship of forces which is reconstructed during the hearing itself. All participants are, in the first instance, social actors defined by their social positions on the one hand, and by the system of positions represented by all the participants in the hearing on the other. Some of the positions represented correspond to specific roles which have been defined in advance by the rules of procedure. The internal dynamic of the hearing is produced by departures from the roles and by ruptures in the expected correspondences between role and social position. After all, the basic aim of the public hearing is to transform individual messages into a collective judgement. Therefore, the exchange and sharing of information at the hearing is based on strategic alignments that preceded the negotiation, not on reaching consensus through a process of making knowledge objective.

This social drama is neither gratuitous, nor abstract, nor arbitrary. It occurs in a "social vacuum" situation that has several aspects. The first aspect involves the political and social determination of economic life. Public and private investment in major development projects is not always integrated into the community's social development in a natural way. There may be doubts about the real value of such investment and whether it represents a net loss or gain for society. In addition, public and private investment may not automatically correspond to firm public choices, nor readily submit to written or unwritten rules governing the correspondence between investment and the collective development citizens want. The second aspect of this social vacuum situation involves challenges to the role of objective knowledge in the process of rational decision-making. There is both refusal by society of the determining function of technical knowledge and a greater emphasis on socially meaningful knowledge. The expert's role is thus relativized, and expert testimony is classed as one more piece of evidence among

others. Finally, the third aspect involves challenges to the legitimacy of government intervention. As the government is deeply implicated in the means and ends of the collectivity's economic development, it may no longer constitute an assuredly neutral arbiter between the economic interests on which it relies to support economic development and the interests of the agents of social development. In addition, the government is weighed down by its own apparatus and divided by the sectorial political interests of different elements of the apparatus; this circumstance gives rise to doubts as to the government's political and administrative coherence and to challenges to the legitimacy of its role as final decision-maker.

As a social drama, does the public hearing enjoy a measure of autonomy in relation to its own rules of procedure, which attempt to regulate how the relationship of forces articulated in the participants' roles and positions is expressed? Is this autonomy internally governed, within the strictly situational dynamic among the participants in the hearing? Is it, rather, sustained by the three aspects of the "social vacuum" situation which we consider the background to the public hearing mechanism? Finally, is the public hearing a ritual or an instrument of social development?

Our approach was defined by these general questions. We consciously allowed ourselves to be drawn into an analysis of the hearing as a mechanism. We considered the rules by which participants are assembled and the positions of the participants; these positions were defined in terms of their participation at the hearing and not in terms of their general social positions. We examined their presentations, understood in the first instance as determined by the dynamic of the hearing and not as representative of possible presentations on the issues raised by the proposals submitted for public evaluation.

One limitation of this study is that it is not an analysis of the social actors present at the public hearings on the environment, as we have chosen to consider the public hearing itself as a social actant, as an agent of socialization. In addition, this study is based on an undifferentiated analysis of all hearings held under the procedures for public hearings on the environment. The hearings are understood here not as a forum for the social issues raised by the projects submitted for public evaluation but rather as a social issue in themselves,

This is without doubt the most important limitation as it prevents us from identifying how the type of project and the site of the project influence the hearing. This limitation was, however, regularly questioned and assessed in the course of the study and it is still being assessed. We felt that this was part of the price to be paid in order to carry out a study of a mechanism which, by its nature, tries to demarcate itself, to become autonomous, and to define itself as a social act in itself.

Finally, another limitation of this study is that it ignores all the processes and strategies aimed at influencing the final decision which occurs around and outside the public hearing. By limiting our analysis to the public hearing only, we establish a direct link between the public's requests and the review boards' reports, and between the boards' reports and government decisions. While the report must present an overview of the opinions expressed by the public, we must not overlook the fact that the boards usually also have a mandate to conduct inquiry and can therefore obtain information by

means other than the discussions at the hearing. As for the ministers, they receive departmental advice in addition to the board's report. They are also subjected to pressure through channels of social and political influence or within the context of negotiations and exercises in dialogue. As, however, the purpose of this study is to partially assess the impact of public participation on decision-making, and as we wanted to evaluate the public hearing as an institutionalized procedure, it is legitimate to consider the specific impact of participation in public hearings on decision-making.

CHAPTER I: THE RIGHT TO PARTICIPATE

Public consultation and participation now seem to be accepted practices. They are not new, having long been used for specific programs in the areas of development, health, social security, and labour. They have been used regularly by governments in the context of committees and commissions of inquiry into specific problems. Finally, taking the public's opinions and representations into account is common practice in the areas of social and political analysis. In recent years, public consultation and participation have become somewhat separated from inquiry and social discussion. They are considered special practices conducted through specific institutionalized mechanisms belonging to decision-making and administrative processes.

As institutionalized mechanisms, public consultation and participation become distinct entities. They now appear regularly within institutions in various distinct ways. They may be formally established under general legislation that makes them compulsory, such as Quebec's *Loi (125) sur l'aménagement et l'urbanisme*. They also appear in regulations and orders in council issued to implement general laws, such as the Quebec regulations on environmental impact assessment. Consultation and participation mechanisms are institutionalized in a less formal way by administrative procedural guidelines tying certain government subsidies, for example, to public consultation processes. They appear in corporate administrative policies (as in the case of Hydro-Quebec) and in special agreements between various partners on a given subject or program. These institutionalized consultation and participation mechanisms generally operate according to known, explicit, structured procedures which are seen as safeguards.

Public consultation and participation also occur in many procedures used in existing or potential conflict situations that have no official status. Consultation and participation mechanisms are established either as part of the planning process, or in more specific ways as part of the decision-making process concerning a given program, policy, or project. They are established by either elected representatives, administrative officials, or experts and professionals. In the latter case, consultation and participation must be seen as social practices which function as social and cultural operators, without having been institutionalized.

Through the institutionalization of consultation and participation under general legislation, and also through the adoption of specific practices in which the planner and the decision-maker accept to be bound by participation procedures, the public's right to participate is guaranteed and, moreover, acquires legitimacy. This legitimacy has not been generated by a spontaneous consensus produced by circumstances: it has, rather, been argued and developed through fundamental debates on democracy in general and democratic decision-making in particular.

These debates have been based on two long-opposed theories of democracy. One of these is the theory of direct democracy, which holds that those most affected by a decision should participate directly in the decision-making process. The other is the theory of elected or representative democracy, based on the delegation of power: this theory holds that elected representatives are entitled to make all decisions themselves, as they have been elected for this purpose. The current debate over direct democracy has been fuelled primarily by the excesses and weaknesses of representative democracy. Elected representatives do not have specific mandates for each area of social and economic life; they have a mandate only for general stewardship. Their mandates are long, and in the course of serving their mandates, elected representatives encounter questions and issues that may not have been anticipated at the outset. Elected representatives are not experts and the complex administrative structures they must steer can acquire a certain autonomy by virtue of their own expertise, and so forth.

More importantly, however, the substantive debate between the two theories has been fostered by the debate on the nature of freedom.¹ Among other things, traditional philosophy advanced two conceptions of freedom: "positive" freedom, the right and duty to participate with other people in making decisions of common concern, and "negative" freedom, the right to be protected from intrusion and coercion by other people. The debate between these two conceptions had approached the conclusion that only negative freedom can be realized in practice.

From the point of view of negative freedom, public participation in decision-making was considered to be of secondary importance, far less significant than the election of the people entrusted with decision-making power. All political issues were subsumed under the central question of first ensuring the formation of a stable and competent government whose responsibility, in essence and in practice, would be to act in accordance with the general interest. In this view, therefore, public participation consists of electing the decision-makers, the governments.

Contemporary debate on the philosophy of freedom subscribes to the guiding principle of the positive conception of freedom, that the basic aim of democracy is to ensure that decisions are made by those who will be affected by them. This principle calls upon the community and relies on it as the agent responsible for social organization. Democracy is no longer conceived as an ideal model but rather as a method of participatory community organization.

This conception of democracy involves a radical transformation of our perception of the individual and society. Individuals are no longer understood in terms of their needs, as consum-

ers, but rather as active agents, as doers, who are essentially oriented toward responsible action. Social organization is no longer understood as a functional structure whose purpose is to meet the needs of all individuals, but as a collective system of responsible action. Social organization as a whole is therefore oriented toward the full development of the individual as an active agent. In many ways, public participation in assessing environmental impact shows that, on the whole, the purpose of the operation is not so much to reduce the negative effects of a project's impact on all involved as it is to give the community concerned responsibility for the actions taken in order to ensure the maintenance and development of social cohesion under adverse conditions.

The theoretical debates over democracy and the philosophical principles of freedom outlined above rest on theoretical and conceptual developments in a number of specific disciplines.

The Right to Participate

In the area of law, the general principle of natural law has been called into question. This principle holds that people whose rights or property are significantly affected—that is, affected to a greater degree at least than those of the general public—are entitled to protection by virtue of natural justice. This principle has been negatively interpreted, as a bar to intrusion and coercion by other people, and has been applied by the courts in a limited and restrictive way. It has not been applied as a fundamental principle. The courts have interpreted it very narrowly, to protect strictly private interests against arbitrary action by administrative agencies. In most cases, legal action is not possible for ordinary citizens: the cost of a suit would be prohibitive, information is lacking or classified, the burden of proof rests entirely with the plaintiff.

It would appear that the general principle of natural law must remain an abstraction insofar as administrative and regulatory agencies are far better equipped than are citizens to defend their actions. In addition, these agencies are themselves captives of the parties they are called upon to regulate, or at least are dependant on them for the relevant information. Finally, government agencies are neither organized nor equipped to admit citizens and listen to their representations.

In view of these circumstances, we cannot help but conclude that the principle of natural law requires that specific mechanisms be established to ensure that affected citizens are informed, heard, and heeded. It must be accepted that this principle implies that a fair and acceptable solution cannot automatically be found on the basis of so-called objective data alone. A different understanding must be developed—that an undertaking prompts the disclosure of contradictory interests and that a social contract embracing the recognition of collective responsibility must be drawn up on the basis of these interests.

Participation and Public Administration

The growth of public and private administrative structures has promoted the application of administrative rationality to major issues of collective concern, at the expense of social and

political rationality. The administrators, whether elected or appointed, are far removed, physically and morally, from the public. They implement decisions, regulations, and laws whose basic content is often procedural, leaving administrators considerable room to manoeuvre. The administrators are also far removed from elected officials and from the public's designated representatives. A social and political vacuum is thus created around major administrative structures and their legitimacy in regard to social development is called into question. Public participation, initiated and fostered by major administrative bodies, would appear to be an essential condition for the resocialization of these bodies.

Administering the major regulatory agencies (such as those responsible for protecting air and water quality) requires regular contact between these agencies and their "clients" to obtain information and negotiate compliance with standards. This routine contact brings the agencies into their clients' zone of influence. The public, which they were intended to protect, carries less and less weight in the daily administration of the agencies. Public consultation and participation would appear, then, to be necessary to allow these agencies truly to perform their roles in accordance with the established objectives. Participation and consultation are more vital still for reviewing the agencies' administrative guidelines, establishing new guidelines, and changing bureaucratic habits to produce greater flexibility and greater openness.

In addition to these arguments based on general problems in public administration, there are a number of arguments based on the theory of administration which weigh in favour of extensive public involvement in administering public agencies. Public consultation and administration may be considered valid substitutes for the regular administrative or quasi-judicial reviews which agencies must carry out or must undergo. They make it possible for citizens' viewpoints to take the place of technocrats' value judgements. They may, on occasion, help agencies and administrative bodies to resolve internal problems which may arise in major administrative structures as a result of interdepartmental conflicts.

From the standpoint of the theory of administration, public participation appears not as a right of citizens but almost as a moral obligation of administrations. In addition, public participation is considered a management tool, effective both for relations between administrative bodies and citizens and for the internal operation of administrative structures.

The Political Economy of Participation

In view of the size of major private (and public) corporations, the expansion of their operations into numerous areas of activity, and their sometimes close connection with government actions, they may be considered more as "private governments" than as simple economic actors. Through their size and the range of their activities, major corporations have shattered the market model, which is based on a large number of small, competing businesses, making the consumer king. As a result, it is no longer possible for the public to spontaneously influence economic policy through direct market intervention in the form of consumer demand.

By virtue of their ability to shape their economic and political environment rather than simply react to it, these major corporations have more in common with governments than with the small producers of the classical economy. They can influence government decision-making, if not participate in it directly. By contrast, consumers are fragmented; they are motivated by individual interests; and what a single consumer stands to gain is negligible compared to what the corporations stand to gain.

In addition, major corporations are linked by alliances, contracts, and networks that multiply the private interests they represent when choices and decisions are made. They have direct and indirect means (such as tax deductions) which give them control not only over products but also over procedures. In the context of this new political economy, formal public participation in the decision-making process serves to reestablish a certain operational balance that can make it easier to implement policies and decisions.

Due to the range of activities in which they are involved and the size of the projects they undertake, major private and public corporations have the ability to force the hand of government and of society in the long term. They choose their opportunities carefully, according to the situation, compelling the community to accept or negotiate the environmental, social, and political impact of their choices. They have bureaucracies and technocrats at their service, and they exercise control over a large quantity of strategic information; they use these resources to control the form and timing of their initiatives. They thereby contribute to the creation of a sort of social vacuum and to increasingly depriving the community of responsibility for a project's impact. Formal application of public consultation and participation procedures is necessary to reintroduce long-term and multidimensional considerations into public policy-making.

Finally, major corporations have the ability to negotiate directly with individual consumers and to compensate them, at the expense of collective interests. They also have the ability to mobilize groups of individual actors in their spheres of activity against elected representatives and the administrators of regulatory agencies. Required, formal public participation is essential to preserve the political process in public decision-making.

The Political Sociology of Participation

Massive and systematic government intervention in all spheres of economic activity raises questions of legitimacy and fairness. First, problems of legitimacy arise because it is not obvious that all government intervention in the economy pursues public and collective goals or serves such goals. Second, problems of fairness arise because such government intervention, when politically astute, is conducted with the complicity and in accordance with the interests of a specific social and political class. The powerless and the voiceless cannot be considered a party to these choices and decisions simply on the basis of the democratic system of electing officials and naming representatives.

The political apparatus of the state is large, complex, and compartmentalized. Its overall cohesiveness is not necessarily ensured by a strong government. Relations between the

central apparatus and the apparatuses of the various other levels of government randomly disperse political responsibility, depending on elections at each level and the style of inter-departmental relationships between the levels. The influence of groups, parties, and associations is no longer brought to bear in a systematic way and it is no longer certain that the structure as a whole will be generally receptive to political influence on the part of the public. Institutionalized participation represents a way of strengthening internal cohesion.

There is no guarantee, in either the philosophy or the practice of decentralizing and deconcentrating the state apparatus, that the goals of democracy and closer contact between authorities and citizens will be attained. The changes in attitudes and political practices prompted by these practices can defeat the purpose. Local elected officials, who now enjoy wider powers but who also-perhaps most importantly-are now captives of the actors and strategies of the major central agencies, are becoming professionalized and are adopting technocratic attitudes. The experts working for decentralized agencies in local communities adopt a patrician style and are quickly accepted into the networks of the local elite. The practices of deconcentration and decentralization do not eliminate the need for government to enter into direct contact with the population affected by the choices made: on the contrary.

Finally, the rise of the new middle class has been identified as an important economic and sociological phenomenon, and the political dimension of this phenomenon cannot be ignored. On the one hand, this class has an enormous capacity to exert political influence due to its members' skills, their education, and their employment in all sectors of public administration. In policy-making at the local level, this class can claim to be skilled in the application of knowledge and can claim greater legitimacy than the technocrats for its value judgements. If participation is necessary to give this class access to channels of political influence, it is even more necessary to open up these channels to the other segments of local societies.

Participation: A Global Sociological Phenomenon

The organization of the new middle class and its extensive involvement in the practice of political influence significantly modify the social context of decision-making. Specific issues arising at the local level, problems of coordination among components of the state apparatus, the decentralization of power, and the proliferation of regulatory agencies all provide opportunities for this class to make its presence felt and compel the formulation of clearly defined participatory mechanisms.

The proliferation of voluntary interest groups and the emergence of major social movements, which often cut across class lines, compel a kind of public mediation between different interest clusters. Institutionalized, formally established public participation constitutes an instrument of social conflict control that serves to channel diverging positions and ensure a degree of social order.

Public pressure on proposals and issues with far-reaching effects on the community represents a threat to collective development, and indeed to the undertakings in question,

when it is channelled for the benefit of the media or by elites. Public participation constitutes at once an escape valve, a form of group therapy, and also a necessary stage in the process of rendering public policy operational.

Finally, in potential conflict situations, public participation may be considered an acceptable social strategy for preventing private exploitation of the issues and for controlling the conflict. Not only can public participation easily be sold as an influence-sharing device, but it can also be conceived of as a way of initiating collective bargaining on the collective benefits generated by major projects and undertakings.

Whether it is considered strictly from a legal point of view, as an administrative procedure, as an instrument of political and social management, as a planning tool, or as a means of controlling the impact of decisions, public participation must be understood in itself as a way of dramatizing normal social dynamics.

It must be considered and assessed in terms of the central question at stake, which is to say the final decision. Public participation may be a relatively unimportant factor in the decision but it may also be the determining factor, and may indeed be used as an instrument of control.

Participation is not a spontaneous act. Whether it is formally institutionalized or improvised on an ad hoc basis, it is always initiated by an actor, who will play a determining role. The rules, strategies, and procedures by which the participation

process is initiated are not without bearing on how participation is conducted and especially on the results it produces.

Whether participation is formal or not, institutionalized or not, it develops its own methods and generates its own internal dynamic. The choice of methods, the study of informational content, the definition of its own rules of order, and the role of the authority designated to conduct the proceedings all have direct influence on the results, both in terms of the specific issue at hand and in terms of the participation process's general success in establishing itself as a lasting, self-reproducing mechanism.

Finally and most importantly, it is an illusion to think of participation as a neutral social operator, perfectly receptive to all influences. Participation has its own social field and its own social basis. It must be understood as a special instrument in the sociopolitical arena, an instrument suitable for the exercise of certain types of political influence for the benefit of certain segments of society and designed for this purpose.

Arnstein (1969) has defined participation as a practical gesture toward a utopian state; participation is a process oriented toward a distant goal. It may be understood as a strategy by which the have-nots can take part in determining the dissemination of information, the establishment of goals and policies, the allocation of resources, the implementation of programs, and the distribution of benefits and advantages. Ideally, it could prompt significant social reforms involving more equal sharing of the costs and benefits of affluence.

CHAPTER II: PUBLIC PARTICIPATION MODELS AND ASSESSMENTS

Public participation assumes a variety of forms depending on the goals the initiator of the process seeks to achieve and the goals the initiator attributes to the intended participants. The form of the procedure depends as well on the degree of influence initiators are prepared to accept over their decisions and actions. Participation is also a strategic tool and is organized on the basis of the initiator's strategy.

Goals

Involving the public in the decision-making process serves many purposes, which more often than not are not clearly defined and separated. The aims are neither stable nor permanently established. They are constantly reformulated through the dynamic created by the actors involved, all of whom have their own aims which they seek to impose. It would appear to be possible, however, to identify some general goals that each of the major actors brings to the participation process.

The planners, who are most often the project's proponents, seek to integrate subjective values and images, individual or collective, latent or articulated by the public, into their approach. They have, moreover, a number of instruments at their disposal for this purpose, from opinion polls to public consultation. They know that the values and images will be generated, in part, by the way the proposal is presented, documented, and argued. They therefore look to public participation to assess the appropriateness of the strategic facts used to document the proposal, as well as the quality and acceptability of the arguments used to support the proposal and the major choices made. In some cases, they may even obtain new information that had been overlooked in their own studies or dismissed as unimportant by their experts. Overall, the planners will seek to assess the general acceptability of their project through public participation so as to determine the effectiveness of the accompanying measures under consideration or to add mitigating measures citizens want.

At a more strategic level, proponents wish to gain acceptance for their proposals when they initiate the participation process; they aim to obtain the necessary authorization or to reduce public opposition that could lead to the imposition of special conditions or to delays in implementation. They try through public participation to identify, isolate, and neutralize the main opponents to their projects, in order either to negotiate with them separately afterwards or to shift the burden of blame for impeding progress onto their shoulders. In most cases, the proponents will turn public participation into a public relations exercise through which they attempt to project an image of themselves as good corporate citizens. This image is intended not so much for the public itself as for political and administrative officials, whose role in the public debate proponents strive to neutralize. By so doing, proponents can more easily obtain

acceptance and authorization for their projects; they may succeed in reducing supervision by administrative agencies; they may even succeed in initiating negotiations on exemptions or special measures. Finally, when there are institutionalized public participation mechanisms, such as public consultation or public inquiry procedures, proponents may attempt to divert the attention of opponents in order to avoid being subjected to proceedings they cannot control.

Political authorities are almost always represented in public consultation and participation mechanisms. They may be the proponents or partners in the project; they may be involved through regulatory agencies, or as the officials responsible for the functioning of the participation process itself. Through their involvement in the consultation and participation process, they enter into direct contact with the public and present themselves as the public's representatives. They thereby undertake their prescribed role and also acquire the necessary means to enforce programs, timetables, and legal and regulatory requirements. In exchange, they accept public assessment of the government review of the project and its effects, in order to ensure the relevance, completeness, and legitimacy of the review. In addition, the need to present coherent positions during the public review process will compel (or will have compelled) closer interdepartmental coordination within the government apparatus.

The representatives of public authorities cannot allow themselves not to participate in public consultations. The debate gives them the opportunity to hear the public's demands, often articulated in response to suggestions from the proponent, and thereby gauge the magnitude of demands on public administrations. They can take note of all the suggested mitigating measures, assess the costs, and survey the identification and designation of responsible authorities. They also have the opportunity to take note of the special monitoring and follow-up measures that citizens almost always ask political authorities to impose.

Finally, consultation and participation can easily replace opinion polls. The participating political authorities can assess the project's public image and can more easily bring subjective values into the discussion. Public authorities therefore use the consultation and participation process to assess differences about the project's implementation and to determine the thrust of their strategic actions towards the project's implementation and operation.

As for the public, participation in public consultation mechanisms constitutes a commitment to and an act of personal and community development. Through their participation, whether individual or collective, citizens reassert their rights over public affairs; they may also use the opportunity for the purpose of grassroots mobilization. Their participation is oriented toward bringing conflicts concerning the project into

full view. They want these conflicts to be clearly displayed, documented in detail, and recognized by all parties.

Participating citizens strive to establish themselves as a specific, distinct party with different interests and concerns from the technocrats and bureaucrats. They attempt to carry the social debate beyond simple questions relating to the application and enforcement of regulations by introducing subjective values into the discussion. Indeed, they attempt to initiate genuine negotiations on the project's authorization and the terms of their support by introducing the question of community development into the debate and tabling requests for special measures and conditions.

Forms of Participation

Given the multitude of objectives and the different dynamics which may be created by the combination of actors and institutional frameworks, public participation can assume many forms. These forms have been listed, described, and discussed on numerous occasions. One drawback of these analyses is that, for purposes of presentation, they include many levels of public involvement in the planning and decision-making process, some of which have little to do with participation in the strict sense of the word. Analyses of participatory forms may be roughly divided into those that proceed by considering the way the public is brought into the process and those that distinguish the types of decisions reviewed under the process.

Grima (1977) identifies three main forms of participation, defined according to the way the public is brought into the process.¹ First, he distinguishes participation through the election or appointment of public representatives to different levels of the decision-making apparatus—public and private—and to administrative bodies, so they may influence the decision-making and management processes. This type of participation through public representation on advisory councils and consultative committees readily lends itself to cooptation, to the over-representation of experts and accredited organizations, and sometimes to manipulation.

Next, he distinguishes legal action and requests for judicial review of administrative decisions as a specific form of participation. In this case, participation is reactive and defensive; it involves a restricted public which must demonstrate its direct interest in the case.

Next, Grima discusses education, information, communication, and dialogue. While these forms of participation are not expressly and exclusively tied to a decision on a given proposal, they constitute means of personal and community development and indirectly involve the public in actions and projects.

Finally, he deals with specific mechanisms of participation in decision-making, including public consultation and public hearings. These are supported by education and information and tend to constitute direct, non-discriminatory relations with the public, within a process leading to a decision on an action. Public consultation and public hearings represent one of the most active forms of public participation. The functions of these mechanisms may range from simply distributing information to exercising control over the decision.

Some discussions of public participation proceed by distinguishing the types of actions and decisions addressed by a given form of participation. Emond (1975) locates three types of decisions on a continuum and says they produce three, different types of participation.* The first type is decisions related to policy-making. In the case of such decisions, the legislature provides the best institutional forum for public participation, according to Emond; it enables the public to participate through its elected representatives. In the best of cases, parliamentary commissions hear the representatives of major organizations and national commissions of inquiry may be set up.

In general, administrative decisions concerning regulatory measures and checks may be revised in response to requests from the citizens affected. For this type of decision, formal quasi-judicial procedures and arbitration provide the most effective arenas for public participation, according to Emond. Finally, he discusses policy implementation decisions involving primarily technical and economic considerations and generally giving rise to questions of justice, fairness, or legitimacy. For this type of decision, says Emond, public participation is general, non-discriminatory, and decisive for formulating the alternatives and reaching the final decision.

Emond thus leads us to isolate participation as a specific general practice. Participation occurs when, due to specific problems of implementation, operation, or justification, decisions made or pending are reviewed with broad public involvement and the direct representation of all interested parties.

Combining these two approaches to distinguishing participatory forms will enable us to obtain a valid definition. Participation performs two significantly different functions: it is at once a formal procedure for bringing the public into the decision-making process and a political device for obtaining public support for decisions. Definitions will emphasize one aspect or the other, but the two are always connected.

Wilkinson (1974) defines participation as the involvement of members of the affected publics in the process of formulating the specific policies, programs, and projects of different organizations, insofar as these policies, programs, and projects affect their lives.³ According to this definition, participation involves giving citizens responsibility for decisions that affect them in accordance with the principle of natural law, which holds that those with a direct interest in a decision should have a say. In this case, participation is restricted and requires a motive.

Sewell and O'Riordan (1976) understand participation more as an instrument of conflict resolution.⁴ It consists of conflict recognition, common identification of legitimate disagreements, and the planning of solutions on a community basis with the involvement of all participants. If we can still speak of participation rather than mediation, it is because Sewell and O'Riordan consider this practice a means of community development involving the collectivity before individual interests.

Finally, Hydro-Quebec's (1984) definition emphasizes consultation in determining and providing compensation.⁵ Consultation is a process in which an authority voluntarily

enters into interaction with the public and invites comments on a pending decision. It commits itself to taking these contributions into account in the decision-making process, so as to balance the interests of the parties involved.

On the whole, for the writers surveyed, participation is a voluntary action by which a responsible authority formally involves affected citizens in the decision-making process when a decision is pending on an already-formulated policy, program, or project. For there to be formal participation, the procedure must be made public, specified in advance, and followed. The issues must be clear or clarified at the outset. Participation must take account of both the immediate interests of the citizens directly affected and community development considerations.

Some general principles emerge from these definitions and assessments of participatory forms:

- A responsible authority initiates the participation process.
- The body inviting public participation must have the authority to make a decision on the matter under consideration.
- There must be clear notice of what decision or decisions are pending.
- The decision-maker must make a public commitment to accept public input.
- The public must receive adequate information on the matter under consideration, the public participation procedures, and the outcome.
- How the results of the participation are to be dealt with must be established and known in advance.

These general principles serve to outline a typical participatory model. The specific circumstances, decisions, and actors arrayed around this model give the participation process concrete form. Evaluating participation makes it possible to identify fringe models and alternative models. The methods of evaluation will themselves contribute to specifying the characteristics of public participation,

Evaluating Participation

Eidsvik (1978) has developed an analytic grid to evaluate the possible forms of participation.⁶ The grid is organized around two axes, coordinating "agencies' decision-making power" with "public participation in the decisions."

According to this grid, public consultation occurs prior to the decision. It implies that citizens' opinions are heard and taken into consideration in the decision-making process. We can no longer speak of consultation when the decision is left entirely to the public; in this case, the public is no longer a consultant but, by definition, a decision-maker.

Arnstein (1969) proposes a more elaborate and better documented grid. Arnstein essentially questions the real power the public can exercise over plans and programs through participation. She therefore does not coordinate "decision-making power" with "public participation" as Eidsvik does but, rather, openly questions public input into the decision.

Levels 1 and 2 on the scale do not represent forms of participation; for many decision-makers, these are ways to avoid genuine participation. The real aim of these operations is to "educate" and "civilize" the public. In practice, these types of "non-participation" consist of naming citizen representatives to advisory committees or organizing cultural and social activities.

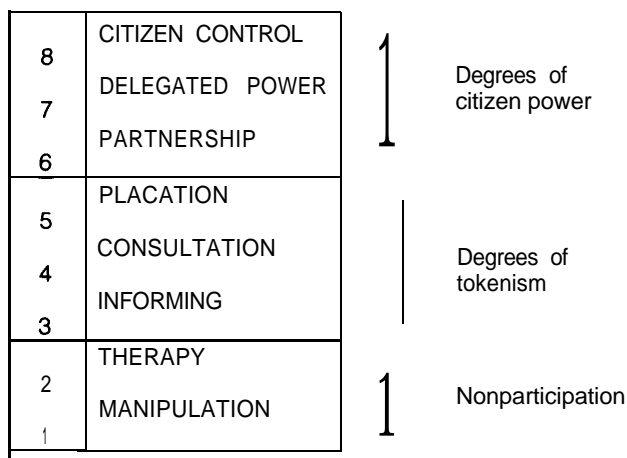
Levels 3 and 4 of the scale allow the public to listen and to have a voice. According to Arnstein, public participation can have no effect on the decision if it ends there, for the public gives advice only and cannot monitor the effect of its advice on the decision. In practice, these forms of participation consist of public information through the media, questionnaires and polls, community meetings, and public hearings.

Level 5, placation, constitutes another type of tokenism: while it allows citizens to comment on the decision, it still leaves the decision entirely in the hands of power-holders. Placation is practiced through mediation sessions held at the initiative of the decision-makers and attended by citizen representatives. The public's influence depends on the quality of the technical information in its possession and on its ability to directly influence its representatives.

DECISION-MAKING POWER

Information	Persuasion	Consultation	Cooperation	Control
The decision is made and the public is informed	The decision is made and an effort is made to convince the public	The problem is submitted, opinions are collected, the decision is made	The limits are defined, the decision is shared with and made together with the public	The decision is made by the public, which assumes a role of public responsibility

PUBLIC PARTICIPATION



Levels 6, 7, and 8 of the scale constitute participation according to Arnstein. Level 6, partnership, permits negotiation and bargaining over the effects of the decision. Level 7, the delegation of power, grants citizens the majority of seats on decision-making committees. Level 8, citizen control, gives public representatives full administrative control. In these practices, power is delegated to local citizens' committees; citizens receive veto power; resources are allocated to organized groups active in specific problem areas; and neighborhood corporations are formed.

Arnstein does not consider consultation by itself to be a form of participation. It is, at most, an administrative practice. For Arnstein, participation means power-sharing. For consultation to constitute a form of participation, therefore, it must include monitoring and follow-up, if not subsequent delegation of power-partial, sectorial, or complete.

These approaches to evaluating participation consider the forms and types of participation in an absolute way, without expressly taking into account the means of participation and the effect that the means themselves may have. For example, Arnstein does not consider the indirect effects of public consultation on the decision-maker, the decision-making process, and the decision itself. Neither do these approaches take into account the strategy of the decision-maker who initiates the participation process. An attempt could be made to develop an evaluative schema of participatory styles considered as influence-sharing mechanisms, on the assumption that the manner of consultation is itself significant for the participation process.

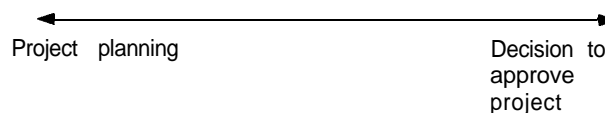
Evaluating Participation in Environmental Impact Assessment Procedures

Environmental impact assessment legislation has two aims: to ensure that environmental impact is taken into account as early as possible in the planning process and to institute a

public impact assessment process. These two goals find concrete expression in the environmental impact assessment procedures set up to guide the decision-making process. As these procedures apply to a specific set of projects which are thereby subject to government approval, they affect the decision-making process more than the project planning process. Rather than forcing any series of new planning practices on proponents, therefore, environmental impact assessment procedures tend to isolate and focus on the decision-making process, which is defined in time, placed under the responsibility of a neutral party, and situated somewhere between the proponent and the final decision-maker. The impact assessment procedure therefore begins with the submission of a project proposal consisting of a finished plan and accompanied by an environmental impact study. The assessment is performed through a public consultation process and is conducted in a fairly public manner. It ultimately produces a report conveying a recommendation or decision to the final decision-maker.

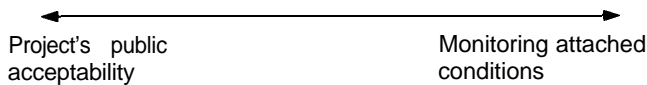
The public consultation concerns impact assessment; in theory, the recommendation or decision deals exclusively with the acceptability of a project's impact. By extension, then, consultation could begin before the impact study is submitted, for impact assessment is based on the impact study, and assessing whether the impact study conforms to its original terms of reference could therefore be included as a subject of consultation. By further extension, as the consultation process produces information and recommendations, it allows participants to contribute to shaping the decision and any attached conditions.

Although public consultation procedures for environmental impact assessment are generally distinguished from the project planning stage and oriented toward the decision-making process, they may extend further into the planning stage or further into the decision-making stage. One way of classifying consultation procedures is therefore to locate them on this continuum:

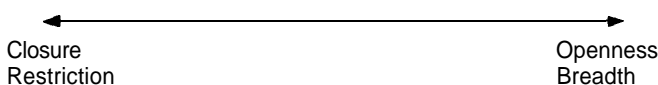


In addition to their position in the overall planning/decision-making process, consultation procedures may be classified according to the form of public participation they include. In the debate on environmental impact assessment policies, types of public consultation are distinguished on the basis of the consultation's purpose—simply put, whether the public consultation aims to enlighten the final decision-maker as to the scale of importance of the assessed effects and the extent of the effects which had been overlooked, or whether it aims to legitimize the decision by democratizing the decision-making process. Without closing the discussion in favour of one alternative or the other, consultation procedures may be evaluated according to whether they tend to seek new information or to distribute information that has already been organized. In either case, it remains to be determined whether or not the proceedings—inspired by one motive or the other—have an internal dynamic capable of modifying the original

form. At one extreme, the proceedings may become a one-way public information exercise, but at the other extreme they may be transformed to the point where they not only involve the public in a shared decision but elaborate measures to monitor compliance with attached conditions. On this scale, participatory forms may consist of receiving information, imparting information, formulating recommendations, participating in elaborating the decision, and formulating the safeguards attached to the decision. This scale provides a second way of classifying public consultation procedures:



Regardless of its form, the consultation procedure has an internal dynamic. Consequently, consultations may vary in length, in autonomy from the government decision-making hierarchy, in subservience to rules of procedure, and in the extent to which they are controlled by the initiators. In principle and in general, public consultation procedures for environmental impact assessment have been designed so as not to unduly delay project implementation. They are therefore limited in time and mandated to review a specific project so as not to become permanent monitoring and assessment panels. While promoting general public access in principle, their rules of procedure impose a certain system for organizing the different types of speakers and conducting the consultation. The rules of procedure therefore assign roles and specify the form and length of statements. Public consultation is a defined event, limited in time, with, in theory, provisions concerning the quantity and quality of participants. The dynamic of the proceedings may produce a consultation which is restricted to a certain number and a certain type of participant, determined at the outset for the entire duration of the consultation. At the other extreme, the dynamic may produce a broad and indiscriminate group of participants, which may or may not be progressively structured during the consultation process itself. Thus, consultation procedures may also be classified according to this third scale:

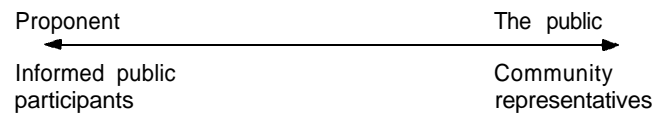


The dynamic of the consultation is structured by the rules of procedure and is, in principle, aimed exclusively at the smooth operation of the consultation process so that it does not take too much time or prolong indefinitely the approval process; and also so as to guarantee its democratic character. In general, the rules of procedure are publicly decreed and known in advance. They are enforced by the agency or board responsible for conducting the consultation. The procedure is formally regulated and this regulation defines the direction of the proceedings' dynamic.

The proceedings lend themselves to informal control by participants. The extent of the influence participants can exercise over the direction of the consultation depends on the stage at which they are brought into the process. In general, consultation procedures aim to bring together the proponent, experts called to testify by the review board and by the

proponent, other experts, and lay citizens. In addition, the proceedings are generally initiated following a request from an individual, a group, or an organization. The party filing the request must usually give a reason, which is included in the consultation mandate. The positioning of the different types of participants and the weight given to one or another reason for the request will influence who controls the proceedings. Finally, as the object of the consultation is to assess a project's impact, which can be defined in space and territorially delimited, the location of the proceedings is usually decided on the basis of the site of the project, the territory affected by the impact, and the affected population.

In principle, the rules of procedure and the neutral review board preserve the neutrality of the process, but in practice informal control is exercised on the basis of the positions occupied by the different types of participants and the nature of the participants. Thus, a consultation procedure may tend to be controlled by the proponent and the proponent's experts or by the public, public organizations, and public experts. At another level, the extent to which the participants are considered representative of the affected population depends on the extent to which elements of the population itself can directly contribute to the consultation process. Control over the procedure swings sometimes towards the proponent, the proponent's representatives, and counter-experts who do not represent the local population, and sometimes towards the affected population and the various segments of the affected communities. Control over the procedure thus constitutes a fourth criterion for the comparative assessment of consultation procedures:



Finally, we can also examine the form and dynamic of public consultation procedures for environmental impact assessment, and attempt to evaluate the thrust and style of the process. This evaluation is based primarily on the pace of the consultation and the way it is conducted, while taking into account the role assigned to the public. Thus, consultation may take the form of an incremental distribution of information by which the proponent or review board answers the public's questions. In this case, consultation becomes an instrument of persuasion; it has its own pace and imposes its own rhythm, which will vary partly or entirely according to the public's energy and diligence. In the procedures under consideration, the incremental information-distribution exercise generally precedes the consultation procedure but may occasionally resume during the consultation. These procedures are therefore located above the lower rungs of Arnstein's ladder (1969) and are focussed primarily on receiving citizens' comments. At this level, the procedure goes beyond simple persuasion and becomes a form of paternalistic negotiation in which views are heard, incorporated into an information-exchange exercise, and returned to the public accompanied by new information. Beyond this, negotiation may be developed for its own sake, on a non-cooperative basis, and indeed the process may erupt into adversarial debate. At this pole, the public becomes an opposing but equal partner in the procedure. At one extreme, then, the exercise brings together citizens expressing their

- outcome of consultation
- analysis and summary of results
- consultation report
- information on consultation report
- follow-up on recommendations, requests, and views
- setting up follow-up mechanisms
- etc.

CHAPTER III: THREE PUBLIC ENVIRONMENTAL CONSULTATION PROCEDURES

The Canadian Procedure

On March 14, 1974, the federal Minister of the Environment announced in the House of Commons that the government was adopting an Environmental Assessment and Review Process (EARP).

Since April 1, 1974, all federal departments and agencies have been subject to EARP, except for crown corporations and federal regulatory agencies; these are encouraged but not required to adopt the procedure. EARP is designed to assess the environmental consequences of a project and ensure that these consequences are taken into account at the planning, decision-making, and implementation stages.

The Federal Environmental Assessment and Review Office (FEARO) is responsible for administering EARP. It reports directly to the Minister of the Environment and is independent of Environment Canada. EARP requires that any "initiator" (that is, any federal department or agency planning to undertake or sponsor a project, program, or activity) conduct a review of its project, program, or activity to determine whether it is likely to have any significant adverse effects on the environment.

The review process includes three successive stages: the first two are conducted by the federal agency backing the project, while the third is a more official review of those projects judged likely to have significant environmental effects. In the latter case, the executive chairperson of FEARO is responsible for setting up an environmental assessment panel which submits the environmental impact statement (EIS) for public scrutiny and for study by federal, provincial, and non-governmental organizations that have the necessary technical expertise. At the conclusion of this public review, the panel chairperson submits recommendations to the federal Minister of the Environment.

Although the environmental assessment panel has only the power to make recommendations, the public nature of the review, the hearings, and the recommendations give the panel definite influence.

The process is flexible and non-coercive, for it depends from the outset on an internal review of the project by the initiating department, which independently decides whether its project is likely to have any significant adverse effects on the environment.

The Framework of the Procedure

A Cabinet decision of December 20, 1973, amended by Cabinet on February 15, 1977, requires that all initiators of federal government projects, programs, or activities establish

review mechanisms to fulfill their mandates and meet their responsibilities in accordance with the Environmental Assessment and Review Process (EARP).

The purpose of the Process is to ensure that the environmental effects of federal projects, programs and activities are assessed early in their planning, before any commitments or irrevocable decisions are made. Activities with potentially significant environmental effects are submitted to the Minister of the Environment for formal review by an Environmental Assessment Panel.¹

The environmental assessment process applies to all undertakings and activities for which the Government of Canada is involved in the decision-making process. Specifically, the following proposals are subject to the process:

- i) proposals to be executed directly by a government department;
- ii) proposals which may have environmental repercussions on matters under federal jurisdiction;
- iii) proposals receiving financial support from the Government of Canada;
- iv) proposals to be executed on territory managed by the Government of Canada, including the high seas.

This, however, applies only if it is the general policy of the corporation that has the power to decide on a proposal to apply the process and if the corporation is empowered to apply the process for the proposal in question.²

The first stage of the process is the environmental screening. This preliminary review must establish that the project is likely to have no significant adverse effects on the environment. The initiating department may make use of the resources of FEARO and federal government departments and agencies and may call upon them for technical assistance for the purpose of the review. The project may be modified in the early planning stages to reduce or eliminate its ultimate impact on the environment.

The second stage of the process is the initial environmental evaluation (IEE). When the screening is not sufficient to determine the extent of environmental impact, more thorough studies must be conducted. The initiating department conducts an initial environmental evaluation or hires a consultant to do so. The purpose of this evaluation is to determine whether the potential effects on the environment are of major significance and impossible to alleviate. If so, the initiating department refers the proposal to the Minister of the Environment for official review by an environmental assessment panel (EAP). The Minister then mandates FEARO to conduct an official, independent, external review; the report produced by this review serves to assist the Minister in reaching a decision.

After consulting the various documents from the preceding stages, the panel issues guidelines for an environmental impact statement (EIS) to the proponent. Order in Council 21'32 specifies that this statement is

a documented assessment of the environmental consequences of any proposal expected to have significant environmental consequences that is prepared or procured by the proponent in accordance with guidelines established by a Panel.³

The panel may, at its discretion, invite public comment on these guidelines before submitting them to the initiator. Such consultation, when it occurs, is the first official opportunity for public involvement in the environmental assessment process.

The panel checks and assesses the validity of the environmental impact statement. It may then require that the study be revised, made more detailed, or expanded. The panel may consult government technical agencies, the public, and outside experts for this purpose. When the technical review of the impact study has been completed, the panel makes the study public along with all the documents produced in the course of the technical review.

At this point, the panel formally opens the public consultation procedure. The public may have been previously informed of the project and may have exerted pressure for more information, for an evaluation of the guidelines, or for a public review. It may have been consulted about the draft guidelines prepared by the panel, and even invited to comment on the validity of the impact study. Consultation may, indeed, begin as soon as the panel is created, but such consultation is restricted to those directly affected, informed citizens, and individual experts. Only after the impact study has been released does the panel begin the organized public consultation called for by the environmental assessment process.

This consultation consists of public hearings conducted in an informal way with a minimum of explicit rules. They are of a non-judicial nature. The panel establishes the rules itself in accordance with general procedural guidelines established by FEARO. The panel may hold various types of meetings. There are specific provisions for the three following types.

Community Meetings

Meetings of this type are held in isolated or sparsely populated areas that may be affected by the project. They last at least a day.

For such community meetings, the proponent is asked to provide only one representative. The full Panel may not be present. The community meeting normally lasts only one day in each community. It begins with a presentation by the proponent describing the project and its anticipated impacts. Under direction of the Chairman, the session is then opened to statements and questions from the audience....Any points raised by local residents that cannot be adequately addressed in this setting are raised again by the Panel at the general meetings....When the situation warrants it, the Panel also arranges for representatives from the small communities to attend the general meetings.⁴

Technical Meetings

Meetings of this type bring together outside experts summoned by the panel to clarify technical issues related to the project for the benefit of the panel and the public. These meetings may be held in public. The proponent's experts and experts from the government departments involved may be included in the discussion. In principle, the findings of these meetings are made public and the participants in the public meetings may have access to them.

Public Meetings

Meetings of this type represent the core of the public consultation, and unlike the two other types of meetings they are required under the federal procedure:

The Panel meets with the public. It receives oral and written briefs from individuals and groups who wish to present their viewpoint. Generally, these meetings are held in the area affected by the project. The Panel usually arranges for special technical witnesses to participate.⁵

It is in the spirit of the federal procedure to avoid giving the meeting an overly rigid form and to avoid turning it into a kind of commission of inquiry. On the other hand, the proponent is required to lay the groundwork for the public meeting by providing all necessary and relevant information and is required to attend. The government departments involved are invited to send representatives.

The public meeting may be held over a period of several days and at several locations in order to reach the entire population that stands to be directly affected.

The Standing of the Participants

It is implicitly accepted that all participants are equal before a federal panel. There is no "official" invitation list to the hearing. The lists which do exist do not specifically affect the participants in the meetings; they are only lists of people who asked to be kept informed on a regular basis or who participated in the first stages of the procedure in one way or another.

The participants are invited, not summoned, to appear. They are not sworn in. They may, however, be questioned. There is no official procedure; each panel is free to adopt its own rules. There has been a tendency since the first hearings, however, to make the procedures uniform. This tendency has been encouraged and guided by FEARO as suggested by Order in Council 2132 (article 35d).⁶ The following summary of the conduct of the public meetings held on Eldorado Nuclear's plan to build a uranium refinery close to Carman, Saskatchewan provides an example of the procedure:

The first day was set aside for introductory statements by participants and for government agencies' technical reviews of the overall project. A number of general sessions were scheduled to allow registered speakers to present overviews on the project. Specific sessions were allocated for more detailed discussion of the following issues: impact on the natural environment, socio-economic and community impact, waste management....After each issue session, as time permitted, presentations on general issues were also made.

The extra session held on January 21 was devoted to the subject of project rationale. The final day included a session devoted to catching up on outstanding matters, followed by a closing session to receive concluding statements from participants.⁷

Follow-up

Following the public meetings, the panel drafts a report which the chairperson submits to the Minister of the Environment. The report does not have a set format and is in no way a record of the proceedings or an overview of the opinions expressed. On the contrary, the role of the panel is to consider all the information brought forward during the procedure and to make recommendations on the basis of such consideration. The reports generally include a description of the project and its background, a presentation of the environmental effects and problems, the panel's conclusions and recommendations, and several appendices (the panel's terms of reference, the list of participants in the public review, biographies of panel members, bibliography, various technical reports).

Following the submission of the panel's recommendations, the Minister of the Environment and the minister of the initiating department make their decision. If they agree to accept the panel's recommendations, the appropriate instructions are issued to the departments or agencies involved. The ministers' decision may also specify the departments or agencies that are to be responsible for the required surveillance and monitoring when this is not spelled out in the panel's report. In the event that the two ministers fail to agree, the matter is brought before Cabinet.

The Ontario Procedure

The Ontario procedure for public consultation on the environment was established by the Environmental Assessment Act (EAA) which was passed in July 1975.

The third section of the EAA provides for the creation of the Environmental Assessment Board (EAB). The EAB's mandate is to hold public hearings on the environment whenever the Minister of the Environment asks it to do so. Article 18(20) of the EAA stipulates that the public hearings held by the EAB be conducted according to the Statutory Powers Procedure Act (SPPA).

In theory, the EAA applies to all undertakings of the provincial government, government-owned corporations, and municipalities, as well as to all private projects, industrial or commercial, defined as "major" and covered by the regulations. In practice, a large majority of these projects are exempted from the provisions of the Act and are never reviewed at public hearings.

The Act gives the Minister of the Environment wide discretion to grant such exemptions. Thus, when the Act was proclaimed in October 1976, the government issued 200 pages of regulations partially or entirely exempting a large variety of undertakings. Projects may also be exempted as a result of the ambiguity of certain terms used in the Act, notably the adjective "major" which is the key term for determining the application of the Act to private sector undertakings. No such undertaking has yet been reviewed at a public hearing. Neither

is the meaning of the term "undertaking" entirely clear; the Act defines it very broadly as "an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity..." (EAA, 1(0)).

In practice, this definition means that once a "general undertaking" has been reviewed at a public hearing, the numerous projects involved in its execution need not be examined separately under the public review procedure. Finally, the Act provides for the definition of classes of undertakings. It does not specify whether an undertaking may be exempted from the public review procedure once a certain number of undertakings belonging to the same class have been publicly reviewed.

When the Minister of the Environment deems it necessary to hold a hearing on an undertaking and this undertaking qualifies for the public hearing procedures provided for under other Ontario laws such as the Planning Act, the Expropriation Act, the Municipal Act, etc., the Minister sends the proponent an affidavit requiring that the undertaking be submitted to a joint hearing. These are defined under the Consolidated Hearings Act (CHA). Once the Hearings Registrar, who is appointed by the Lieutenant Governor in Council to help in the setting up and operation of each joint board, has received from the proponent the documents required under the Act, the matter is referred to the chairpersons of the Environmental Assessment Board and the Ontario Municipal Board (OMB). They then establish an ad hoc joint board for the undertaking in question, consisting of at least one member from each of the two boards. This joint board then conducts a joint hearing covering the provisions of all the relevant laws.

A joint board is not required to comply with the SPPA and may establish its own procedures and practices.

The proponent's first obligation under the EAA is to submit an environmental assessment (EA) to the Minister. The Act requires that the content of the EA be as follows:

An environmental assessment submitted to the Minister...shall consist of,

- a) a description of the purpose of the undertaking;
- b) a description of and a statement of the rationale for,
 - i) the undertaking,
 - ii) the alternative methods of carrying out the undertaking,
 - iii) the alternatives to the undertaking;
- c) a description of,
 - i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
 - ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and
 - iii) the actions necessary or that might reasonably be expected to be necessary to prevent, change, mitigate, or remedy the effects upon the environment, by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

- d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking, and the alternatives to the undertaking.⁸

Upon receipt of the EA, the Minister orders a government review. At this review, all Ontario government departments involved in the project, directly or indirectly, are invited to comment on the EA. The review is conducted by the Ministry of the Environment's Environmental Assessment Branch.

The public is then invited to examine the EA and the review, and to submit in writing its comments on the undertaking, the EA, and/or the review. It may also ask for an EAB hearing by sending a written request to the Minister. Government departments may comment only on the EA, while the public may express opinions or request hearings on the EA, the review, or the undertaking itself.

Upon receipt of a request from the public or acting on his own initiative, the Minister may instruct the EAB to hold hearings; in this case, the Minister delegates all his decision-making power to the EAB.

When the EAB is not mandated to hold hearings, it is up to the Minister to decide whether to accept the EA. The EA is accepted when the Minister, or the EAB if the matter has been referred to it,

...is of the opinion that the environmental assessment is satisfactory to enable a decision.⁹

Should the Minister consider the EA to be inadequate, he may revise it himself or ask the proponent to conduct further studies. Otherwise, the EA is accepted. Sometimes, therefore, the EA is revised and accepted, or accepted without revision, before the project is referred to the EAB for review under the public hearing procedure. In this case, the hearing deals only with the acceptability of the project itself.

Initiating the Public Consultation Procedure

The process is opened to the public when the Minister gives notice that the EA has been received, the review has been completed or is being completed, and any person may consult these documents at the places indicated. This notice is sent to the proponent, the clerks of all municipalities affected by the project, and anyone the Minister deems it necessary to notify. It is also addressed to the general public.

Citizens have 30 days from the date of the notice to make a submission or address a request to the Minister. A submission informs the Minister of the public's views; a request asks that EAB hearings be held. When the public makes a request, the Minister instructs the EAB to hold a hearing unless he considers the request to be frivolous, vexatious, or a cause of undue or excessive delay. When no request for a hearing has been received during the 30-day period or the request has been rejected, there is an additional 15-day period during which any person who had previously filed a submission or made a request, may request a hearing.

Should the Minister decide in favour of holding a public hearing, he notifies the EAB in writing. Once the EAB has

received such notice, it is responsible for organizing the consultation and reaching a decision.

The Environmental Assessment Board

The EAB is an administrative tribunal of the province of Ontario. It consists of at least five people who are appointed by the Lieutenant Governor in Council. These people may not be members of the civil service, or may not remain so.

The EAB is entirely independent of the Ontario civil service. It receives the mandate to hold hearings under the EAA directly from the Minister and the mandate to hold joint hearings under the CHA directly from the Hearings Registrar. The boards created by the EAB to hold hearings have powers of inquiry. Once a board has completed its activities, the EAB reports the decision to the Minister, the parties to the proceedings, the persons who submitted briefs and requests, and the clerks of all municipalities affected by the project.

In the case of a joint board, the proponent, the parties present at the hearing, and the Executive Council are informed of the decision, as well as any person whom the board deems it advisable to inform. The Minister has 28 days to revise or overturn a board's decision. The Lieutenant Governor in Council likewise has 28 days to revise or overturn a decision rendered by a joint board.

The Hearings Procedure

Boards created by the EAB to hold hearings must follow the prescriptions of the Statutory Powers Act. Joint boards, responsible for holding joint hearings, are in theory exempted from observing the provisions of the SPPA. In practice, however, they follow the SPPA rules quite closely. The SPPA does not use the term "board," referring instead to "tribunal."

The Standing of the Participants

The participants are encouraged to become parties to the proceedings, on the tribunal model. At the hearing, each party may:

- a) be represented by counsel or an agent;
- b) call and examine witnesses and present his arguments and submissions;
- c) conduct cross-examination of witnesses at a hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.¹⁰

The tribunal has the power to bar any person whom it does not consider competent to represent or counsel a party or witness, except for lawyers qualified to practice in Ontario. Consequently, it is in the interest of all parties, indeed all participants, to be represented by a qualified lawyer, and this is becoming standard practice. In addition, the tribunal has the power to regulate the order in which a party's witnesses appear as well as the length and content of examination and cross-examination. In practice, the tribunal frequently intervenes to set time limits and to cut short the presentation of facts that have already been considered.

The parties register as such at a preliminary hearing. They are the only type of participant in the hearing to be defined in the Act and the only ones whose prerogatives at the hearing are clearly established under the Act.

There may be more than two parties. To begin with, the proponent and the person who requested the hearing are necessarily present. This does not prevent other parties, with positions between the two poles represented by the proponent and the person who requested the hearing, from being formed. In the event that there are too many parties, the Act provides for the constitution of a “class of parties” with a “class representative.” The chairperson of the board that reviewed the Samuel Bois Park proposal provides a good description of the role of a party to the proceedings:

Normally, if you are a party, you contract additional obligations. You undertake to be present at the hearing from beginning to end and to cross-examine all witnesses called before the tribunal...and most importantly, you accept the obligation to support a specific position before the tribunal, to call witnesses, and to produce evidence in favour of your position...” [translated from the French]

In addition to the parties, there are three other categories of speakers in the Ontario procedure for public consultation on the environment:

- participants,
- interveners without standing, and
- witnesses.

None of these three categories is defined under the law. They seem to have been adopted by the boards and joint boards for reasons of convenience, so as to distinguish between interveners who will play a very active role in the proceedings, those who will play a less active role, and those who will play a relatively small role.

A participant may cross-examine with the permission of the Board. I can tell you we rarely refuse this right, but that is real definition.¹² [translated from the French]

Speakers often choose to be classified as participants purely for reasons of convenience. Doing so involves no obligations and participants may, at the discretion of the board members, enjoy privileges comparable to those granted to parties. Thus, some participants may play a much more active role at the hearing than some parties:

A participant is an interested person who will not have to attend the entire hearing but who wants to state his position and his arguments and we will do all we can to accommodate him in terms of procedure and time.¹³ [translated from the French]

The category of interveners without standing includes interveners who become involved at a late stage and who speak only briefly, usually for the sole purpose of expressing their views. This category seems to have been created through a certain relaxation of the requirements of the SPPA procedural guidelines. Intervenors without standing are not cross-examined.

As we have seen, witnesses may be defined within the meaning of the law as anyone who speaks at a hearing, for any speaker may be questioned or cross-examined by a party. This category therefore does double service, for it applies to the interveners previously described as parties, participants, and interveners without standing. If, however, we set aside these three types of witnesses, we are left with a very specific group of speakers, people who have been called to testify by the parties because of their sectorial, technical, or scientific expertise.

This definition returns us to the parties' obligation to “defend a specific position.” In order to meet this requirement, parties call upon academics, high-level specialists, consulting firms, etc.

It is fairly simple to make the distinction between a “witness” and the other speakers at the hearing. The role of the witness is to testify on the basis of expertise in a given field. The dynamic of the cross-examination allows the opposing parties always to begin by calling into question the witness's legitimacy as an expert. Witnesses attempt to establish their legitimacy at the outset by introducing their resumes as evidence.

How the Hearing is Conducted: The Stages

A board or joint board begins with a list of people to be personally notified in writing of the fact that a hearing is to be held and of the date set for the first session. The list must include the names of individuals, institutions, and organizations recognized as having obtained or claimed the right by virtue of the relevant legislation, given the stage the proceedings have reached, to be personally notified of any new development concerning a specific undertaking.

The notification list therefore includes the proponent, the clerks of all municipalities affected by the undertaking, all government departments that participated in the review, all persons who made submissions or requests, as well as any person whom the Minister deems or has previously deemed it appropriate to notify.

Public notices published in newspapers also invite the general public to attend the hearing.

The Preliminary Hearing

There are no provisions for a preliminary hearing in either the EAA, the CHA, or the SPPA. As it thus has no legal basis, the conduct of preliminary hearing is not subject to any rules of procedure and the atmosphere is very relaxed. It has gradually become standard practice to hold such hearings.

They serve the following functions:

- a) to identify the parties and participants at the main hearing;
- b) to set a date for the main hearing;
- c) to learn what basic position (for or against the undertaking) and what general argument each of the parties and participants will advance at the main hearing;

- d) to estimate the length of the main hearing and draw up a timetable;
- e) provide general information about the procedure.

The interveners speak in turn and briefly present their positions. They then specify what status-party or participant—they want the board to grant them for the main hearing. The session is quite short: a preliminary hearing is usually completed in a few hours, at most a day.

The Main Hearing

The main hearing is highly formal. Each party is first introduced by the chairperson. The chairperson also describes the tribunal's mandate and the laws under which the hearing is being held.

The proponents introduce their evidence. They call witnesses and the witnesses are sworn in. The proponent's lawyers examine the witnesses and the lawyers of the other parties cross-examine them. The proponent may call a number of witnesses and the process of examining and cross-examining them may last several hours.

The government departments involved introduce their evidence in turn, according to the same procedure and usually with a large number of expert witnesses.

Any public parties involved in the process then present their evidence. The volume of evidence presented by each party is directly related to the party's level of activism. Some parties are capable of producing a large amount of evidence and calling a large number of witnesses. Others will argue only a limited position, calling a single witness or none at all. By this stage, the great majority of relevant questions have been raised either by the two main parties (the proponent and government departments) or in the cross-examination of the two main parties' witnesses by the representatives of the public parties. The tribunal therefore starts to exercise stricter control over testimony so as to allow only new facts to be introduced.

Finally, one or two sessions are usually set aside for verbal comments by minor participants, that is to say those who have only a short statement to make before the board. The date of this "special session" is always announced, unofficially but clearly, several days in advance.

This session is "special" insofar as the formal rules are lifted. Speakers must still be sworn in, but this is now the only procedural requirement. Speakers are unlikely to be examined or cross-examined, regardless of what they say before the board. At this session, citizens may express their opinions and are under no obligation to provide evidence. Parties still have the right to cross-examine, however.

At the conclusion of the hearing, the parties appear again in the same order in which they have appeared throughout the hearing. Each party now gives a general recapitulation of its evidence, taking from an hour to a day for the purpose. At this session speakers may no longer be examined or cross-examined.

The Report on the Hearing

Starting with the second public hearing, the EAB began producing two documents, and this practice was subsequently adopted by the joint boards as well. One of the documents is entitled "Reasons for Decision." It is quite lengthy—40- to 100- pages long—and its purpose is to describe the grounds for the decision on the undertaking. This document discusses each of the main themes dealt with at the hearing. It summarizes the major arguments on both sides, specifying in every case which speaker presented and defended each argument, and for each theme it explains how the board members arrived at their conclusion. The overall decision on whether to accept the undertaking as a whole is produced from the sum of the decisions on the various questions dealt with. This explains why a favorable decision on an undertaking is always accompanied by a set of very precise conditions.

The decisions themselves are contained in another document entitled "Decision." This document is usually quite brief—under 10-pages long—and is limited to presenting the decisions on whether to accept the EA and whether to approve the undertaking.

The documents "Reasons for Decision" and "Decision" may be issued simultaneously or one after the other. In the latter case, "Reasons for Decision" is released well before "Decision."

The EAB sends the two documents to the Minister of the Environment, the parties to the proceedings, the persons who filed submissions and requests, and the clerks of all municipalities affected by the undertaking. The Minister then upholds, amends, or changes the EAB's decision. In the two latter cases, the Minister must clearly explain the reasons in a document which is sent to all those who received the EAB's findings.

The Quebec Procedure

The *Loi sur la qualité de l'environnement*, amended in 1978, sets out the environmental impact assessment procedure. It describes in detail the assessment mechanisms for certain types of proposals and it establishes the Bureau d'audiences publiques sur l'environnement (BAPE). In addition, Order in Council 3734-80 makes detailed provision for informing and consulting the public and Order in Council 3736-80 elaborates the BAPE's rules of procedure. These three texts establish the formal procedure for public consultation on the environment.

The impact assessment process as a whole begins when the proponent announces the project by notifying the Minister. Whether a proposal is reviewed under the procedure is determined primarily by the potential environmental risk it entails rather than by the nature of the proponent (public, semi-public, or private). The Order in Council lists types of proposals which must be reviewed under the assessment process and the Minister may not grant exemptions to such proposals except in an emergency situation.

Upon receipt of the proponent's proposal notice, the Minister prepares, with the help of the department, guidelines outlining the nature, scope, and content of the impact study the

proponent is required to conduct. These guidelines are issued to the proponent. Once the proponent has submitted the impact study to the Minister, the department assesses the study's compliance with the guidelines. If the study is accepted, the Minister releases it, requires the proponent to give public notice of the proposal, and mandates the BAPE to organize a public information program and consultation on the proposal. The documentation includes the impact study, all documents filed by the proponent in support of the request for an authorization certificate, any information, study, or research produced at the request of the Minister, the notice of the proposal submitted to the Minister by the proponent, the Minister's guidelines concerning the nature, scope, and content of the impact study, and any study or review carried out by the Ministère de l'Environnement. This file is deposited at the BAPE office and at offices opened in the affected communities. The documents are available for inspection by the public in general and the affected municipalities in particular for a period of 45 days.

During this period, any person may file a request with the Minister for a public hearing on the proposal. Unless he considers the request frivolous, the Minister directs the BAPE to hold a public hearing.

The BAPE then notifies the general public and the affected municipalities that a hearing is to be held. It may hold closed preparatory meetings with the person who requested the hearing and with the proponent in order to define the main subject of the hearing and to explain the special hearing procedure. The hearing has two distinct parts. The first part is reserved for the person who requested the hearing and the proponent. The former explains the reasons for the request; the latter explains the documents that support the request for authorization. In addition, the BAPE may summon any person whose testimony it considers necessary and the deputy ministers of the appropriate government departments. After the statements and testimony have been heard, the commission accepts relevant questions from the public, which are added to the file.

The second part of the hearing is reserved for persons who have filed briefs and those who wish to make verbal statements to express their views on the matter or make suggestions. The commission may also hear testimony from other persons in order to correct facts raised during the hearing.

When the two parts of the hearing have been completed, the commission prepares a report, which becomes the BAPE report. The BAPE submits it to the Minister, and the Minister releases it. The BAPE's mandate is to give an account of the public hearing and its own inquiry in the report. The Minister submits the recommendations to Cabinet, which then decides whether or not to grant the proponent's request for authorization, and in the case of a favorable decision whether to make modifications or attach conditions.

The Quebec process is lengthy and may be considered mainly oriented toward providing information to the public. The information program is divided into stages which are strictly separated in time. The first stage serves to prepare for public consultation and participation, while the second serves to produce a two-sided presentation at the first part of the hearing.

The entire procedure is organized around and in relation to the impact study documentation submitted by the proponent and supplemented by the department and the BAPE. The impact study is essentially based on a specific project proposed by the proponent. This may be a construction project, a works project, a plan, a program, an activity, or an operation, all of which are precisely defined in article 2 of Order in Council 3734-80.

The impact study must include:

- a) a description of the project covering everything from its purpose to its integration into the local and regional development and planning context;
- b) a survey of the environmental features likely to be affected by the project, from both a quantitative and qualitative point of view; the survey must cover essentially the entire physical, human, social, economic, and cultural environment;
- c) a list and assessment of the project's positive and negative effects on the environment;
- d) a description of the various options, variations, and alternatives;
- e) a description of the mitigating measures, monitoring, and follow-up.

In practice, it is also accepted that the impact study must be produced using controlled scientific methods and must contain an accessible summary.

The BAPE is a standing government body which reports directly to the Minister of the Environment and is independent of the Ministère de l'Environnement. It has two functions under the law: to investigate any matter referred to it by the Minister, and to organize special hearings and inquiries as part of the environmental impact assessment procedure.

The BAPE has at least five members. Whenever it receives a mandate, it must set up a commission. The members named to these commission may or may not be members of the BAPE. They enjoy the powers and immunities of commissions appointed by virtue of the *Loi des commissions d'enquête*, including powers of inquiry and the power to subpoena witnesses.

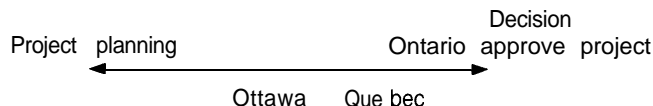
The BAPE has adopted its own principles to organize the proceedings provided for in the Order in Council. During the public information and consultation stage, it provides information and technical and professional guidance to the citizens consulting the impact assessment documentation.

It maintains close and regular contact with environmentalist groups and experts. Once the Minister has released the report on the inquiry and the hearing, the BAPE continues to perform its public information function by distributing and explaining its report.

Comparative Evaluation of the Procedures

On the whole, the federal, Ontario, and Quebec environmental impact assessment procedures are oriented more toward the decision to approve the project than toward the project-

planning process. While the three governments would like to see proponents take environmental impact assessment into consideration during the project design stage, none of them has attempted to directly and explicitly modify the project design and planning process, except perhaps the federal program insofar as it formally *invites* proponents to begin considering environmental impact themselves to consult the public about the assessment of this impact quite early in the process. Consequently, the federal procedure is nearer to the "project planning" pole of the following scale than are the two others:



The Quebec and Ontario procedures are nearer to the "decision to approve project" end of the scale insofar as they lead directly and formally to a decision on whether to approve the proposal. The federal procedure institutes, rather, a form of internal control, the result of which is not backed by any delegated authority but is left to a political assessment of the appropriateness of proceeding with the project. In terms of the formal decision to approve a project, the Ontario procedure goes further than the Quebec procedure as the decision can be reached within the impact assessment procedure by the Environmental Assessment Board. The Quebec procedure leads to a recommendation to the Minister of the Environment rather than to a decision. It is true that the Ontario Minister of the Environment may modify or reverse the EAB's decision, but in this case the Minister must act to change a decision which has already been made.

The scope of the decision-making process may vary in breadth and consistency. The process may be strictly limited to considering the decision to authorize the project, or it may also include the decision on the impact study's validity and even the decision on the guidelines issued to the proponent for the impact study. From this point of view, the Quebec procedure is definitely the narrowest; giving notice of the project, drafting the guidelines, and approving the impact study are closed processes conducted entirely within the confines of the Ministère de l'Environnement by the impact assessment analysis office. In addition, the decision-making process's openness to public consultation is essentially determined by the impact study and not by the proposal itself. The federal and Ontario procedures are more receptive at every stage of decision-making in the impact assessment process. The environmental assessment panel created under the federal procedure is invited to consult the public when drafting the guidelines. In addition, the consultation concerns both of the subjects covered by the procedure, the validity of the impact study, and the acceptability of the proposal. The Ontario procedure is the most explicit with respect to its scope. The impact study is made public as soon as it is filed, even before it has been accepted. Citizens are invited to submit their views and recommendations concerning the study. The Minister must formally consider citizens' views and recommendations before asking for modifications to the impact study or modifying it himself. The public consultation officially deals with two specific subjects: the acceptability of the impact

study and the authorization of the project. Thus, the decision itself and monitoring the assessment procedure both fall within the scope of the public consultation. That is to say, in addition to participating directly in the decision on authorizing the project, the public also participates indirectly in monitoring the instruments used in the decision-making process.

The scope of the decision-making process may extend to drafting the conditions attached to the project's authorization. The three procedures under study are different in this regard as well. In Ontario, the mandate of an environmental board explicitly provides for the EAB to consider the terms and conditions of authorization, and the monitoring and follow-up of these terms and conditions if authorization is granted. While the federal procedure is less explicit, it gives panels broad terms of reference and admits all types of recommendations, including recommendations concerning attached conditions, follow-up, and monitoring.

The Quebec procedure does not provide, formally or informally, for the BAPE to recommend conditions, follow-up, and monitoring. The BAPE's mandate is rather narrowly confined to consulting the public about the impact studies for projects under consideration. The BAPE acts on its own initiative when it draws up sweeping and complex recommendations concerning conditions and monitoring; the procedure gives it no power to follow up on its recommendations.

On this scale, the Ontario procedure is located far nearer to the "decision to approve project" pole than are the other two. While the federal and Quebec procedures are also oriented more toward the authorization decision than toward the project planning stage, they are further removed from the decision, and the Quebec procedure has relatively restricted input into the decision.

Information, Consultation, Decision

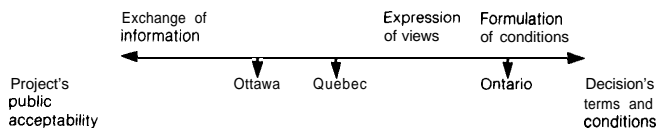
The procedures examined here lean strongly and explicitly toward public information and consultation. On the second scale we proposed for comparative analysis, the general consultation and public information process may be aimed, on the one hand, at simple information exchange among the proponent, the public, and the Board; or, at the other end of the scale, the process may aim to gather new information to add to the impact assessment documentation, helping to elaborate the decision's monitoring provisions. From this point of view, an impact assessment procedure is oriented either toward producing recommendations and opinions to be taken into account when the decision is made, or producing conditions to be attached to the decision.

Only the Ontario procedure explicitly requires the Board responsible for public consultation to consider whether terms and conditions should be attached to the decision, and if so to specify the nature of these terms and conditions. The Ontario Board does this in a systematic, precise, and clear way in its reports. While the federal procedure is not explicit on this subject, an environmental assessment panel's recommendations may include project implementation conditions under the federal provisions; such conditions are not, however, expressly tied to the decision. In the Quebec procedure, the BAPE is explicitly required to report only on its inquiries and its hearing

concerning a proposal's impact assessment documentation. In practice, the BAPE has sought to make its reports structured syntheses rather than just summaries of the views expressed. In a number of cases, BAPE reports have proposed authorization conditions.

The federal and Quebec procedures promote a long process of public information and broad consultation, much more so than does the Ontario procedure. Two of the three main parts of the Quebec process primarily involve public information. In principle, the 45-day period preceding a public hearing and inquiry serves exclusively to inform the public, and the express purpose of the first part of the hearing is for the proponent and the person who requested the hearing to make information available to the public. The informal and diversified nature of the federal procedure allows the public information program to be prolonged or intensified. Citizens living in remote areas are informed through community meetings; as many of these are held as is necessary. Dense technical information is made public at technical meetings. Finally, the rather non-adversarial nature of the public meetings promotes information exchange.

On the basis of these first considerations, the procedures would be placed as follows on the second comparative evaluation scale:

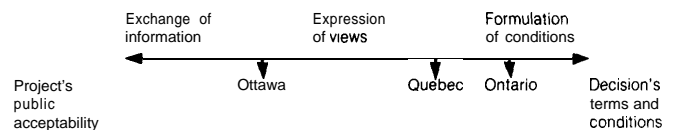


The length and intensity of the information gathering and exchange process may vary, as may the extent to which it is under the control of the opposing parties (the public and the proponent). Only the Quebec procedure makes no provision for direct public participation in drafting the guidelines and analyzing the impact study's validity. The Quebec consultation procedure therefore begins with a finished document which has been approved by the Minister; from the outset, the public information and consultation process focusses on a predetermined content. The federal and Ontario procedures allow the public to influence directly the Minister responsible in drafting guidelines and assessing the impact study's nature, scope, and content.

The Ontario and Quebec procedures assign a specific role, however, to the request for a public hearing and to the person who files such a request. In Ontario, any person may request a public hearing during the first stage of the process. Later in the process, any person who participated in one way or another in assessing the impact study may still ask for a hearing. In Quebec, any person may file a request for a hearing, giving a reason for the Minister to include in the BAPE's mandate. In these two cases, therefore, the request plays a role in orienting the public information and consultation process. There is no such device for orienting the content of the public consultation under the federal procedure. In addition, Quebec's BAPE may hold a preparatory meeting with the person who made the request for the purpose of defining the main subject of the hearing, providing the public another opportunity to control the information gathering process.

Finally, the implementation of the public information and consultation procedure may further public control over the information to varying degrees. Only the Ontario and Quebec procedures explicitly provide for a form of adversarial debate. The Ontario procedure is essentially based on an adversarial model, with parties and successive periods for examination and cross-examination. The Quebec procedure provides for opposing statements by the proponent and the person who requested the hearing during the first part of the hearing. The procedure's originality, however, resides in the fact that citizens' suggestions, opinions, and views are entirely separated from the opposing statements, being assigned to the second part of the hearing. Citizens may therefore speak freely, without the risk of being cross-examined or being confused by new information introduced by the proponent. The federal procedure promotes, instead, a public debate in which the proponent and the appropriate government departments are expected to provide information.

For these reasons, the positions of the three procedures on the assessment scale must be changed. The federal procedure appears, much more than the other two, to be a public information program that tends to become a one-way flow of information from the proponent and the government departments involved to the public. Without explicitly promoting adversarial debate, the Quebec procedure tends to favour the distribution of conflicting information and free expression of views on the part of citizens. The Ontario procedure favours adversarial debate, which may lead to a form of self-censorship or self-exclusion on the part of citizens, as they are threatened with cross-examination.



The Dynamic of the Hearing

A procedure for public information and consultation concerning environmental impact assessment may be considered open or closed depending on whether it has an internal dynamic and the ability to develop in the course of the proceedings. Thus, the consultation will either initiate and develop a broad and open public debate, or be a relatively closed exercise in dialogue restricted to an already established strategy and group of people.

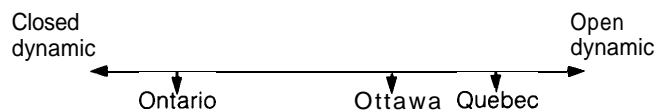
The federal and Quebec procedures may be called incremental research procedures. On the whole, these procedures aim to make as much information as possible available to the public, to attract as many speakers as possible, and to admit new contributions in the course of the process. In the federal procedure, for example, the panel disseminates technical information and seeks out affected local interests at community meetings and through a major public consultation in which the results of the preceding stages are brought before a public hearing. These operations are based on relatively general public concerns and interests. This cumbersome informal procedure makes it impossible to limit debate and discussion to a few qualified participants. The information exchanged at

one point or one stage may be picked up again, questioned again, reassessed, reviewed, and elaborated. Speakers are in no way limited to a single statement or a single type of statement and may easily change roles. Finally, the panel has no right, in theory, to prevent anyone from speaking or to restrict or limit their comments.

The Quebec procedure is more formal than the federal procedure, but this formality serves only to define the pace and thrust of the incremental research, which are left to the discretion of the panel members in the federal procedure. The Quebec procedure defines certain roles, at least those of the person who requested the hearing and the speakers who have filed written briefs. These roles do little, however, to close off the procedure. In theory, a period of general public information and consultation precedes the request, which is filed during or at the end of this period. In practice, even this period tends to serve to locate and identify the people who will eventually request hearings and to give them the opportunity to prepare the text of the request in the light of the direction that this first stage of the consultation takes. At the same time, several requests may be filed and their authors are not forced to join together at any point in the proceedings.

After the preparatory meetings, at which the person who requested the hearing can, in theory, orient the proceedings and control their pace, the first part of the hearing is held. Here, information supporting both sides is provided to the public, immediately followed by a question period. Twenty-one days must pass before the second part of the hearing; during this period, those who wish to make a statement have time to obtain more information, to make the necessary arrangements, and to prepare their statement. New participants may, therefore, appear at the second part of the hearing and introduce new information. In principle, no one is refused the right to speak; there are no limits and no questioning. Anyone wishing to speak may register to do so at the beginning of the session. The consultation continues until the end of the registration list is reached.

Consequently, the federal and Quebec procedures appear more open and more incremental when situated on the third comparative evaluation scale. The Quebec procedure, which was expressly designed for this purpose, is located further on the scale than the federal procedure:



The Ontario procedure is very formal and generally aimed not at gathering additional information but at defining specific points of concern and debating them in a restricted group. From the first public notice of the proposal, such a group emerges, consisting of the people who addressed comments and opinions to the Minister. This group quickly obtains formal recognition. Its members are kept regularly informed during the remainder of the procedure. Only members of this group may request a hearing after an amendment or revision of the filed impact study. At the hearing itself, public interveners are required to become parties and to defend a single type of position throughout the hearing. If there are several parties,

they are invited to join together. The parties thus formed call their witnesses before the board. The board may refuse to recognize a party's representative. It may direct the examination and cross-examination so as to admit only what is relevant and only arguments about facts which have not yet been raised. Independent participants may speak only at the end of the process, on new facts.

The Ontario hearing procedure operates more as a tribunal than a public assembly. The parties and their positions are known in advance. Speakers testify as witnesses, and are screened by the parties. The dynamic of the examination and cross-examination tends to narrow the debate to the opposing positions held by the parties. It is the right and duty of the board members to keep the discussion focussed on the central issues. Given this context, most interveners choose to be represented by a lawyer, who defends positions agreed upon in advance with the client. The witnesses are accessories whose contributions are confined to the strategy of the party for which they are testifying.

Control Over the Hearings Procedure

Whether the dynamic of a procedure is open or closed, the degree of openness or closure determines the possibility of exercising formal or informal control over the proceedings. We will consider here the possibility each type of participant has of influencing not only the pace and dynamic of the proceedings but also their content: information, comments, views, debates. Participants in the procedures under study may be classified according to the stage at which they enter the process, the role they acquire, and their affiliation. This may identify them with the proponent, with the public (lay or specialized), or with the government and public institutions (experts and representatives). Finally, given the nature of the project, its integration and impact on the territory, and the site of each stage of the hearing and inquiry, participants will also be distinguished according to their territorial affiliation. This may identify them with local populations, of which they may be the delegates or of which they may be representative, or with general interests, for which they may speak by virtue of their economic or environmental concerns, for example, or by virtue of their role as representatives of the national government.

The three procedures under consideration all have the stated goal of reaching the public, first and foremost, and particularly citizens likely to be directly affected by the project. Thus, all three procedures explicitly require that hearings be held in the areas affected, that local authorities be informed, and that public notices be published in, and using the resources of, the local press. The Quebec procedure contains explicit and formal provisions for organizing local hearings, while the other two procedures do not. The federal procedure explicitly provides for "community meetings," however, which are basically local by definition. With this exception, there are generally no meetings specifically and exclusively for local residents. The question arises whether local public hearings attract speakers from the local community or from outside the local population. To answer this question, it is necessary to return to the circumstances preceding the start of the hearing procedure.

In the federal and Ontario procedures, and most explicitly and formally in the latter case, the expression of local interests and concerns is encouraged and recorded through the submissions to the Minister, public participation in drafting the guidelines for the impact study, and consultation about and assessment of the impact study prior to its acceptance by the Minister. In these two procedures, hearings are held if strong local or regional concerns are expressed and pressure exerted (or if the Minister directs that hearings be held for reasons of national strategic interest). In the Quebec procedure, local residents enter the process at a later point, due to the fact that the impact study is released at a late stage, after it has already been accepted by the Minister. The period during which a request for a hearing may be filed is limited and precisely defined. This period is also used for public information and consultation on the impact study. In the final analysis, groups which are already organized and already informed are in a better position to prepare and file a request for a hearing. Indeed, the request may be filed by a single person or group entirely alien to the community, without consideration for local interests and concerns. In principle, the request for a hearing is not a collective or community request in Quebec; the other two procedures lend themselves more readily to community requests due to the fact that they admit the public at an earlier stage.

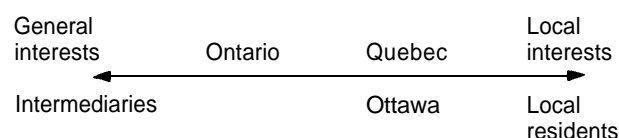
In Quebec, those who request the hearings retain a central role in the proceedings, until the second part of the hearing. Only they are entitled to a preliminary meeting, aside from the proponent, and they are the public's only representatives at the first part of the hearing. Their interests may therefore occupy a predominant position until the second part of the hearing. If they do not explicitly represent local interests, these can be expressed only at the second part of the hearing or are expressed by the persons who requested the hearings within the logic and strategy of their own statements. On the other hand, local interests and concerns may be expressed freely and without restriction at the second part of the hearing. The "public meetings" of the federal public hearing procedure are less formal and may resemble the second part of the Quebec hearing. The important position occupied by the representatives of government departments and the experts summoned to testify may, however, exert a countervailing influence.

The highly formal nature of the public hearings in the Ontario procedure requires the formation of parties and classes of parties. The central position occupied by the parties, their obligation to attend the entire hearing, and the process of examination and cross-examination promote the representation of parties by intermediaries, usually lawyers. The procedure also assigns an important role to witnesses, which, however, depends on the strategy of argument adopted by the representatives of the parties. Free, spontaneous expression of views by local residents is necessarily reduced. This does not, however, prevent local interests from being considered, expressly and exclusively, as one or more local parties may be formed. The logic of the party system governs the proceedings, however, and their content.

In addition, the board has the power to orient the debate within a line of reasoning and on the basis of whether new information is being presented; this contributes to reducing the expression of views by local residents. Finally, only this

procedure allows the board to hold sessions behind closed doors, when matters related to public security may be disclosed or when the confidentiality of private or personal financial matters may outweigh the considerations favouring public proceedings.

For all these reasons, the Quebec procedure appears to be more oriented toward allowing local interests, concerns, and representatives to influence its content; and appears to be organized more for this purpose, except when the person who requested the hearing represents strictly general interests. By virtue of its lack of formality, the federal procedure would appear to be similarly oriented and organized. On the other hand, while the Ontario procedure is oriented by local interests at the outset, its organization tends to allow the representatives of the parties to the proceedings and the succession of expert witnesses called by the parties to control the process.



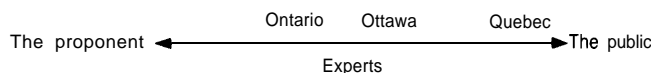
Public hearings on the environment bring together the proponent, with his representatives and experts, the public, with its representatives and experts, representatives of the appropriate government departments, and the experts called by the government departments and by the board responsible for holding the hearing. The federal procedure appears likely to attract the greatest number of experts, due to the extensive network of government departments involved: the proponent, the initiating department, the other departments concerned. In addition, the environmental assessment panel may call its own experts and hold "technical hearings." In theory, all these experts should be present at the "public meeting" and may speak at any point to make additions or corrections to, or elaborations on, the information and interpretations presented. These experts are invested with great legitimacy and it is easier to initiate discussion between them and the public than between the proponent and the public.

In the Ontario procedure, the content and thrust of the proceedings are under the control of the parties. In principle, the experts are called as witnesses by the parties. At the same time, the parties themselves are represented by "procedural experts," who meet and interact on the pretext of developing debate between the public and the proponent, whom they represent.

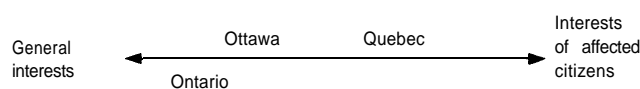
The Quebec procedure does not appear to emphasize, either in principle or in practice, the position and role of experts. The person who requested the hearing, opposed in practice to the proponent, formally represents public interests and is not called upon to play the role of expert. The public is invited to attend the hearing in person, without intermediaries, and it need not situate itself in relation to the person who requested the hearing.

In all the procedures, proponents take the first initiative in the proceedings: they speak first; they have total control over the data under review; they have either the right of rebuttal or the right to cross-examine. In all the procedures as well, time is Set

aside exclusively for citizens to speak. In Ontario, however, this time is limited by the length of the debate between the parties, by the board's right to restrict statements to "new" Content, and by the role of the representatives of the "public" parties. In the federal procedure, it would appear that the position occupied by experts may neutralize the direct relationship between the proponent and the public. For these reasons, it would appear that the content of the hearing can be most easily influenced by the public participants in the Quebec procedure, by the experts in the federal procedure, and by proponents in the Ontario procedure, due to their right to speak first and to cross-examine:



While public hearings on the environment are intended to allow direct communication with the citizens affected by a project, so as to gather new information and obtain particular assessments of the project's impact, in practice affected citizens' direct access to the assessment board varies according to the procedure. Therefore, the possibility of citizens systematically orienting the content of the hearing, from beginning to end, also varies. As the starting point for the hearing is always the impact study, which is prepared by the proponent, the hearing puts citizens in an initial position of "reaction" and dependence in terms of the information contained in the impact study and their understanding of this information. The participation of public experts, which may vary in extent, tends to orient the debate toward counter-expertise. In some cases, the extensive involvement of intermediaries and representatives may create a dynamic which relegates citizens to the fringes of the process, reduced to spectators. Thus, the direct expression of the interests and concerns of local residents is directly or indirectly reduced.



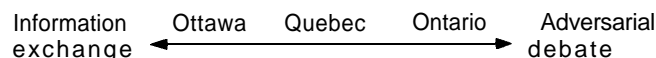
General control over the content of the hearings would therefore appear to be split between the poles represented by the interests of affected citizens and by general economic and environmental interests. The procedures under consideration tend more towards the second pole than the first; the Quebec procedure differs from the other two insofar as it more readily allows the interests of affected citizens to exercise control over the procedure.

General Orientation of the Hearings Procedure

Finally, we set out to consider the overall form of the procedures for public consultation on the environment. In discussing this form, we consider the general type of relationship between the two main actors and thus the general strategy of the proceedings.

In theory, under the Quebec procedure, the main actors and groups of interveners have not met prior to the beginning of the hearing. In practice, many of the participants attend many different hearings and have met previously. Public participants

have not contributed to preparing the guidelines for the impact study and have not participated in determining the study's acceptability. This is not the case in Ontario and may soon cease to be the case in the federal procedure. In most cases, the persons who made submissions and some citizens' groups have been directly consulted by the proponent or have indirectly addressed questions and preliminary positions to the proponent through the Minister. In principle, therefore, the Quebec procedure begins with a period during which participants obtain and exchange information. This is, we believe, the defined objective of the first part of the hearing. On the other hand, in the federal procedure the hearing begins with a description and overview of the information, questions, and views expressed up to that point in the impact assessment process. In the Ontario procedure, a preparatory meeting sets the stage: the parties are formed, meeting dates and locations are established, and by the time the hearing begins alliances will have been made and the positions of the speakers clearly identified. At the outset, then, two of the procedures are oriented toward information exchange, while the third has already entered adversarial debate between identified opponents:



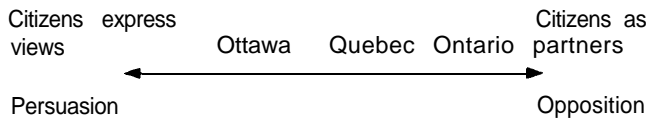
At the beginning of the process, the first part of the hearing, the Quebec procedure allows opposing statements by the proponent and the person who requested the hearing. This is the only point at which the opposed parties are formally brought together. The remainder of the proceedings are intended for independent participation, not organized according to parties.

In the federal procedure, there is no reason to believe the process will go beyond information exchange. On the contrary, the exchange process is quite informal. Information may be tabled at any time and in theory every question can receive an answer: the experts are there for that purpose. Views, comments, and recommendations are recorded, however, and may appear in the panel's report. This report is in no way binding: it is a recommendation only. Any authorization conditions which the report may contain will be discussed by the government departments involved and the decision will be made by consensus. The federal public hearings procedure begins with information exchange; it then prompts the proponent to adopt a public persuasion strategy, and the public in turn expresses its opinions and makes recommendations.

The Quebec procedure seems to allow adversarial debate during the first part of the hearing. This part does not explicitly involve consultation, however-much less negotiation. It is rather aimed at providing information on both sides of the question. The two parties, the proponent and the person who requested the hearing, speak in turn and in theory have no right of rebuttal. Consequently, there is no dialogue. Citizens attending the first part of the hearing may ask question in order to obtain additional information but may not enter into debate. The second part of the hearing is more dynamic, even though in principle it consists of a series of statements by citizens to which the proponent and the person who requested

the hearing cannot respond except to correct false information. The Quebec procedure, like the federal procedure, mainly promotes the exchange of conflicting information. There is no adversarial debate as such, which could lead to genuine negotiation, except if the commissioners encourage it by calling experts to testify.

In Ontario, the public hearings procedure is formally oriented toward adversarial debate: the parties are identified, witnesses called, examined, and cross-examined. The aim of the procedure is to validate or invalidate the information provided, so as to be able to determine the acceptability of the impact study and of the proposal itself. In addition, the board must be able to derive from the discussion the terms and conditions to be attached to the project's authorization. The parties are therefore prompted to act as opposed negotiating partners, bargaining over the conditions to be formulated by the board. The public is thus considered a partner in the decision-making process and called upon to perform the role of the opposition. By contrast, in the federal and Quebec procedures the public is the recipient of information; it is called upon to ask questions and express opinions, while the proponent and the person who requested the hearing attempt to persuade it:



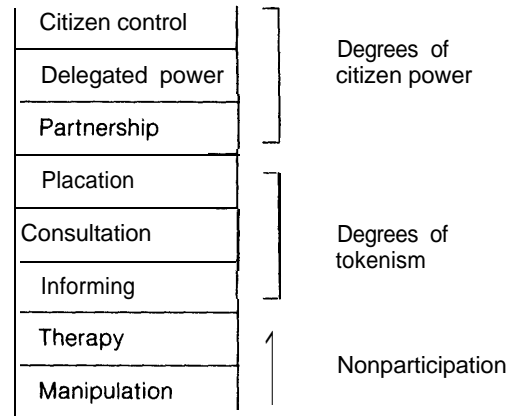
In the Ontario procedure, the experts are generally associated with a party and testify from the party's standpoint. They therefore have little opportunity to speak for the public in the adversarial debate. This is not the case in the federal and Quebec procedures. In the Quebec procedure, the experts are independent and may be called to testify directly by the commissioners. They may, therefore, initiate the debate if the commissioners give them the opportunity to do so. In the federal procedure, the experts are parties to the government's general strategy. They can exercise definite influence due to the legitimacy they obtain from their direct ties to the government departments involved, whether formal or informal.

The Procedures Compared: Degree of Citizen Participation

We have performed a comparative analysis of the three procedures under study according to five criteria. The five sections of this analysis may be integrated using Arnstein's ladder of citizen participation.¹⁴ This analytic tool attempts to gauge the degree of genuine citizen participation in the decision. Consequently, it does not apply exactly to an analysis of the degree of citizen control over a public consultation procedure, even though Arnstein does deal tangentially with this question as a way of approaching her main concern. As we are concerned primarily with control over the proceed-

ings and only secondarily with control over the decision, we use Arnstein's scale here as a methodological tool, without adopting her theoretical priorities.

Arnstein's ladder
Eight rungs on a ladder of citizen participation



The federal, Ontario, and Quebec procedures for public hearings on the environment all go beyond the nonparticipation category on this ladder. Due to their rather formal character and the fact that they are conducted under the aegis of neutral bodies, these procedures do not allow for direct and systematic manipulation of the participants. Neither are these procedures exercises in therapy, for they are situated within a decision-making process and they influence this process through the submission of specific items (briefs, comments, reports). On the other hand, these procedures do not assign any specific and exclusive power to public participants as do the categories at the top of the scale. Decision-making power is never delegated to the public and the public has no direct input into the decision. The reports are written by the board members and the decision is made by the appropriate Minister, or by the EAB (in the Ontario procedure) with the Minister having the power to overturn the EAB's decision.

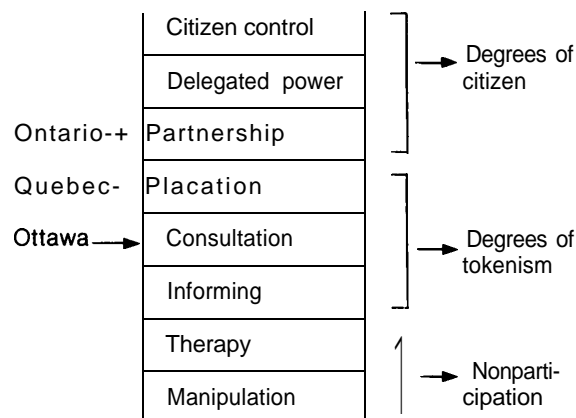
On the other hand, the three procedures rely greatly on information. The Ontario procedure provides for explicit public control over the nature of the information gathered, through public participation in writing the guidelines for the impact study and in evaluating the impact study's compliance with the guidelines. In the Quebec procedure, the information is explicitly intended to encourage public consultation and provide the necessary documentation. The federal procedure does not explicitly define the role of information in relation to the consultation; consultation and public information tend to be merged, thus leading the consultation towards question-and-answer type exchanges which serve to elicit information. Consequently, the federal procedure can be situated at the level of consultation on Arnstein's ladder. At this level, says Arnstein, the public may speak and listen in the context of a process in which information is generated and conveyed by the appropriate government departments. Under these conditions, citizens have no power within the procedure to

ensure that their views, opinions, and comments are really taken into account by the decision-maker. Furthermore, the procedure does not explicitly provide for any follow-up to citizens' comments. The outcome will be decided by the panel's report and the interplay of influences among the departments involved.

One step higher up the ladder, at the level of placation, citizens' power to make recommendations is **recognized** and guaranteed. We would situate the Quebec procedure at this level for several reasons. It is explicitly intended to gather citizens' opinions: the division of the hearing into two parts is designed to achieve this purpose. In the second part, citizens may speak freely, without the risk of being cross-examined or bombarded by too much new information. Furthermore, the commissioners and the Bureau must prepare and submit a report on the hearing and the inquiry. That is to say, they must explicitly present the views expressed and not only their own position. On the other hand, the public is given no power within the procedure to check whether its comments have been forwarded, much less to participate directly in making the decision.

We cannot go further than the category of partnership on Arnstein's ladder to situate the Ontario procedure. In this procedure, citizens are not delegated any decision-making power, nor any power to participate in or monitor the decision-making process. On the contrary, the EAB makes the decision at the conclusion of the proceedings. In order to reach this decision, the EAB has conducted a hearing at which clearly identified parties participated directly in making the determinations on which the decision is based: the acceptability of the impact study, the acceptability of the proposal, the formulation of the conditions attached to the project's authorization. If the Minister responsible overturns this decision, he must give public notice of his decision and inform the participants in the hearing procedure, providing his reasons in writing. We believe that this obligation puts the Minister to some extent in the position of having to negotiate his decision.

Arnstein's ladder
Eight rungs on a ladder of citizen participation
The ranking of the procedures



This ladder has limitations, as Arnstein admits. It does not take into account the number of citizens affected and included in the participation process. Neither does it take into account the relative influence of the publics included in the participation process, which must be weighed against the influence exerted by the representatives of the proponent and of "traditional" policymakers, and especially by experts, all of whom are also present. In order to overcome these limitations, we would have to depart from essentially formal analysis of the procedures and examine the real dynamic among the public participants, assess their representativity and the interests for which they speak, and analyze the content of their comments before the environmental assessment boards. For now, it should be noted that we supposed the Quebec procedure to have a more open dynamic than the other two, particularly the Ontario procedure. We also supposed that local interests and local citizens could be better represented in the Quebec and federal procedures than in the Ontario procedure, and that the Quebec and federal procedures allowed for broader grass-roots representation.

CHAPTER IV: THE CITIZENS PARTICIPATING IN PUBLIC HEARINGS ON THE ENVIRONMENT

The public consultation procedures bring together several types of participants as defined by their role in the general impact assessment process and in the public consultation. There are three general groups of participants: first, the proponent and the proponent's representatives and experts, keeping in mind that the proponent may be a company, a group of companies, a government body, or a group of government bodies; second, the government apparatus, which on the one hand is represented by the departments involved and the experts called by those departments, and on the other hand is present through the review board and its members, who are responsible for conducting the public consultation, and the experts called by the board; third, the public participants themselves. This analysis is concerned only with the third group. The public participants are the individuals, groups, and local community representatives who attend the public consultation: that is, the public hearing and inquiry in Quebec, the public hearing in Ontario, and the public meeting in the federal procedure. The proponent, government representatives, and private and semi-public companies appearing on behalf of the proponent or the government will therefore not be expressly considered.

Despite their eminently public character and the extensive publicity about them, these hearings are not overwhelmed by an excessive number of participants. An average of 45 public participants speak at each hearing. They generally speak to packed houses, however, in the municipality or municipalities directly affected by the project. Given the variety of proposals and regions affected, public participants are almost entirely different from one hearing to another. Only a few citizens attend more than one hearing, either because they represent nation-wide organizations or because they regularly attend public hearings on certain types of projects.

Public participants in hearings on the environment can express themselves in two ways: by filing a written brief before the start of the hearing and registering to present it verbally, or by registering to speak at the beginning of the session — to ask questions, make comments, express views and opinions. Almost half the participants make a written submission before the hearing. Their statement has therefore been prepared, documented, and argued. In many cases, the document represents a collective position and has been filed by the representative of an organization, an interest group, or a local institution.

The public and relatively formal character of the hearings does not appear to discourage public participation. On the contrary, citizens realize that their participation will be more decisive and will automatically be recorded if they file a written document with the board. Furthermore, the oral presentation of these documents often takes up most of the hearing. Due to the formality of the hearing and the emphasis on written texts, participants in environmental hearings tend to be from social elites. This circumstance may even be encouraged by

environment departments and by the review boards, as they seek well-prepared, authoritative presentations written in the style of the counter-experts. In some cases, public participants may receive technical help from the board's experts to prepare their documents; in other cases, they may receive financial assistance to consult an expert, to present their document, or to distribute it.

The Nature of Public Participants

Public participants may be distinguished, in the first instance, by their inherent nature. Participants who speak in their own name and do not formally represent any group or organization may be classified as individuals. They attend the consultation in their capacity as interested or affected citizens, or as experts testifying on the basis of their competence. For example, the witnesses called by the parties in the Ontario proceedings, who are most often experts, will be considered individuals. The groups and organizations represented at the consultation may be large or small registered organizations, usually non-profit, or voluntary groups formed or constituted sometimes for the sole purpose of participating in the public hearing. Institutions with delegated authority in a specific sphere of activities for a defined territory that are not involved in the project's development or implementation will be called community institutions. A community social service centre, a school board, a hospital, or a regional development council would fall into this category. A chamber of commerce, a consumers' association, or a fish and game club would be included under groups and organizations.

Public hearings on the environment attract mostly individuals. Fifty-six percent (56%) of all public participants are individuals; twenty-eight percent (28 %) are groups and organizations; fifteen percent (15 %) are community institutions. Individuals attend the federal and Ontario procedures in substantially greater numbers than do other types of participants. The Quebec procedure differs from the other two in that groups and organizations attend in almost as great numbers as do individuals; very few community institutions participate. There is nothing in the procedures to account for these findings, except that the strong representation of community institutions at Ontario proceedings may be explained by the fact that this procedure systematically provides for municipalities to be taken into account throughout the process and that the procedure is applied primarily to local projects. The weak representation of groups and organizations in the federal procedure is surprising given the importance of the projects reviewed under this procedure, the majority of which involve major technological or social policy choices.

Citizens who participate in more than one hearing are almost always representatives of groups and organizations. A large majority of citizens who make written submissions are also representatives of groups and organizations. Many of the individual participants are experts called to testify by groups

and organizations, especially in the Ontario proceedings. Given these observations, it must be recognized that the representatives of groups and organizations manage to obtain the most time and tend to take control of the hearing. On numerous occasions, ordinary citizens have asked that time be set aside at the hearing for them, that is for individual local residents. In Ontario, the boards have adopted the practice of setting aside one day for "ordinary" citizens. In the federal procedure, the panels may, and do, hold community meetings at which they can establish direct contact with "ordinary" citizens.

The Independence of Citizens' Participation

Some speakers may appear at a hearing spontaneously, in response to the public announcement that a hearing will be held. Others are formally invited by the board, which generally has the right and the power to summon witnesses to appear at the hearing. In some cases, citizens can obtain technical assistance and advice or financial support. Public participation at hearings on the environment can therefore be generated and controlled or simply left to the initiative of minimally informed citizens.

Several types of participants may be distinguished on this basis. Totally independent participants are, in principle, ones who have had no prior contact with the Minister, the board, or its members. Their participation is unforeseen and unforeseeable. Another class of participants may be distinguished on the basis of the quality of information on which their contributions are based.

These participants inspect the documents-impact studies, departmental reviews, experts' reports-prior to the hearing, during the information periods provided for by the procedures. They register at the place where the documents have been deposited. They may also have attended informal meetings in advance of the hearing. Some other participants personally receive formal notice that the hearing is to be held and are invited to attend. These are the participants who have already been in communication with the Minister, the board, or board members, either to submit an opinion or to request that they be formally notified of the hearing. Their names are usually entered on lists compiled by the Minister and the board; their attendance is foreseen and foreseeable. Finally, there are participants who are guided and governed by the procedure. These are the ones who play a direct, active role in the proceedings, by contributing, for example, to drafting the guidelines for the impact study and to analyzing the study's compliance with the guidelines. This category also includes the person who requested the hearing, the experts, and the subpoenaed witnesses.

The procedures for public hearings on the environment all provide for relatively long, fixed public information periods prior to the public consultation. They require that documents be deposited in accessible public locations. In practice, some provide technical assistance to help citizens understand the documents. These various methods are effective: the large majority of public participants are informed and over half have consulted the documents. The citizens consulted are therefore informed citizens.

Many participants, indeed almost one third, were personally notified, invited, or summoned. In addition to informing the public, therefore, the consultation procedures aim to control, to some extent, the nature of the public participants. This control is exercised by seeking out specific participants and also by educating the participants. All receive the same information on a given question, on the same terms. Thus the consultation process is already oriented in a given direction before the hearing begins, and the public hearing can then be held in due form with "quality" participants.

Participants who attend several different hearings, or who attend regularly, receive less guidance than the others. They are often familiar with the documentation and stay personally informed of the various projects underway and upcoming public hearings. They are informed citizens who are active in environmentalist movements or local organizations. These general features may vary enormously, however, from one hearing to another and from one procedure to another. It must be admitted that this type of participant sometimes serves the review board's strategy; boards may use such participants to orient discussion at the public hearing in the direction they wish. In some cases, citizens who participate in more than one hearing are the most closely guided and their attendance is almost solicited.

The Geographic Base of Participants

The simple explanation for public participation in public hearings on the environment is that groups and individuals who stand to be directly affected by a project's immediate impact and repercussions are motivated to attend. In theory, local residents should provide the greatest number of participants—all the more so in view of the fact that there is an information period for the benefit of the local community prior to the hearings and that the hearings are usually held in the affected areas.

A participant's geographic base will be called immediate if it is entirely within the territory on which the project is certain to have an impact. It will be called *peripheral* if it is on territory where the impact is secondary, uncertain, or unverified. For example, residents of an area where a flood spillway is to be built would be considered to be within the project's area of immediate impact, for the project would directly modify local land use and directly disturb the fabric of local activities. Residents living upstream or downstream would be considered to be within the project's area of peripheral impact. A participant's geographic base will be considered *regional* if it is within the larger territory surrounding the project's site. It will be called global for participants considered to be national or international, who attend for general social reasons and motives and whose base stands in no, or undetermined, relation to the project's site. National or international experts, for example, would generally be considered to have a global geographic base.

Participants in the public hearings procedures under consideration are generally local residents and are located within the project's area of immediate or peripheral impact. Sixty-four percent (64%) of participants fall into this category, with the greatest number being located in the area of peripheral impact. Participants whose geographic base has no defined

relation to the project's area of impact are quite numerous but make up only a small proportion of the total number of participants. It must therefore be concluded that the procedures are successful in promoting the participation of local residents through public information and by holding the hearings locally. It must also be concluded that the importance of the projects examined through these procedures and the problems involved in integrating them into the local fabric attract local participants first and foremost.

Most of the public participants who attend more than one public hearing come from outside the projects' areas of immediate and peripheral impact. They are representatives of national or even international organizations and travel to the regions where hearings are held to put forward their general interests, which are primarily related to environmental protection.

Public hearings on the environment bring together two types of participants classified according to geographic base: on the one hand, local citizens residing in the area of immediate or peripheral impact, and on the other hand citizens from outside the area of impact. The former are attending a public hearing on the environment for the first time; the latter have attended other public hearings in other regions. The "local" participants are most often individuals speaking for themselves or representatives of special interest groups, often formed for the sole purpose of participating at the public hearing. The participants from the "outside" are mostly representatives of established, recognized organizations. They always submit written documents and they are often able to obtain the services of experts.

Local residents often feel manipulated at the public hearing. The presence of the proponent, government representatives, their respective groups of experts, and the public participants from the "outside" relegates local citizens to the fringes of the process; this is often the result of an intentional strategy on the part of the board members, who wish to emphasize assessments based on strictly environmental considerations of the proposal. Local citizens and the representatives of community institutions have often asked for local meetings reserved for them exclusively. Only the federal procedure allows for so-called "community meetings" before the main meeting.

Public Participants' Responsibility for Managing Environmental Impact

It can be said that participants in public hearings on the environment are affected by the environmental impact of the proposed project and attend the hearing for this reason. They may be informed citizens who are directly affected by the project, or they may be responsible for managing the consequences of the impact in one way or another. It might be supposed, therefore, that the people directly affected and directly responsible for managing these consequences would attend the hearings in great numbers in order to try to negotiate the distribution of the burden with the proponent and the government representatives.

We will attempt to identify the distribution of real, concrete responsibility for managing impact by isolating and assessing the responsibility of each participant. For example, a commu-

nity institution might be responsible for moving or rebuilding an access ramp or service road; a group might be responsible for modifying its game hunting activities, for example, or shifting them to a different location; an individual might be responsible for restoring his property. The importance of such responsibility may be gauged on a scale which has real, immediate, concrete responsibility at one end and general, undefined responsibility as an affected member of the community or of local, regional, or national society at the other end. Between these two poles we situate what we will call indirect responsibility, placing indirect collective responsibility nearer the first pole and indirect individual responsibility nearer the second pole. A property-owner who identifies with other property-owners and anticipates new problems and constraints in the use of his property would be an example of indirect collective responsibility. We consider him to be more affected than a property-owner who feels individually obligated to relandscape his land; such a property-owner would be an example of indirect individual responsibility. The determination of this variable and its importance is not governed by the nature of the participant in any systematic way. For example, a community institution may consider itself responsible for managing a given impact by virtue of its commitment to collective interests and also by virtue of private interests such as damage to its property.

Participants at public hearings on the environment most frequently have indirect individual responsibility or general undefined responsibility for managing the project's impact. This is true in each of the three procedures under consideration.

The public hearings are neither a negotiation process, nor a mediation process, nor an arbitration process. Those who have direct, immediate responsibility are involved in the impact assessment process prior to the public consultation and are involved in impact assessment through other mechanisms during or after the consultation. Public consultation deals more with the proposal's general and social acceptability.

Consequently, two very different types of issues and interests remain to be discussed during the consultation. One relates to all the individuals whom the proponent does not consider to be directly affected by the project's impact. At the hearing, they will seek to establish that they will indeed be affected and will have to make adjustments which were not foreseen by the proponent in terms of their property or their lifestyle. Often, they are participants we have identified as coming from the project's area of peripheral impact, not the area of immediate impact. The other type of issue and interest is raised by speakers who have no immediate responsibility, direct or indirect, for managing and adjusting to the project's impact. They represent the general social conscience. They attend the hearing in order to defend the general rights of the environment and recall society's responsibility for it. Their statements raise questions about general policies and programs.

Almost all of these participants who uphold general interests and social responsibility have attended other hearings. As we have seen, they represent concerned, well-informed groups that participate regardless of a project's location in order to claim society's attention for certain general interests, not to claim any responsibility of their own for managing the consequences of the environmental impact. In this respect, they

differ from the other major type of participant in the hearings, the individual or group representing its own interests and concerned about its own responsibility for managing the impact.

Public Participants' Fields of Activity

Public participants may attend hearings on the environment not only because they are located within the project's area of impact or are involved in managing the project's impact, but also because they are involved in a field of activity that relates directly or indirectly to the nature of the project in question or the nature of its impact. We will take this other distinctive characteristic of participants into account by introducing the variable "participant's field of activity." This variable will be determined by comparing the nature of the project and its impact with each participant's usual primary field of activity. If the two entirely coincide—in other words, if the participant's field of activity is directly affected by the project and its impact—we will classify the participant's field of activity as being in complete and direct correspondence with the nature of the project and its impact. An example would be a local angling association concerned about a water diversion project. If the participant's field of activity partially coincides with the project and its impact, we will classify it as being in necessary partial correspondence. An example would be a truckers' association concerned about the path of a highway because it affects the safety of its members. The highway does not, however, threaten the association itself. If the participant is tangentially affected by the project and its impact but his actions are not affected in any essential way, we will classify his field of activity as being in optional partial correspondence with the project and its impact. An example would be a local Golden Age group concerned about losing a picnic ground it occasionally used. Finally, the last category is overall lack of correspondence between the participant's field of activity and the nature of the project and its impact. Without stretching the point, for example, we may say that a feminist group concerned about the path of a highway displays an undefined correspondence between its specific field of activity and the nature of the project and its impact.

Using this approach, we will attempt to define the nature of participants' statements without entering into detailed analysis of their strategies. We might suppose that the closer the correspondence between a speaker's field of activity and the type of project, the greater will be that speaker's participation in the public hearing. In practice, this is not exactly what happens. Over half the participants display no direct or necessary correspondence between their field of activity and the nature of the project and its impact. They do not have any particular competence or familiarity concerning the type of project and type of impact in question. They come to participate in the decision-making process as concerned citizens, as opposed to informed citizens.

On the other hand, participants who attend more than one hearing and represent social interests with respect to the environment through established and recognized organizations are almost all familiar with the questions raised, if not experts. Their position and role in the public hearing therefore steers the proceedings towards factual discussion among experts. In addition, the formality of the procedures, the system of

opposed positions on the proposal, and the important position occupied by the experts called as "witnesses" all favour the participation of "qualified" citizens. The procedures are oriented toward elaborating formal decisions and conditions so as to acquire and maintain a certain credibility, thereby favouring technical discussion at the expense of broader social debate. The board members, who must draft a report to advise the decision-maker, encourage this orientation. It is standard practice to interrupt public participants in the course of the hearing and even to cross-examine them, asking them to back up their statements. Ordinary citizens often feel intimidated by these practices.

Findings Concerning the Nature of Participants: Overview

Most participants in public hearings on the environment are individuals. Groups and organizations represent the second largest group of participants, especially in the Quebec procedure. Representatives of community institutions are almost absent, except in the Ontario procedure in which the presence of community institutions ensures that consideration is given not so much to local issues as to regional issues broadly defined.

The majority of speakers are local citizens from the area of immediate impact or peripheral impact of the project submitted for impact assessment. The Quebec procedure mainly attracts local residents; the other two procedures attract participants from a much larger territorial base than just the project's area of impact.

The participants do not primarily represent immediate interests directly affected by the project's impact. The typical profile shows, rather, informed citizens, concerned about their individual and collective responsibility for handling the consequences of the environmental impact on their areas. Consequently, the average speaker seeks to participate in a decision-making process rather than negotiate among clear and defined interests. This is the typical participant in the federal procedure. The Quebec procedure attracts more participants whose lives would be directly and immediately affected by the project's impact than do the other two procedures.

The procedures do not appear to give rise to debate among experts or qualified participants in any systematic way. Most public participants do not possess extensive qualifications relevant to the problems raised by the project and its impact. Only the Ontario procedure systematically promotes the demonstration of expertise and competence by defining the roles of parties and witnesses. To a lesser extent and by deliberate choice, the Quebec procedure promotes participation by qualified and expert individuals and groups based on counter-expertise. It cannot, however, limit the debate to the level of counter-expertise alone, nor does it seek to do so.

We have noted that the behaviour of participants depends not so much on their nature as on how closely guided they are by the procedure itself. The quantity and quality of this guidance differs from one procedure to the other, and this variation accounts for the differences between the participants that each procedure attracts.

Naturally, the procedures provide guidance first and foremost to the participants they are able to identify, primarily community institutions and groups and organizations located within the project's area of impact, but they do so in different ways. In practice, the Quebec procedure provides guidance primarily to groups and organizations, the Ontario procedure primarily to community institutions. The Quebec procedure is more activist in this respect and mobilizes participants to a greater extent. The Ontario procedure tends more towards a strategy of regional dialogue.

By providing guidance to groups and organizations, the Quebec procedure mainly promotes attendance by regional and national representatives. Through systematic reliance on experts, the Ontario procedure promotes attendance by regional and provincial participants at the expense of local representatives. Only the federal procedure appears to be biased primarily in favour of local residents.

The federal and Ontario procedures aim primarily to attract participants who have a degree of responsibility for managing the impact. While the Quebec procedure appears to reach all the publics directly or indirectly affected, it is explicitly focusses on attracting spokespersons for general and national interests, thus favouring the broadening of the social discussion during the impact assessment process.

On the whole, public participants in the hearings are able to assert their competence in their usual fields of activity. More than others, the Ontario procedure favours participants with relevant qualifications. Only the Quebec procedure appears to rely on speakers with broader, less specialized skills in order to foster public debate.

Given its precise but not very formal rules of procedure, the Quebec procedure would appear to us to be oriented toward activism. It focusses on the social issues, interests, and dimensions present in genuine local issues. For this purpose, it relies on organized, competent participants, who do not, however, necessarily represent local grassroots interests and concerns.

The Ontario procedure is strictly structured and governed by firm rules and sets of procedures. It therefore favours experts, activists, and organizations. At the same time, the formality of the rules serves to confine the debate to the standpoint of regional interests concerned about the project's integration into the local fabric. The procedure does not favour major debates on social issues based on activist positions.

The federal procedure is flexible and relatively lax. It deals with important issues raised by the projects reviewed under the impact assessment process-technological and social policy choices. The procedure is not oriented toward activism, however, and its strategy is not focussed on reaching a decision; it tends rather to promote local public information programs. Contrary to what we had supposed, the procedure does not particularly favour experts and counter-experts, but simply brings together representatives of local interest groups.

General Profile of Public Participants

We may sketch the following profile of public participants in environmental hearings. Most are individuals speaking in their own names, either as local residents, as private experts, or as informed citizens. The majority of these individuals are well-informed about the proposal in question and have obtained the relevant information within the framework of the public consultation procedure. They attend hearings on projects which have an impact on the areas in which they live and work; this area is, however, larger than the project's area of immediate impact, embracing the entire region. Most participants are not directly affected by the project; it is in rather indirect ways that they are personally affected. Finally, their attendance is not primarily due to familiarity with the questions and issues raised.

Participants who regularly attend more than one hearing have a specific profile. They are well-informed groups and organizations first and foremost. They cannot be clearly situated in relation to the project's site and its area of impact: they are groups and organizations with a primarily national vocation, defined by their common interest in a given problem area and type of issue. Consequently, they are not considered to have direct and immediate responsibility for managing the project's impact. On the other hand, they are familiar with the questions raised, given that their existence is based on a problem area and type of issue which corresponds exactly to the problems and issues raised by the project's impact assessment.

Most hearings on the environment bring together these two typical groups of participants. One represents individual, geographically situated interests and has no special competence; the other represents collective interests with respect to issues which affect all or part of society at the national level and is relatively competent in terms of a given aspect of the problems raised. The latter participate extensively, regardless of the project's area of impact, insofar as the project relates to the type of general interests they uphold.

CHAPTER V: THE PUBLIC'S PRESENTATIONS AT HEARINGS ON THE ENVIRONMENT

Public participants in environmental hearings can express themselves in two ways, either by filing a written brief in advance of the hearing and registering to present it verbally, or by registering to speak at the beginning of the session -to ask questions, make comments, express views and opinions. Some procedures control and limit the time allotted to participants more than others. The Quebec and Ontario procedures are the most formal. The Quebec public hearing procedure provides for a first part in which citizens who registered at the beginning of the session may put questions to the proponent, the person who requested the hearing, and the commissioners. The second part of the hearing is set aside for verbal presentation of the briefs filed previously and for citizens who registered at the beginning of the session to express their views, give their opinions, and make comments. In Ontario, the parties lead the debate and call witnesses. Many public participants thus testify either as witnesses or as representatives of the public party or parties. Presentations are made verbally, regardless of whether briefs have been filed. In addition, the Ontario procedure provides for a "special session" of the hearing at which all registered participants may speak, regardless of whether they have filed briefs. The federal procedure is less formal. Participants speak with minimal constraint and guidance, in random order regardless of whether they have filed briefs.

In all the procedures, the hearings are recorded in their entirety. The tapes are transcribed and the transcripts are deposited in the archives of the responsible board or agency. In the Quebec procedure, all written briefs submitted are attached to the report on the hearing. In the federal and Ontario procedures, the briefs are assembled and may or may not be attached to the report. For the purposes of this analysis, we have examined only written briefs filed and registered as such by the agency responsible for the proceedings.

In principle, the subjects participants may address are limited by laws and regulations, as well as the public hearings procedure and impact assessment process legislation. In practice, the subjects addressed are controlled by the board only in the Ontario procedure. In the two other procedures, the board members are generally tolerant. In the Quebec procedure, for example, speakers are allowed to express their views, give opinions, and make comments even during the period set aside for questions.

The public hearing on the environment deals with assessing the effects of a project submitted for authorization by a proponent. The precise subject is therefore the project's environmental impact. Given the general terms of reference for conducting and drafting the impact study, however, various other related subjects enter into the debate:

- a) the project: its aims, its site, its implementation, its subsequent operation and maintenance, further

constructions and operations, the materials required, waste and residue disposal, plans for related development;

- b) a qualitative and quantitative inventory of environmental features, including fauna, flora, human settlements, heritage, agricultural resources, resource management;
- c) a survey and assessment of the project's environmental effects, including indirect, cumulative, long-term, and irreversible effects;
- d) a description of possible project options, as concerns notably its site and implementation methods;
- e) a list and description of measures required to prevent, reduce, or mitigate environmental damage.

A participant's presentation may be analyzed in terms of the following eight themes. A participant will deal with one or more of these:

- 1) the proponent, in terms of responsibility towards the area and the community;
- 2) the impact study, as an impact assessment tool;
- 3) the project, including its elements, its implementation and related development;
- 4) the elements and features of the environment likely to be affected by the project;
- 5) the impact, as assessed;
- 6) the options, as studied and assessed;
- 7) monitoring, follow-up, and mitigating measures;
- 8) the inquiry and hearing proceedings.

We have added another category to these eight themes which registers the speaker's overall position on the proposal. How can a public participant deal with these various themes? At what we will call the "objective" level, participants begin by implicitly referring to the content of the laws and regulations, and then deal with one or all of the themes in terms of what the laws and regulations require. At what we will call the "subjective" level, participants look beyond the laws and regulations or ignore them entirely, describing what they themselves want done.

When dealing with these themes, speakers take varying degrees of liberty with the impact study which was filed and which they are supposed to have inspected. Participants may ask questions about specific points in the impact study. They may raise new points. In some cases, they may take the liberty of assessing the content of the impact study, challenging the data, the methodology, or the interpretation of the data. They may also interpret or reinterpret the results of the proponent's analysis. Finally, they may go well beyond the content of the

impact study or ignore it, introducing entirely new information and assessments.

The Typical Presentations of Public Participants

There are significant differences among the briefs filed by public participants. They vary in length, some containing a real counter-impact study while others simply express a general position on the project. They vary in terms of their parameters, some confining themselves to the exact terms of the impact study while others propose more or less complete alternatives to the proposal or enter directly into debate on social policy.

Most participants' presentations are fairly elaborate and varied. On average, participants deal with five of the eight themes we have defined for the purpose of analyzing participants' presentations. These themes are largely dealt with in a liberal and subjective way, without explicit reference to the impact study, the regulations, or the other documents filed. While public participants have inspected the documents, they do not consider themselves confined by their content. For example, they do not dwell on specific mistakes in the impact study; rather, they say the impact study is biased, that it fails to deal with the entire program of which the project is a part, that it does not address all the responsibilities involved, etc. If they speak in this way, it is because they take an overview of the impact study and the other documentation occasionally pointing out contradictions, omissions, or faulty interpretations.

Most participants adopt an explicit position on the acceptability of the proposal and the impact study. Almost all are opposed to the project, arguing that the impact study serves to justify choices which have already been made, at the expense of other alternatives which were ignored, too hastily dismissed, or not evaluated.

Subjects Raised by Public Participants

Public participants speak primarily about the project itself, its impact, and the proponent's responsibility. They comment much less on options and choices, controls and follow-up, and the public hearing procedure itself. Their presentation would thus appear to be focussed on the problem and central question of whether the proponent's proposal should receive authorization, and to be only secondarily interested in discussing the terms of authorization.

In this type of presentation, citizens express highly critical views and opinions concerning the project, the options and choices, and the hearings procedure. They say that they are against the proposal, that the options have not been properly studied or evaluated, that the hearings should have decision-making power or involve arbitration on behalf of the public.

The speakers who are most familiar with the procedure, having attended other hearings on the environment, not only invoke more themes but also refer to each theme more often than does the average participant. They speak most frequently of choices and options, then of the project, and then of the proponent and the impact study. Thus, they are most highly interested in assessing the impact of the proponent's project. In this connection, they take an interest in both the impact

study and the proponent's responsibility. This means that they try to depersonalize the question in order to obtain what they consider to be a more accurate assessment of the options, variants, and alternatives.

Speakers who have attended other hearings are also more critical than the average participant, particularly with respect to the project, the proponent's responsibility, and the impact assessment hearings procedure. Their reasoning is relatively simple: the project should be reconsidered because the effects have been inaccurately assessed; the proponent's responsibility is limited; the board responsible for conducting the hearing should require that the project be reconsidered due to the flaws in the impact analysis.

As much as ordinary participants base their argument on the conditions to be attached to the project's approval, speakers who have attended other hearings base their argument on impact reassessment. Their attitude is not based on political considerations; it is, rather, tinged with corporatism, for what they question is the quality of the assessment and of the expertise, to which they oppose their counter-expertise.

In all the procedures, participants comment on the project and adopt a highly critical position concerning its approval. Speakers generally consider the proposal to be inadequate; the proposal often provides no details on the project's construction and implementation, nor on its integration into a development and activities plan. In Quebec, citizens most frequently raise these questions on account of environmental considerations. In the federal and Ontario proceedings, discussion of the project focusses on specific effects. Only in the federal procedure do speakers make the impact study itself a major theme of their presentation. These speakers view the impact study less strategically and are not particularly well-informed about its content; consequently, they accept it less readily.

Quebec participants also differ from the others in their highly critical attitude towards the variants, options, and alternatives proposed by the proponent. In this way, they attack the project itself, most frequently citing environmental concerns. In the federal and Ontario proceedings, criticism of the proposal leads to criticism of the proponent. Only public projects and projects coming directly under the jurisdiction of public authorities are reviewed under these two procedures. The debate on the project therefore tends to become politicized. In Ontario, this debate is motivated primarily by environmental considerations. In the federal procedure, the debate is and remains political, with citizens most frequently attacking the hearings procedure itself. The procedure is perceived ambivalently, as both a genuine attempt at consultation which is expected to have a real influence on the decision and a gratuitous democratic exercise with no defined position in relation to the decision.

Each of the procedures succeeds, therefore, in keeping the debate focussed on the main theme, the proposal under consideration. On the other hand, they enjoy different degrees of success in orienting the discussion toward impact assessment. In Quebec, participants' presentations tend much more strongly toward general environmental issues; in Ontario, they tend to challenge the legitimacy of the proponent's statement;

federally, they tend to challenge the impact assessment process itself.

In all three procedures, the presentations of speakers who have attended other hearings display the typical features of average participants' presentations in heightened form. Like the average participant, speakers comment primarily on the project, but even more critically. Only in the Quebec procedure are multiple participants more conciliatory than the average participant, for they are mainly interested in debating environmental impact and options and alternatives. They adopt highly critical positions on all these subjects, however, attempting to displace the proponent or the proponent's experts by citing their own expertise. We are inclined to think that they tend to be counter-experts, who are familiar with environmental assessment and represent a group or organization dedicated to environmental protection.

In Ontario, speakers who have participated in other hearings most frequently comment on the impact, then on the impact study, and then on the project. They play the role of opposition party, critically invoking the proponent's responsibilities and emphasizing environmental considerations. In the federal procedure, multiple participants comment primarily on the same subjects; however, their criticism is focussed on the procedure for public hearings on environmental impact assessment.

Only in the Quebec procedure, therefore, are multiple participants significantly different from the average participant, primarily in that their critical presentation focusses on considerations related to the project's conditions and on alternatives to the project instead of on environmental considerations.

Frequency of Themes and Approach to Themes According to the Amount of Guidance the Speaker Receives

The participants who are best-informed and most closely guided have the most elaborate presentation and comment on a large majority of the subjects. The nature of their comments varies according to the amount of guidance they receive. Independent participants who are only informed speak most frequently on the project, then on its impact, and then on the proponent's responsibility. Participants who are notified and guided also speak most frequently about the project, but they comment on the proponent before the impact. The first type of participant links the project's impact to the project itself; the second type of participant links the project's impact to the proponent's responsibility.

Informed participants and notified participants act in specific ways on the basis of these two general modes of presentation. Informed participants are the only ones to speak primarily of the impact study; they behave as questioners seeking additional information or seeking details concerning the information contained in the documentation. Notified participants speak primarily of the proponent's responsibility for general environmental protection. Their presentations are either expert, or clearly political, emphasizing the proponent's general social responsibility for the environment.

Independent participants are the most critical, and the participants who are most closely guided are the least critical. The most critical participants are especially so with respect to the public hearings mechanism itself, and on the choices and alternatives to the project. They make demands on the board, asking it to compel a reconsideration of the project by seeking and analyzing alternative solutions. The least critical speakers, the ones who are most closely guided, most frequently question the choices and alternatives supported by the proponent, primarily on environmental grounds. They thus speak of the decision pending in relatively abstract terms, setting out to reassess alternatives to the project by emphasizing new environmental considerations. We see here two distinct types of presentation, one belonging to the most independent participants and dealing primarily with the decision itself and the other belonging to the guided participants and dealing primarily with environmental assessment and alternatives to the project.

While the presentations of the most independent participants typically centre on the connected themes of the project, its impact, and the proponent's responsibility, each of the procedures modifies this typical presentations. In both the federal and Ontario procedures, independent participants base their presentations on the project and impact, but in the Ontario procedure they develop environmental arguments in connection with these themes while in the federal procedure they confine themselves to the impact statement. The latter therefore define their positions more with reference to the impact study and are more dependant on it. In Quebec, independent participants mainly raise environmental considerations in connection with the project and the proponent's responsibility. They therefore behave in the same way as do all other types of participants in the Quebec proceedings, in which discussion evidently is focussed on the general environmental considerations related to the proponent's proposal.

In the Ontario procedure, the participants who are most closely guided are generally more interested in the project's precise effects. In Quebec, they participate in the debate on general environmental considerations. In the federal procedure, participants discuss first the proponent's responsibility, then the impact study, and then the project. The amount of guidance speakers receive determines their participation in the public hearing to a great extent; that is to say, the procedure and its application by the board tend to generate the type of presentation expected of this type of participant. In the Quebec procedure, a presentation generally oriented toward environmental considerations is expected; in Ontario, the tendency is towards a presentation narrowly focussed on impact assessment; in the federal procedure, which has less ability to guide speakers, we believe that the panel members are rather caught unawares by the presentations of guided participants, which do not respond to expectations. If, on the other hand, we were to reject the hypothesis that presentations do not respond to expectations in the federal procedure and look at the question from another point of view, then the proceedings would have to be seen as purely informative in nature, even for guided participants.

This last conclusion is supported by the type of critical presentation we find. All types of participants in the federal procedure are most highly critical of the public hearings

procedure itself, and the guided participants set the tone. They clearly challenge the hearing's function in the decision-making process, citing environmental considerations in a very critical way. In the two other procedures, guided participants do not seriously question the function of the public hearing on the environment. In Quebec, they play the role of counter-experts, calling for revision of the alternatives proposed by the proponent and reassessment of the impact, and connecting these two processes. In Ontario, they debate the proponent's social responsibility for the environment, acting more like activists than counter-experts.

It may therefore be concluded that, of the three procedures, the Quebec procedure most successfully controls the presentations of the participants who are guided by the procedure; the expected presentation focusses on the assessment of impact and of options and alternatives, given environmental considerations. In Ontario, a narrow impact assessment is expected, but it is conducted on an adversarial basis and the debate is often broadened to embrace general environmental considerations and the proponent's responsibility. The federal procedure, which is quite informal and conducted in a flexible way, projects a neutral image which participants challenge by raising environmental considerations for which they seek a somewhat less hesitant arbitration process.

Frequency of Themes and Approach to Themes According to the Nature of the Speaker

The presentations of groups and organizations are more elaborate and highly critical. The most highly critical presentations are those of individual citizens who comment on few subjects. Community institutions adopt a more conciliatory but relatively well-developed attitude.

Each of these types discusses first the project, then its general impact, and then the proponent's responsibility. In addition, each adopts a critical attitude towards the project, calling for alternatives rather than for attached conditions. They challenge the alternatives proposed by the proponent and want the public hearings procedure to decide in favour of seeking and evaluating alternatives.

This kind of presentation is most typical of participants in the federal and Ontario procedures. In Ontario, groups and organizations are distinguished by the fact that they emphasize general environmental considerations before considering the project's specific effects. In addition, individual citizens and the representatives of community institutions directly connect impact assessment with the assessment of the choices, options, and alternatives supported by the proponent. In the federal procedure, participants all speak with reference to the impact study. Clearly, the reception and perception of the impact study by citizens is not entirely clear, so much so that individuals and groups and organizations are more inclined to discuss this document than to consider the proponent's responsibility.

On the other hand, criticism is not primarily directed toward the impact study in the federal procedure, but rather towards the function of the public hearing and the proponent's responsibility. It must therefore be concluded that the impact study is a reference document about which inadequate

information has been made available, at least for individuals, groups, and organizations. We would also observe that criticism of the hearing's function reveals an inaccurate perception of the relationship between the public consultation and the proponent's responsibility on the part of most participants in the federal procedure. In any event, this relationship is always controlled by the government. Individuals question this poorly defined relationship in connection with alternatives to the proposal, while community institutions question it in connection with monitoring and mitigating measures in which they plainly ask to be involved.

In both Ontario and Quebec, the criticism voiced by speakers is focussed on environmental considerations and the project itself. Ontario participants directly invoke the proponent's responsibility in this connection, the proponent being always a public authority to whom community representatives point out their share in the burden of responsibility. In Quebec, participants draw attention to the environmental considerations related to the project by commenting on the options and alternatives, as well as the conditions to be attached to the project. Individual citizens mostly make demands while groups, organizations, and institutions tend more toward negotiating changes in the project.

Thus the discussion is generally more political in Ontario, invoking the public authorities' environmental responsibilities. It has a more technical character in Quebec, where participants feel the decision is out of their hands and seek rather to influence it through an assessment of the options and the conditions. In the federal procedure, the discussion appears to become sidetracked, turning to the role, place, and function of public consultation in a cumbersome decision-making process which seems to be beyond the control of participants; only community institutions take advantage of the occasion to emphasize their own responsibility.

Frequency of Themes and Approach to Themes According to the Speaker's Geographic Base

Participants who have been identified as belonging to the project's area of immediate impact comment most frequently on the project's impact and the proponent's responsibility. They share a pragmatic approach that leads them to seek to identify, measure, and assess the project's impact, and to evaluate the proponent's responsibility for this impact. Only local residents primarily invoke general environmental considerations; they take a global, critical approach to their environment.

Local residents adopt a generally critical position on the proposal and seek alternatives. They usually develop this critical position by assessing the alternatives, options, and variants proposed by the proponent. This leads them to challenge directly the procedure itself. They want more than an exercise in consultation; in some cases, they seek a real arbitration ruling.

Participants in the federal and Ontario procedures follow this model of presentation with few exceptions. Local residents participating in the federal procedure differ in that they are equally interested in debating the precise conditions to be attached to the authorization of the project. They thus

negotiate compensation and integration measures in addition to assessing the impact. Almost all types of participants in the Ontario procedure differ in that they include options and alternatives among the central themes of their presentation. As usual, participants in the Quebec procedure differ from participants in the other two procedures in that they question the project and the proponent's responsibility by invoking general environmental considerations. In the Quebec procedure, participants from outside the area of immediate impact also deal extensively with impact assessment.

At the federal level, the type of critical presentation does not vary significantly according to the participant's geographic base. Criticism of the project and negative positions on it are based on a critical assessment of the proponent's responsibility and a strategic challenge to the environmental hearing procedure. In Ontario and Quebec, criticism is based rather on environmental considerations and the assessment of alternatives.

In the Ontario and Quebec procedures, citizens from outside the area of immediate impact adopt the same type of critical presentation and challenge the proponent's responsibility in terms of his assessment of the options, variants, and alternatives. Citizens who are more closely identified with the area of impact comment first on the impact and the options. Two types of participants stand out, however: first, local participants in the Ontario procedure, who ask the Environmental Assessment Board to arbitrate, and second, regional and peripheral participants in the Quebec procedure, who assess the impact very critically. The first group demands respect for the integrity of its environment, regardless of the other considerations involved. The second group plainly seeks to expand the area of impact being taken into consideration.

This confirms that the Quebec procedure defines the area of impact narrowly and that participants from outside the area of immediate impact feel relegated to the sidelines. This also confirms that in the Ontario procedure local residents are one of the determining parties in the adversarial debate on whether to authorize the project.

Frequency of Themes and Approach to Themes According to the Speaker's Degree of Responsibility for Managing the Impact

In general, presentations do not vary according to the speaker's responsibility for managing the impact: the average participant speaks primarily of the project's impact and the proponent's responsibility. Neither does degree of responsibility affect the critical character of participants' presentations. They generally accept the proponent's impact assessment, except that they modify it quantitatively. On the other hand, they question the alternatives and the public hearings procedure's strategic function. Only the participants who are most immediately responsible or who bear collective responsibility seem concerned to emphasize general environmental considerations in a critical way. These participants mainly cite social aspects of the environment.

Participants in the federal procedure act in the most consistent way. All consider the project from the point of view of its impact and the validity of the impact study. It appears clear

that the procedure prompts more questions on the documentation and the proposed impact assessment than on any other subject; this is true for all types of participants. Only speakers who bear immediate responsibility consistently raise the question of the proponent's responsibility, as well as the conditions and measures to be attached to the decision. They are the only ones to consistently pursue mediation and dialogue.

Participants in the Quebec procedure also act consistently and their degree of responsibility does not modify in any way the typical presentation which has already been identified for the Quebec procedure. For all types of participants, the main question is the proponent's responsibility in terms of the general environmental considerations raised by the project.

On the other hand, participants in the Ontario procedure are quite clearly distinct. First, they differ from participants in the other procedures in that their presentation is well developed and richly articulated. This is especially true of speakers with responsibility. Second, there are clear distinctions among the Ontario participants. They are essentially interested in the project's impact and the proponent's responsibility, but participants with responsibility are also interested in assessing the options and in the consultation procedure's role in the decision-making process, while participants without defined responsibility are less interested in the impact than in assessing the options and alternatives. They thus try to circumvent the problem without dealing with the question of responsibility for managing the impact.

Participants with responsibility behave differently in the different procedures. In the federal procedure, they primarily question the role of the hearing procedure itself; they seek an arbitration process which would evaluate alternatives to the proposal. Therefore, they do not try to negotiate compromises, but use the hearing to prompt the panel to abandon its neutrality. In the Ontario procedure, participants of this type attempt to negotiate conditions and mitigating measures appealing directly to the commissioners against the proponent. In the Quebec proceedings, participants of this type do not differ substantially from the average participant; they ignore questions of responsibility in favour of an alternative environmental presentation.

In the federal procedure, the presentations of participants without defined responsibility closely follow the typical model for the procedure. They address the proponents—that is, the appropriate departments—as well as the panel, however. It might be said that they have a more political approach than do the participants with responsibility. In Ontario, participants without defined responsibility adopt a critical presentation with respect to the proponent's responsibility for general environmental considerations. Consequently, their presentation is militant and political, as the proponent is always a public authority in Ontario. In Quebec, this type of participant behaves as a counter-expert, evaluating the impact and the proposal's variants in the light of environmental considerations.

It may be said that only the Ontario proceedings bring interveners with responsibility, the proponent, and the board members face to face and put them in a situation which seems

to assume the character of a negotiation for the interveners with responsibility. Participants in the federal proceedings adopt a strategy of information distribution and confrontation which extends to the proponent as well as the panel members.

Frequency of Themes and Approach to Themes According to the Speaker's Field of Activity

The relationship between a participant's usual primary activity and the range of problems connected with the project and its impact is not associated with any significant variation from the typical presentation on the project, the proponent's responsibility, and the impact assessment. Only participants who are not specialists in the problem area and not familiar with it behave slightly differently, taking a more global approach and dealing with general environmental considerations rather than the evaluation of specific effects. They favour widening the discussion to the social effects of the project, which proponents and their experts most often minimize or dismiss. This attitude on the part of nonspecialist participants may be explained by examining the behaviour of this type of participant in the Quebec procedure, where all speakers emphasize general environmental considerations.

In the Quebec procedure, the theme of environmental considerations is favoured by all types of participants. It is particularly strongly favoured by specialists and nonspecialists, but this is probably a coincidence, for the procedure in its entirety and all participants regardless of their characteristics invoke this theme as their main argument in the debate on the project and the proponent's responsibility.

In the federal and Ontario procedures, speakers of all types relegate the theme of environmental considerations to a position of minor importance. In Ontario, debate focusses on the impact itself and the options. In the federal procedure, the impact and the impact study are the central themes. Specialists are, however, distinct; in Ontario, they discuss the options with immediate reference to the impact study and not with reference to the impact itself; in the federal procedure, they discuss the proponent's responsibility in connection with the impact and the impact study. In Ontario, then, they behave more as counter-experts, while in the federal procedure they develop the political debate on responsibility more than do other speakers.

Nonspecialists in the federal and Ontario procedures also display distinct behaviour. In Ontario, they adopt a very well-developed and consistently articulated presentation about the project's impact, the options, and the proponent's responsibility. Theirs is the most political and militant presentation in the Ontario procedure, confirming our previous conclusion that in Ontario counter-experts play a secondary role in the debate, in support of local, nonspecialist residents. In the federal procedure, nonspecialists seem to have difficulty making sense of the impact study and spontaneously rely on the competence of the environmental assessment panel. Public specialists appear to be the leading forces in the debate at the federal level.

In the federal and Ontario procedures, specialists develop their most highly critical arguments by linking a critical assessment of the options with the proponent's responsibility. In Quebec,

they focus their criticism on the impact and environmental considerations. Specialists are by far the least critical participants in the Quebec procedure, acting essentially as counter-experts. In Ontario, they attack the proponent's responsibility, the proponent being the public authorities involved. Consequently, they necessarily adopt political positions. In the federal procedure, they use critical political positions to challenge the public hearings procedure and its role in the decision-making process.

Nonspecialists appear more inclined to discuss the conditions to be attached to the decision. They are the most highly critical speakers in the Ontario proceedings, adopting a confrontational attitude and attacking the impact study, the proponent's perception of the environment, and the proponent himself. They are of course relegated to the sidelines in the Ontario procedure because they act outside the party system.

Analysis of Participants' Presentations: Overview

There are clear differences among the three procedures in terms of the type of presentation public participants adopt. Presentations in the Quebec procedure generally emphasize environmental considerations. All types of participants adopt roughly the same type of moderately critical presentation that relies to a fair degree on the proponent's proposal, the proponent's assessment of the options, and a generous environmental vision. This presentation is found in its most typical form in statements by representatives of groups and organizations that are fairly specialized, are not specifically identified with the project's area of impact, and have no defined responsibility for managing the impact. These participants are also the most closely guided by the procedure and clearly reveal the direction the commissioners and the Bureau want the discussion to take. The Quebec procedure avoids negotiating the conditions, challenging the impact study, or entering into painstaking analysis of the impact.

The Ontario procedure is more oriented toward reaching a decision. This decision relates to the acceptability of the impact study, on the one hand, and the acceptability of the project on the other. The procedure favours contributions by interveners organized as parties and adversarial debate on the assessment of impact. At the same time, the procedure is politically determined in two ways. First, it has decision-making power: consequently, interveners have a tendency to negotiate with the proponent with the board acting as a neutral arbitrator. Local residents, speakers with responsibility, and nonexperts adopt this attitude. Second, the procedure is applied only to proposals originating with constituted public authorities. Consequently, it enables a political debate on the responsibility of these authorities and of elected representatives, in which case the discussion focusses on the environmental policy itself. Environmentalist groups, speakers from outside the area of impact, and specialists attempt to open this type of debate. The conduct of the proceedings does not allow them to steer the entire discussion in this direction, however, and the debate remains dominated by the assessment of the two types of acceptability.

The federal procedure is negatively perceived, with good reason. It is not a decision-making process; follow-up is vague; it is implemented by a federal panel to review proposals

involving only federal government responsibilities. The majority of participants are confused by the process and adopt a negative attitude from the outset. This attitude turns to debate on federal government policies and on the lengthy and cumbersome public consultation process, which participants do not want to be entirely gratuitous.

These procedures generally do not approach close negotiations on the project's integration into the environment-far

from it. In fact, the conditions of integration are a very secondary theme for the majority of speakers. On the whole, participants make relatively little reference to the impact study, despite the fact that it is the central item of documentation. It must be noted that the purely consultative role of the boards, except in Ontario, does not promote practical debate on conditions of integration. It favours either broad social debate on the environment, as in Quebec, or political debate on government responsibility, as in the federal procedure.

CHAPTER VI: REQUESTS MADE BY PARTICIPANTS IN PUBLIC HEARINGS ON THE ENVIRONMENT

Public hearings on the environment are not only opportunities to inform the public and obtain its comments on a proposal and the accompanying impact study. At some times and for some participants, the hearing may become a kind of public negotiation over a project's conditions of authorization. The majority of public participants in the hearings perceive the hearings this way and file formal requests. These requests can be isolated in the participants' presentations: they are formulated differently than requests for information, judgments, and opinions; most often, they propose a condition to be attached to the project's authorization.

Analysis of citizens' requests allows a rough estimate of the impact of public participation on the authorization decision. The review board's report will recommend that the final decision-maker—the Minister of the Environment, Cabinet—attach certain conditions to the authorization of the project. Most if not all authorization decisions include a series of conditions. To what extent does the public succeed in convincing the board to accept its requests and to what extent does the decision-maker accept them in turn? Is the mediation conducted by the board members and the refereeing carried out by the decision-maker attentive to the public's explicitly expressed requests?

For the most part, citizens' requests are formulated in writing in the briefs filed prior to the public hearing. They are therefore formulated and written spontaneously, outside of the hearing's central dynamic. They are submitted primarily by representatives of groups and organizations, and by individual participants who can cite a certain expertise.

Participants in the Quebec procedure produce the largest number of requests, followed by participants in the federal procedure and participants in the Ontario procedure in that order. This finding may be explained by the nature of the proposals submitted for public review. It may also be explained by the nature of the proceedings and the way they are conducted. The Quebec and federal procedures are less formal, the first being oriented toward activism and the second having few constraints in terms of content. They allow participants to speak more freely and they make possible an overall assessment of proposals for which the authorization decision is far off and, most importantly, to be made outside the public hearing procedure. The Ontario procedure is more formal and directly involved in decision-making. It favours argument about the decision rather than negotiation over conditions of authorization.

In general, the boards take the time to analyze the requests before writing their report. They use highly detailed analytic grids based on inventory methods for this purpose, as well as environmental impact profiles. We will discuss the requests according to their inherent nature and according to the action they refer to or call for.

The requests deal with the project's implementation and construction conditions, and its functioning and operating conditions once completed. They also deal with special mitigation, integration, and planning measures. Finally, they deal with environmental monitoring and follow-up measures, instruments, and mechanisms. They refer to and call for different types of initiatives. They may be addressed simply and clearly to a recognized responsible authority—the proponent, a minister, a municipality, etc. They may cite the necessity of continued public participation. Finally, they may propose new control boards, contracts, joint action, etc.

Number of Requests

The public hearings deal with specific proposals, usually well advanced in the planning stage and well documented. The great majority of the documents made public essentially concern the project. Consequently, citizens' requests deal most frequently with the projects themselves and then with environmental monitoring and follow-up measures, which derive most often from the impact study and sometimes from the proponent's original proposals. Lastly, they deal with special conditions which are external to the project, most often involving material compensation to the community.

When citizens make requests concerning the projects, they may refer either to the project's design, execution, or operation. The largest number of requests concerning the project deal with its original design and may challenge the alternatives, the variations, the technological choices, the site, etc. Next, requests deal with the project's operation once completed. Thus, citizens' requests concern, naturally enough, the main subject of the assessment process and the public hearing: the project as submitted by the proponent and its direct impact on the environment in the course of its operating life. Participants are relatively uninformed about the construction phase and conditions on the building site, and they make few requests related to this subject.

Citizens make requests of largely the same nature in the three procedures. The largest number of requests always concern the project, followed by environmental monitoring and follow-up measures. This order is broken slightly in the federal procedure, in which equal numbers of requests concerning the project and planning provisions to be attached to the project were recorded. At the federal level, the projects under review are major public projects involving elaborate coordination among a number of bodies. Thus, participants may try to take advantage of the number of bodies involved to ask for adjustments to the project or to negotiate terms of acceptance. In the Quebec procedure, there are a very large number of requests concerning the assignment of responsibilities and tasks, as will be seen later. For the moment, we will simply

observe that the debate over responsibilities shifts requests away from the things to be regulated and toward the nature and distribution of responsibility for such regulation. Consequently, the discussion departs significantly from the central subjects—the project and its impact—to enter the political arena. In the Ontario procedure, almost all requests concern the project and environmental monitoring and follow-up. Public participants in the Ontario hearings negotiate the project's terms of authorization more directly than do participants in the other two procedures.

In all the procedures, the largest number of requests from the public concern the project submitted for review. The great majority of these requests are directed towards the project's design (integration, variations, alternatives). In the federal and Ontario procedures, requests concern primarily the project and secondly the project's start-up and operation. In the Quebec procedure, requests from the public also concern mainly the project. In addition, however, there are a large number of requests concerning construction conditions; participants in the Quebec procedure pay greater heed to the impact of the construction work than do participants in the Ontario and federal procedures.

The Addressee of the Requests

Of the public requests and conditions examined, less than half were specifically addressed. While the public is able to define precise conditions to be attached to the authorization of a project, it is unable to identify the authority responsible for imposing and enforcing these conditions. It is also possible that the public simply does not do so, because it regards the authorization procedure itself as a sufficient mechanism.

Of the specifically addressed requests, the greatest number are directed to a designated authority with power to decide or act: the proponent, an appropriate agency, the Minister of the Environment, etc. The others are fairly evenly distributed: some demand that the public be involved in implementing or enforcing the conditions through one form of participation or another; some propose new mechanisms—bipartite or tripartite commissions, roundtables, agreements and contracts between central and local governments, etc.

It would appear that the more a consultation procedure is directly oriented toward reaching a decision, the more focussed public participation becomes. Requests are then generally addressed to the appropriate body. This may be clearly seen by comparing the three procedures. The greatest number of specifically addressed requests is found in the Ontario procedure, the smallest number in the federal procedure. The Quebec procedure is closer in this respect to the Ontario procedure than to the federal procedure.

In all the procedures, however, most specifically addressed requests are directed to a designated responsible authority. Using the same principle as above, we might expect to find the greatest proportion of requests so addressed in the Ontario procedure, but this is not the case. Proximity to the decision also enables a freer exercise of influence and the consideration of new solutions. In the Ontario procedure, a far higher proportion of requests are addressed to expanded public participation and new mechanisms than in the other two

procedures. From this point of view, the Quebec procedure appears rather like an arbitration process in which the public names realistic conditions that the arbitrator must take into account. The Ontario procedure appears more like a negotiation in which the parties reach agreement on new monitoring provisions. The federal procedure, which we have previously characterized as a broad public information exercise, now appears more like a complaints counter.

The Nature of the Specifically Addressed Requests

Review board members and ministers should clearly be most likely to heed the most comprehensive requests, those which bear on a specific point and name a responsible authority. These very precise requests should be the most likely to command a response. As the following shows, comprehensive requests are in fact the most likely to be accepted, especially if they concern monitoring and follow-up measures and if they are addressed to the appropriate ministers.

Citizens make few comprehensive requests; however, the great majority of these ask a responsible authority to review or refuse to authorize the project. Requests are often addressed to the proponent and concern an alternative to the project. The second most common type of comprehensive request asks a responsible authority, most often the Minister of the Environment, for monitoring and follow-up. Finally, the third most common type of comprehensive request asks for continued public participation in the project; as the public is usually opposed to the project as proposed, such requests generally ask that the project be revised, and that the public be involved in the revision and in reviewing the revised proposal.

On the other hand, the public's comprehensive requests rarely include conditions for the project's authorization and rarely concern the public's role in the follow-up to conditions and monitoring provisions. Citizens prefer the creation of new mechanisms to their own continued participation. The reasoning seems relatively simple: they demand that the proponent revise the project and that they be consulted about the revised project, failing which they ask the authority responsible for environmental matters for monitoring and follow-up.

In cases reviewed under the Quebec procedure, comprehensive requests from the public represent a very small proportion of all requests. Most comprehensive requests are addressed to a responsible authority; they deal in equal numbers with the project and with follow-up and monitoring. On the surface, the requests made by the public in the Quebec procedure resemble those made in the other procedures. On the other hand, citizens make a relatively large number of requests for material conditions to be attached to the project's authorization in the Quebec procedure, unlike the other procedures. These requests are addressed to a responsible authority. With respect to the project, however, citizens are more likely to demand continued public participation and the creation of new mechanisms in the Quebec proceedings than in others.

In the Ontario procedure, the public specifically addresses most of requests. These requests primarily concern the project, and then follow-up and monitoring. While a high

proportion of both types of requests are addressed to a responsible authority, there are also many calling for procedures involving continued public participation and the creation of new mechanisms. Ontario citizens almost never demand conditions for the project's authorization.

At the federal level, the public specifically addresses a very small proportion of its requests. These requests concern the project, but a large number of requests concern material conditions to be attached to the authorization. In the case of the latter, the requests are addressed to a responsible authority, usually one of the proponent ministers.

The federal procedure is applied to large-scale projects still in the design stage. The Ontario procedure, on the other hand, is applied to precise proposals with completed designs; citizens doubtless think it unrealistic to formulate conditions, but they demand a partnership role in the authorization process and in the implementation of follow-up and monitoring measures. The Quebec procedure also reviews proposals with completed designs; the public attempts to obtain concessions in exchange for its support, making various requests concerning the project and monitoring and follow-up provisions.

Comprehensive requests related to the project concern first the project's operation after construction has been completed, and then the construction itself. They are therefore more oriented toward monitoring the project's operation than toward the project itself, unlike requests which are not specifically addressed. The public is more precise when making requests concerning the project's construction and operation; its demands are more clearly addressed, indicating a realistic strategy aimed not so much at challenging the project as monitoring its implementation and operation.

Public participants generally address comprehensive requests concerning the project in the same way. They direct their requests primarily to the government authorities responsible for drawing up and enforcing the relevant regulations. Secondly, they propose forms of continued public participation and sometimes the creation of new mechanisms.

Requests concerning the project's original design are more likely than the others to involve a form of continued public participation-subsequent consultations. In their requests concerning the project, public participants insist that the same type of consultation be resumed and continued if the project's design is modified following the first public consultation. For other aspects of the implementation and operation, they rely on the appropriate authorities and sometimes suggest mechanisms for intergovernment cooperation.

Only in the Quebec procedure does the public directly address requests concerning the project's original design to the appropriate authorities. These citizens see the project as something to be accepted or rejected in its entirety and their entire argument is oriented toward the basic decision on whether to authorize the project. In Ontario, the process allows *interveners* to enter into a type of negotiation or arbitration which may deal with variations on the project. In this case, the public enters a type of shared responsibility situation and insists on being included in the later stages of the process. At the federal level, the size of the projects, their stage of design,

and the information-oriented nature of the hearing may easily lead citizens to think that public consultation is only the first phase of a longer public consultation process and leads them to want to see the consultation continued.

The project's start-up and the lasting effects it may have lead the public in both Ontario and Quebec to propose new monitoring mechanisms; in Quebec, these include public participation, which is considered an instrument of monitoring and environmental protection. Participants in the Quebec proceedings are almost alone in making complete requests concerning the project's construction. They address such requests primarily to a responsible authority, the appropriate government departments or local authorities.

Findings Concerning the Public's Requests: Overview

Participants in the federal and Quebec proceedings make the largest number of requests, those in the Ontario proceedings the least. In all the procedures, the great majority of requests are made in the briefs filed by public participants. The Ontario procedure's quasi-judicial formality, its system of parties to the proceedings, and the decision-making function it assigns to the consultation procedure and to the board tend to channel speakers' presentations toward specific points of contention. There are few requests, but they are precise and strongly defended. The Ontario public hearing favours requests for precise conditions to be attached to the project's authorization. The federal and Quebec procedures have a more political function, being intended to advise policy-makers. The Quebec procedure is oriented toward assessing the project and its impact. It is conducted by the commissioners in such a way as to enable them to advise the ministers. The commissioners play a very active role at the hearing, acting as inquiry heads, attempting, to gather as much information as possible, and the public is generous in its response. While the findings are similar for the federal procedure, it does not appear to be for the same reasons. At the federal level, the project's design is often still imprecise. The hearing is oriented more toward disseminating and explaining information. Citizens are involved in a decision-making process in which the actors and the moment of decision are not necessarily clearly identified.

In short, to present the matter schematically, the Ontario procedure seems to be oriented toward negotiation and arbitration among the legitimate interests involved. The Quebec procedure seems to be intended to produce a general recommendation of a political nature to a single decision-maker who is outside the public consultation process. Finally, the federal procedure seems to be intended to formulate the project's final features and requirements, and refer these to an interdepartmental coordinating committee.

The requests concern primarily the project submitted for impact assessment; they secondarily concern either environmental monitoring and follow-up measures or special planning and integration provisions not directly attached to the project or indispensable for its implementation. Requests concerning the project deal primarily with the original design-technological choices, alternatives, variations, elements, etc.; much less frequently, they concern its implementation, construction, and operation.

It must therefore be concluded that citizens respond to the invitation to participate in the public evaluation of a project's environmental effects by questioning and challenging the project itself. As has been seen, the majority of public participants take a position against the project. Regardless of the procedure, therefore, the public hearing moves toward a confrontational situation in which the public is the opponent to the project's authorization. This attitude is encouraged by some procedures-the party system in Ontario, the activism of the Quebec proceedings-and discourages discussion of monitoring instruments and incentives.

Citizens specifically address a very small proportion of such requests, and in most cases they do not know to whom to address them. Consequently, they tend to direct all such requests to the review board itself. The proportion of specifically addressed requests and the nature of such requests vary little from one procedure to another. The formality and the formation of parties in the Ontario procedure doubtless promote clearer articulation of requests, given the fact that parties are represented at the hearing by a lawyer and that preparatory work is necessary. The Ontario procedure admits requests directed towards new mechanisms and public participation more readily than do the other two procedures. As they are brought into the impact assessment procedure at an earlier stage, receive focussed information, and are involved in a public review based on an adversarial model, participants in the Ontario procedure are better informed as to the

distribution of responsibilities and better able to address their requests to the appropriate body. As they are involved in something which resembles a mediation process, they can risk demanding new mechanisms and continued public participation. It may be said, abstractly, that as a general rule, the better informed the public is of the distribution of responsibilities for the matter under review, the more accurately it can address its requests.

The breakdown by procedure does not reveal any major differences in the nature of the requests or how they are addressed. The few slight variations may be explained by the general style of each procedure. The Ontario procedure, being more formal and legalistic and leading directly to a decision, favours specifically addressed requests dealing with the project itself. The federal procedure, being more informal, more oriented toward information, and leading to recommendations to a number of responsible bodies, favours the expression of general opinions and sometimes of conditions, the application of which would require coordination among several government departments. Finally, the Quebec procedure, being more adversarial, more political and politicized, and not having any direct control over the decision, encourages attempts to exert pressure on the decision: there are many requests; few of them are specifically addressed and they are less strongly oriented toward the terms of authorization.

CHAPTER VII: THE PUBLIC'S REQUESTS CONCERNING URBAN WATERFRONT INSTALLATIONS

Urban waterfront installations' are a matter of considerable public interest. Citizens state precise conditions for such development through various public consultation channels and in neighborhood forums. We will present an overview of the concerns and conditions cited by the public at public hearings for assessing the impact of these projects.

For this purpose, we have examined some proposals for major installations which were referred to the environmental impact assessment process and reviewed at public hearings: the extension of the port of Quebec City to the Beauport sand-bank, the building of a dam across the Millelles River (Montreal); the building of a flood spillway on the Riviere des Prairies (Montreal); the extension of the port of Vancouver to Roberts Bank; the development of Samuel Bois Park on the shore of Lake Ontario (Toronto). We have compiled the formal requests made by the public in briefs filed with the environmental review boards and at the public hearings for all the proposals listed above. The public's conditions are quite consistent, despite the diversity of the projects. They might be considered basic terms of the social contract which must be drawn up for urban waterfront installations.

Citizens' conditions may be classified according to whether they are substantive or procedural. We will call substantive those conditions that concern the project itself, related installations, and environmental monitoring and follow-up. We will call procedural those conditions that concern the planning, management, and monitoring procedures for constructions, installations, and new facilities. In short, the public says not only what should be done but also how it should be done.

We have established the following general categories for the purpose of compiling and presenting the public's requests:

Substantive requests:

- related to the project's original design
- related to the construction phase
- related to the project's operation
- related to special provisions for integration, planning, and mitigation measures
- related to general subsequent follow-up and monitoring

Procedural requests:

- related to assigning the power to decide and the power to act
- related to public participation
- related to the creation of new or ad hoc mechanisms of planning, management, and monitoring mechanisms

Citizens' Positions on the Project

The public's general position on proposals for waterfront installations is initially negative. As a colleague put it, citizens consider waterway and waterfront environments to be "crown jewels" which must be left untouched. Faced with a precise proposal, however, the public agrees to negotiate the terms of its support because it finds the proposal contains items of interest to segments of the community or the community as a whole.

Nature and Design of Projects

The public is not ready to accept any and all waterway and waterfront projects. The appropriateness of the projects is fundamentally questioned in several ways. Citizens are especially opposed to projects which precede a real tendency toward development or which go beyond immediate current needs. They do not want projects that stimulate development. They invariably demand that existing facilities, structures, and installations first be used to their full capacity. They demand genuine alternatives to sites situated on the water. With these arguments, the public asserts, in practice, that waterways and waterfronts should be the last sites touched, and if they must be touched it should be as little as possible and definitely not for purposes of development as such.

For a project to be accepted, it must first be shown that it is appropriate in terms of the objectives of local residents. The projects selected should be those that have the most positive impact in terms of job creation. Finally, they should be projects that are integrated into local land use structures and do not threaten those structures, which requires that land use not be over-concentrated. The public is ready to consider the acceptability of projects that are integrated into the immediately surrounding community in physical, social, and economic terms.

While the public wants small-scale projects, it nonetheless demands that these projects be technically sophisticated. It expects attractive technical choices: flexible, alternative technologies selected because of their exemplary character. It also expects the facilities, buildings, and installations to meet high aesthetic standards. Finally, it expects there to be no rupture with the surroundings in terms of architectural and urban integration.

Citizens called upon to consider the acceptability of a waterway or waterfront project expect to review a complete and final design. They want to know about extensions and later additions in the same detail as the immediate proposal. They want to carry out the assessment once and for all and expect total honesty from the proponent,

With respect to the project itself, citizens make specific demands concerning both the project's construction and its integration into the environment. Waterway and waterfront projects should not involve the use of large amounts of land for parking space for the installation itself. Access to the site and automobile traffic on the site should be reduced to a minimum. Finally, the projects should not use space for their own purposes by including secondary service facilities. With respect to their integration into the environment, the use of waterfront land should be kept to a minimum and the riverbed should not be affected. The preservation of nature, of public spaces, and of the natural and architectural heritage should be considered priorities.

The preservation of waterways and waterfronts is considered a priority by the public. Development of any kind is secondary to this priority. To be acceptable, a project must be moderate, exemplary, and perfectly integrated into the immediate social and natural environment.

The Project's Construction and Implementation

Most proponents neglect to include short-term effects of the project's construction in their impact studies. Urban waterfront projects are often built over long periods, causing major disturbance to the waterway, the waterfront, and also the urban fabric. Citizens participating in the public impact assessment of such projects are very sensitive to this type of impact.

The public wishes to avoid lengthy disturbances in urban areas and consequently is opposed to projects being built in stages. It wants a precise construction plan, with a relatively precise schedule for the beginning of work and its completion. Just as the public does not want projects with possible later additions, so it does not want to risk unnecessarily drawn-out construction of uncertain duration.

The public's second greatest concern relates to access to the construction site. Citizens most frequently suggest that access routes be alternated and that traffic headed to the site be dispersed over several routes. Second, they demand special safety measures for heavy traffic to protect vulnerable members of the population such as children, senior citizens, and the handicapped. Finally, they often ask for a plan to redirect local traffic in order to avoid traffic jams.

The public also advances a series of requests and recommendations to safeguard the quality of the environment and the area during the construction phase. The most frequent are requests to protect residents' immediate environment through antinoise and antidust measures.

Next are requests aimed at preventing lasting damage due to the construction itself and at limiting the impact of the work required to restore the site. Citizens ask that the construction site occupy as little waterfront space as possible and that nothing be dumped on the riverbed or on private property. They recommend studies and monitoring to maintain the waterlevel, the free flow of water, and the water's turbidity.

Studies of the impact of a project's construction are not well-developed. Consequently, while the public consistently makes

recommendations to reduce the impact during the construction phase, they mention and evaluate such impact essentially as it affects the quality of life in the area during this period. They deal with the lasting impact of the construction primarily through requests for relandscaping, such as the use of excavated earth to create a riverside park.

The Project's Functioning and Operation

Just as the public asks to see a complete and final proposal, and that the project be built in one stretch and not in stages, so it demands that the project's established boundaries be scrupulously respected. Often, for example, citizens demand new zoning in order to permanently fix those boundaries in writing. They ask that further development of the project, such as an extension or the addition of new activities, be integrated into the project's main design.

With respect to the project's functioning, the public often demands that operating procedures—for example, daily schedules, safety measures, emergency measures, volume of traffic — be written down and made public. Finally, as with the choice of technology, the public recommends that operating practices be the latest and most exemplary possible. To this end, citizens sometimes suggest training or recycling programs for the staff assigned to operating the project.

Finally, citizens suggest a series of measures to reduce the anticipated impact of the project once it is in operation. The first type of measure involves controlling industrial pollution of the water, the air, the land, and the habitats in which flora and fauna live and reproduce. The most numerous requests concerning aquatic environments are those dealing with controlling shoreline erosion. A second group of measures concerns safety problems posed by the handling of dangerous substances and by traffic on the body of water. The public is also very concerned about general safety, in terms of supervision and maintenance, on the site and in immediately adjoining public spaces.

The public's perception of the project's exterior appearance is based on an image of its own everyday environment, which in general is situated on the waterfront. Consequently, the public demands protection from the impact of the project's operation from this standpoint. In addition, the public often makes requests concerning the preservation of recreational activities, the quantity and quality of drinking water, and the visual aesthetic quality of the waterway and waterfront. The latter may involve, for example, maintaining the waterlevel and the ice cover.

Integration into the Urban Environment

The questions asked by citizens participating in public assessment of urban waterway and waterfront projects deal primarily with the projects' integration into the urban environment. In the main, these questions do not deal with specific mitigating measures or compensation; they mostly raise general planning issues. In addition, these questions do not raise special private concerns so much as collective issues.

First, the public wants comprehensive coordinated planning of public and private spaces, land and water, in connection with

these relatively important and pivotal projects. It frequently demands a regional development plan to determine how much space is to be used for each type of activity, and it generally asks that a special plan be drawn up for the development of recreational and tourism-related activities. In most cases, the recreation and tourism development plan is considered a precondition for and a restriction on the regional development plan. More specifically and less importantly, the public demands a waterfront preservation plan accompanied by special zoning regulations for waterside zones.

Second, the public is concerned about the water. Before proposing specific measures with respect to these projects, citizens demand that general plans and programs primarily oriented toward water safety and quality be drawn up. They ask for comprehensive water regulation plans embracing the management of the entire waterway in order to ensure year-round control over the flow of water, reduce the risk of flooding, and avoid too great variations in the waterlevel. They ask for general plans and programs to improve water quality, their main goal being maximum supplies of drinking water. In addition to these first general demands concerning water quality and water regulation, citizens are concerned about the water in two ways: they demand plans and programs to protect the shoreline and stabilize it in order to reduce the risk of flooding and erosion, and they propose tough measures to protect aquatic environments.

Finally, citizens consider the water as a prop for activities of all kinds and they see rivers and lakes as constituting a system. They demand that free circulation over the water and between bodies of water be protected and sustained.

In addition to pursuing general planning and management measures, the public takes advantage of the assessment and integration of major projects to launch development initiatives and to ensure the development of principles and measures to protect the environments in question. While the public suggests fewer conservation measures than development measures, it formulates the conservation measures as preconditions for development. The public mainly proposes specific conservation rules: total preservation of undeveloped islands, preservation and management of flora and fauna, no disturbance of the riverbed, preservation of and respect for the landscape and regional character, preservation of special aquatic zones, such as spawning grounds, the habitats of rare plants and wildlife colonies, etc. Next, the public proposes specific conservation and improvement measures: stabilization of the shoreline; construction of embankments to prevent flooding; bulwarks to improve the flow of water; definition, preservation, or establishment of marine conservation zones. Finally, it proposes measures concerning the management of public spaces and the maintenance of specific activities.

In almost every case, the public demands that agricultural activity near the waterway or coastal zone be maintained; it demands that acquired rights and the rights of the first inhabitants be respected, and that waterfront land be expropriated to establish preserves for public use. In some cases, citizens propose that public land be transferred to conservation societies to be used for educational or scientific purposes. Finally, the public often calls for information and signs of an educational nature to be posted in waterfront areas, and for

channels and canals to be clearly marked out for reasons of safety.

Lastly, citizens frequently make requests for all kinds of special facilities. In general, these facilities fall into the category of compensation. Most often, however, they are basic facilities and measures with a collective function and intended for community use. The largest number of such requests concern the construction of individual facilities or networks of facilities for recreational and tourism-related activities: parks, floating platforms, footbridges, beaches, bicycle paths, belvederes, navigational locks, etc. Some concern conservation measures: migratory channels for fish, green belts, marine and aquatic preserves. Finally, a number of measures concerning public access to the water and the shoreline appear regularly in citizens' requests: access routes and paths, land reserved for public use, rights of passage, free public access, etc.

Contrary to certain widespread perceptions, citizens do not attempt to negotiate the terms of their support for major waterway, waterfront, and urban projects by requesting individual facilities or installations. They first express a general concern about land use and water management. They seek to broaden the discussion beyond the simple authorization of the project to impose a comprehensive and integrated planning philosophy. Only then do they propose specific facilities and installations; these are exceptionally consistent with their overall vision, which is dominated by concern with conservation, the development of recreational activity, and public access.

Monitoring and Follow-up

The public is not particularly familiar with environmental follow-up measures. Its requests in this area are limited and by far the least important. Given the threatened impact of the project, and especially the uncertainty over the project's final shape, citizens first demand planning mechanisms and monitoring instruments.

The public asks for comprehensive development and land use planning in the areas affected by the projects. This planning should produce guidelines and blueprints, and promote water and shoreline conservation policies. Next, as safeguards, they demand functional and sectorial zoning: zoning the shoreline strip, zoning waterside areas such as marshes, islands, and breeding grounds, and instituting restrictive zoning to promote the maintenance of agricultural and recreational activity. They ask that this zoning be rigorously implemented and enforced, and that offenders be subject to severe sanctions.

Beyond these first instruments of control, the public proposes all kinds of regulations to ensure that environments are protected, and also to control present and future activity: regulations concerning waterfront and waterway improvements, the flow of water, navigation, discharges, the maintenance of facilities and installations, industrial pollution, etc. These requests for strict regulations often go beyond the what is required to control the impact of the project under review alone.

Citizens take advantage of the public assessment to denounce the lack of monitoring for waterways and the waterfront, and to launch general plans to improve the condition of the area.

In addition to plans and regulations, the public demands that greater knowledge be obtained of the areas in question. Before asking for follow-up measures with respect to the project's impact, the public asks for general studies. First, it demands a general inventory to identify unknown possibilities that may be of use in the formulation of development and planning alternatives: inventories of natural sites, of the potential of the riverbed, of recreational potential. Next, it demands more specific and specialized studies of the natural oxygenization and clarity of the water, fish migration, fish resting and spawning grounds, and aquatic plants. These inventories and studies are requested not so much to monitor the project's integration and impact as to increase knowledge of the area in question. In more than one case, citizens asked that the new information requested and obtained be used to develop large-scale environmental information, instruction and popular education programs.

Citizens make a limited number of requests for monitoring the impact and integration of the project itself. The most frequent demand is for an operational plan for regular safety checks of the new facilities created. Citizens are also concerned about isolating the project's specific impact and propose a series of checks and comparisons for this purpose: pre-construction tests on the effects of embanking, a photographic record of water clarity and currents, a photographic record of the general evolution of the area before and after, the establishment of testing and measuring stations throughout the waterway. They demand specific and special follow-up measures when projects directly affect the riverbed, areas where there is a risk of erosion, or vulnerable habitats. Finally, citizens have asked for long-term cumulative social impact studies in several cases. In this connection, some citizens suggested that such a study could be used for project cost control and to reassess priorities for investment in planning and mitigating measures.

Citizens adopt a general perspective in the area of monitoring and follow-up: they are less interested in measures dealing essentially with one project than in measures that would contribute to the general improvement of waterway and waterfront areas. They do not appear ready to sacrifice everything for such measures, however, and are concerned about controlling total costs and expenditures. Citizens do not change their general priorities in the case of these projects.

In their requests concerning the nature of the project and specific mitigating measures, compensation measures, monitoring and follow-up, citizens express first a general concern with regional and sectorial planning. They do not want to allow changes affecting urban waterways and waterfronts solely for reasons of development and without a general land use plan. They do not, however, see these areas as "crown jewels." They accept projects which contribute to preserving, improving, or reviving waterways and waterfronts. These goals are valued not so much for environmental reasons as for social and cultural reasons. In the course of reviewing these projects, citizens discover the issues in waterfront use and they believe that the local community should be considered the prime interested party.

We will now briefly consider the relevant procedures proposed by the public.

Responsibilities, Procedures, and Mechanisms

In addition to formulating questions and opinions concerning the proposals and impact studies submitted, the public makes numerous precise requests before the environmental review boards, as has been seen. We believed it would be interesting and relevant to examine the parties to whom the public addresses these requests. For purposes of analysis, we have defined three categories. Requests may be addressed to a recognized, designated responsible authority: the appropriate minister, the proponent, the local government, etc. Requests may also be addressed to a procedure instead of an institutional or corporate body; here we distinguish between requests addressed to procedures involving public participation and those addressed to new mechanisms of dialogue, management, etc.

In practice, very few requests are specifically addressed. Citizens most often address their requests to the board members/inquiry heads, expecting them to forward their requests. When citizens themselves address requests made within the framework of public assessment of urban waterway and waterfront projects, they do so by demanding procedures to ensure continued public participation. This is not what we found in the case of other types of projects, where the public directs its requests primarily and almost exclusively to a single designated responsible authority, most often the Department of the Environment or the proponent.

The Designated Responsible Authority

Citizens address very few requests to a designated responsible authority in the course of assessing proposals for facilities or installations in urban waterfront areas. When they do so, they mainly address their requests to the proponent, demanding that the proponent assume the entire cost of the installations, the restoration work, and compensation. They also demand that the proponent comply with municipal regulations. In brief, they expect the proponent to behave as a good citizen and not to receive any special favours or exemptions from higher levels of government, over the heads of local authorities.

In some cases, the public addresses its requests to both the proponent and the governments responsible, primarily to demand protection and conservation measures. In any event, the public often has difficulty distinguishing between the proponent and the central government, as most of these projects are, directly or indirectly, government initiatives. Of local government, the public demands planning measures to produce land use guidelines and schemes, zoning regulations, and regulations to preserve the quality of the environment in question.

Proposals for facilities and installations in urban waterfront areas are complicated and involve many actors in lengthy decision-making and authorization processes. The public does not appear to know the specific body to which it should address its requests, with which it should negotiate, and from which it should claim damages. This last question is often raised, and the public has found no better solution than to ask that a single agency be created to forward its complaints.

The Participation of the Public and of Community Institutions

The great majority of the public's specifically addressed requests include provision for required public participation in one form or another. According to the public, these participatory forms should involve primarily the residents, the local community. In some cases, the public suggests that at the very least it be represented by local elected officials.

The most substantial demand contained in this type of request is for direct public participation in the final decision, for a measure of control over the decision. While some seek decision by general consensus, others propose either a referendum, a neutral decision by publicly appointed decision-makers, or a decision reached through genuine negotiations with the public. When citizens speak of the decision, they naturally mean the main decision on whether to authorize the project, and also the series of decisions on the conditions they have requested.

Beyond the decision, citizens demand much more extensive participation in the assessment process. They seek a role in drafting the guidelines for the impact study and in assessing the studies filed by the various participants, including the technical studies. Naturally, they demand to be involved in monitoring and follow-up, either directly through comprehensive public information and continued consultation, or indirectly through delegated representatives on monitoring and follow-up commissions and committees.

The most frequent request with respect to continued and systematic public participation, however, concerns assessing needs, defining territorial vocations, planning installations, providing compensation, and instituting mitigating measures. In this connection, citizens expect complete, systematic, and continuous information. They expect regular consultation and mechanisms ensuring significant and constant public representation in all phases of waterway and waterfront projects. They expect local residents to have a specific, distinct role in the public participation process.

Finally, citizens consider local elected officials to be their representatives. They regularly demand that local governments be directly involved in coordination and negotiation. They demand in particular that all development be under municipal control and remain so. More specifically, with respect to recreational and tourism-related installations, the public demands that the work be under the control of the local community.

Suggestions for New Mechanisms

Instead of designating a responsible authority to act on its requests, the public suggests the creation of new mechanisms, often without demanding participation.

As the public's requests mainly concern the project's integration into a general development plan, and as the public is particularly sensitive to the planning and zoning of shoreline areas, it has proposed on more than one occasion the creation of a national shorelines commission. This type of proposal is generally accompanied by secondary proposals: bipartite or

tripartite shoreline zoning committees, and environmental inventory and surveillance committees. In all cases, the public expects coordinated planning involving local elected officials, regional governments, and the central government. Citizens sometimes propose the creation of regional or waterbasin development corporations.

With respect to the project itself, the public proposes the creation of commissions of inquiry whose first task would be to examine the various proposals for shoreline use, to assess the quality of their technical documentation, and to determine their mutual compatibility. These commissions could have an extensive surveillance role, especially in assessing risks, cumulative effects, and safety considerations.

As the public is interested first and foremost in shoreline installations, and as it supports proposals for public use of the shoreline for purposes of recreation and tourism, it proposes that any action in this direction be covered by strict intergovernment agreements and that intermunicipal corporations be created to build and manage these installations.

Finally, citizens have generally been very disappointed by the public review procedure for these major projects. They suggest the creation of special review committees for this type of project. These committees should have broad powers of inquiry, access to independent experts, and promote the creation of professional public interest organizations to evaluate these projects and create an impact assessment code of ethics.

Citizen requests directed to new mechanisms call for extensive local community involvement, broader terms of reference, signed agreements, and independent assessment procedures.

Overview

For the public, evaluating major urban waterway and waterfront projects involves more than a simple assessment of environmental impact. It involves a planned joint consideration of all the areas affected and of the urban region in particular.

The public's attitude is not primarily conservationist; it is in favour of enhancing shoreline environments. The public wants urban waterway and waterfront areas planned for public purposes, primarily for recreational and tourism-related activity. The public has a positive attitude towards any specific project that contributes to such public use of waterfront environments. On the other hand, the public rejects out of hand projects exclusively geared towards development as such, especially if local residents will not receive most of the socioeconomic benefits.

The public does not accept additional disturbance of the environment by the construction work. It expects this work to be carefully planned and scheduled, and to be accompanied by numerous measures to minimize disruption. With respect to the functioning of the project once completed, the public expects exemplary safeguards, a detailed and public operating plan, and of course long-term benefits for the community. The public feels better protected and compensated when the project is integrated into a regional land use plan, when a comprehensive recreational and tourism-related installations

program exists and when the project fits into this program. Improving water quality and promoting public use of the shoreline remain the central concerns.

The follow-up and monitoring requested by the public primarily express a need for information and support of environmental assessment goals. Beyond these first general objectives, they tend to be oriented toward safety and anticipating risks.

Finally, the citizens who participate in evaluating proposals of this type and who express their aims and concerns as described above demand continued and constant public participation-either direct participation or participation through locally elected representatives. This representation is

not considered in terms of any administrative partitioning of the territory but rather at the regional level. To this end, the public proposes intermunicipal agreements, commissions, and corporations.

The systematic compilation and analysis of public requests submitted during the review of major urban waterfront projects reveals a keen interest in the planning and management of this type of environment. Public awareness and public mobilization have broadened the general parameters initially established for planning this type of project in this type of environment. It remains to be seen how policymakers have responded to these requests and how they have altered their planning practices in these cases.

CHAPTER VIII: RESPONSE TO CITIZENS' REQUESTS: REVIEW BOARD REPORTS AND DEPARTMENTAL DECISIONS

The review board's report presents an overview of the public consultation and recommendations to the minister. The minister in turn issues an authorization notice. The form of the notice varies from one procedure to another, but it generally contains precise conditions drawn from the requests made by the public and forwarded by the board, among other sources. The boards forward a very small proportion of the public's requests. On the other hand, the minister responsible usually accepts most of the conditions recommended by the board. It can be said that, at best, the public assessment process collects a certain number of conditions for the project's authorization from the public participants. These conditions do not appear to derive from a process of negotiation but rather from an arbitration conducted by the board. The conditions named by the public in its requests do not emerge at the public hearing but mostly during the preparatory period during which the public participants draft their briefs.

Conditions by Procedure

Ontario boards include the largest number of conditions for the project's authorization in their reports, and it must be remembered that their reports constitute decisions. The Ontario procedure is clearly the one in which the boards accept the greatest number of citizens' requests. It should be recalled that in this procedure the public is organized into parties, adopts the formal behaviour required by the hearing, is often represented by a lawyer, and often has expert witnesses. Its requests are therefore more likely to be directly relevant to the project, well-formulated, and solidly argued.

In the federal and Quebec procedures, the board members are called upon to write a report containing a general overview for the consideration of the decision-maker. As they have no power to decide on the project, they are less motivated to attach conditions to this decision. They formulate few conditions and include barely one third of citizens' requests. These two procedures therefore tend to function as political instruments: the boards include those arguments that are most likely to influence the decision.

The environmental impact assessment process does produce results, which can be seen in the conditions attached to the authorization by the appropriate government department. These conditions are not derived from the board's report alone, still less from the public consultation alone. The ministers accept about one half of the conditions suggested by the boards and less than 20% of the public's requests. As these requests are mostly contained in the briefs filed prior to the public hearing, and as these briefs are generally filed by organized groups and associations, the effectiveness of the public hearing itself as a mechanism for negotiating the conditions of authorization is questionable. The hearing serves primarily to exchange information, and also to provide the

board which is to exercise influence over the minister with a political instrument for this purpose.

This observation raises a series of important questions concerning public participation: How can the large number of requests submitted be handled? How can the public be assured that its comments have been listened to, even if they have not been included in the general recommendations? How can the process be continued and contact maintained with citizens who made requests? How can each request be followed-up? These questions directly touch upon the political nature of participation, the credibility of the public hearing procedures, and the openness of the impact assessment mechanisms. If these mechanisms were intended to be democratic, to open up the process to public participation, is it acceptable that immense discretion be maintained precisely when the result of the participation is analyzed?

The Nature of the Conditions

The requests picked up and reformulated by the boards concern first the project, then monitoring and follow-up, and finally specific measures for integrating the project. On the other hand, the public's requests concerning follow-up and special conditions are the ones most consistently picked up by the boards. The boards' strategy is thus to lessen the impact or provide compensation; they adopt an environmental policing role, attempting to enforce monitoring and guarantee follow-up. The impact of public participation on the project itself can thus be said to be diminished by virtue of being filtered through a board's report.

The requests and conditions cited by the boards with respect to the project are less focussed on the project's design than are those of the public. They also concern, to a very large extent, the project's construction and operation. It must therefore be supposed that citizens, being ill-informed about the project, formulate entirely irrelevant requests concerning its original design, which the boards consequently dismiss. It might also be supposed that the boards give priority to new information concerning the project's implementation coming from the public, such information being relatively scarce and vague in the impact study documentation. It would appear, in particular, that the boards reserve for themselves the power to influence the decision on the project's design, but are willing to forward requests concerning the project's implementation and environmental monitoring. They would then be adopting a strategy of exerting influence based on defending the public interest, including general, long-term interests not directly related to the project itself.

The conditions imposed by the minister tend even more strongly than those of the boards toward specific conditions, monitoring and follow-up. Ministers seem most willing to

accept input from the boards and the public with respect to these types of provisions. As the boards have already given priority to requests which are not expressly linked to the project, and as the minister most readily accepts input from the board when it consists of requests concerning conditions, monitoring and follow-up, it must be concluded that the public's influence on the project is progressively reduced at each stage of the decision-making process. Board members and ministers are mainly interested in compensation, mitigating measures, monitoring and follow-up measures that will reassure the public and win its support. Public assessment of environmental impact would therefore tend to contribute not so much to changes in the project's design likely to lessen its impact as to establishing conditions for integrating the project and making it socially acceptable.

In line with this conclusion, the requests and conditions concerning the project itself that are accepted by the ministers tend strongly towards monitoring the operation of the project once it has been completed. They concern the project's original design less frequently and very rarely its construction.

The Nature of the Conditions by Procedure

In general, the requests and conditions cited by the boards concern first the project itself, and then monitoring and follow-up. This is not the case in Ontario, however, where the boards demand primarily monitoring and follow-up. In the Ontario procedure, it may rather be supposed that the boards accept all of the public's requests concerning monitoring and follow-up and special conditions. The Ontario boards therefore conduct a kind of arbitration among the project as it stands, the impact study, and measures to increase the project's acceptability, favouring the latter in accordance with the point of view of the public. Boards tend to adopt this attitude in all the procedures, but in the federal and Quebec procedures they accept the public's requests in a highly selective way. The difficult position federal panel members find themselves in, often being caught between several actors participating in the proceedings, leads them to bargain over the project rather than attempt to deal with its design as such. In Quebec the commissioners deal with the project more than the board members in the two other procedures, although they accept fewer citizens' requests than do the Ontario board members. We have already described the Quebec procedure as more activist than the other two; here, we can partially confirm that it is less oriented by the commissioners toward negotiating terms of acceptability and more focussed on the design of the project itself. The commissioners basically try to influence the decision on whether to authorize the project. In the federal procedure, the exact opposite strategy may be observed; given the uncertain outcome of the decision-making process and given the nature of the proponent and the importance of the projects, the panels bargain over the terms of their support for the project, relying partly on citizens' requests.

The appropriate ministers attempt to modify the project in question when they issue the certificate of authorization or when they publicly announce the project's authorization. They can easily do so in view of the fact that they are most often the project's proponent. In Quebec, such modifications to the project are very frequently accompanied by specific conditions attached to the authorization certificate. In Ontario, the

authorization is accompanied rather by monitoring and follow-up requirements. At the federal level, special conditions and monitoring and follow-up are attached to the authorization in approximately equal numbers. In fact, the ministers make a political move at this point and conduct a real arbitration, which is quite broad in scope at the federal level and in Quebec and rather narrow in Ontario. This may be due to the fact that the decision is contained in the board's report in Ontario, and as the boards are independent of the government department backing the project, they are better able to impose conditions on the department.

The ministers are quite attentive to the boards' requests and conditions. In some cases, for example the Boundary Bay Airport in Vancouver, the ministers adopt the requests and conditions proposed by the board outright. The board's report may therefore be considered a genuine political document. As we have seen, the minister rarely overturns the EAB's decision in Ontario. In Quebec, the minister responsible is more careful, accepting influence from his department and the proponents' lobby. The minister makes a clearly political move, however, greatly preferring to impose general conditions rather than acting with respect to the project or monitoring and follow-up.

The minister is relatively uninfluenced by citizens' requests. To begin with, these requests have been selected and reduced by the boards, and the minister has no direct contact with the public and its requests. Only Ontario provides an exception to this observation, for there the public may address the minister directly during the preparatory period of the impact evaluation. Many of the documents which contain requests are forwarded directly to the minister. In the case of Ontario, the direct link between the public consultation and the decision, which is formalized by the possibility of the public entering into direct contact with the final decision-maker, influences the EAB, which acts as intermediary. In the case of the other two procedures, how can we help but conclude that the review board secures its own position in the decision-making process by reducing the public's influence so as to increase its own credibility.

Requests and Conditions Related to the Project

The conditions and requests concerning the project put forward by the boards are significantly different from those put forward by the public. It would appear that in the federal and Ontario procedures the boards do not attempt, in the main, to change the project's original design; they are willing, however, to consider and accept all requests from the public related to the project's construction and start-up. Their attitude is focussed on reducing the impact of the project's construction and operation. In the Quebec procedure, the commissioners make recommendations primarily with respect to the project's design, and secondly with respect to the impact of its construction. They adopt the majority of citizens' requests concerning the project's construction and a significant number of citizens' requests concerning the project's original design. They do not consider the project an unalterable fact,

The conditions attached to the projects by the ministers generally display a shift towards monitoring the project's operation once it has been completed. They accept the great majority of the boards' recommendations along these lines,

and it is in this area that they accept the greatest number of citizens' requests. It is in Quebec that the project's design is most likely to be called into question by the public's requests, the commissioners' recommendations, and the minister's conditions; all participants in the Quebec assessment procedure seem to focus on the basic decision on whether to authorize the project. In the other two procedures, there is a clear shift towards conditions and monitoring and follow-up measures with respect to the project's effects even though the great majority of citizens had questioned the project itself.

Of course, citizens' requests do exert an influence on a project's authorization. The boards and the minister accept this influence primarily when the requests concern the project's construction and operation. They are mainly interested in the conditions for integrating the project into the environment, and they are responsive to citizens' requests in this area. When, however, they allow themselves to touch the project's design, they pay much less heed to the public's views and requests.

The Addressee of Requests and Conditions

Almost one half of the boards' requests and conditions are addressed to a specific body, this body being an authority with the power to act or decide. Their familiarity with the parties involved allows them more readily to identify the institution responsible. They accept the majority of citizens' specifically addressed requests. The more precise citizens are in addressing their requests, the greater the likelihood of their requests being adopted by the board.

On the other hand, the boards direct few requests towards continued public participation or the creation of new mechanisms. They accept very few citizens' requests addressed in this way. The boards address their requests in a strategic way, naming existing responsible authorities and indicating to the minister that the requests are realistic, realizable, and fall within a recognized jurisdiction. They do not suggest weighing down the final decision with the creation of new procedures, and still less do they support the development of new forms of public participation.

The ministers address almost all of the conditions they attach to the authorization to existing, designated, responsible institutions, adopting the great majority of the public's specifically addressed requests and all of the boards' specifically addressed requests; they even add new conditions, no doubt on the basis of departmental reviews of the projects. On the other hand, they are equally, if not more ready, to consider continued public participation in the matter and the creation of new forums for dialogue. They have a far more generous attitude towards public participation than do the boards. They are more willing and in a better position to pursue a political strategy of this kind.

As we have seen, the closer participants are to the decision, the more likely they are to specifically address requests and conditions, primarily to recognized responsible authorities, and the more they do so the more likely the boards and the minister are to accept the requests. This observation also holds when we compare the procedures. In the Ontario procedure, the board members specifically address almost all

of their requests and conditions. In the Quebec procedure, the commissioners address few of their requests and conditions; they act as simple advisers to the final decision-maker, providing little guidance on how to follow or implement their advice. Panel members act similarly in the federal procedure. As they are at the fringes of the departmental decision-making process, they do not attempt to interfere with post-decision administrative matters, but confine themselves to exerting political influence on the decision.

Only in the federal procedure do the panels suggest new monitoring and follow-up mechanisms in any significant proportion.

Such proposals are realistic in the federal procedure, given that the decisions emerge from departmental agreements in ways which are not really institutionalized. Only in the Ontario procedure do the boards adopt a significant number of requests for mechanisms involving the continuation of public participation. In Quebec, the commissioners generally dismiss citizens' requests involving either public participation or the creation of new mechanisms.

Few of the requests made by the public are included in the ministers' decision, in any of the procedures. The boards forward very few of them, of which the ministers accept some. These requests are addressed to a recognized designated authority. The commissioners and the ministers are reluctant to consider the creation of new mechanisms, and even more to suggest or require the continuation of public participation. The federal and Ontario procedures are at opposite ends of the scale in this regard. The Ontario procedure, being comparable to an arbitration process and leading directly to the decision, adopts the largest number of citizens' requests and considers citizens as partners in monitoring and follow-up. The federal procedure is prepared to include in the decision the creation of new mechanisms requiring and governing interdepartmental coordination. In comparison with the two other procedures, the Quebec procedure appears more as an intragovernmental instrument for exercising political influence on the decision. The commissioners obtain information from citizens' requests; they explicitly adopt few of them and they do not address them in the same way. The minister's decision is more general and this is the level at which genuine arbitration takes place.

The Nature of the Specifically Addressed Requests and Conditions

The boards address the majority of their requests and conditions to specific bodies. They essentially concern the project and monitoring and follow-up. They are addressed to the proponent first and foremost, and then to the Minister of the Environment. They exclude public participation in assessing the revised project and they set aside the majority of citizens' requests involving new mechanisms for environmental monitoring and follow-up. The boards focus on the hard core of the decision: the authorization of the project conditional upon minor revisions and objective follow-up measures.

The ministers accept the board's arguments. They most often accept comprehensive requests. These are accepted because they clearly identify the proponent's responsibility for the project and the minister's responsibility for monitoring and

follow-up. The public consultation process certainly widens the various participants' areas of concern, but it does not fundamentally change the scope of decisions and methods. It must be considered a political instrument which allows citizens to penetrate the decision-making process if they accept the basic conditions and constraints.

In the Quebec procedure, the complete requests and conditions contained in the commissioners' report essentially concern the project, which is questioned as such. They are generally addressed to the proponent. Secondly, the commissioners suggest monitoring and follow-up measures. These are addressed to the Minister of the Environment. They adopt a simple strategy and a simple argument: to influence the decision by identifying points in the proposal which are unclear, to sway the decision so that it should include monitoring and follow-up. They do not take up citizens' diverse arguments (planning provisions, public participation, new mechanisms), due no doubt to their greater realism concerning the decision-making process and the sharing of responsibility. They thereby deprive themselves, however, of the possibility of exploring new practices.

The same type of argument and strategy may be observed in the Ontario procedure: the project, monitoring and follow-up are questioned; the proponent being addressed with respect to the project and the minister with respect to monitoring and follow-up. The boards' requests and conditions concern monitoring and follow-up more than the project, however. There is a large number of conditions concerning integration and planning. In addition, the boards do not hesitate to propose public participation as a mechanism for implementation and monitoring.

The Ontario boards play the role of arbitrator. They provide citizens with a guarantee that monitoring and follow-up measures will be implemented, and they involve citizens in the implementation of such measures. They add integration conditions that the public does not even call for.

The federal panel members make few comprehensive requests. Most of these are requests concerning monitoring and follow-up measures, most frequently addressed to new interdepartmental coordination mechanisms. Secondly, panel members formulate integration conditions and these are addressed to proponents. The project itself seems to be beyond the influence of the federal panels. Their comprehensive requests are aimed only at requiring guarantees through coordination processes. They confine themselves to the role of advisors to the appropriate ministers.

In the final analysis, there is little correspondence between the comprehensive requests made by the boards and the public's requests. The boards more readily adopt comprehensive requests made by the public, but they reformulate them. At the time of writing their reports and recommendations, the board members have heard the public, but they now adopt a different standpoint, oriented toward the decision and influencing the decision. Their reports do not provide an overview of the views expressed by the public, but rather a coherent set of recommendations to the decision-maker.

The decision-maker is a minister or group of ministers. The boards address their recommendations according to estab-

lished areas of jurisdiction and the distribution of responsibility. As they have no control over the project and as they are addressing a public authority, they ask this public authority mainly for monitoring and follow-up measures. There is a slight variation among the three procedures in this respect. In Quebec, the commissioners' central position is elaborated so as to influence the decision on the project itself; in Ontario, the position is based on an arbitrated solution and does not call the project into question to any great extent; at the federal level, the project itself is a decidedly secondary question and the panel's position is oriented toward monitoring and follow-up. The differences between these positions are due to the differences between the procedures: in Quebec, the commissioners are advisers; in Ontario, they are decision-makers; in the federal procedure, they provide information. It may be supposed that the closer the procedure is to the decision, the more likely the boards are to play the role of arbitrator; when the procedure is further removed from the decision, or when the decision pending is an imprecise decision on a proposal which is still being developed, the boards are more likely to try to keep the question of the conditions to be attached to the project open.

According to our hypothesis, the minister's decision concerning the project's authorization is more likely to include requests and conditions that were comprehensive, for the ministers themselves issue comprehensive conditions.

In Quebec, the minister's decision contains conditions and positions concerning the project. Ministers are more precise and go further than do the commissioners. On the other hand, ministers are more moderate with respect to monitoring and follow-up requirements. They confine themselves to the essential decision and prefer to impose changes to the project and secondary integration and planning conditions only on the proponent.

In Ontario, the EAB report constitutes a decision. The minister did not use his power to overturn the decision in any of the cases examined. Consequently, the public consultation and influence process stops with the board members, who play an arbitration role which is much more liberal and more diverse than the arbitration effected by the minister's decision in Quebec.

At the federal level, as in Quebec, the minister's decision contains comprehensive conditions, especially with respect to the project itself and to secondary conditions. In this sense, the decision is closer to the public's requests than to those of the panel members. The federal departmental decision quite willingly accepts new mechanisms, which seem to correspond exactly to those proposed by the panels. It must be remembered that, in the federal procedure, the proposals often involve two government departments. In this case, interdepartmental coordination is necessary. The panel recommends this and the ministers adopt it. It must be admitted that, in the final analysis, the entire consultation procedure may serve primarily to effect this needed coordination.

Requests and Conditions Concerning the Project

Citizens are very precise with respect to the project's construction and operation. So too are the review boards, issuing

comprehensive recommendations; these recommendations give considerable priority to monitoring the operation of the project once it has been completed. The boards are interested in minimizing the impact rather than in calling the project into question.

The ministers adopt the same position; however, they also address their conditions concerning the project's design in a very precise way.

In the Ontario procedure, boards address all requests and conditions concerning the project's operation to a specific body, precisely identifying the government agencies and divisions responsible. Almost all their requests and conditions concerning the project's original design are also specifically addressed. The decision-making nature of the Ontario procedure obliges the EAB to take responsibility for addressing the requests, as it cannot rely on a higher authority to do so. By contrast, the Quebec commissioners do exactly that to a great extent, putting pressure on the decision-maker by formulating a large number of requests and conditions concerning the project's original design without addressing them to any specific body. The federal panels do likewise.

The majority of the ministers' requests and conditions are addressed, with requests and conditions concerning the project's operation being addressed in the highest proportion. The three procedures therefore seem to adopt the same strategy. Public impact assessment largely ignores the impact of the project's construction. While it provides for a review of the original proposal, the responsibility for the review falls essentially to the proponent. In all three procedures, the public assessment is aimed at making public authorities responsible for controlling the impact of the project's start-up and operation.

The Addressees of Comprehensive Requests and Conditions Concerning the Project

The boards adopt very pragmatic and relatively conservative positions. They dismiss, to all intents and purposes, all requests addressed to forms of public participation; they refuse them entirely where the project's original design is concerned. All of their requests and conditions concerning the project are addressed to responsible authorities. There are only a few requests suggesting new mechanisms to control the impact of the project's construction.

The ministers attempt to protect the proponent's initiative and responsibility with respect to the project and its construction. All the conditions related to the project refer to a single responsible authority. The ministers accept the creation of new mechanisms for monitoring and follow-up respecting the project's long-term impact.

Citizens' requests concerning the project are not accepted, as addressed, when they involve the creation of new control mechanisms and when they could instead be addressed to established responsible authorities. The ministers are, in large part, not informed of these requests as the boards themselves do not accept them. It would appear, therefore, that all the processes are oriented toward accepting only requests that

are consistent with the established institutional, legal, and administrative division of responsibility.

In every procedure, the boards address their requests and conditions concerning the project to a single designated responsible authority. The federal and Quebec boards depart slightly from this norm, the Quebec commissioners accepting requests concerning the project's start-up and involving either public participation or new mechanisms, and the federal panel members accepting requests addressed to new mechanisms when these concern the project's construction.

The ministers adopt the same attitude as the boards, with only a few differences, depending on the procedure. The Quebec minister accepts, on rare occasions, the creation of new mechanisms to control the project's original design; the federal ministers accept new mechanisms to monitor the impact of the project's operation.

As has been seen, the public makes very few comprehensive requests. Of these, the great majority concern the proponent's project and they deal primarily with its original design, which citizens ask the proponent to revise. Despite slight differences among the procedures, in general the boards accept complete requests concerning not the project's design but rather the impact of its construction and operation. They address these requests to a responsible authority, usually the government department with jurisdiction over the field. The ministers impose conditions concerning the project's design on the proponents, but they do so without really having been informed by the boards of the public's requests concerning the project's design. Naturally, the ministers invoke the proponent's responsibility as a good citizen.

These simplified general observations bring us to the essence of the public consultation procedure for assessing environmental impact. If the purpose of consultation is to gather information on which to base the decision and to help formulate conditions to be attached to the decision, it must be recognized that the consultation as such does little to further the formulation of such conditions. When it does so, primarily concerning the project, the board's strategy departs from that of the public: the boards are primarily interested in reducing the impact of the project's construction and operation, while citizens see changes to the project itself as the basic way to lessen its impact. This is also the view of the ministers, but they act on their own initiative, without having been systematically informed by the boards of citizens' requests to this effect.

Findings Concerning the Impact of Public Participation on the Decision: Overview

In addition to considering the general influence of the different processes on public participation, and consequently on the quantity and nature of requests made, we have considered the influence of the public consultation as such and of the review boards. At the public hearing, the boards can encourage citizens to make requests or discourage them from doing so. Furthermore, they may filter requests to a greater or lesser degree when writing their report. The type of procedure used contributes to the ultimate impact of public participation on the minister's decision, but so too does the role played by the board and its analysis of the information brought to the hearing.

Public participation has relatively slight effect on the project authorization procedure in terms of requests made, accepted and forwarded by the review boards, and included in the final decision.

While citizens are able to make a very large number of requests and these are relatively diverse in nature, they do not succeed in designating authorities or mechanisms to carry out their requests. This may be a failure or it may be intentional. Citizens who are brought into the authorization procedure at a late stage and who are relatively far removed from the decision itself may simply be unable to see who could act on their requests, or citizens may intentionally bring as many recommendations, requests, and conditions as possible to the proceedings, using their first contacts, the board members, as intermediaries to forward their requests, without undertaking to designate the responsible authorities and mechanisms.

It would appear easier, however, for the boards to forward a properly addressed request; the appropriate minister will almost always heed such a request. The boards thus play an important strategic role. If they do not forward the requests, the ministers have little chance indeed of learning of them. In accepting primarily requests addressed to a specific body, the boards act first and foremost in a responsible way towards the ministers, suggesting to them possible valid conditions within the mandates of established responsible authorities. We have also observed that they are rather conservative in this respect; they forward requests which do not require the creation of new responsible authorities or shared responsibility, still less continued public involvement.

The boards filter requests in another way: they accept mainly those concerning monitoring and follow-up measures, and conditions for integrating the project. In addition, they consider the project in its completed form, in operation. Thus the great majority of citizens' requests dealing with the project's design are dropped. For the boards, the project must be assessed globally, in terms of the environmental impact of its operation and taking into account the measures which may be taken to control this impact.

In general, input from public participation—still considered in terms of the requests made—is most noticeable in the area of monitoring and follow-up with respect to the environment affected by the project. Citizens have not been able to have as much input through their requests into conditions of authorization. Finally, they have been unable to acquire new monitoring mechanisms and still less continued public participation. In practice, they have mainly obtained commitments from the appropriate ministers to observe changes in the affected environment.

The slight effect of public participation is mainly due to the public consultation process and the impact assessment and authorization procedure. Though citizens are involved in the public consultation, they remain relatively far removed from the assessment and authorization procedures. Their participation with respect to the project's design and the impact study is limited and begins at a relatively late stage. In addition, their comments are interpreted and their requests picked up by a government board that also has no direct connection with the project, the proponent, and the impact study. The findings of

the public consultation are ultimately intended for a minister or group of ministers. These findings are consequently forwarded bearing in mind the nature of this authority, which has limited means (laws, administrative practices, policies, programs) to act with respect to the government, the proponent, or itself. The message the minister receives is basically to authorize the project in whole or in part, on condition that he undertake his responsibility for monitoring the project in the public interest.

The effect of the consultation process is doubtless to be found elsewhere: in the proponent's planning practices, in the role of the impact study in shaping the project's final design, in the political interaction among the proponent, the minister or ministers responsible, the public, and the board. Perhaps the proposals submitted and authorized are better for these reasons, more respectful of the environment; perhaps the impact study is more exhaustive and more reliable. The citizens who participated in the impact assessment fail to obtain real guarantees and real collective compensation, however; they do not even obtain any assurance that the controls will be implemented at the right time by the right authorities. If they can feel satisfied about their participation, it is because they have been made responsible with respect to the project in question and the environment.

The most unsatisfactory aspect of these public consultation processes, as revealed by this study, is the failure to record citizens' requests. In the French public inquiry procedure, all views expressed by the public must be recorded and considered separately. It is true that our procedures do not allow the systematic recording of all views, and this might not even be desirable, but there is nothing to prevent the boards from identifying, noting, and forwarding all formally expressed requests, with the assistance of their research divisions. Going further still, they could organize requests and integrate them, so as to make them more complete, if necessary. The decision-maker would then have access to all the requests made by the public. This procedure, if it were followed and known, would no doubt encourage public participants to conclude their contributions with explicit and comprehensive requests.

This analysis also shows that public involvement in the impact assessment procedure at an early stage and decision-making by an independent tribunal shielded from political pressure and general policies, increases the likelihood that public participants will make complete, realistic requests that can serve as a basis for negotiation. It is in fact desirable that the public have the opportunity to become involved in the procedure as early as possible, certainly no later than the drafting of the guidelines for the impact study. It is then easier to focus the public consultation and bring the real issues to the fore in a well-documented, substantive debate. The boards responsible for conducting public hearings doubtless offer the best forum for ensuring that citizens are brought into the procedure at an early stage. Ways to extend their mandates to the drafting of the guidelines should definitely be assessed. There are no doubt many ways to ensure the political neutrality of the boards, the board members and the public hearing itself. In our view, measures are needed to prevent the discussion from becoming politicized in the course of the hearing. The boards, the ministers responsible, and the ministers involved should avoid bringing aspects of the

discussion that are outside the hearing's purview before the public while the hearing is in progress; any new relevant material should be brought before the hearing before being brought before the public; the ministers responsible and the ministers involved should refrain from actions or comments related to the question under review for the duration of the hearing, etc.

The citizens participating in the hearings are not always able to express themselves fully, and there are no specific measures to help them formulate their requests and demands properly, except when the proceedings are formalized in a quasi-judicial way and citizens have legal representation. We have noted in reading the verbatim transcripts of the hearings that public participants were often interrupted and cross-examined, and that their comments and questions were picked up and reformulated, often readdressed. This behaviour certainly does not help public participants; its purpose is rather to help the board formulate its recommendations. As the commissioners will be able to write their recommendations calmly, without outside interruption, they should scrupulously respect citizens' right to speak. At this stage, the purpose is not yet to select the most valid information, but first to gather all the relevant information. Perhaps the possibility of naming a neutral person, who will have no subsequent role in the proceedings, to chair the hearing should be considered. It is unrealistic to expect a board member chairperson to refrain from acting as both board member and chairperson during the hearing.

Finally, the fact that there is no review whatsoever of the public consultation, no appraisal and no follow-up tends to deprive all participants in this consultation of responsibility. The public participants entrust their views to commissioners who are not obliged to include them in their reports. The commissioners' report is intended primarily to influence the decision; the decision-maker does not necessarily receive detailed information with respect to the consultation. A report on the consultation is written and made public, but its accuracy in terms of the public consultation itself is never assessed. Consideration should definitely be given to creating a mechanism to review the outcome of the consultation and ensure that requests are followed up.

Public consultation is more than an opinion survey; it is a social drama voluntarily prompted and inserted into a decision-making process. For the exercise to succeed, the actors must first appear on stage. This requires that the procedure have total credibility and that it have an internally controlled efficacy of its own. We consider two conditions to be essential: citizens invited to participate must have some control over their participation and related matters, including mastery of data and information, and control over their own statements and comments. Second, there must be an appraisal and review of the public consultation at the end of the process to enable citizens to monitor the results of their participation.

CHAPTER IX: PUBLIC CONSULTATIONS: EVALUATION AND OUTLOOK'

Public consultation is a form or stage of public participation; public participation being defined as the direct or indirect involvement of the people who stand to be directly or indirectly affected by a decision or action in making the decision or carrying out the action. Public consultation is the stage of participation at which information is distributed and opinions gathered in public. It is a form of participation insofar as citizens are indirectly involved in planning, decision-making, or management. Since 1978, there has been a tendency for public consultation to become the typical form of public participation, due primarily to new Canadian legislation and the initiative of government apparatuses. In the area of development, public consultation is generally used in the process of creating or modifying nature parks, elaborating regional development plans, and assessing environmental impact. In these three cases, public consultation is considered compulsory and necessary. It is explicitly defined in the relevant laws and regulations, the consultation procedures being laid down or formulated beforehand.

Consultation in the Decision-Making Process

Public consultations are conducted as part of a well-defined decision-making process concerning a specific proposal or subject: a park, a development plan, a facility, installation, or infrastructure. The consultation is carried out when the proposal or subject is at a fairly advanced stage of formulation and just prior to the decision on whether to adopt it or authorize it.

In the social and political debates that led to the formalization of the consultation procedures, it was held that public consultation should promote consideration of interests and effects as early as possible in the project planning process, so as to directly influence the project's nature, shape, and integration. In practice, however, the consultation is conducted relatively late in the planning process, as it must deal with a proposal. In addition, it is slightly removed from the planning process and included in a relatively autonomous process focussed on the decision whether to adopt or authorize a proposal that has already been presented. The public consultation therefore tends to deal less with the project-its nature, shape, elements, alternatives-and more with the decision-questions of acceptability, appropriateness, integration, and authorization.

The public consultation does not have a direct role in the decision, the decision being reserved for elected officials. None of the forms of consultation has any power of authority over the final decision-maker, with respect either to the decision or to follow-up. At most, the decision-maker undertakes to inform the citizens consulted of the decision. In practice, the consultation is oriented not toward the decision itself, over which it has no control, but toward the terms and conditions which should accompany the decision to adopt or authorize the project: the protection of acquired rights, safeguards and compensation, subsequent monitoring and follow-up.

The citizens initially invited to participate, through consultation, in elaborating the project and reaching the decision effectively enter a bargaining process in which they negotiate terms for their support of the project.

Consultation Restrictions

The public consultation procedures that have been established since 1978 are aimed, in a general and non-discriminatory way, at all citizens affected, strongly or slightly, directly or indirectly, by the proposal submitted for decision. They differ in this respect from other types of public consultation, which either were aimed at a restricted group defined by its degree of sensitivity to the project, or admitted only authorized or designated representatives of the communities affected.

In principle, the current generation of public consultations has neither the means nor the right to select the publics and the participants for the consultation processes. The rules of procedure are generous and inclusive: the time allotted to participants, the order in which they speak, and the form their statements may take are all designed to be non-discriminatory. The consultation takes the form of a large public meeting, held in the area affected, at which a moderator is usually responsible for ensuring that all preregistered participants have the opportunity to speak freely. In principle, the floor time allowed to the decision-maker, the initiator of the project, and their experts is limited and defined so as not to orient or limit public participants.

In practice, however, the distribution of information concerning the question under consideration, command of the nature and validity of this information, and familiarity with and access to the relevant documents are all factors which contribute to a preliminary filtering of public participation. At a further stage, the availability of time to follow the consultation process and the availability of means to prepare a brief or consult an expert constitute another system of filters. Finally, previous experience, recognized legitimacy based on professional expertise or representation, and the strategy of the board conducting the consultation, which wants to obtain maximum results, serve to filter public participants at a third level.

Public consultations therefore tend increasingly to involve participants who are consistently present at every stage of the decision-making process and consistently present at all public consultations. These include experts representing professional groups or acting in an individual capacity; representatives of organizations, interest groups, and community institutions; and often experts in participation and public hearings-known activists, lawyers, accredited experts, and even specialized firms. As a colleague puts it, we often find ourselves among "people of quality."

The original objective, which was to produce the widest and most diversified public debate possible involving the people directly affected, tends to be seriously compromised. Depend-

ing on the case, the public consultation may be transformed into limited public consultation panels, a series of specific panels, or even a consultative committee. Unlike pre-1978 forms of consultation, which may have resembled such panels, the current procedures do not require that effort be made to ensure that genuinely affected interests are represented. The most influential groups and individuals are included within a limited strategy on the basis of their knowledge or qualifications.

Consultation: Confrontation or Negotiation

The public consultation mechanisms created since 1978 differ from previously existing mechanisms by their new strategic orientation. The main goal of the previous consultation mechanisms was to allow the consulting body to exercise a sort of self-regulation over its projects and actions by taking note of the representations of the people consulted. In some cases, the self-regulation would go as far as the partial sharing of responsibility, maintaining contact between the consulting body and the consulted into the project's start-up and operation.

By centering on a decision and giving that decision a legal, sometimes quasi-judicial form, the current mechanisms favour the creation of parties, which engage in public confrontation before a moderator, who is at arm's length from the decision-maker and is required to be neutral by the rules of procedure or by virtue of his status. The public consultation procedures we have considered explicitly define the roles of the proponent and the person who requested the hearing, the latter being in principle opposed to the project. These two parties must bring their positions before the public, argue them, document them, and back them up with evidence.

This type of consultation, which is characterized by public confrontation, is beginning to generate devices to avoid confrontation, or to focus the confrontation on specific problems and issues related to the question at hand, or to neutralize it by replacing direct confrontation between parties with confrontation between experts representing the parties or testifying for them. To this end, the proponent itself now undertakes ad hoc consultations in most cases prior to the public consultation, the main purpose of which is to isolate specific points of contention and identify the groups and individuals directly affected in advance of the public consultation. The persons who requested the public hearing strive to file a collective request, rather than individual requests, forcing them to limit the reasons for their request to a common platform which spells out the problems and issues to be raised. Each of the parties calls experts to testify on specific points, which in the final analysis constitute a common ground. The orientation of the public consultation is thus shifted and the public confrontation on the overall question of the decision tends to be replaced by a public dialogue exercise dealing with the problem areas recognized by the parties. Those responsible for the public consultation do not yet perform the role of arbitrators in this exercise, but they act almost as mediators, attempting to advance the negotiations over the points in contention, which most often concern the project's integration or the integration of activities, and not the basic decision on putting them into effect.

The public consultation, the aim of which was to involve the parties in the decision and transform it into a collective choice, may thus become a mediation exercise dealing with a project's terms of authorization and implementation. New tendencies make this conclusion inescapable. The agencies responsible for dealing with requests for authorization consistently invite the proponents to carry out their own consultations and the reports on these consultations are added to the file; firms of experts specialized in public consultations are being set up and they are making an arsenal of increasingly sophisticated instruments available to proponents—inquiries, surveys, games and simulations, etc.; interest groups and community institutions affected by the project also carry out consultations, creating structures and mechanisms for conducting direct negotiations with the proponent. Some analyses of the new situations see these exercises as going beyond dialogue to cooperation.

Such innovations and manoeuvres to bypass public consultation concerning the final decision represent attempts to avoid public debate and political arbitration. Discussion of major technological and social policy choices can thus be set aside in favour of detailed settlements attending to specific interests. This orientation, which some consider innovative, organizes the decision-making process around an interaction among basically unequal and uneven groups and interests, as Schrecker has convincingly shown.²

These first three considerations allow us to hypothesize that there has been an important and substantial movement away from the objectives which originally inspired the formulation and institutionalization of the major public consultation procedures. The focus has shifted from the central question of the basic decision toward specific issues related to a project's terms of authorization and integration. The consultation's sociological field seems to be narrowing to favour interest groups and specialized groups, primarily at the expense of local interests. It would appear that the consultation procedures are currently being short-circuited and turned into mediation exercises—some would say cooperation exercises—among the interested parties.

These considerations raise various questions related to the short-term development of public consultation procedures and mechanisms, and consequently the development of forms of public participation. We will examine three questions: first, the displacement of the public by counter-experts; second, the anticipated withdrawal of the state from the role of moderator in the public consultations; and third, the ascendance of private technocrats and their role in the public negotiations over the projects.

Participation and Consultation: Citizens and Informed Citizens

When the public consultation deals more with the terms of authorization and the conditions of execution than with the decision itself, the goal of involving the citizens who stand to be affected in the decision-making process as extensively as possible, based on a direct democracy model, becomes less urgent and more focussed on details. The consultation's orientation itself becomes more selective, aimed at assessing

specific aspects and specific consequences of the project. The assessment then requires not so much an appraisal of the values connected with the project as a technical appraisal of the size of the risks and the consequences. The assessment is inevitably oriented toward objective, technical discussions that the proponents and their experts open and pursue. With this type of orientation, involving these types of participants, lay citizens are disqualified by the experts and counter-experts. Counter-experts may claim public legitimacy or claim to represent the public; they may appear as the representatives of organizations or as consultants for groups. Their position as counter-experts, however, their analysis, their approach, their arguments all tend to set them apart from the general, often confused set of elements that constitute the social debate in which they are participating. In addition, as counter-experts, they pursue their own scientific, professional, social, and economic goals, whether these are connected or not.

Once they enter the debate, the counter-experts must first face the experts. Their legitimacy, the weight of their arguments, and the relevance of their views will be measured against the scope and substance of the studies, analyses, and assessments submitted by the experts. In this way, they are indirectly brought onto the territory of the experts and the proponent they represent, consistently led to argue on the basis of technical objectivity. Not only do they accept the proponent's data but they indirectly adopt the attitude, conduct, and values of the experts and the proponent. In order to maintain their positions within the broader social debate, they must either break the complicity which ties them to the experts' presentations adopt specific, distinctive interests that may supplement the interests of the public.

Private counter-experts must face not only the private experts but also the public counter-experts—that is, experts employed by public regulatory agencies, government departments, committees, commissions. The latter have been dealing with the question under consideration from the outset; they have left their stamp on it and steered it through agreements negotiated with the proponent and the proponent's experts. Private counter-experts must therefore deal not only with objective technical documentation but also with a political text produced through concessions and compromises. If they do not associate themselves with either the private experts or the public counter-experts—in which case they would lose their specificity—private counter-experts are led to use the public consultation as a tribune where they primarily defend their objectivity and their professional position as social actors. They thereby obtain the status of informed social actors.

This new position occupied by the private counter-experts destabilizes the public consultation. It would be difficult indeed to refrain from destabilizing it and calling it into question, knowing that it is a costly process whose effectiveness is questionable given that the participants tend to be the proponent, the proponent's experts, public agencies, their experts, and a limited, informed public. There are many clear indications that some types of public consultation may be displaced by restricted panels of experts. The agencies responsible for conducting these public consultations have cultivated the need for private counter-experts, most often attached to major organizations, universities, research centres, or even consulting firms. These private counter-experts have access to privileged channels to obtain highly precise and

highly technical information. In many cases, they are in direct professional communication with the proponents' experts and the consulting firms' experts, if indeed they are not courted by these experts. Finally, we are now seeing cases in which they are quite directly involved in the internal procedures of the regulatory agencies, being included, for example, in drawing up the guidelines for the impact study and assessing the impact study's acceptability.

If the tendencies we have observed continue to grow in strength, the function of public consultation as an instrument of participation will be directly threatened. We may expect to see proponents invited or compelled to conduct the public consultation themselves and include a report in their project file. The internal operations of the agencies involved in the authorization procedure will no doubt be modified to co-opt private counter-experts. It is not inconceivable that professional counter-experts, recognized as informed social actors, will seek to increase their standing and legitimize their position and role by entering into direct contact with the public themselves, through ad hoc consultations, inquiries, and surveys. At the worst, being members of professional associations, they will have to base their claims to status on their rules and code of ethics. As may be seen in current public consultations, experts, public counter-experts, and private counter-experts make up the core of a new corporatism which the state may well wish to substitute for the attempt at direct democracy in the case of projects and programs involving major technological and social issues.

The Anticipated Withdrawal of the State

As long as there was a social context which fostered challenges to the legitimacy and social effectiveness of major projects and programs, and as long as social protest groups brought the dangers and risks presented by these projects and programs to the attention of the public, the state had to play a moderating role and channel the social debate. To this end, public consultation on the environment has played an important role in Canada.

There are a number of indications that the state is not really inclined to extend its role as moderator, nor to bind itself more closely or in a more defined way to public consultation in the decision-making process concerning the authorization of projects and initiatives. At the outset, the types of projects and initiatives to be submitted to lengthy decision-making processes involving public consultation was defined in a restrictive way under the regulations. The government made a commitment to revise and extend the list of projects to be submitted to the process. Not only is the list of projects not being extended, however, but in fact it is being revised so as to limit the application of the lengthy decision-making procedures. This restriction of the list may be carried out directly by the ministers involved, who have the power to exempt projects and have discretionary powers with respect to the request for a public hearing and the hearing's terms of reference. The restriction of the list may also be carried out indirectly, through prompt action on the proposals submitted; thus, for example, the government may, in order to avoid public consultation as provided for in the established procedure, deal directly with the proponent so as to make the project acceptable before the documents are filed, or it may sound out the groups and communities affected in advance, thereby undermining the

potential basis for public consultation under the established procedures, which involve a request, a reason for the request, and a mandate based on the reason for the request.

The government is acting in this way because the first major consultations and the types of proposals submitted to the long procedure have shown, first, that the government was more often than not directly or indirectly involved in backing the projects in question, and second, that the issues and problems raised by the impact of these projects were, in large part, organized around the central problem of interdepartmental coordination among different parts of the state apparatus. The government thus found that the consultation referred it back to itself; confused about the logic of its internal and external actions, the government cannot consider binding itself more closely to the consultation procedure in order to reach decisions. Indeed, retreat is necessary.

Retreat is also possible. Not only does internal assessment of proposals submitted for authorization permit responsibility to be given to the proponent, it also encourages the proponent to undertake to survey and directly consult the public. The proponents' new methods, the expertise of the specialized firms, and the general effectiveness of these practices directly contribute to the general economy of the project and to its planning process. The consultations have revealed that it is possible to restrict participation to a limited, informed public. Being encouraged, informed, and supported, the private counter-experts may even take the place of the public counter-experts by participating directly in the private assessment of the project and its impact. By radically revising the established procedures in favour of procedures based on fair play, the government could reduce its own counter-expertise concerning the project to nothing more than abstract verification of the mechanisms. It could then turn inwards, insisting first and foremost on internal coordination in the form of government reviews of the projects submitted to the authorization decision process.

Acting in the public consultation arena according to the 70s model, the government intervenes by sector to follow up responsibilities delegated by each sector. The government thus set up several types of public consultation that intersect in practice. In considering the government's possible withdrawal from the arena of public consultation, we must also include the possibility that the types of consultation will be consolidated. Consolidation would consist of submitting to a single consultation procedure proposals that currently would be reviewed under several procedures on account of their field, impact, or subject. Consolidated consultation does not result from any single administrative and procedural rationalization goal. Its direct effect is to bring together the aspects of projects and their effects falling under the jurisdiction of different departments, to force radically different interests to merge around a common question, and to orient the debate toward harmonizing conditions on the basis of points common to all the overlapping aspects. Consolidated consultation produces an increasingly technical and specialized debate that emphasizes a new type of expertise: expertise and counter-expertise pertaining to the procedure itself, which is held mostly by legal advisers and experts in law. Consolidated consultation represents the government's withdrawal from the field of sectorial consultation; this is a significant withdrawal,

with which problems of administrative and regulatory coordination replace political choices as the subject of the consultation.

The Ascendancy of Private Technocracy and Its Role

Public consultation was conceived and launched as a way of involving the public in decisions. It used centralized procedures under the patronage of the government acting as moderator. It could have used other approaches: for example, decentralization and genuinely bringing together policymakers and the citizens directly affected. The government's withdrawal from the field of public consultation and administrative decentralization, which it seems ready to begin in the areas of planning and development, is directly dependent on the relationship of forces and of legitimacy.

The public consultation undertaken by the government relied on a minimum of rules and standards with respect to sectorial policy fields. The government's role as moderator was of course ensured by explicit procedures, but especially by the role of the government technocracy, which applied its skills and knowledge in line with specific and explicit standards.

The arrival of experts and private counter-experts to the consultation procedure and the development of parallel consultation procedures and devices have shattered the framework of consultation. Private technocracy may privilege negotiation over mediation. Strengthened by its specialized knowledge, but subject to the proponent's economic power of initiative, private technocracy is called upon to directly negotiate conditions of integration. This negotiation directly addresses local authorities, offering general economic advantages in exchange for a specific impact. In this sense, it can already be seen to be opposing public technocracy, which has general if not abstract standards, and being directly destabilized by local agreements.

Private technocracy has the initiative in interpreting standards, most often abstract and procedural-and may choose the method by which this done. In the area of social impact assessment, for example, the space to manoeuvre is greatest when social impact is considered as objective, quantifiable data, and not as a broad collective issue. Private technocracy may introduce, at its leisure, all the elements of a negotiated agreement, until the advantages outweigh the drawbacks. Private technocracy has a wide choice of means and instruments of consultation by which to establish priorities. As it is not bound by formal procedures, it has the advantage over public technocracy of being able to test the effectiveness of alternative models and of apparently more objective instruments, such as surveys. It is thus able to back up the negotiations and their results with procedures that are directly linked to the type of result desired.

A contest thus arises between public and private technocrats with respect to legitimacy. The first are bound to general standards and limited to formal procedures; consequently, their effectiveness is of a primarily bureaucratic nature and depends on the internal structure of the government apparatus. The second are involved in obtaining a negotiated result which is balanced between losses and gains; they clearly display their interests and needs. The actions of public

technocrats are circumscribed by consideration of the common good and the goals of fairness and justice; they are oriented toward achieving the best possible solution in terms of vulnerable interests. Private technocrats tend to negotiate a net collective advantage, as measured in terms of organized interests and by the strength of the most powerful interests. Public consultation based on these types of professional expertise, one of which may be called bureaucratic technocracy and the other strategic technocracy, is fated to become a public negotiation limited to directly involved, demonstrable interests, and limited to the project's or program's exact area of impact. There are already indications of this tendency in some types of consultation procedures, in which participants must have an interest in the proceedings—the burden of proof being on would-be participants and a fixed address.

The replacement of citizens by counter-experts at public consultations, the withdrawal of the government, which is now underway, and the formation of a private technocracy will bring changes to centralized consultation in the short term. There are both spontaneous and structured models currently at the experimental stage which tend to emphasize local problems and issues. Problems related to integrating the project and reorganizing the local fabric tend to replace broad social issues related to technological and development choices. In this case, participation in the consultation exercise is legitimized by and relies on the participant's belonging to or representing the community. These qualities are usurped or corrupted by self-styled experts and counter-experts and by people from outside the community, raising the question of the arbitrary and abstract nature of the terms local, collectivity, and local community.

In this context, the laundering of adversarial positions and interests, which replaces opposition with complicity, destabilizes classical social positions, traditionally established in relation to economic power and political power. Can these positions be said to be totally reestablished in the rules and social mechanisms governing admittance to the debate over

technical questions and issues? The qualifying rules and mechanisms take the place of the traditional opposing positions only symbolically. They take advantage of a transitional stage in the process of social restructuring characterized by the declassification of professional fields; the exclusion of welfare recipients, the unemployed, the retired, and early retirees; the reorganization of local social relations by the emergence of new professional groups and the arrival of foreign workers.

The shift to the local level and the rising quality of participants in the public consultation processes promote mediated cooperation among partners. When the participants are "people of quality" and the issues are problems of integration into the local fabric, there is no basis and no means for confrontation in the context of a broad social debate around social issues. On the other hand, the mediation does not yet have legitimacy. Whether the negotiating partners are equal and whether they have shown a common, freely expressed will to participate in the procedure is not assessed and these conditions are not guaranteed. Neither is the mediator's neutrality assured, nor the ethics on which the mediation is based defined. The process of defining the subject for mediation is unstructured. There are no controls or safeguards to ensure that the positions of the participants remain equal throughout the mediation process. The conditions for participating in the process—such as representativity, access to information, and financing—have not been established.

Finally, the goal of the mediation has not yet been established. Should the parties agree to a decision, a collective contract, or a joint venture? Does mediation preclude recourse to arbitration? These questions and the search for solutions through experimental models must be addressed and promoted by public authorities. The government cannot withdraw from the field of public consultation without organizing the new dialogue mechanisms and legislating their form. If it does not do so, it must at least grant local authorities the political and legal means to institutionalize these new forms of dialogue aimed at elaborating genuine social contracts.

CONCLUSION:

DECENTRALIZATION, PARTICIPATION, AND JOINT ACTION*

When we consider the decentralization of the government apparatus and direct citizen participation in public affairs, it is tempting to isolate these practices, to consider their coherence in terms of their internal effectiveness. It is easy to be impressed by case studies, specific procedures, or ad hoc mechanisms, and to forget that these practices are not widespread, that choices related to them can be reversed, that the assessment of relations between citizens and government does not follow a linear progression. Why would elected governments share with citizens the power they have obtained with such difficulty? Why would citizens organized into interest groups agree to circumscribe their interests, temper their means, and demobilize for the benefit of public administrations?

Decentralization and citizen participation sustain and are sustained by new political attitudes and new demands for social and administrative efficiency. They are supported by powerful social tendencies such as rising levels of education, complex bureaucracies, and large-scale government intervention. Seen in this way, they appear more as experiments than finished models. The outcome is not known and cannot be known; they may lead eventually to new social contracts based on cooperation, dialogue, or social action.

There currently is no indication that decentralization and citizen participation are planned, systematically organized, or widely regulated practices. They were launched by governments in conflict situations in which it was necessary, above all, to control social activism. They were launched in specific fields, in which potential conflicts gave rise to fears that traditional methods would be ineffective. Finally, more often than not, they served the difficult but necessary purpose of coordination within the government apparatus.

Attracting citizens and organizations to participate in the mechanisms, whether institutional or ad hoc, has rarely been accomplished without the pull of conflict situations. Success has been partial more often than not and readily explained by the general context of exacerbation of the conflict to which the decentralization and participation mechanisms themselves contributed. Finally, citizens have most often participated suspiciously and sullenly due to the unequal resources available to different participants and the fact that parts of the civil administration circumvented the process, sometimes underhandedly.

In the final analysis, the relationship between decentralization and participation is ill-defined. The issues and strategies of

each have not yet been clearly distinguished. While decentralization necessarily implies or calls for participation insofar as it involves new actors in the planning and decision-making process, it is not clear that participation also necessarily implies decentralization. While participation is best conducted in a specific local context, its effectiveness may depend on its proximity to the site of power and of the final decision.

Given the thrust of this discussion, examining participation would have the greatest heuristic value. Participation implies democratizing choices involving the allocation of resources, decentralizing the management of services, taking bureaucratic decisions that affect citizens' lives out of the hands of professionals, and demystifying decisions on planning criteria and spending. Participation will remain incomplete as long as it does not also embrace the material basis of the decision, the decision itself, managing implementation, and monitoring and follow-up instruments. Seen in this way, it must meet the conditions of a learning process which can lead to joint action or coproduction (Susskind and Elliott 1983).

Principles and Conditions of Joint Action

Participation may be called joint action when citizens and official government representatives jointly elaborate and implement public policy. This is entirely different from government action, whether subject to public consultation or not, and from collective action by citizens, initiated by them, under their control, and aimed at their objectives. Joint action requires two independent partners who meet regularly or on an ad hoc basis in one or more areas of public policy.

Both partners must be mobilized for this meeting to take place. Both must provide mobilizing information based on the aims of the meeting. Unlike objective information, which is oriented toward truth, accuracy, and completeness in relation to its subject, mobilizing information is focussed and oriented according to each party's subjective position. It is not intended to swamp the other party with an accumulation of facts, nor to demonstrate the accuracy of the facts in a consistent way. In joint action, the accuracy of the facts is secondary; the emphasis is on identifying and communicating each party's images of an area of common action. By way of illustration, the very lengthy process of jointly drafting guidelines for the impact assessment included in some environmental impact assessment procedures are exemplary. Decentralization through neighborhood workshops and certain routine administrative practices can have a high mobilizing information value, as would posting plans for installations and development projects on the intended sites.

Joint action is performed by two partners with unequal, totally disproportionate means. The history of citizen participation is

* This text, presented here as a conclusion, was prepared to be delivered at a seminar on new public management methods at the fifth congress of the ACFAS held in Ottawa in May 1987.

short, most groups and associations are not organized to participate, and citizens and public organizations are diverse—necessarily so.

The problem raised here is enormous: how can citizens whose participation is indispensable be helped without compromising their independence? First, it seems clear to us that groups and organizations should receive generous subsidies. It must be recognized that they do work for which they are not necessarily prepared; if they did not do this work, it would have to be done at the expense of public administrations. It must be recognized as well that a clear correlation has been observed between the financial assistance groups receive and the results achieved by standing large-scale joint action procedures. Second, the initiators of joint action must make their own expertise available to the other parties. This could include making technicians and experts available on free loan and distributing objective and technical information; it could also involve the stimulation exercise and the production of alternatives. In the case of neighborhood workshops, for example, the elaboration of projects and actions should be partly decentralized and conducted locally through open processes that are accessible to the public. Experts or counter-experts working for an environmental assessment board should do part of their work locally, in public workshops open to direct public influence.

Joint action requires a politically neutral context and terrain in order to proceed at its own pace. It must certainly be removed from any political line and also from the specifically political dimension of government. It must therefore be located at the executive and administrative level. The government actors involved need not be civil servants from the appropriate departments; they could be advisers, often appointed on an ad hoc basis, with special powers so they may disregard traditional administrative divisions and go directly to the government's central core. Commissions of inquiry, environmental assessment boards and mediation processes could serve as examples. The government apparatus and political actors will still have to adopt a reserved attitude so as to avoid untimely comments and actions concerning matters subject to joint action. In the long term, joint action should be formalized as a defined procedure through laws, regulations, and administrative guidelines. The passage of laws and orders in council establishing conditions for public consultation in the area of environmental impact assessment (in Ontario and Quebec, for example) has endowed those processes with considerable credibility.

The Need for Debureaucratization

Public management assigns a high value to rational administrative and procedural organization. It also assigns a high value to joint action, which is in many respects incompatible with the traditions attached to rational organization. In joint action, procedures are not codified or do not exist; the actors are diverse and their expectations do not coincide; their qualifications are less important than their activism; the rules of the game can change. It would be unthinkable to manage neighborhood services or environmental mediation procedures like a department in a bureaucratic apparatus. There must therefore be a willingness to change and move in a different

direction, but without an established helmsman, according to the pace of the learning process.

It must first be admitted that the process may be prolonged; the length of each stage may vary and may differ from what is usual in bureaucratic administration. For example, the practice of not carrying over the balance from one financial year to the next is absolutely counter-productive in any joint action process. The means of setting times and durations is different: the long term is privileged over the short term, the schedule of activities is not established at the outset, the process is organized in time so as to give priority to learning processes, the pace is not set according to a rational progression in which all the stages are logically connected.

This does not mean that these processes are necessarily lengthier than traditional bureaucratic processes or that they are less efficient. The decision or action appears less as a coherent construct than as a spontaneous creation.

Bringing Processes and Issues to the Local Level

Participation aims to democratize decision-making and administrative apparatuses. In line with these goals, participation mechanisms were opened up in a wide and non-discriminatory way. All citizens were considered equal before the proceedings, regardless of the issues raised or the areas affected. In order to reach local citizens, the accepted compromise was to hold local information sessions and to conduct part of the procedure locally. In the area of urban management, the opening of neighborhood offices pursued the same goal.

Joint action is more demanding and requires choices entailing greater risk. The most immediate partner, for both the decision and the action, must be identified, mobilized, and accorded priority. This partner must demonstrate an immediate interest in the matters in question. Joint action embraces those local groups and organizations that can demonstrate a direct interest in the decisions and actions involved. The financing of public participants should take account of the following criteria for the allocation of funds: the participant's demonstrated direct interest in the matter and demonstrated connection with the area. Following the alternative path, aimed at involving the most useful participants for reaching the best decision, means favouring groups and organizations that have developed universally valid expertise in general fields and leads to the realm of the experts.

Local and grassroots groups and organizations should have the services of their own experts, from whom they can obtain the information and technical support that they themselves have identified as necessary to their contribution. Experiments in decentralized neighborhood management in which the experts belong primarily to the central administration are praiseworthy; the experts bring with them ready-to-use information or documentation prepared according to the central administration's standards of efficiency and usefulness. Moreover, they bring with them certain concepts of objectivity and rationality. Local and grassroots groups must be able to hire their own experts, assign their mandates themselves, and ask questions not necessarily foreseen in the offices of the central administration.

When a central administration decentralizes, or decentralizes part of an administrative or decision-making process, it must run the risk of fragmenting or splitting its political practices. Emissaries from the central administration must have clear mandates in defined fields: they must be able to negotiate agreements locally, make decisions on site, and sign agreements and contracts which can be locally implemented and monitored.

In this connection, the matters that are the objects of joint action must be directly relevant to the local level and lend themselves to realistic decisions and actions that can be carried out at the local level. The partners in joint action must have the courage and also the humility not to broach questions and issues related to national policies within the framework of their cooperation. The most difficult aspect of their cooperation may well be delimiting and exactly defining the area in which they will exercise their relative autonomy in decision-making and action. In this way, local knowledge will be turned to good account and the means and instruments of the communities will be used. This does not exclude innovation or expansion; on the contrary, these are promoted and will, in the end, contribute to creating more general processes. Joint action to develop urban planning blueprints has shown that operations begun at the neighborhood and district level can produce general orientations for the entire metropolitan area. In the field of environmental management, mitigating measures, monitoring, and follow-up have most often ensued from the definition and conduct of local experiments based on local problems.

Joint Action and Coproduction

Like participation and decentralization, joint action can serve to control existing or potential conflicts. Conflict, by definition, arises from the subjective perception that there is an obstacle. It is most easily anticipated by rational, hierarchical bureaucratic administrations; rationally, they must perceive potential conflict in order to bypass it and thus carry out their programs and achieve their goals. Formal public consultation and participation exercises have most often been conceived and carried out against this background.

Urban protests and environmental protection movements are motivated by real issues in the areas concerned as much as by the one-dimensional definition of conflict perceived by rational (government) administrations. In some cases, these movements have been the victims of their own lack of rationality, which leaves them open to any attempt to disband them.

Joint action based on real conflicts that are differently perceived opens a limited area of coproduction between protests and hierarchical administrative procedures. It is a learning process relying on distinct partners whose survival is safeguarded by their distinctness; as such, it makes it possible to define limited areas of action and agreement. It cannot, by

definition, lead to the disappearance of either of the partners or to the disintegration of their adversarial material basis. It only permits areas of agreement and coproductions limited in time and space. Just as, in the area of labour relations, a collective agreement does not lead to the dissolution of the union or of its area of struggle but rather reinforces it, so it is with local joint action to produce and manage facilities and services, and so it is with joint environmental action to produce and manage mitigating measures, monitoring and follow-up.

In terms of the balance of social forces, participation oriented toward joint action has only resulted in granting citizens increased responsibility. The lengthy and sometimes coordinated preparation of the public assessment of environmental impact, for example, has led to extensive public involvement in difficult areas. Citizens have adopted an attitude of shared responsibility when they have been adequately informed, listened to, and heeded. Proponents have prepared imposing impact studies using sometimes unclear frames of reference; some have voluntarily met with the citizens affected in order to focus the study and outline the major mitigating measures. Government department representatives have begun the difficult process of internal coordination within the government apparatus, and in more than one case, infighting between parts of the apparatus has given way to common effort to ensure the best possible forecasting and monitoring.

Of course the mechanisms which have compelled this granting of responsibility are not perfect and can be bypassed in favour of private strategies. Some changes to laws and regulations may yet be necessary to perfect the joint action mechanisms. We believe there is greater promise, however, in changes to operating practices than in changes to the laws and regulations. These practices could bring new advances on two fronts if they were carried out with determined leadership: first, institutional advances to reinforce and extend the foundations of the committees or boards responsible for initiating or guiding the joint action. In the past, the practices of these committees and boards have not given rise to lasting institutional byproducts, demonstrating their weakness within the government apparatus, their relative isolation, and their political and administrative instability. Some have recently begun to examine their own operations or have undertaken new actions, such as forecasting; these are positive indications of institutional guarantees. The second type of advance is in the direction of social contracts as a way of giving institutional form to the outcome of the practice and perpetuating the practice's accomplishments. Exercises in participation generally have not led to written agreements or explicit contracts between government representatives, proponents, and communities. They have not produced byproducts for society and rarely even follow-up mechanisms. Initiatives in this direction are to be found in parallel conflict resolution mechanisms (such as mediation and negotiation), which are significantly different from those oriented toward joint action (such as consultation and participation).

NOTES

CHAPTER I

- 1) Robert B. Gibson (1975), "The value of participation", in P.S. Elder's *Environmental Management and Public Participation*, published by the Canadian Environmental Law Research Foundation, Toronto.

CHAPTER II

- 1) A. P. Grima, "Participatory rites: Integrating public involvement in environmental impact assessments," in *Environmental Impact Assessment: The Canadian Experience*, Whitney and MacLaren, eds. Institute for Environmental Studies, University of Toronto, 1985, pp. 33-35.
- 2) P. Emond, "Participation and the environment: A strategy for democratizing Canada's environmental protection laws," in *Osgood Hall Law Journal*, Vol. 13, No.3, 1975, pp. 1783-837.
- 3) P. Wilkinson, "The role of the public in environmental decision-making." In Dwivedi, *Protecting the Environment*. Coop Clark, 1974, pp. 21-250.
- 4) Sewell and O'Riordan, "The culture of participation in environmental decision-making." *Natural Resources Journal*, Vol. 16, January 1976, pp. 1-2 1.
- 5) Hydro-Quebec, *Problématique de la consultation à Hydro-Quebec*, Direction des communications, 1984.
- 6) Eidsvik, "Le public et la planification des parcs au Canada," in *Parcs*, 3(1), 1978, pp. 3-5.
- 7) S.R. Arnstein, "A ladder of citizen participation," in *Journal of the American Institute of Planners*, July 1969, pp. 2 16-224.
- 4) Canada, FEARO, *Environmental Assessment Panels: What They Are: What They Do*, Ottawa, 1980, p. 9.
- 5) Canada, FEARO, *Environmental Assessment in Canada: Summary of Current Practice*, Ottawa, 1982, p. 10.
- 8) Canada, *Environmental Assessment and Review Process Guidelines Order*, P.C. 1984-2 132, June 2 1, 1984.
- 7) Canada, FEARO, *Eldorado Uranium Refinery R.M. of Corman Park, Saskatchewan: Report of the Environmental Assessment Panel*, Ottawa, 1980, p. 10.
- 8) Ontario Environmental Assessment Act, Revised Statutes of Ontario, Chapter 140, 1980, August 1982, art. 5, para. 3.
- 9) Idem, article 9.
- 10) Ontario, Statutory Powers Procedure Act, chap. #84, article 10.
- 11) Ontario, EAB, Chairman, *Colonel Samuel Bois Smith Waterfront Area Master Plan*, Verbatim Transcript, 1980.
- 12) Ontario, EAB, Chairman, *Thunder Bay Community Auditorium Verbatim Transcript*, 18 January 1983.
- 13) Ontario, EAB Chairman, *Ontario-Hydro-Eastern Ontario Transmission System Expansion*, Verbatim Transcript, 10 November 1981.
- 14) S. R. Arnstein, *op.cit.*, 1969.

CHAPTER VII

- 1) This chapter is based on a paper delivered at the Conference On Protecting Urban Waterways held in June 1987 at the Centre Jacques Cartier in Lyon.

CHAPTER III

- 1) Canada, FEARO, Revised Guide to *the Federal Environmental Assessment Review Process*, Ottawa, 1979.
- 2) Canada, *Environmental Assessment and Review Process Guidelines Order*, P.C. 1984-2 132, June 2 1, 1984, Article 1.
- 3) Canada, *Environmental Assessment and Review Process Guidelines Order*, P.C. 1984-2 132, June 2 1, 1984, Article 1.

CHAPTER IX

- 1 This chapter is based on a paper delivered at the conference held by the urban planning section of ACFAS in Chicoutimi, May 1985 and published in the proceedings of the conference.
- 2 T.F. Schrecker, *Political Economy of Environmental Hazards*, Law Reform Commission, Canada, 1984.

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