PUBLIC REVIEW:
NEITHER JUDICIAL, NOR POLITICAL, BUT AN ESSENTIAL FORUM FOR THE FUTURE OF THE ENVIRONMENT

A Report concerning the Reform of Public Hearing Procedures for Federal Environmental Assessment Reviews

Cat. No. En 106-9/1988

ISBN O-662-55666-6

January 1988

Mr. R.M. Robinson
Executive Chairman
Federal Environmental Assessment Review Office
13th Floor, Fontaine Building
Hull, Quebec

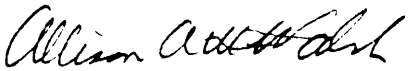
Dear Mr. Robinson,

In accordance with the terms of reference provided to the Study Group we have completed a review of procedures used by Environmental Assessment Panels and are pleased to submit our report for your consideration.

As requested we have examined the procedures used by federal Environmental Assessment Panels, have compared them to procedures used in other jurisdictions or by other administrative tribunals and have conducted an extensive consultation across the country to solicit the views of past participants in various environmental reviews. Our recommendations concerning the mandate given to us are included herewith.

Further observations concerning questions frequently raised by submittors to the Study Group not included in our mandate are also made in the report.

Respectfully yours,



Honourable Allison A. M. Walsh
Chairman
Study Group on Environmental Assessment
Hearing Procedures

ACKNOWLEDGEMENTS

The Study Group would like to thank all those who participated in its work, and in particular the following individuals:

Mr. C. Douglas Robertson, Secretary

Mr. Guy Riverin, Assistant Secretary

Mr. Colin Lachance

Miss Margaret Dowling

Ms. Jeannine Duperron

CONTENTS

GLOSSARY

EARP	Environmental Assessment and Review Process.
FEAR0	Federal Environmental Assessment Review Office : responsible to the Minister of the Environment for the administration of EARP.
EIA	Environmental Impact Assessment.
EIS	Environmental Impact Statement : 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 an Environmental Assessment Panel.
Initiating Department	Any department that is, on behalf of the Government of Canada, the decision-making authority for a proposal.
Proponent	The organization or the initiating department intending to undertake a proposal.
Proposal	Any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility.
Panel	An Environmental Assessment Panel appointed by the Minister of the Environment that conducts the public review of a proposal.
Initial Assessment	The first step in the Environmental Assessment and Review Process, encompassing everything a department does to determine what, if any, potential adverse environmental effects a proposal may have.

1. INTRODUCTION

1.1 ROLE OF PUBLIC HEARINGS

The authors of this report wish to bear witness to the confidence and degree of satisfaction expressed by the vast majority of citizens consulted throughout Canada in a flexible, simple, direct and informal environmental public hearing process, and to the desire to maintain the particular and original nature of this type of forum.

The meetings which we have had in recent months with many interested parties in this issue have shown that the disadvantages perceived by some in the federal public hearing process in its present form — disadvantages which will be analysed in the chapters to follow — are offset considerably by the advantages it provides. This does not mean that the process should be immutable for all that; there is undoubtedly good reason to broaden the scope of the investigation methods and the range of hearing procedures used by the various panels. The legislative authority will have to decide how best to set up the structures necessary to do so; it is the legislative process to which we must have recourse.

Thus additional powers could be granted to panels in certain cases, while greater flexibility in procedures could prove necessary in others. Also, provision could be made to cover the expenditures of the various citizens' groups or of certain individuals who must participate in hearings and without whose presence there could be no public hearings. Hearings might sometimes even be made less formal if it is felt that this may maximize the positive contribution of the public.

In any case, the authors wish to affirm their deep-seated conviction that environmental public hearings have meaning and exist only in relation to the needs of citizens likely to be affected by a proposal. This is axiomatic. All hearing procedures must initially be designed with this in mind, including the application of the rules of fairness for all participants, be they proponents or citizens groups, experts or departments, individuals or provincial governments.

Public hearings are one of the most interesting expressions of a still recent phenomenon: the direct involvement of individuals, communities and citizens' groups in issues that traditionally come under the authority and decision making power of elected officials. It is essential that such public intervention take place before the decision about the proposal being reviewed is made. Although this seems self-evident, quite often public hearings are scheduled for the sole purpose of defending and gaining acceptance for decisions which have already been made but over which dissatisfaction has been expressed.

Public hearings are not, for all that, strictly a forum for citizens' participation in the decision-making process. Their purpose is also to assist decision makers in their traditional roles by identifying the issues at stake, determining the problem areas of a proposal, its justification and other upstream questions (those questions which arise earlier in the decision-making process) from a different angle than that of the initiator. Public hearings do this by shedding new light on certain technical aspects, revealing dimensions which the most well-meaning proponent could have overlooked and defining the values which the population associates with a specific proposal. Rather than a public participation process, might not the subject of our discussion be referred to as a public involvement process?

It is nevertheless still up to the same traditional decision makers to decide. Public hearings do not establish a new order. Environmental assessment panels do not decide whether a proposal will be carried out. They investigate, they hear, they analyse, they draw conclusions, they make recommendations. Decision making authority remains in the hands of its traditional holders. The only difference is that, in certain cases where the environment is an important element for consideration, a new variable has entered the decision making process, namely the public's contribution and the panel's report. The report is not the decision, but can be a factor in that decision — all the more determining in that it will express the aspirations of the consulted population, faithfully and objectively report the data and facts, and in particular contain conclusions based on a rigorous analysis of the entire issue. To help in the decision and to ensure that the public has a positive influence on the proposal, the report must place the various components of an issue — ecological, environmental, economic, technical, financial or social — into proper perspective.

The environment is a collectively shared property. It is no longer accepted that anyone may make use of this shared property unilaterally. In fact, it is to protect this collectively shared property that our societies have laid down major conditions concerning the use of private or public property. The now numerous acts and regulations adopted by the federal government and the provinces make it no longer possible to develop natural resources or operate a business without taking into account the

effects these may have on the environment. Impact assessment studies, the transportation of dangerous goods, management and disposal of hazardous waste, wastewater treatment, the reduction of atmospheric emissions, the protection of ecologically sensitive zones — all represent constraints aimed at protecting, enhancing and ensuring that this collectively shared property will be everlasting.

The corollary to this is that environmental law implies a process of consultation which must tend towards concensus. In this area more than others, there is a need for consensus, hearings and mediation. Megaprojects alter the environment, often permanently. They consist of structuring and determining activities, almost by definition, requiring arbitration — between social choices, between various resource uses, between the users of a single resource, and between various social, ecological or economic values. Impact assessment mechanisms are implemented upstream in the development of proposals. They provide a forum where conflicting theses are debated and from which even the most well-intentioned experts in absolute good faith draw different and often contradictory conclusions.

The courts cannot be asked to decide the outcome of such disputes between choices made by society, nor can they be expected to identify the future effects of a proposal with any degree of certainty by accurately using the various available scientific or technical theories and arguments. The very nature of the judicial function does not lend itself very well to this type of exercise. Judges have neither the training, nor the personnel at their disposal to determine which hypotheses presented might represent the truth.

While wisdom dictates that the courts should not be asked to play this role, the role is necessary and must be assumed by someone. Recognizing that environmental law implies consultation tending towards concensus, one must carry the logic to its conclusion and admit that new forums must be established that are adapted to this new function. Among these are environmental mediation mechanisms and public hearings. The former make it possible for all the interested parties to gather around a single table and to identify the conditions under which a proposal can be implemented. While the latter make it possible for them to explore in detail the issues at stake and to define certain solutions, leaving to politicians the making of choices and the task of arbitration, traditionally reserved, in our society, to elected officials.

Public hearings on environmental issues constitute what is still today a new forum requiring new rules of procedure. A public hearing is not a trial. The rules of procedure used by courts of law or quasi-judicial agencies are not consistent with the needs of public hearings. A public hearing must favor debate, discussion and the exchange of ideas; it is a forum in which expert opinions on technical subjects as well as value judgments or the choices of society may intersect and merge. This dynamic nature of public hearings should be protected. Any effort to apply judicial or extremely formal rules of procedure to a mechanism which, it should be remembered, is consultative and not decision-making in nature would inevitably lead to the sterilization of that mechanism.

The public hearing process is long and generally expensive in terms of time, energy and money. This fact should be acknowledged from the start. However it is not costly when compared to other more formal processes.

In our experience, there are no simple public hearings. By its very nature, because of the type of issues addressed, and given the political choices it entailed, the public hearing process comes up against numerous stumbling blocks: some would call it a pretence of direct democracy, others a damming up of the most legitimate or spontaneous sources of opposition; the superficiality of technical arguments and the exacerbation of proponent and opponent relations are often cited. It would be difficult and dangerous to redefine public hearing procedures strictly according to the epistemological and methodological criticisms which are levelled at them. After acknowledging the social merits of consultation by means of public hearings, it would be wiser to work upstream and attempt to centre the manner in which hearings are carried out on a series of principles which are common to all issues and linked to the goals and rationale of this forum. A certain public hearing “code of ethics” exists. The wider the application of this code, the greater will be a hearing’s potential for effectiveness. Nevertheless, a hearing can never be more than an airing of public views in a system that does not recognize citizens’ joint management of or participation in decision making. This is an important subtlety because much of the criticism we have uncovered focuses on an order of things that should be changed, while the mandate given to us concerns only the manner in which environmental public hearings should be conducted.

Accordingly, the objective of a public hearing process is not to destroy or sabotage a proposal. Neither is it to muzzle criticism of that proposal; nor is the hearing a forum for an initiator to promote a proposal. Ideally, a

hearing should provide an opportunity for a dynamic exchange of views leading to conclusions that make it possible to improve a proposal that is compatible with the environment or to reject a proposal that constitutes a threat to the quality of the natural or social environment.

1.2 MANDATE OF STUDY GROUP

The Federal Environmental Assessment and Review Process (EARP) was established effective April 1, 1974 and at present operates under a Guidelines Order-in-Council P.C. 1984-2132 registered as SOR/84-467 as of June 22, 1984; a copy of this Order-in-Council is annexed hereto as Appendix A.

With the experience gained from successive reviews it was recognized that certain core procedures were applicable to all reviews. These were published in 1985 under the title Environmental Assessment Panels: *Procedures and Rules For Public Meetings;* a copy is annexed as Appendix B. While there are now increased forms of public consultation prior to the commencement of the public hearing to review the proposal in detail, covering such matters as information on the proposal, scoping and draft guidelines for the Environmental Impact Statement (EIS), certain problems remain. EARP has been criticized because of the lack of quasi-judicial procedures and absence of subpoena powers to ensure that the panels have full information upon which to base responsible conclusions and recommendations, insufficient questioning of participants, and absence of intervenor funding.

The present Study Group (a short biography of the members is annexed as Appendix C) was therefore established by the Federal Environmental Assessment Review Office (FEARO) to review the hearing procedures used by panels and, in the light of the nature of the issues which form the subject of the panel reviews and in developments in the law relating to fairness, to consider the following matters:

(a) the scientific, legal, political and financial ramifications of a continuation of the present procedures;

(b) the scientific, legal, political and financial ramifications of the introduction of more judicial procedures; and to

(c) recommend the preferred course of action for the future.

In regard to the foregoing the following questions inter *alia* were to be addressed:

1) Does the nature of the procedures affect the quality and sufficiency of the information received so as to enable a panel to reach a credible conclusion?
2) Can information before a panel be tested adequately as to its credibility through the present informal procedures or can adequate testing of such information only be achieved through sworn testimony and cross-examination?
3) What procedures are more appropriate for examining scientific as distinct from non-scientific evidence?
4) What procedures are more appropriate for dealing with opinions presented by concerned citizens?
5) Should there be a relationship between the nature of the procedures and the composition of the review panel, and if so, what?
6) Is the flexibility of the panel to be innovative in the review process hampered by the present process? Would it be hampered by a more formal process?
7) What are the implications for EARP hearing procedures of the corresponding provincial government procedures and practices? Would changes facilitate or complicate federal-provincial cooperation?

1.3 PROCEDURES USED BY STUDY GROUP

Following the formation of the Study Group in January 1987, approximately 6,000 press releases were mailed to individuals, public interest groups, federal and provincial agencies, consultants and representatives of industrial sectors who had experience with EARP and whose names were on various FEAR0 mailing lists. The purpose of the announcement was to publicize the formation of the Study Group and to invite interested people to submit written comments on procedures used by Environmental Assessment Panels. People were also asked whether they would wish to meet with the Study Group.

Furthermore on January 14, 1987 the Study Group mailed approximately 150 letters to a representative group of individuals who had participated in EARP reviews as proponents, initiating agencies, intervenors, panel members and technical experts. Among other people invited by letter to submit comments were Environmental Impact Assessment (EIA) administrators, representatives of provincial agencies similar to FEAR0 and academics working in EIA. The January 14 letter provided the same details as in the press release but was aimed at encouraging people who had had experience with federal or provincial environmental assessment and review processes to participate in the study.

On March 18, a second letter was sent to those who had responded to the January 14 press release or letter advising them that the Study Group had decided to travel to certain centres across the country to meet with interested parties. People were asked to communicate their wishes to meet with the Study Group to the Secretary of the Group. This was followed by a telephone call to individuals to encourage them to participate and provide them with details concerning the meetings.

The Study Group received 54 written submissions from individuals across Canada. A list of these individuals can be found in Appendix D. The Study Group held consultation meetings in St. John's,' Halifax, Quebec City, Montreal, Ottawa-Hull, Toronto, Winnipeg, Calgary, Edmonton, Vancouver and Victoria. Approximately 3 1 sessions were held by the Study Group: 25 round table discussions and six bilateral meetings with individuals or organizations. A list of participants is appended in Appendix E. Many of the persons appearing before the Study Group had had experience with provincial or federal environmental assessment reviews or with comparable environmental reviews before other bodies and could speak from personal knowledge about the present federal procedures.

Not surprisingly, given such an extensive expression of opinions, looked at in many cases from different viewpoints or with respect to different types of panels, a wide range of opinions was expressed. Some found the present process entirely adequate, others considered it as being too informal, still others found it to be too formal, in all cases giving their reasons. All these different viewpoints were freely and openly expressed during the informal consultation meetings which were suitable for the type of study being made, and the wide range of views was most helpful in assisting us in our recommendations. We are most grateful to all those who participated whether by written submissions or by appearing at our meetings, often at considerable personal inconvenience.

In addition to the written submissions received and the consultation meetings, the Study Group consulted many other reports related to public hearings. These are listed in Appendix F and are available at the FEAR0 office for examination by interested parties.

The written submissions made, as well as the minutes of the consultation meetings, are also available at the FEAR0 office.

1.4 DEFINITION OF TERMS

We will define the terms in this report since the same terms were used with different connotations in different submissions. For example the term "legalistic" or "quasi-judicial" hearing was often used to contrast this type of hearing with an "informal" hearing. There was substantial agreement that "quasi-judicial" hearings should be avoided in EARP where the conclusions are expressed as recommendations, not decisions. This does not mean, however, that in certain situations more "formal" hearings are not desirable. We believe that a proceeding can be "formal" without being ''quasi-judicial" or "legalistic", and we will use the term in this sense.

Similarly, although it was conceded that participants must be questioned and their statements closely examined, the questioning should not be in the nature of an adversarial legalistic cross-examination, so the term "questioning" will generally be used rather than cross-examination.

The use of the term "intervenor" is also troublesome since there is no such thing as a formal intervention in EARP. In practice anyone making a submission to a panel can be considered as an intervenor even if the person is not opposing the proposal in a formal way but perhaps only asking a question or making his or her personal views known. The word "participant" rather than intervenor therefore appears preferable but when the reference is to the proponent or initiating department or their witnesses (who are also of course participants) it would seem preferable not to designate them as such but limit the use of "participant" to other persons heard from.

1.5 ISSUES NOT DEALT WITH IN THIS REPORT

Given the mandate assigned to the Study Group, the report will focus only on the issue of federal environmental public hearing processes and will not deal with certain other related issues which some submittors felt advisable to bring to the attention of the authors. The following sections therefore will not deal with the delicate question of duplication of environmental hearings and the resulting redundancy (e.g., when a proposal is referred to both FEAR0 and the National Energy Board). Moreover, the report will not deal with the EARP in general, as defined **in the Order-in-Council** of June 22, 1984, since this issue has already been examined thoroughly and forms the subject of a recent publication entitled *Reforming Federal Environmental*

Assessment — A Discussion Paper released by FEAR0 on September 23, 1987. Similarly, the authors did not make an in-depth analysis of the legal problems surrounding the adoption of a federal bill on environmental impact assessment and public hearings, only noting that this would probably be the most effective way of ensuring the development and application of an impact assessment process for all large-scale projects to be undertaken by the federal government, its departments and agencies, as well as by corporations funded by the federal government or working on federal lands.

The Study Group feels that all these topics are nevertheless of primary importance. They are considered essential by many of the submittors who addressed the Study Group. The fact that these topics are not dealt with here does not infer that they are not important.

1.6 **REPORT OUTLINE**

Section 2 provides a description of EARP as it currently operates, emphasizing the public hearings component. In Section 3 the role of public hearings for environmental reviews is developed and principles of ethics for public reviews are presented. In Section 4 a comparison of the two basic procedural models for public reviews is made and informal procedures are selected as being more suitable than quasi-judicial procedures for EARP reviews. In addition this basic informal model is developed more fully to improve the procedures for public hearings used in EARP. In Section 5 the matter of intervenor funding is discussed and Section 6 deals with some residual issues such as legislation for EARP and joint federal-provincial reviews. Section 7 is a summary of the conclusions and recommendations reached by the Study Group and Section 8 suggests changes needed in legislation and the Order-in-Council to give effect to our recommendations.

From the many written submissions we have received, a representative number of quotations have been selected and these appear throughout the Report.

2. DESCRIPTION OF CURRENT ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS

The purpose of this chapter is to provide a brief description of EARP as it currently operates. We will focus primarily on that portion of the Process of interest to the Study Group, the public review phase and the public hearings in particular. Special attention will be paid to the existing public hearing procedures. More details about these topics are available from the EARP Guidelines Order-in-Council and from the FEAR0 report, *Environmental Assessment Panels: Procedures and Rules for Public Meetings,* both of which are included as appendices to this report, and from the FEAR0 reports, *The Federal En vironmen tal Assessment and Review Process* and *Initial Assessment Guide.*

EARP is a planning tool for predicting the environmental consequences of proposals which require a decision by the federal government. It is a means to identify unwanted effects before they occur and to determine appropriate mitigation measures. It also offers an opportunity to alter or abandon plans if major negative effects cannot be moderated.

2.1 BRIEF REVIEW OF THE PROCESS

EARP has three phases: the initial assessment phase in which the initiating department* undertakes a preliminary review of a proposal for potentially significant environmental impacts; the public review phase in which proposals with potentially significant environmental impacts are subjected to a public review by a panel; and the implementation phase in which the proposal is implemented subject to such environmental constraints as may have been developed through EARP. The relationship between the three phases is shown in Figure 1.

2.1.1 The Initial Assessment Phase of EARP

Each agency of the Government of Canada is responsible for ensuring that each proposal for which it is the decision-making authority is subjected to initial assessment. The initial assessment determines whether, and to what extent, there may be any potentially adverse environmental effects from the proposal.

The purpose of initial assessment is ultimately to determine whether the proposal should proceed directly to the implementation phase (no significant impacts or adverse effects known to be mitigable) or to refer it to the Minister of the Environment for a public review (significant adverse effects or public concern). Only a small minority of proposals (about 0.1%) are referred.

2.1.2 The Public Review Phase of EARP

The mandate of the Study Group involves only public hearings which are part of the public review phase, i.e., that portion of the Process which commences with the referral of a proposal and terminates with a panel report making recommendations about the proposal.

Once a referral takes place, terms of reference for the review are developed. These terms of reference are drafted by FEAR0 in consultation with the initiating department and then issued by the Minister of the Environment after consultation with the minister responsible for the initiating department. These terms of reference outline the scope of the public review to be undertaken by a panel and provide the panel with its mandate. Panel members are then selected. Current practice is for the panel chairperson to be drawn from FEAR0 staff and for the other members to be selected from outside the federal public service. The panel members are required to be unbiased with respect to the proposal, free of any political influence, and to have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review.* An executive secretary to the panel is also appointed (from FEAR0 staff). This person along with other panel secretariat members will provide logistical and administrative support for the panel.

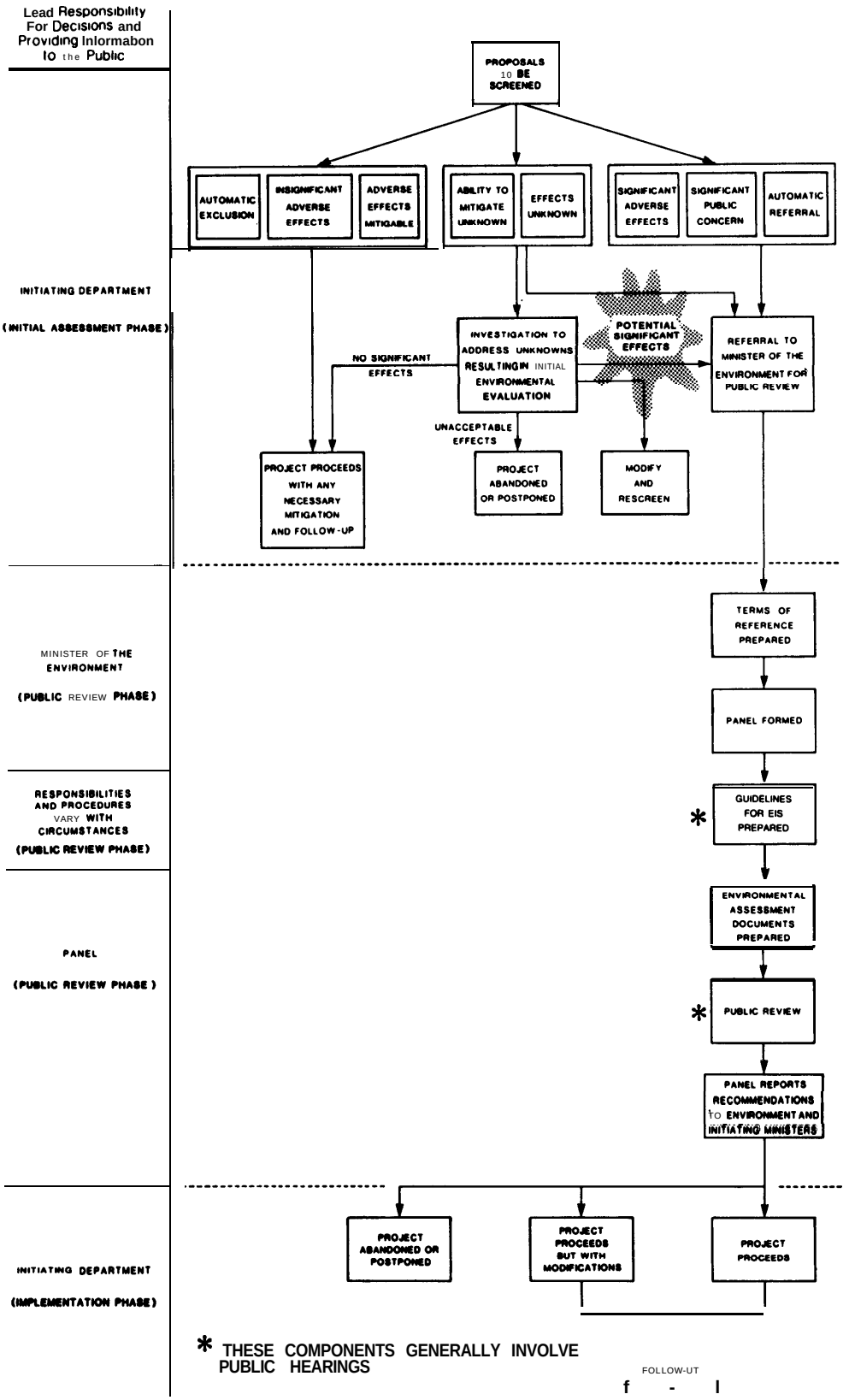
The first major task of the panel is normally to prepare guidelines for the preparation of the Environmental Impact Statement (EIS). * * The EIS will subsequently become the focus of the public review of the proposal and so it is important that it be directed towards the issues that are of particular importance for this review

* The initiating department is the department which, on behalf of the Government of Canada, must make a decision about a proposal.

• The selection of a panel is more complex when the review is to be conducted jointly with a province or other jurisdiction (in which case co-chairpersons may be used and some members may be selected by the other jurisdiction). In such cases the review process generally may be altered.

• * The EIS is a detailed documented assessment of the potential significant environmental consequences of any proposal that is produced by, or for, a proponent in accordance with the information requested in the EIS Guidelines by an environmental assessment panel for a public review.

Figure 1 ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS



and that matters of lesser (or no) importance be excluded. In order for the panel to prepare the guidelines, it consults government agencies, technical experts, the proponent and the public in an attempt to determine what the issues are and which ones are important. This "scoping" exercise results in the preparation of EIS guidelines. The preparation of guidelines is important to the Study Group because the guidelines hearings, or scoping sessions as they are sometimes called, are the first public hearings in the Process.

Once the guidelines are released by the panel, the proponent (that is, the organization intending to undertake the proposal) is responsible for preparing the EIS. When completed, the EIS is distributed by the panel secretariat for public review. If the EIS is found wanting, the panel may request further information. When the EIS is satisfactory*, the panel will schedule public hearings. These public hearings will provide the principle opportunity for public comment on the proposal.

Following these proposal review hearings, the panel writes its report for the Minister of the Environment and for the Minister of the initiating department. The panel's report, which is always made public, is advisory; the Ministers make the final decision. The report usually contains a brief description of the proposal, the characteristics of the proposed site and affected areas, the potential impacts, comments, issues and analysis, and the panel's conclusions and recommendations.

2.1.3 The **Implementation Phase of EARP**

The third phase of the Process is that in which proposals subjected to EARP are implemented. During this phase FEAR0 has no continuing role and the panel (if the proposal was subjected to a public review) will generally no longer exist. It is important though to note that EARP is not yet finished. For proposals which proceed to this phase, the government decision-makers will have selected conditions (such as the use of suitable mitigation measures) which must become a part of the approval. These decisions may have been taken during the initial assessment phase if no public review was undertaken; or the decision may have been based on the recommendations of a panel. The initiating department is responsible for seeing that these conditions are incorporated into the design, construction and operation of the proposal and that suitable implementation, inspection and environmental monitoring programs are established. The proponent is responsible for ensuring that appropriate post-assessment monitoring, surveillance and reporting, as required by the initiating department, are carried out.

* Note that a "satisfactory" EIS means that the EIS contains enough information on which to base a review and does not imply that the proposal itself is satisfactory.

2.2 EARP PUBLIC HEARINGS

As was noted earlier, there are two stages during the public review phase of EARP when public hearings are normally held. The first is during the preparation of EIS guidelines when the guideline hearings or scoping sessions take place. These occur very early in the public review and their purpose is to allow all participants to explain their views on what the issues are and how important each issue is. This information allows the panel to prepare the EIS guidelines in such a way that the review will be focused on the key environmental questions resulting from the proposal.

The second set of hearings comes at the end of the public review phase of EARP and provides the principal opportunity for public comment on the proposal. These proposal review hearings take place after the EIS has been completed.

By the end of these hearings, the panel must have enough information about the proposal to write its report and make its recommendations.

While there are generally two sets of hearings, guideline hearings and proposal review hearings, each of these may be complex and involve several different types of meetings in different communities. For each review the panel must decide on the number, type, location and purpose of meetings that would be most appropriate.

The detailed conduct of meetings will vary somewhat depending on the location (e.g., a hotel meeting room in a large urban centre or a community hall or church basement in a remote community), on the participants (e.g., government experts, organized environmental groups or unaffiliated public) but these variations are not crucial. Of more importance are differences in procedures for meetings with different purposes. The scoping sessions are one clear example. As part of the proposal review hearings, a variety of component meetings takes place. General sessions are meetings to consider views about the proposal's technical and non-technical aspects; technical sessions are meetings to consider a particular aspect of the proposal in greater detail; community sessions are meetings to allow a particular community to voice its concerns; and information sessions are used to raise issues and to allow partici-

pants to prepare for subsequent sessions. Any or all of these different types of sessions may be selected by a panel to conduct a given review.

2.3 PROCEDURES FOR PUBLIC HEARINGS

The procedures and rules of conduct of the public hearings are governed and determined by several different sources. The most important of these are the EARP Order-in-Council, the FEAR0 document, Environ-*mental Assessment Panels: Procedures and Rules for Public Meetings,* the panel terms of reference, the review specific procedures developed by the panel, the actions of the panel members themselves, and precedents from previous reviews.

2.3.1 The EARP Order-in-Council

The Order-in-Council (Appendix A) governs the operations of EARP generally and specifies to a considerable degree the procedures to be used for the public hearings. It identifies the means by which panel members are appointed and specifies criteria for their selection. It also defines the roles for panel executive secretaries and the secretariat. The preparation and content of the terms of reference of the referral are spelled out as well.

Perhaps the most important procedural requirement in the Order-in-Council (from the Study Group's point of view) is that the "hearings of a Panel shall be public hearings conducted in a non-judicial and informal but structured manner".

The Order-in-Council indicates that the panel "may question the relevancy and content of any information submitted to it" and that participants may be questioned but not sworn or subpoenaed.

The openness of the hearings is also stressed as the Order-in-Council requires that all information submitted to a panel becomes public information. It also obliges all panels to conduct public information programs and to make all relevant information available to the public. In particular, public access to all information submitted to the panel (and sufficient time to examine it) is required prior to public hearings.

Panels are also empowered to develop their own procedures and the flexibility to vary procedures in "special circumstances" is clear in the Order-in-Council.

The proponent as well as government agencies (especially the initiating department) are obliged under the Order-in-Council to participate in the review.

2.3.2 FEAR0 Procedures Document

The EARP Order-in-Council provides the basis for the public hearing procedures and obliges FEAR0 to "provide written procedures and any other advice and assistance on procedural and policy matters, to ensure that there is procedural and policy consistency between the various public reviews by panels".

The FEAR0 Procedures document (Appendix B) provides substantially more detail about panel procedures including the need to make available to the public the panel's procedures for the review, the EIS guidelines, the EIS, and all documents, correspondence and submissions respecting the proposal. Some mention is made of panel technical experts and their use and the treatment of unsatisfactory EISs is made clear. The need for panel members to refrain from private discussions except with other panel members or staff about the proposal is mentioned as well.

The document also spells out a number of rules for the conduct of public meetings. These rules enable the panel chairperson to exercise control over the meeting when submissions are excessively long, outside of the panel's terms of reference, or needlessly repetitive. The rules indicate that suitable notice of panel procedures and of public meetings will be provided by the panel and strongly encourage the early submission of written statements by participants where appropriate while still indicating that oral presentations will be allowed. Questioning of participants is also indicated.

The rules also state that a transcript or minutes of the proceedings will be made and that translation services will be provided where required.

Flexibility to vary the rules where a discrete situation arises is also mentioned in the document.

2.3.3 Terms of Reference for the Review

The terms of reference for the review will further influence the procedures to be used for a given review. There may be a specific mention of a task to be performed by the panel, such as a scoping exercise. But in all cases the questions to be addressed will be spelled out in the terms of reference and so the hearing will be focused on those questions. It is common, for example, for certain issues to be specifically exempted from the review in the terms of reference such as aboriginal land claims, nuclear energy policy or defence policy.

2.3.4 The Panel's Review Procedures

Each panel is obliged to develop its own detailed operating procedures, which must be in accordance with the FEAR0 Procedures document. These are more detailed in terms of the specific proposal being reviewed, the locations, times, dates and purposes of meetings, the name of the executive secretary to the panel, and the phone number through which he or she may be contacted. Specific procedural variations are made known where appropriate. The locations of places (such as libraries) where various documents will be made available are also provided.

2.3.5 Behaviour of Panel Members

The various layers of documentation regarding hearing procedures are all very helpful as indicators of what to expect at the hearings. But even more important is the actual behaviour of the panel members themselves.

The procedures indicate that the hearings must be conducted in a non-confrontational manner; but if the panel acts in such a way as to encourage confrontation, there will be confrontation. The procedures indicate that questioning by panel members and by others is expected but if the panel does not question and inhibits the questioning of others, questioning will not occur.

Conversely, one purpose of the hearings is to receive public comment on the proposal and if panel members respectfully and effectively encourage the public to come forth (by their choice of hearings format, their tolerance, their expressed interest and their responses to public comments), then this purpose of the hearing will be met.

2.3.6 Precedents of Previous Panel Reviews

As required by the Order-in-Council, there has been some procedural consistency between the various public reviews conducted by panels. Attempts have been made to apply practices and procedures which have worked well. Panel chairpersons and executive secretaries (generally FEAR0 staff) are the major means of passing on lessons learned as they are the people providing the continuity.

The means by which these precedents are carried from one review to another are the detailed operating procedures developed by the panel and the behaviour of the panel members. These are influenced greatly by the panel chairperson and executive secretary and by the explanations of how previous panels have operated.

2.4 EXAMPLES OF THE CONDUCT OF PUBLIC HEARINGS

Two features of EARP hearings will be mentioned here to illustrate some aspects of the Process, the conduct of rural community hearings and the questioning of scientific and technical information. The first will provide an example of the manner in which EARP hearings attempt to accommodate and encourage public input while the second will indicate the ways in which panels receive scientific and technical information. Public input and scientific and technical issues are not separate aspects of the review but are significantly interconnected. For simplicity they are presented separately as the two are conceptually distinct.

2.4.1 Conduct of Rural Community Hearings

Hearings conducted in a rural community in the area likely to be affected by the proposal, are designed to solicit the specific concerns of that community. Where the community is small and remote (a common situation for EARP reviews), the panel goes to the community rather than trying to bring community members to a location more suitable for the panel in order to involve as many affected people as possible.

Where local people may be very uncomfortable with formality, adjustments are made. Microphones may not be used and minutes, rather than the more common transcripts, may be taken for the meeting. Translation may be required. The panel members (and other participants) try to adjust their behaviour to reflect local customs (e.g., dress, meals and meal times will be altered appropriately). The panel may sit through theatrical presentations or other unconventional submissions. Sessions will be scheduled at times of the year and of the day suitable for the local participants. When a session was scheduled to terminate at a given time (e.g., 10:00 PM), but there were still many people with questions, the hearing has often continued well beyond that time (e.g., 1:00 AM or 2:00 AM) by public request until there were no more questions.

2.4.2 Questioning of Scientific and Technical Information

Questioning of scientific and technical information is handled in EARP hearings in a variety of ways. Panel members have expertise relevant to the proposal being reviewed and they participate extensively in questioning material presented. Other government departments (such as Environment Canada and Fisheries and Oceans Canada) are also participants who review materials and

participate by sending relevant expertise to question information and provide advice at the hearings. Members of the public are free to question and do so frequently. University academics, for example, often contribute at the hearings and so provide another source of expertise. In addition, where the panel wishes to have certain aspects covered in more depth it can hire independent technical experts to provide reviews of materials at the public hearings. All of these questioning mechanisms are employed and the nature of the questioning is face-to-face discussions involving the relevant participants at the hearings.

3. PURPOSE OF PUBLIC HEARINGS

3.1 IDENTIFICATION OF THE ROLE OF PUBLIC HEARINGS

Because the targeted objective of hearings focuses on protection of the physical and social environment, the hearing procedure generates extremely high public expectations. These are often difficult to satisfy, particularly since the very goals of a hearing are often misunderstood.

A public hearing is not a privilege granted to the population, but in fact a service requested of the public by the government to help it make an informed decision and to favor a harmonious relationship between economic development and environmental protection. It is a necessary corollary of this understanding of what a public hearing is all about that the hearing be designed to meet the needs and availabilities of the public. The public should not have to submit to the availability, calendar or schedule problems of panel members, proponents or departments. Panels are responsible for determining what procedures are most likely to reveal the most about the proposal under review, taking into account the social setting in which the hearing is to be held, its inhabitants and constraints.

The definition or conception of public hearing processes in itself encompasses ipso *facto* a certain number of rules of so-called "procedure". Such rules cannot fit precisely into a code of procedure or a regulation on hearing procedures. They are principles which express an "ethic" of public consultation as defined in the introduction. The precise and specific rules of a given hearing can differ from those of another hearing (e.g., in terms of speaking time, question period, scheduled time of hearing, importance given to experts, etc.). Beyond these specific questions, however, there should always be a certain number of constant principles underlying the specific rules of procedure. Some of the criticism which we heard focused not so much on the hearing process or the procedure itself, as on the conception that panel members have of their own role. It is difficult therefore, to define a series of strict rules of procedure. It can never be repeated too often: much of the success and credibility of the operation lies in the quality and personality of the selected panel members and, in particular, in the talent, empathy and sensitivity of the panel chairperson.

At first glance, one of the most attractive ways to ensure uniformity in the work of the various panels would be to judicialize or further formalize the forum. Although we recognize that there are times in certain hearings when the search for a technical or scientific truth, if it exists at all, justifies a tighter or more "judicialized" approach,. we do not feel that the adoption of judicial formalities would be a solution. Four arguments in particular drew our attention.

Examples were cited of provincial quasi-judicial environmental proceedings which could have effects contrary to those sought in most of the country. A code of procedure and strict rules are not enough; those who are called upon to chair hearings under such circumstances must be perfectly familiar with this code and rules and have long experience in their application. Short of creating an itinerant environmental court, this approach could be difficult to apply under the present circumstances.

Second, justice cannot be rendered without an apparatus, and such an environmental court could not function without specialists, experts and specialized lawyers available in sufficient numbers throughout the country, which is certainly not the case at present.

The third objection to judicializing hearing procedures is that the rules usually applicable before the courts are entirely different from those found in environmental public hearings because of the difference in purposes involved. A judge presides over a court in order to apply the law and arbitrate a debate limited to the interests of the parties. Such is not the role of the public hearing. The interests represented in such a hearing are many and heterogeneous; the parties are not and cannot be grouped under a banner to make possible ready adjudication of a given law or group. Before being specific and particular, debates are first basic arguments, arguments centred on social choices, on methods of development, on economic priorities; only after these fundamental arguments have taken place and the upstream choices have been made is it finally possible to pass judgment over specific questions of site selection or mitigation measures. Seeking to judicialize would probably mean that hearings would henceforth focus on downstream issues more than on upstream issues — in other words, on mitigation measures rather than on proposal justifications. We feel there would be more to lose than to gain in such an approach because, in cross-examination, one would necessarily fix upon the details of a project rather than the project as a whole, thereby from the start shifting the focus of review from the global to the specific.

Public hearings on environmental issues, when held should be conducted in as non-judicial a manner as possible in order to avoid:

(1) adversarial proceedings.

(2) creating a public impression that the proceedings have the power of the courts (either via their procedures or physical format).

(3) focussing the proceedings on legal technicalities and procedures, rather than on discussion of the issues.

(4) prolonging the proceedings for procedural reasons.

J. O'Riordan
B.C. Environment and Parks
Victoria

The hearing process itself should allow for participation by all groups affected by the project and should therefore be as non-threatening as practicable .

Eldorado Resources Limited
Ottawa

The challenge for an environmental assessment process is to provide a means for clarifying the nature and implications of choices on the way a proposed project should proceed, if at all, without denying their essential value-laden character. It also should ensure that decision-making on these choices is open, well-informed and fair.

Brian Ward
Ontario Environment
Toronto

Public hearings are one such way to ensure that the public gets its say — whether in the form of comment or expert advice. Based on experience from far and wide, it is fair to say that the public does have a great deal to offer in the process of assessment and evaluation of projects, thus all efforts should be made to facilitate getting access to the public's valuable expertise.

Friends of the Earth
Ottawa, Ontario

Public interest has been taken into account when the assessors have attempted to ensure that the arguments for or against the proposal or variables of those arguments have been adequately submitted. . .

Léandre Desjardins
University of Moncton

. EARP should strive to achieve the goal of being a fair procedure that meets rntervenor demands, when they arise, for formal procedures and analytical rigor on the one hand and informal procedures and broad-based community input on the other.

Brian Ward
Ontario Environment
Toron to

As well, judicial procedure, the object of which is to arrive at a judgment, rests on the presentation of a mass of concordant or diverging facts. Perceptions of fact, value judgments, and opinions are not admissible in court. By means of cross-examination, the opposing party seeks to attack the credibility of the witness. A mass of rules of evidence and procedure exists to be mastered. Such is the price of the often vaunted rigour of the judicial process. As to the desire to reproduce this rigour in environmental public hearings, we are convinced that the result would be a reduction in public participation, the intimidation of participants, a loss of information that would rob conclusions of their originality, and a decline in the usefulness and special nature of the hearing to the benefit of a process byproduct. It would be best to let the law courts perform their task, keeping in mind that they are generally called upon after the fact; while the environmental hearing process is by nature preventive rather than corrective.

3.2 GENERAL PRINCIPLES OF ETHICS FOR PUBLIC HEARINGS

A number of simple rules exist — principles rather than rules, in fact — that could be collated by FEAR0 and distributed to all panel members upon their appointment; not for dogmatic purposes, but in order to constitute a sort of introductory handbook, perhaps titled the "public hearing code of ethics", for want of a better term, as opposed to a body of rigid rules of procedure. The authors have identified twelve principles which should be publicized, known and common to all panels. It should be noted that no one appeared before the working group with such a series of principles. These principles nevertheless arose from the various representations which were made during meetings we held with submittors and from our observations and experience.

Principle one: The specific rules of procedure for public hearings must be known beforehand to all interested parties and all participants in a hearing, so that none of the protagonists is surprised by the manner in which the hearing is carried out. This means that each panel must define its specific rules of procedure in the light of precedents and specific local needs.

Principle two: All information pertaining to a proposal subject to a public hearing must be known in advance, available to the public concerned and to the information media in a popularized form. This information must be available well before the start of the hearing to ensure that everyone has ample opportunity to prepare adequately. Without proper and adequate prior information, there can be no public hearing because knowledge of the issue is not equitably shared between the proponent and the public. It is the panel's responsibility to ensure the quality of information and the terms and conditions of its dissemination.

Principle three: A public hearing must be directed by a panel that is neutral, autonomous, independent and impartial in relation to the proponent and to those who will decide on its recommendations. Panel members should be selected not only for their knowledge of the subject under review or their scientific and technological competence, but also for their concern about the integrity of the public hearing process and their respect for persons participating therein.

Principle four: Hearings must favor a dynamic exchange of information between the proponent, experts and members of the public. Panels should first make it possible for the public to ask all relevant questions in order to define the nature and scope of the proposal under review. Public question periods have dynamics all their own and a synergistic effect that is inevitably lacking in private meetings. A good question directed to a proponent before an attentive roomfull of people will have a significant multiplying effect and generate new questions from the floor, from experts, members of the panel and so forth.

Principle five: The mandate given to a public hearing panel must be clear and unequivocal, and known in advance. It must provide the opportunity for in-depth debate that will make it possible to influence a decision which must not have been made before the start of the hearing. The mandate must enable a panel to play a useful role and to provide decision makers with light shed on a proposal from a different angle than that presented by the work of the proponent and its experts.

Principle six: The mandate, barring exceptional circumstances given in writing, should make it possible to argue the justification of the proposal under review and its alternatives. The hearing should focus on the proposal as a whole and not on specific subjects listed in advance; otherwise, interest could very likely be diluted and the hearing itself be of little effect.

Principle seven: Sufficient time should be taken to prepare and hold a public hearing. Between the moment a proposal is announced by a proponent and the moment when the interested parties are familiar enough with that proposal to pass judgment over it, there must be sufficient time to allow for the assimilation of informa-

tion and adequate preparation. Members of the public attending a hearing are not necessarily in the habit of asking questions and formulating opinions in public. This is not instinctive. Things sometimes come slowly, which does not mean that they are less true for all that. When individuals and groups have worked a number of days to prepare a report, they should be given the time to present that report adequately before the panel. In this sense, a strict and immutable time limit for speaking before the panel is inadvisable because the message could be misrepresented. It is also necessary to take the proper time because words often hide elusive realities that demand to be uncovered, and it is often only by increasing the number of questions that one can grasp all the various subtleties involved. The active role of panel members here is essential.

Principle eight: A public hearing must be open to any and all interested parties, and anyone must be allowed to ask questions, submit arguments, formulate comments or produce a report. In environmental public hearings, the concept of interest, as defined in the courts, cannot be applied. The right to appear before panels must not be limited solely to the public directly affected by a proposal. Moreover, this concept of "directly affected" is almost impossible to define. This has been demonstrated by the numerous attempts undertaken until now to obtain such a definition and the very unfavourable reactions that they have inevitably provoked.

Principle nine: A panel must be able to submit the proposal under review to its own experts' opinions. Exchanges of information play an important role in environmental reviews and it is essential that the ideas and analyses presented to the panel be sound and clearly understood. In order to achieve this goal, a variety of expert contributors on the issues being discussed should participate in the public hearings. The panel must have the full contribution of other government departments with relevant expertise; the panel members themselves must be actively involved; members of the public should be encouraged to contribute; and the panel must have access to such outside expertise as it feels is necessary to question fully and rigourously the information presented.

While this principle clearly applies to scientific and technical information, the same guidelines should be applied to all submissions. Questioning of all participants to clarify their views, politely and sensitively but fully and rigourously is appropriate.

Principle ten: A written report must be made based on the public hearing and should include the observations made by the panel, its analysis of the proposal as a whole, and the conclusions and recommendations which it has drawn. Persons attend a public hearing for the purpose of convincing the panel. All arguments presented, however, are not of equal value. It is by analysing the proposal as a whole, the Panel members uncover the essential value of each argument presented. Some are better than others, better formulated, with a greater basis in fact. It is important to identify them and state why a given argument deserves to be retained. It is equally important to state why a panel arrives at a given conclusion. A conclusion or recommendation is only as good and carries only as much weight as the argument behind it. A public hearing report must not be purely factual and linear, and must not be limited to recording the list of arguments presented by the supporters and opponents of a project. The report must make it possible to understand how the panel reached its conclusions. This is the only way in which a public hearing can result in a useful and innovative document for the decision makers. The report must therefore set out the technical arguments, weigh the social options and subsequently make clear recommendations.

Panel reports must not resemble court decisions. They should take the form of recommendations primarily for the use of political decision makers. The subjects of public hearings always call for arbitration between various values and between various interest groups. Making a choice among all these options remains essentially a political task. The work of a panel would be less useful to the community as a whole if it took on the role traditionally reserved for elected officials. Rather, it is the role of appointed panels to do as workmanlike a job as possible and present in their report a complete picture of the situation, as well as an in-depth analysis of the various elements of the proposal under review, with grounds to support their conclusions. Elected officials are responsible for making use of this report as they see fit and making decisions. Each person must play his or her role to the fullest. A political decision based on fragile grounds will be all the more difficult to justify if the hearing report on this same subject has been rigourous and clear. The rigour and clarity of the panel report's contents offer the greatest guarantee that the consultation exercise will not have been in vain.

Principle eleven: A public hearing report must be made public as soon as possible after its completion. The interested public has a right to know not only the

conclusions and recommendations formulated by a panel, but also the arguments by which they were arrived at by the panel. If the report is a poor one, the interested parties should have time to publicize that fact before any decision is made by the Government. Conversely, if the report is considered acceptable by the interested parties, messages to that effect should circulate before any decision is made.

Principle twelve: The political authority which initiated the public hearing process must agree to take the conclusions of the hearing into serious consideration in the decision-making process. A public hearing is not a chance incident, a means of trivializing or compartmentalizing opposition, or a mechanism for identifying resistance. If the person called upon to make a decision is not prepared to take into consideration the results of a public hearing, if his or her mind is already set, if the essentials have already been decided even before the hearing begins, the hearing is a pointless exercise.

4. PUBLIC HEARING PROCEDURES

Having determined the purpose of the public hearings and a set of ethical principles for the conduct of public hearings, we will now identify, for EARP, the set of procedures for the conduct of hearings which is most consistent with these. This goal will be met by a two step process. First, a basic procedural model will be selected. Following this choice, the basic model will be more fully developed or fleshed out.

We provide a brief outline of the two basic procedural models used for environmental reviews, quasi-judicial and informal procedures. Then the compatibility of the basic procedural models with the purpose of the public hearings will be examined in order to make a preliminary choice of procedural model. Following this there will be a fleshing out of public hearing procedures for EARP by examining the implications of the ethical principles on detailed procedures. This section will deal with setting terms of reference for public reviews, questioning of participants by panel members, the need for subpoena powers, principles of fairness, * flexibility in procedures and the selection and training of panel members. Following is a brief section on the views of contributors to the Study Group regarding the choice of procedural model and a summary section on the choice of the informal as opposed to the quasi-judicial model.

4.1 THE TWO BASIC PROCEDURAL MODELS

Before selecting the hearing procedures most appropriate for environmental reviews, we briefly describe the two basic models for hearing procedures associated with environmental reviews. Quasi-judicial procedures are the basis for reviews conducted by the Ontario Environmental Assessment Board, the Alberta Energy Resources Conservation Board and the National Energy Board. Informal procedures are used by federal EARP reviews, the Quebec Bureau d'audiences publiques sur I'environnement and by the Environment Council of Alberta. There are differences in the detailed procedures within each jurisdiction but the basic models have been examined closely by the Study Group. Submittors to the Study Group generally had experience with these two distinct types of procedures and mentioned them frequently.

Quasi-judicial procedures make extensive use of rules of evidence, swearing in of witnesses, cross-examination of witnesses, subpoena powers, etc. and use of lawyers is employed by the major participants in such reviews. These procedures are used when the board (the equivalent of the panel in EARP) has delegated powers to make administrative decisions. These procedures have been developed over decades to be such that the decisions taken by the boards can withstand judicial review.

Informal procedures are a recent development designed to facilitate public participation and a non-confrontational hearing. These procedures are used when the panel's responsibility is to make recommendations to government, but where the panel does not have delegated decision-making responsibility. They generally avoid the judicial aspects associated with the quasi-judicial model. The present EARP procedures outlined in Section'2 are informal procedures.

4.2 COMPATIBILITY OF THE BASIC PROCEDURAL MODELS WITH THE PURPOSES OF THE PUBLIC HEARINGS

The Study Group heard serious advocates of both quasi-judicial and informal hearing procedures. To test the suitability of these two generic models, one should compare how compatible they are with the purpose of the hearings as developed in Section 3. While the complete purpose is somewhat more complex, a simple two part description examining environmental issues related to the proposal being reviewed and hearing from the public about these issues will suffice.

Virtually all submittors to the Study Group agreed that the goal of hearing from the public was promoted by the use of informal procedures that avoid the intimidation inherent in the quasi-judicial reviews. Submittors who advocated the use of quasi-judicial procedures argued that their greater judicial rigour made them more credible and, especially that their superior ability to test evidence and to question the information presented at the hearings made them a more suitable choice. Thus, to the extent that these views are correct, a tradeoff must be made. The informal procedures are better for public participation in the hearings but some of the submittors claimed that the quasi-judicial procedures are better for examining the information presented about the environmental issues.

But the Study Group does not agree that the choice involves such a tradeoff; a more detailed examination is

* The principles of fairness or natural justice require that the panel be unbiased about the proposal and that it conduct itself in a manner that shows no bias. Fairness would also imply some ethical considerations such as making known the procedural rules, access to information, reasonable notice of hearings and a fair opportunity for all affected people to be heard.

necessary. The results of the Study Group's examination are included under the two headings of public participation in the hearings and questioning of scientific and technical information.

4.2.1 Public Participation in the Hearings

Given the important role of public participation in the hearings, it is clearly essential that hearing procedures be designed to accommodate, and indeed to promote, participation by the public. This is a very important principle because it implies that the procedures must be as informal as possible. People are significantly intimidated by adversarial and legally formal procedures and simply do not participate nearly as readily in hearings conducted under such procedures as they do in those using informal procedures. Information to this effect was presented to the Study Group by many submittors who had participated in earlier EARP reviews. (Some submittors suggested ways that even the informal procedures used for EARP hearings could be made less formal and so less intimidating.) The same observations were also made by government and university submittors who had undertaken appropriate studies. The message is very clear; if widespread participation by the public is desired, informal procedures must be used.

There are exceptions to this observation. For example, some organized public interest groups are quite capable of participating effectively before quasi-judicial administrative tribunals. Some individuals may also have the ability to do so, especially where they have a direct interest in the outcome. While the overwhelming majority of submittors indicated that legally formal procedures inhibited participation by the public, some argued that the public could (and should) adapt to such procedures. These submittors felt that the superior ability to test the evidence and question the information presented at the hearings provided by the more judicial procedures was worth the tradeoff in reduced public access and that the public was more adaptable than others indicated.

Before going on to discuss the questioning of information at hearings, it is worth noting that the lack of public participation at legally formal hearings is not just due to intimidation. Features such as the rules of evidence or the qualifying of expert witnesses lead to time-consuming procedures which appear to the public not to be related to the important issues but only to be based on the need for legal niceties. Individuals not only fear that they too will be subjected to challenges and cross-examination (a fear that is not always justified), but they are also bored by seemingly endless rounds of legal jousting. Moreover, extensive cross-examination of experts by lawyers can be very time consuming and so reduce the time available for the public to make contributions if overall time is limited. Moreover, when dealing with the field of environmental impact assessment where issues are of a predictive and speculative nature and where one is more often confronted with hypotheses than facts, cross-examination can be extremely laborious and long, without providing in most cases the possibility to determine which thesis is right and which one is wrong. When contemplated in this manner, cross-examination is not very productive and does not fulfill the specific objectives of a public hearing. For instance, it is difficult to imagine how cross-examination could lead to the establishment of necessary follow-up and mitigation measures having as their objective the measurement of the impacts of a proposal on a certain population. It is also very difficult to imagine how it would be possible to cross-examine an intervenor on his or her values and choices. Although these values and choices may not seem important in a litigation between two private parties, they may be of primary importance to the members of a panel conducting a public hearing, particularly when taking into account the terms of reference issued to that panel and the role that society attaches to the public hearing exercise.

Finally, it must be noted that participants in quasi-judicial hearings observe that the "effective" participants (those the panel listens to most of the time) are those represented by counsel. The conclusion is similarly reached that to be effective requires such representation. This means that the cost of participating rises very substantially and provides a great financial incentive to avoid the hearings.

4.2.2 Questioning of Scientific and Technical Information

If the hearing is to serve its proper role, it is essential that questioning of scientific and technical information be well done. While some submittors to the Study Group insisted that cross-examination and swearing in of witnesses was needed (especially to deal with scientific and technical matters), the overwhelming majority of people who had participated in EARP public hearings felt that the questioning at the hearings was quite sufficient to provide the panels with suitable understanding of the issues being discussed. This is not to say that all such issues are resolved. Some are resolved; some are not capable of resolution with existing knowledge (and so need care when the panel makes its recommendations, e.g., a monitoring and management program

Thus, from our perspective, the use of judicial EARP hearings would increase the time required to reach a verdict, would inhibit the direct expression of concerns by many members of the public, would increase the costs of hearings (with the majority of the increase going to the legal profess/on) and is unlikely to improve the quality of the judgements in the recommendations from the panel.

Joe Howieson
Energy, Mines and Resources Canada

There were people with concerns. Many of these people spoke with panel staff and made it clear they did not want to address the pane/. They were intimidated by the microphones, the court reporters, the media, the audience and perhaps most of all *by the well-dressed and educated men at the front of the hall. [And yet,] this was an example of an informal procedure.*

W.A. Coulter
Halifax

A judicial format for public hearings on policy or development options does not necessarily entail the best interests of the public. In addition to raising the cost and time needed for existing processes, legal approaches could constitute a significant barrier to public participation and decrease the probability of reaching cooperative solutions between parties-at-interest. The legal *process is adversarial. The greatest strength of the EARP is the availability to encour-*age *non-adversarial hearings.*

Canadian Petroleum Association
Calgary

We support Informal procedures for Panel reviews. Such an informal approach, involving both oral and written submis-*sions, encourages public participation. If formal procedures involving legal counsel were to be adopted, it would be difficult for native groups to intervene without the provision of financial ass/stance. Indian bands generally lack the financial resources necessary to properly prepare and present a formal case.*

Glenn Bloodworth
Indian Affairs and Northern
Development Canada

Cost to government and to participants is a major factor. Many people refuse to be *a participant* if *hearings are formal. They perceive it will take too long and cost too much money even if the participant does not employ a lawyer. You might notice that the National Energy Board has few individual participants.* .

Carson H. Templeton
Consultant, Victoria

could be required or the proposal could be rejected); and some issues are determined to be unimportant.

While a few contributors suggested that more judicial procedures be used to deal with the difficulties of questioning scientific and technical material, many more expressed concern that this would be a retrograde step. Those advocating more judicial processes argued that this would yield more credibility for environmental assessment hearings as judicial processes are highly respected. They also noted that these legal processes would be more consistent and compatible with other (quasi-judicial) reviews (such as those of the National Energy Board, the Canadian Transport Commission, the Alberta Energy Resources Conservation Board or the Ontario Environmental Assessment Board). Those arguing against the legalization of the hearing process (especially for questioning of information) believed that such changes would reduce the flow of relevant information to the panel. On the basis of experience with other quasi-judicial hearing procedures, they argued that more time would be taken challenging the credibility of expert witnesses and less on the issues being dealt with. Given the existence of expertise on the panel, they argued that it was counter-productive to alter the informal system which allows extended directed exchanges between various participants to take place in front of the panel.

In addition, increased legalization, it was argued, would lead to a more confrontational and adversarial process than was desirable. Several technically qualified experts who had participated in previous reviews indicated to the Study Group that their willingness to provide information in more confrontational judicial processes would be sharply reduced. It would also be more difficult for non-expert members of the public to contribute effectively, as they would not be qualified as expert witnesses.

Scientific and technical experts who had contributed to previous EARP reviews felt that our understanding of the science of impact prediction was not well enough developed to deliver with certainty the conclusions they perceived a legal system would demand. They also felt that better exchanges of information take place when they participate directly in questioning (rather than through lawyers) and that some scientific and technical experts would be inclined to participate less fully when exposed to legal cross-examination. They would become more protective of their information. That is, some scientists as well as members of the public are inhibited by more legal procedures.

4.2.3 Selection of Informal Procedures

Having completed this analysis of the compatibility of quasi-judicial and informal hearing procedures with the purpose of the hearings, the Study Group is convinced that informal procedures are clearly appropriate for use in EARP. They are superior in terms of promoting effective public participation and they permit questioning of information at least as effectively as do the more judicial procedures. Accordingly, the Study Group recommends that hearing procedures which are generally informal should continue to be used in EARP public reviews.

4.3 FLESHING OUT THE EARP HEARING PROCEDURES

While advocating the use of informal procedures, the Study Group does not wish to suggest that the existing procedures are working satisfactorily in all cases. There are some serious problems which need to be addressed. Some of these problems are encountered by all environmental reviews (e.g., the need to encourage public participation, flexibility in procedures, the role and selection of panel members and the need to focus the review on the few issues that really matter) while some are specific to EARP reviews (e.g., the development of the terms of reference for the review, the need for better questioning of participants, procedural fairness and the need for subpoena powers). In order to treat these matters properly, there are important features which must be incorporated into the hearing procedures.

The general choice of informal procedures as opposed to quasi-judicial procedures is based on a clearly better match with the purpose of the hearings. However, in addition to this general selection, detailed features of the procedures must be based on the application of the ethical principles developed in Section 3.2 and especially on the examination of situations where there is conflict between two or more ethical principles as applied to a given situation.

The application of some of the ethical principles is really very straightforward. Requirements, for example, to make known the procedural rules to be employed in the public hearings, or to provide a suitable period of time prior to the hearings in which all interested participants can have access to the necessary materials are straightforward enough and are clearly included in the existing EARP procedures. So also, the principles that the hearings must be open to the public and that the panel report must be made public are a part of the existing Order-in-Council. The Study Group is convinced that

In short, it is my advice that public reviews conducted by panels according to the federal environmental assessment and review process should not be made more judicial. The more legalistic (quasi-judicial) approach used in Ontario under the authority of the EA Act has not, in my view, resulted in greater protection of the environment. Rather, it has provided a platform for legal counsel and public advocates to polarize issues and create a win-lose situation, the antithesis of environmental assessment.

Paul H. Rennick
Consultant, Burlington

The present informal nature of hearings has elicited more information from individuals who may otherwise not have contributed in a formal setting. I have found much of this type of input valuable. Sufficient cross-examination occurs when panel members, the audience and other specialists are free to question speakers. I cannot recall an instance where I wished the speaker had been under oath. To have one panel member expert in the overall project work has been a help to other members in drawing out information.

George Tench
Consultant, Vancouver

. . The exchange of expertise available within these groups through informal questioning before the Panel is considered capable of establishing the credibility of information before the Panel. The evaluation of environmental problems often must rely as much on critical comparison of expert opinions, as on establishing facts. . . . It thus would seem reasonable for hearing procedures to emulate this process in examining scientific information by facilitating discussion on specific issues among interested and knowledgeable participants. . .

E. H. Gaudet
Chevron Canada Resources Ltd.
Calgary

My first concern with both provincial and federal systems has been a tendency towards legal rather than technical background of panel members. If members understood the technical issues, cross-examination would not be necessary. . . . The legalistic approach being followed in the United States and, to a certain extent, in Ontario, places minor technicalities and semantics over the accuracy of evaluations of environmental repercussions. To my mind, this defeats the whole purpose of environmental assessment.

Wilson Eedy
Beak Consultant, Toronto

. . . This organization conducts its public hearings under a somewhat more quasi-judicial procedure than apparently is employed under EARP. We rarely take evidence under oath; however, we do use cross-examination extensively and do have subpoena powers, although these are rarely invoked. Cross-examination is by legal counsel or lay participants and we attempt to keep the procedures as informal as is consistent with orderly proceedings and fairness to all involved. Also, from time to time, staff members from our organization are active in mediation prior to a formal hearing if there appears to be a good possibility for dispute resolution without resorting to an adversarial process.

C.J. Goodman
E. R. C. B., Alberta

Informal procedures are necessary *to allow low key, non-adversarial public involvement in FEAR0 processes. However, a quasi-judicial model should also be available to FEAR0 for aspects of reviews that are highly technical, or particularly controversial. If both processes were necessary in a particular review, then information gleaned from the informal review could be entered into the formal review after some systematic qualification process (e.g. use of summary documents, with professioral critiques). It would not be automatically necessary to use quasi-judicial processes; it would be optional.*

Stephan Fuller
Government of Yukon, Whitehorse

. . In no case are we aware of an EARP panel that was unable to obtain sufficient information if it requested s u c h .

W.D. Smythe
Atomic Energy Control Board

Our view is there are no procedures more appropriate than the current ones for examining scientific as distinct from non-scientific evidence. The same procedures should be used for both types of evidence and the present process is most effective.

J.A. Kelly
Mobil Oil Canada Ltd., Toronto

the existing EARP, in the form *to which it* has *evolved over the years, is a very good process in many respects. Its informal procedures have allowed ordinary citizens to voice their feelings, concerns and opinions, which would not be possible if the usual evidential tests of* a court *of law were to be applied to them. While this has on occasion been difficult for proponents to accept, it* has *frequently been a useful cathartic exercise and panels have had the ability to exercise judgement on what weight to give to the evidence. The EARP also differs substantially from more legalistic processes in that the review is an iterative one, with the panel issuing guidelines to the proponent on what should be addressed in the EIS, then reviewing the EIS and issuing a notice of deficiencies, allowing the proponent to correct* any *shortcomings in his submission before the public hearing phase*

Egon Frech
AECL, Pinawa

I suggest that Panel procedures remain informal in light of the following:

- *formal procedures will* likely result *in decreased public participation and restricted government involvement (because of intimidation and costs);*
- *the same environmental issues will be identified whether or not procedures are made formal;*
- *it is not clear that more detail obtained through formal reviews will assist EA Panels in carrying out their responsibilities.*

The above conclusion is based on my comparison of formal and informal (NEB and EARP) environmental reviews.

Kath Rothwell
Environment Canada, Edmonton

That is, our legal system can deal with "evidence" to 'prove" something about events which have taken place but has difficulty "proving" anything about the future, especially in complex systems.

Dixon Thompson,
The University of Calgary

. . . It is ironic, indeed, that *FEAR0 may turn away from its leadership role in informal assessment procedures, a role which has served as an example for others within and outside Canada. . . .*

Canadian Petroleum Association
Calgary

We wish to indicate, at this time, that our committee supports the present proceedings format. The introduction of formal, judiciary proceedings would exclude participation of the general public due to cost and lack of available expertise The appeal process could be extremely lengthy.

Helen MacDonald
Citizens for a Safe Environment
Newtonville. Ontario

As a practitioner of environmental assessment in Canada, I believe that adoption of a judicial approach to project review would be a mistake. Environmental assessment is an exercise in which the environmental costs of a project are evaluated within the context of its potential benefits. It is then the responsibility of those who represent the people of the country to determine what is best for the general good. Judicial proceedings would introduce a more confrontational atmosphere; hearings would be much longer, resulting in additional costs to all involved and there would tend to be clear winners and losers.

David J. Kiell
Newfoundland and Labrador Hydro
St. John's

In general, we favour a hearing format with sufficient formality to ensure good presentations, avoidance of repetitive evidence from members of the same interest group, adherence to the terms of reference and presentation of evidence by persons directly involved in the gathering of that evidence.

W.D. Smythe
Atomic Energy Control Board

There should be public input into all stages of the review, including the establishment of the terms of reference, timetable and review procedures. Such involvement will serve to improve the process for all participants and, in particular, increase its credibility with the public and community groups.

Penelope Rowe
Community Services Council
St. John's

these principles are addressed by current EARP procedures save for possible exceptions dealing with confidential and proprietary information to be further discussed in Section 4.3.4.

4.3.1 Terms of Reference

Concerns were raised by many submittors to the Study Group concerning the terms of reference for a referral. These terms of reference contain the mandate of the panel — the instructions from the Minister of Environment outlining the scope of the public review to be conducted by the panel. Submittors representing the public felt that terms of reference for EARP reviews were generally too narrow and that they frequently excluded from the review issues that were important to the public. While the terms of reference are made public, the problem tends to arise first at the guideline hearings (or scoping sessions), which is the first formal meeting of the panel with the public. There, when members of the public identify their important concerns so that they can be included in the EIS guidelines, they are told by the panel chairperson that the concerns are beyond the terms of reference and so cannot be heard or included in the guidelines. The problem does not arise with every review but occurs frequently enough to be of real concern to several submittors.

Other problems about terms of reference were also raised by project proponents who had the opposite concerns. They felt that panels were too prone to ignore the terms of reference and to pay attention to any issues raised whether they were within the mandate or not. The public representatives felt that the best way to deal with their concerns was to have public input into setting the terms of reference. In that way the terms of reference could reflect public concerns about the proposal. The proponents who expressed concern about panels going beyond their mandates wanted tighter controls placed on panels to prevent them from doing so.

The Study Group has sympathy with both of these concerns about terms of reference but is not inclined to suggest changes in procedures to deal with them. The ultimate decision maker, the elected government, should be responsible for posing clearly the questions it wishes answered, i.e., setting the terms of reference. Occasionally these terms of reference will exclude matters of importance to the public. While such exclusions will not be well received, taking such decisions is part of the legitimate responsibility of government.

There are, however, two procedural mechanisms which can be used to deal with the desire for publicly acceptable terms of reference. The first is a responsibility of FEAR0 which, in consultation with the initiating department, drafts the terms of reference. FEAR0 should make a greater effort to anticipate problems of this sort and to urge the Minister very strongly to avoid terms of reference which will make the conduct of the public review difficult. While FEAR0 is known to have promoted terms of reference which are more conducive to public acceptance, the very considerable concerns expressed to the Study Group with terms of reference indicates that FEAR0 should address this responsibility more thoroughly in the future.

The second procedural mechanism for dealing with such concerns is the responsibility of the panel which encounters the problem. Where the panel hears a concern which is clearly and explicitly excluded from its terms of reference, it has little choice but to ignore the concern. But where a panel hears a concern about which there is some doubt, it can formally request that its terms of reference be clarified and that the public concern be included. This request for clarification can be used constructively by panels at the guideline hearings (scoping) stage of the review.

The suggestion by proponents that panels be more tightly constrained to stay within their mandates is more difficult to deal with. Certainly this ought generally to be done by a responsible panel. But, on the other hand, if one of the major purposes of holding public hearings is to convey to the decision makers the concerns of the public about the proposal, it is difficult for the panels to avoid hearing concerns which are raised consistently by the public. * Members of the public who raise a related matter will expect to have the panel pay attention to their concerns and a failure to see this happen will lead to a lack of public confidence in the panel and the process. Because the Study Group has such high regard for public participation in public hearings, we feel that the panel should bend over backwards to accommodate public concerns. In particular, where a strong and clear public concern arises from the public hearings, the panel should identify clearly that concern in its report. There are limits to this responsibility however, and these will be discussed elsewhere. The bulk of the panel report must restrict itself to matters referred to the panel.

* Techniques that should be used by panel members in questioning participants which will allow the panel to identify issues outside of its mandate are addressed in Section 4.3.2.2.

4.3.2 Questioning of Information

The importance of getting a good exchange of information about the proposal from the participants to the panel cannot be exaggerated. This information includes both scientific and technical matters as well as the opinions and values of participants (generally the public). Submittors to the Study Group were emphatic about the need for the panel to participate fully in the questioning in order to get the information it needs to write its report, In certain situations conflicting ethical principles can lead to problems in questioning information as fully as is desirable. Two such examples are provided. The first involves questioning of scientific and technical information where the principle of submitting the proposal to expert review conflicts with the principle of promoting a dynamic exchange involving the public. The second involves questioning of participants by the panel where the principle of keeping the hearing within the mandate stated by the terms of reference conflicts with the principle of taking enough time to hear all views. In some reviews almost no problems arose and questioning was very well done. In others, serious problems arose because of inadequate questioning. In this subsection details of questioning are discussed, first scientific and technical information and then questioning of participants.

It should be stressed that the Study Group feels that improvements in questioning of the type discussed here (greater rigour and more complete questioning) will contribute more than any other change to improving the public hearing procedures.

4.3.2.1 Questions of Scientific and Technical Information

Some features make the procedural treatment of questioning scientific and technical information more difficult. On important issues it is desirable that this questioning be quite extensive; in some cases several days can be devoted to a single issue. But such extended treatment of these issues can easily give the hearings an appearance of being primarily for technical experts to debate technical matters - a debate in which the public frequently perceives itself as being unable to participate. Thus, there is on the one hand the desire to keep short these extended technical debates and to mix them with real opportunities for relevant non-technical input. On the other hand, it is essential to continue with serious questioning of each issue until the panel has enough information to deal with the matter in its report. This difficulty is further complicated by the potential for new and different perspectives to be provided by participants in different hearing locations.

Another complication is more a result of serious logistic complications. In reviews of large projects, especially those proposed for rural and inaccessible parts of Canada, it is generally necessary to schedule meetings in advance both to provide reasonable notice to communities and to proceed expeditiously. Then, important questioning of an issue may develop (for example late in the day before a panel must depart for the next community) in a manner which forces the panel to finish the hearing and deal less than fully with the issue or to carry on into the night at the risk of giving the matter less than the full attention it deserves because of fatigue. A number of examples of such situations were brought to the attention of the Study Group — situations in which logistic complications seem to have prevented adequate questioning of important issues. This conflict between conducting the hearing in a timely and efficient manner on the one hand and having a full and complete questioning of all issues on the other hand is very real. In the view of the Study Group, panels must insist more on conducting a complete questioning of issues, even at the cost of increasing the time for the review.

The panel has the power to appoint an independent expert to report to it on an issue on which the panel requires further information, and when it does not wish to rely solely on the evidence submitted by the proponents or other participants. The panel must of course be provided with sufficient funds for this purpose.

It may happen that experts testifying on behalf of the proponent and those testifying on behalf of the intervenor cannot agree on some of the major issues. It has been found useful in some jurisdictions such as in Alberta to adjourn the hearings for a brief period of time and direct the experts to get together and try to agree and then report their joint findings back to the panel. In some cases it will be useful to require this before the actual panel hearings commence in order to save time at the hearings and avoid, if possible, a public confrontation. This may not always work satisfactorily however as there will then be no one to question closely the experts and the participants will then only have a jointly presented opinion to question at the hearing. The differences between the experts may also prove to be irreconcilable and it is on such an occasion that an input from a neutral expert engaged by the panel itself may be most useful in identifying clearly the nature of the differences and providing further input.

. *Often, totally incorrect or even ridiculous concerns are aired at hearings and left unchallenged. Cross-examination would resolve this, but a better approach would be to ensure the panel's experts are at the hearing and able to identify such matters to the panel. . . .*

Wilson Eedy
Beak Consultants, Toronto

the basic format for panel review has seemed to me to be' satisfactory. However, . . . the remaining problems at the procedural level have to *do with the general reluctance of panel members to play hardball with proponents and intervenors alike, under even the existing rules. That is, questioning is soft, obvious problem areas are not pursued, important questions are not addressed (or even referred to) in final panel reports, etc., seemingly for fear of offending anyone. In my opinion, therefore, we have not really tested the limits of the present public meeting process.*

Some have argued that to improve on this situation, panel chairmen require the powers of a Commissioner of Enquiry. However, I am not convinced that enabling our present lay panels to operate under formal procedural rules would necessarily improve anything. What is required is an attitudinal change among panel members that will enable EARP to become the strong environmental advocate it was originally touted to be, and a *general sense that EARP is taken seriously at the political level.*

William E. Rees
University of British Columbia
Vancouver

The existing process allows the submission into evidence of more information of a *hearsay, argumentative or repetitive nature than do more legalistic procedures. In some instances which have come to my attention, participants presented poetry, songs and even skits which appeared to have little factual content, but which may have been desirable in order to obtain an expression of community sentiment.*

Egon Frech
AECL. Pinawa

. . . past experience has revealed that expert participants are indeed available in adequate, and at times, surplus numbers. Difficulties have, however, arisen when expert participants have been present but not utilized, . . . Scheduling and procedures which fully utilize the expertise present, and the freedom to retain experts with the most relevant expertise, are considered essential to support the inquiries undertaken by a Panel.

E. H. Gaudet
Chevron Canada Resources Ltd.
Calgary

The present method of permitting the general public to have its say *certainly is fair and should be maintained. All proceedings should continue to be informal except I would strongly recommend that all concerned who are to present views,* etc., *should be sworn in so that all are aware that any evidence given is given under oath. This would, I believe, eliminate those people who only wish to make noise and hear themselves talk for whatever reason.*

J. Fox
C.P. Rail, Calgary

. . . I don't believe that scientific information is presented as well as it might be, either to the panels or to the participants in hearings. If a panel includes one or more scientists, then the problem is not too serious from the point of view of the panel. However, it is important that all the participants and the public should also feel confident that the scientific evidence has been presented fairly.

P.A. Larkin
University of British Columbia
Vancouver

The public is very impressed by the arrival of those important delegations from Ottawa that come to listen. . . . however, it unfortunately discovers that these delegations talk much more than they listen. Insofar as public consultations are concerned, one should not formalize the procedure any more than it is. . . . instead, an effort should be made to simplify the contact with the public.

René Parenteau
University of Montreal

Any changes to the present structure must not serve to eliminate the informality which encourages the participation from the general public. Public hearings must not deviate from the objectives that all individuals should feel comfortable in presenting their ideas. If a formal adversarial structure was adopted, we fear that the ad hoc presentation without the need of a formal brief would be lost.

Louis Lapierre
Environmental Council of New Brunswick

It was suggested that these difficulties can partly be overcome by separating the "public" and "technical" sessions. Some submittors even advocated the use of different procedures for the two types of sessions (informal for public sessions and more judicial for the technical sessions). Most submittors agreed, however, that this separation would not be appropriate. It would give the impression that there were two separate aspects to the hearing when there should not be. The views and concerns of the public are not separate from the scientific and technical concerns the panel hears: rather they are inherently interconnected. Local values and concerns can seriously affect what issues are significant and why they are significant. Thus the nature of panel questioning should be shaped by public input on scientific and technical matters. Moreover, local people can often contribute useful knowledge and expertise regarding their surroundings. For these reasons the full separation of public and technical sessions is inappropriate.

What is more feasible however, is a partial separation, as is frequently practiced, into community sessions, especially in smaller centres closer to the proposed development, and technical sessions, often in larger cities. While both technical and general issues are raised at both types of hearings, and while the formal procedures in place are the same in both, in fact panels do operate somewhat differently. In community sessions considerable leeway is afforded local participants in order to encourage them to express their views and concerns. In technical sessions more extensive questioning of technical experts by other technical experts takes place, while still providing suitable encouragement for others. These mechanisms can partly address some of the concerns raised but care must be taken to explain the nature of the various hearing sessions, for example, through the detailed procedures developed by the panel for the particular review. Also, it should be understood by all participants (especially the technical experts) that the hearings are public hearings and that all presentations should be made as comprehensible as possible (e.g., elimination of unnecessary jargon, clear explanation of difficult concepts). The Study Group agrees fully with this partial separation of roles in different hearing sessions but notes that its implementation puts a considerable responsibility on panel members, especially on the panel chairperson and secretariat to make clear the nature of the various sessions.

4.3.2.2 **Questioning Participants**

All participants, and in particular members of the public, are to be regarded very highly and the procedures should be selected to encourage their participation. As observed earlier, procedures actually used at the hearings depend to a considerable degree on the panel members themselves, and to an even greater degree on the panel chairperson.

In the role of chairperson of the public hearings, the panel chairperson is obligated to control the debate in the hearings. He or she must pay attention to such matters as whether interventions or questions are outside the terms of reference, excessively long, or needlessly repetitive in nature. The treatment by the panel of such contributions will have a substantial role in contributing to the perceptions of how the public hearings operate. The Study Group feels that the panel should make every effort to accommodate all submissions and should question even those that seem to be peripheral to the mandate of the review. The submission may have been misunderstood and some polite probing can determine its real intent. Even if it is off topic, sometimes it is less time-consuming to let the participant have his or her full say and go on to the next person than to interrupt the submission. The effect of listening to him or her, on other members of the public who should be contributing, will be much more encouraging than an early exclusion of the contribution. The panel after all is obliged to consider all submissions and to give them appropriate weight. This having been said, there will be times when excluding long off-topic submissions is the only reasonable action. But such situations are rarer than one would expect.

The important feature to stress is that panel members should show respect for and interest in the submissions of all participants. Members of the public who are clearly intimidated by the process should be treated gently by the panel, but that does not mean they should not be questioned. In fact the opposite is usually true. Someone who cares enough to make a submission to the panel deserves to be listened to carefully and to have the panel discuss the matter further to clarify the points raised so that there is no chance of misunderstanding. This sort of questioning, handled sensitively where that is needed, will give the participants a confidence in the whole process.

The same principle of questioning participants by panel members should extend as well to all participants. While more care should be taken with members of the public, even government, proponent and technical experts (who are being paid for their contributions) should be shown respect and questioned. Some examples were provided by submittors to the Study Group of submissions to a

panel which were heard and ignored as if hearing them was part of a required exercise. Even where there is some explanation for the lack of questioning (such as the panel had carried out extensive questioning on the same issue at earlier meetings), the participant making the submission deserves a response from the panel. The purpose of the questioning is to discover new ideas on the issue. At the very least the participants will see that the panel is not ignoring submissions.

While lawyers cannot be banned from attending panel hearings which are public nor from participating therein, it is widely accepted that it is preferable that they should do so only as individuals addressing a problem which may affect them personally or as a spokesperson for a group that has a presentation to make. If they participate in the questioning itself however, this should not be done in a confrontational manner nor with frequent legal objections nor in accordance with the strict rules of legal procedure or laws of evidence. It will be the responsibility of the panel chairperson to control this.

4.3.3 Need for Subpoena Powers

While agreement was not unanimous as to the need for the panel to have power to issue subpoenas to witnesses who otherwise might not be available or willing to testify, the majority opinion was that having such power is desirable even though it will seldom need to be used. The mere fact of its existence adds weight to a request for appearance or production of documents by a witness who in the circumstances cannot then refuse. This has been the experience of the provincial panels most of whom have this power.

As hypothetical examples of why this may be necessary consider the case of a corporate proponent which, understandably wishes the proposal to proceed without being required to impose all of the controls which opposing participants would like, some of which may be excessively costly or which it may not consider necessary. This proponent may have “in house” studies or perhaps even expert opinions which would raise some doubt as to the environmental impact of certain aspects of the proposal which it would prefer not to have to reveal. Without subpoena powers access to such studies may be difficult.

If the participants or panel become aware that such information which may be pertinent to the review exists then it should certainly be heard. A mere request for it may be insufficient unless the reluctant proponent or witness is aware that the information can be obtained by subpoena. (More will be said later about the manner of dealing with objections that the information sought is proprietary or confidential.)

Similarly, relevant government studies that address directly or indirectly the possible environmental impact of the proposal may exist but not be made available because different ministries may have different and sometimes conflicting environmental views or not be aware of the proposal.

Some of these impacts may not even have been foreseen. Theoretically a mere request from the panel or from a participant with the approval of the panel should be sufficient to obtain the information, especially in view of section 36 of the Order-in-Council which requires that it be furnished on request. The mere possibility of subpoena if the request is not honoured will be sufficient to ensure that it will be provided, however reluctantly. It is even foreseeable that an individual public servant in one department of government may possess pertinent scientific information but management has indicated that he or she should not offer to provide this to the panel. If that person is subpoenaed however, not only will the panel have this information but the public servant will have at least some protection from subsequent criticism by management for having provided it, since he or she had no choice.

One of the main advantages of adding subpoena powers is the increased credibility which such an addition will provide for EARP. Not only will panels have better access to information they may need, but, more importantly, they will be seen to have such access.

We are strongly of the view however, that subpoenas should not be widely used as this would tend to increase the confrontational aspects of the hearing, which we believe should be avoided insofar as is possible.

Some submittors also pointed out that a witness who has been forced to testify by subpoena or threat of same may be a reluctant witness and unwilling to testify as freely as if he or she had come voluntarily. While this may well be true, and the difficulty posed by a reluctant or hostile witness is not an unknown phenomenon in the courts, there may be no alternative if he or she is unwilling to testify voluntarily, unless the panel deems this evidence or documentation to be unnecessary and not likely to be of sufficient importance to force him or her to provide it.

The Study Group concludes that the power to issue subpoenas should be available to panels. However, the issue of subpeonas must be tightly controlled and they

EARP lacks credibility because its panels do not have powers of subpoena. This inadequacy became glaring at recent EARP hearings into proposed hydrocarbon drilling off the west coast of British Columbia. Petro-Canada, the major proponent of development there, pulled out of the review process claiming that the panel's requirements for information were too onerous. Without powers of subpoena, the EARP panel could do nothing.

Donat Milortuk
Tungavik Federation of Nunavut,
Ottawa

I have no particulars to offer with respect to the question of subpoena rights or the ability to cross-examine. I am, however, IN FAVOUR of both of those privileges being held by a PANEL simply because the exercise of those privileges may be necessary to adequate protection of the public interest. What is really at issue here may be the ability of Panel members to exercise in a qualified manner a judicial instrument of last resort. In effect, those privileges should not only be held, but be qualifiedly held in order to prevent their indiscriminate use.

Daniel D. Campbell
Yarmouth Co., N.S.

There is generally good cooperation on the part of proponents to supply information when requested.

Jean-Pierre Beaumont
Association des biologistes du Quebec
Montreal

. The ability to subpoena and cross-examine witnesses has not been demonstrated to enhance the effectiveness of a public environmental review nor has the need for legislative structuring. . .

Canadian Petroleum Association
Calgary

The oath as a means of eliciting the truth in court no longer has the value that it had in the more religious society of fifty to one hundred years ago. Its value is disputed even in legal circles. In EARP hearings on uranium and nuclear projects, there is no evidence that the information presented under oath would be any different from what has been presented without the oath

Joe Howieson
Energy, Mines and Resources, Canada

To hear evidence under oath. The swearing in of witnesses will result in reducing the information flow. While this procedure is most effective when trying to determine degrees of culpability, it is not advisable to make use of such procedure when dealing with public opinion. Moreover, scientific data must be debated intelligently rather than to be based upon arbitraty "facts" derived from sworn testimony.

Léandre Desjardins
University of Moncton

Clearly, for fairness and legitimacy to prevail, all participants must be fully aware. Those who have a legitimate Interest at stake must be permitted to take part and must be provided with the financial ability to do so. The game must also be staged at a convenient time and place, and conducted in language(s) and terminology that all concerned can readily understand. The government, or its representatives, in the role of umpire must be seen to be unbiased Legitimacy, as well as fairness, also requires that all players have equal access to relevant information. Moreover, the latter must be technically correct. In addition, the time available for rts evaluatron must be adequate for objective appraisal.

Derrick Sewell and Harrold Foster
Delphic Consulting Ltd., Victoria

I believe that the first responsibility of Canadian organizations with an environmental agenda is to make sure that their own "client" institutions and processes, like FEAR0 and EARP, are in order, are rigorous and can sustain themselves in the face of outside criticism. I think EARP fails that kind of test.

Don Gamble
The Rawson Academy of Aquatic
Science

The "rules of the game" must be known to all participants such that the presentation of facts and opinions, opportunities for questioning and provision of records serve the purposes of rigorous assessment and fair participation.

Friends of the Earth
Ottawa

should only be issued by the chairperson, on request of the panel or of a participant when the request has been approved by the panel, but never by either proponents or participants themselves.

If the chairperson is to be authorized to issue subpoenas he or she will require powers similar to those of Commissioners under sections 4 and 5 of Part I of the Inquiries Act (R.S.C. 1970 c. I-13) which read as follows:

> (4) The commissioners have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite, to the full investigation of the matters into which they are appointed to examine. R.S.,c. 154, s. 4.
>
> (5) The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases. R.S., c. 154, s. 5.

(A copy of Part I of the Act is annexed hereto as Appendix G.)

It should be noted that Section 4 of Part I of the Inquiries Act provide both powers of subpoena and of swearing in witnesses. The Study Group is reluctant to give the panel or even the chairperson power to swear in witnesses, however, lest it be used too frequently. This would increase the formality of the procedures, and result in an undesirable perception by public participants that the submissions of witnesses (usually technical witnesses) who may be sworn in are considered more important by the panel than those of participants who are not. Moreover, if widely used it may restrict the free expression of views by some witnesses who might otherwise participate but would be intimidated by a hearing resembling court procedure. It is not feasible however, to restrict the right to administer the oath to certain types of witnesses only. Moreover, the right granted by Order-in-Council is extended to all Commissioners (in our case they would be panel members) and not restricted to the chairperson. It is also evident that a separate Order-in-Council would have to be issued for each panel as certainly no global authority would be given to all panel chairpersons when identity would not even be known prior to these appointments. For the above reasons, we believe that a special statute would be required for FEAR0 panels rather than a new Order-in-Council under the Inquiries Act.

The Study Group has concluded that swearing in of witnesses is undesirable and even if given should not be used by the chairperson. The Study Group realizes that witnesses may appear to be hostile or withholding the truth but this situation is exceedingly rare in environmental reviews and there is little reason to believe that swearing in of witnesses will help deal with the problem. Given the various alternatives which panels have to gain information on a given topic (discussed in Sections 2.4.2, 4.2.2 and 4.3.2), the Study Group is convinced that swearing in of witnesses is not appropriate.

It may be necessary on an interim basis to proceed by the Inquiries Act Order-in-Council route in order for the panels to be given the right to issue subpoenas. In this case, panel chairpersons should understand that they should not exercise the powers of swearing in subpoenaed or other witnesses. In the longer term, subpoena powers, but not powers of swearing in witnesses should be included in EARP legislation, which we believe is desirable in any event for other reasons to which we will refer subsequently.

4.3.4 Principles of Fairness

It is not within the scope of this Study Group to decide whether the decision of the chairperson of an environmental review panel or of the panel itself to exclude certain evidence or curtail same would be subject to review by the Federal Court of Appeal under Section 28 of the Federal Court Act which reads in part as follows:

> 28. (1) Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on judicial or quasi-judicial basis, made by or in the course of proceedings before a federal board, commission or other tribunal, upon the ground that the board, commission or tribunal
>
> (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or
>
> (c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

It would be necessary to determine whether the panel recommendation (or the decision during the hearing to exclude the evidence in question if the application to

review is made before the hearing concludes) is "of an administrative nature not required by law to be made on a judicial or quasi-judicial basis". The panel's recommendation is not a "decision or order" but the refusal to hear the submission may be a "decision". The panel may well be a "federal board, commission or other tribunal". On the other hand it does not make any final decision so that the Court would be reluctant to intervene.

The duty of fairness has been extended considerably by the Supreme Court in the Nicholson and Martineau cases and by the Federal Court of Appeal in the Inuit Tapirisat case. The tendency is certainly in that direction. There is therefore a great danger that the proceedings of a panel might be halted by a time-consuming application to review if the chairperson does not exercise discretion in what can clearly be seen to be a fair manner. The transcript presented to the Court of Appeal must indicate that the chairperson was fair. The very possibility of fairness not being perceived by the party challenging it indicates that the chairperson should lean over backwards to ensure a full and complete hearing for everyone, while at the same time maintaining control of the proceedings and not allowing them to continue interminably with irrelevant or repetitious statements. The chairperson is clearly in a difficult position which requires good judgement, open-mindeness, and courteous attention to all participants.

Three matters were raised by submittors to the Study Group which related to the principles of fairness. Several submittors urged earlier submission of documents so that they could be made available to participants in a timely manner. However, this was not intended as an absolute requirement which could have the unintended effect of eliminating many public contributions. This principle (the early submission of documents) is already a part of the EARP hearing procedures and it should be encouraged wherever possible. But as long as all submissions are ultimately well considered and suitably questioned, the Study Group sees no need to alter the procedures. The other two matters raised by submittors are more serious indeed. It was suggested that panels could benefit substantially from the ability to meet privately with certain groups of participants (the proponent, or government agencies or technical experts on a certain subject). It was also observed that panels had received submissions after completion of the public hearings. These two practices appear to violate the principle of fairness as participants do not have an opportunity to question the material discussed in the private meeting or received after the hearings. Whether the panel should receive any information (such as proprietary data, for example) at a closed session is a very difficult matter. There may be objections to revealing some information as being proprietary or confidential. In this event the panel will have to deal with the issue. Whether the panel should receive any such information at closed sessions without this information forming part of the record or being disclosed to opposing participants or the public, and whether the panel can take it into account in rendering its recommendations, if it cannot be disclosed, are difficult issues. Such situations are unusual but if such an eventuality occurs the panel must have immediate access to legal advice. To provide for this contingency section 29 of the Order-in-Council which requires that all information submitted to a panel shall become public information would require amendment.

The receipt of submissions after completion of the hearings violates the principles of fairness as participants do not have an opportunity to question the material received. The Study Group feels that informal procedures must not become unfair procedures and suggests that post hearing submissions should not be allowed.

4.3.5 Flexibility in Procedures

It is not possible for all public hearings to operate according to a single fixed set of procedures. Within a given review flexibility is required to deal with different hearing locations (e.g., size and type of meeting room available), different people involved (e.g., rural public vs mainly government experts) or, most importantly, the purpose of the particular meeting (e.g., information session, guidelines meeting or proposal review session). It is also necessary to have some flexibility to adjust the detailed procedures from review to review. This may simply reflect the fact that a review dealing with nuclear issues in Southern Ontario will be very different from one dealing with offshore drilling in the Beaufort Sea. It is also worth noting that the hearing procedures have evolved over time so that flexibility is required to allow improvements to creep into the procedures. Examples of this are guideline hearings or scoping sessions which were not used regularly in the 1970s but are now a part of most reviews. As many submittors indicated, further improvements in scoping are required and this is likely to result in more changes. Similarly if improved mediation techniques were adopted by public reviews (another feature suggested by submittors to the Study Group), then the hearing procedures could continue to evolve over time. While these public hearing require-

ments do not preclude the need for hearing procedures, they do indicate a strong need for flexibility in those procedures.

Particular attention might be paid for example to using even less formal meetings at some sessions of some reviews. The preservation of informality in the hearings is not merely a matter of how and by whom participants are questioned. Several of the submissions heard pointed out that the very setup and the physical arrangements of the hearing room can be very intimidating to persons not accustomed to the procedures used. In particular, experience has shown that in dealing with native groups in the north, it is first necessary for the panel to gain their confidence, following which they may have some very valid information to present but in a social or very informal setting.

It is intimidating to participants when the panel sits on a dais, the proponent and its witnesses sit on one side of the room, and other participants on another; and anyone who wishes to speak must step up to a microphone. If the participation in a hearing is small it may be preferable to hold it in the nature of a round table discussion with the proponent's representatives and other participants mixed in with each other rather than in a hall with participants of each group sitting on opposite sides. Sensitive microphones can be distributed so that even in a relatively large hall those desiring to speak will be heard without having to step up to a microphone or have a microphone held in front of them. Such matters obviously cannot be dealt with by hard and fast rules but it is clearly the responsibility of the chairperson to maintain an atmosphere in which participants feel comfortable and free to express their concerns openly and which is conducive to a full and productive exchange of information and ideas rather than confrontation.

The requirement of flexibility, as well as those implied earlier in Subsection 4.3.2 are all intended to maximize the extent to which the public hearings meet the purpose intended for them. In the view of the Study Group, the needed flexibility exists in the present procedures. The panels have the ability to adjust the hearings from review to review and also from meeting to meeting within each review. But these adjustments and the reasons for them must be spelled out clearly by the panels so that participants know well in advance what to expect at each meeting.

The Study Group would like to suggest that FEAR0 monitor, evaluate and document the public hearing procedures used for each review. This could lead to better procedures through a more formal effort at learning by doing.

4.3.6 Selection of Panel Members

Many submittors to the Study Group observed that the selection of the panel members is one of the most important steps in the public review. Panel members must have a number of very different qualities. They must be unbiased with respect to the proposal being reviewed and yet collectively have special expertise related to the proposal; they must be able to function effectively as members of an interdisciplinary panel; they must understand and respect the purpose of the review process generally and the hearing process specifically; and they must be able to get the necessary information from the public hearings. The government and the public have the right to expect from panel members their availability, their rigour, their attention and their respect. These requirements are quite demanding and yet substantial failure to meet them will reflect badly on the panel, on FEAR0 and on EARP.

It should be noted that the chairperson of the panel, in addition to having all of the responsibilities of other panel members, must also ensure (with the help of the executive secretary) that the entire review proceeds satisfactorily and, of more importance here, must also chair the public hearing sessions. This means that the requirements of a panel chairperson are substantially greater and that this individual must be a wise person among wise persons.

There is an important principle that has developed in EARP, that the panel shall conduct an independent review. For this reason, FEAR0 itself must be seen to be independent of the rest of the federal government and, even more important, the panel must be seen to be independent. This independence is most readily handled by using a FEAR0 staff member as panel chairman and all other panel members being ad hoc members retained for a particular review (from outside the federal public service). This leads to an independent panel which is seen to be independent. The Study Group did not hear any substantial criticism of panel independence.

However, the selection of panel members for their relevant knowledge and experience with respect to the proposal being reviewed does not by itself ensure that they can work effectively as members of interdisciplinary panels or function well at public hearings. These latter abilities can be developed with experience on panels.

The procedures must be suffiently flexible to accommodate the character of the community, the community reaction to the proposed project, and the nature of the proposal. Whatever procedure is selected, it must not intimidate or require the presence of legal assistance. If the potential participants feel they will be uncomfortable, they will probably refuse to participate. The procedures must be sensitive to the needs of the participants.

W. A. Coulter
Halifax, N.S.

It would be preferable to retain ample opportunity for panels to innovate, particularly when taking into account the variety *of projects referred to public review, and the differences between the various regions of the country and their populations.*

René Parenteau
University of Montreal

Flexibility is an important feature for a federal environmental assessment process which hopes to succeed and *have credibility in a wide variety of contexts and different jurisdictions.*

Brian Ward
Ontario Environment
Toronto

The biggest challenge posed to the current EARP process may we// be the extent to which a single set of procedures can be used throughout the length and breadth of the country. . . .

John Merrit
Canadian Arctic Resources Committee
Ottawa

Finally, the current approach of selecting panel members on a case-by-case basis (rather than a fixed Board) is a good one. Clearly each has strengths and weaknesses, but I would opt for the more flexible approach. It allows the Minister to appoint people to the panel who bring a mixture of experiences including local respect and knowledge, technical expertise concerning the proposed project, legal skill and broad environmental understanding. Quasi-judicial boards simply do not have the "bench strength" to provide thrs perspective for the different hearings.

Paul H. Rennick
Consultant, Burlington

In essence, many of these problems are partially solved if the panel members are well-chosen and ready to work. However, the motivation and integrity of panel members is not always obvious in advance of appointment, adding a *stochastic element to the quality of the final report. On balance, I believe it should be possible to tighten up the integral panel procedures, and to undertake some form of panel member "training" to create, in effect, a performance standard for the individual panelist.*

Stephan Fuller
Government of Yukon, Whitehorse

The legal right to cross-examine can be used to intimidate witnesses and delay decisions. On the other hand, rigid *processes can exclude the consideration of very important issues. This is a case where the skills and awareness of panel members might be more important than the specific processes.*

Dixon Thompson
The University of Calgary

At the end, it is the quality of the competence of those appointed to panels that will determine the success and credibility of those panels with the local and national public.

Fred de Vos and associates
Ottawa

The composition of the panel should reflect the scientific and social nature of the subject before the panel. This would not exclude lawyers from membership. . .

W. D. Smythe
Atomic Energy Control Board

Thus, to some extent the desire to improve the way panel members conduct public hearings would suggest more permanent members and fewer ad hoc members. Unfortunately, that would conflict with the principle of panel independence through the use of ad hoc members

The present approach of FEAR0 is to use the panel chairperson and the executive secretary to the panel (also from FEARO) to provide the continuity and the prior experience with panel reviews. In addition, briefings for panel members are being developed and tried in order to educate the ad hoc members about the review process and the public hearings. The Study Group finds this to be satisfactory.

The Study Group heard a number of comments about panel selection. The main concern was that panels must have relevant expertise to permit them to participate in questioning and to extract the needed information. A second concern was that panel members must understand the purpose of public hearings and to be able to function effectively there. The balance between permanent members and ad hoc members was also mentioned.

The Study Group supports strongly the need for relevant expertise on panels. It also observes that this includes not just scientific and technical knowledge, but some regional experience and an appreciation of local people and their concerns. Neither the proponent nor special interest groups should have the right to a representative on a panel. In addition the Study Group would like to see a better education and training of ad hoc panel members regarding the purposes, ethical principles and procedures of public hearings. If this training proves to be less effective than it should be (i.e., if new panel members prove to be less capable than is desirable at public hearings), then consideration should be given to increasing the number of permanent panel members.

4.4 VIEWS OF CONTRIBUTORS

The views of the contributors, to the extent that they reflect the views of participants in EARP reviews, are an important indicator of how successful various procedures might be. For this reason it is worthwhile to disaggregate the contributors into those who might play the role of proponents, government agencies, public and technical experts. The views they presented may be summarized as follows.

4.4.1 Proponents

Proponents generally supported an informal non-confrontational approach to public hearings. They wished to work with public participants to get their proposals approved. It was also indicated by proponents that they were quite capable of managing their affairs in a more judicial review but were less sure Of how the public would respond. While the financial costs to proponents would be greater for a more judicial review, this was not a major reason for preferring the informal review. Of more concern were the greater costs which would accrue to proponents from having to deal with the public after a more confrontational hearing had taken place.

In addition, some proponents expressed a desire for tighter controls to be placed on the public at hearings.

4.4.2 Government Agencies

Federal agencies indicated generally quite strong support for the informal process which those who have participated in EARP have come to understand. There was also some concern for the extra costs of more judicial reviews. Provincial agencies were split with Ontario and Alberta (Alberta Environment and the Alberta Energy Resources Conservation Board) promoting quasi-judicial processes (used in those provinces) while Quebec, British Columbia, Manitoba, Alberta (The Environment Council of Alberta) and Nova Scotia supported informal procedures.

4.4.3 Public

The public submittors were seriously split on the preferred type of public hearings. Sophisticated interest groups from Ontario or Alberta plus some academics and a Nova Scotia group favoured increasing judicial rigour. Most others favoured very informal procedures.

4.4.4 Technical Experts

Some technical experts felt that good professionals would be able to handle themselves in any type of public hearings. But there was quite strong support for informal processes in which information would be exchanged most productively and most completely.

4.5 SUMMARY

In this chapter the quasi-judicial procedural model for public hearings has been rejected in favour of the informal model. The quasi-judicial model was not adopted because of its poor match with the purposes of public hearings for environmental reviews. A number of

improvements to the existing informal procedures used in EARP have been suggested, the most important of which relate to questioning of participants.

In terms of attracting the public, some jurisdictions using quasi-judicial procedures have shown great flexibility in accommodating public participants. But the excessively long and legalistic procedures employed provide a disincentive for the more active participation of much of the public which the Study Group holds out as a goal for the process.

It must also be pointed out that, where these quasi-judicial procedures are employed, there are strong, well funded and assertive (some would say aggressive) environmental and other interest groups which are capable of participating effectively. This means that the public hearings in those jurisdictions do work reasonably effectively although the Study Group still feels the public participation at those hearings is quite incomplete.

Such active well funded groups are not found throughout Canada. In some parts of Canada the absence of such strong local groups would be a very serious impediment to the effective operation of hearings using quasi-judicial procedures.

One technique frequently used to promote public participation in quasi-judicial hearings is intervenor funding. This is often available to cover some or all expenses in many of the examples encountered by the Study Group. As indicated in the following chapter, this practice. is felt to be essential generally. It is even more essential and much more expensive for more judicial procedures.

In addition to creating barriers to effective public participation, the Study Group is convinced that the benefits provided by quasi-judicial hearing procedures are more than offset by reduced exchange of information at the hearings. As noted elsewhere, informal but extensive and well considered questioning is every bit as effective at getting the necessary information to the panel.

Those involved in environmental assessment processes using quasi-judicial hearing procedures appreciate many of these difficulties and seem to have responded by shifting as many as possible of the exchanges between participants away from the hearings, typically to an earlier stage in the review in order to reduce the considerable expense and difficulties at the hearing.

It is the Study Group's view that a more careful selection of informal hearing procedures would improve the operation of the hearings without incurring the disadvantages of the quasi-judicial review. The public hearings associated with environmental reviews-are not the same as those associated with administrative tribunals and the procedures should respond to the goals of the hearings identified earlier. It is not appropriate to use existing procedures which do not quite fit the goals of the hearing just because the existing procedures have been around for a long time, people have experience with them, and they are well understood.

5. INTERVENOR FUNDING

Although "intervenor" is a term commonly used, we have avoided it, preferring the term "participant". There is near unamimous agreement that, in order to assist in balancing the hearings fairly, some form of funding must be provided for participants. However, intervenor funding, unless it involves unrealistically large sums of money, will only contribute modestly to the goal of reducing inequality. Frequently proponents who are not lacking in funds have many volumes of highly technical evidence to present whereas opposing participants, lacking such funds, cannot have studies made or even retain experts who may have differing scientific views to present.

Moreover, even more important is the provision of funds to serious participants for activities relating to the process such as travel, accommodation, purchase of materials, duplication, postage and telephone expenses.

While there was agreement among submittors on the necessity of funding to promote fairness, timing, choice of intervenors to receive it, source and distribution of it present serious problems.

In terms of the timing of intervenor funding, it is generally appropriate to provide funds for participation in the scoping sessions. Funding for participation in the proposal review hearings must be made available early enough to allow the groups sufficient time to organize themselves, prepare submissions and, where appropriate, to undertake necessary investigations.

The question of who is to receive the funds also raises problems. Obviously they cannot be provided for every would-be participant; moreover, at the scoping stage many serious participants may not have yet indicated that they will wish to make submissions. They should be encouraged to form groups having a common interest, with the funds being provided for the groups. However not all participants have the same common interest and situations have arisen where some participants would wish to see the proposal proceed and are supportive of it and others are strongly opposed. It is always desirable for the panel to hear as many different views as possible.

There is also an issue as to who should provide these funds. Some submissions were received, to the effect that corporations should provide for intervenor funding a proportion of the amount of money they themselves have expended in developing the proposal for presentation, and to build this into their estimated costs for the project. Another viewpoint expressed is that since the primary purpose of environmental reviews is to protect the public interest it should be the responsibility of government itself to see that adequate funds are provided to enable the public interest groups to present their side of the case. Thus it was argued that the State has the responsibility to promote an equal and fair hearing.

The source of the funding must be distinguished from the allocation and administration of it. The Study Group concludes that the Government has responsibility for assuring the availability of funding and for overseeing the allocation of it. Whatever the source of the funds may be, the proponent must not have any control over their allocation.

If the panel itself were to decide on the allocating of funds, there could be a distortion of the public hearings submissions made by affected participants, both before and after the funding decision is made. Before the decision an applicant might try to provide what he or she thinks the panel wants in order to increase its chances of receiving funding; after the decision an unsuccessful applicant might focus his or her submission toward the funding decision rather than toward the proposal. Also it is important that the panel should have nothing to do with the distribution of funds lest a participant whose application has been rejected will feel that the panel is prejudiced. For these reasons the Study Group feels the panel should not have the responsibility for allocating the funds. For the same reason, FEAR0 itself should not be solely responsible although this is less crucial than the case made for the panel which is independent of FEARO.

In one case, dealing with funding of participants in the review of military flying activities in Labrador and Quebec, a special Funding Administration Committee was established to set funding eligibility criteria for public funding and to distribute the funds. This practice might well be adapted for funding in general. Whether such a committee should be given a permanent status so as to develop an expertise in this difficult area may be worth considering. Undoubtedly FEAR0 will have a role in such a committee. Every committee or commission has to be appointed by someone in government especially if it is the government which is providing the funds for distribution, but it is desirable that the Administration Committee distributing the funds be seen to be independent of the proponent, the initiating department and the panel.

To facilitate appropriate participation at formal hearings, intervenor funding should be made available to the public.

Jim Vollmershausen
Environment Canada, Halifax

Funding should be provided to intervenors — rules which are simple, few, well publicized and fair cannot overcome wide disparities in resources.

Friends of the Earth
Ottawa

We would like to see a specific budget set aside in order to help non-government organizations and individuals in the preparation of their brief. As we are well aware, the information required for formal briefs can demand many hours of work and often require expertise which is not available to non-government and private organizations.

Louis Lapierre
Environmental Council of New Brunswick

There should be a requirement for intervenors to justify their *participation. Those rmposrng costs on the proponent and on the hearing process should have a demonstrable, direct stake in the outcome*

Eldorado Resources Ltd.
Ottawa

. Probably the number one deficiency in public participation processes is the lack of resources available to citizen advocacy groups.

Walter *Robbins*
Concerned Citizens of Manitoba Inc.
Winnipeg

Intervenor funding should be available for all *public reviews; its availability should be widely publicized, with an impartial committee establishing the criteria for eligibility and the allocation of funds. Money should be made available as* early as *possible in the review process, in an amount proportional to the total cost of the proposed development. Intervenor* funding facilitates an effective public *input* and *assists in educating community groups. It is particularly important in a province where there is no regional government and where municipal/ties and community groups have only limited, often over-extended, research and planning staff.*

Penelope Rowe
Community Services Council
St. John's

Among the criteria established by the said Funding Committee were that the applicant must clearly demonstrate an interest in the physical, social or economic effects of the project, and that a separate representation of that interest would substantially contribute to the Environmental Assessment Panel's investigation. The applicant must also prepare a clearly delineated plan of activities for which the funds are being sought, which must be consistent with the terms of reference for the review and would not duplicate detailed studies to be carried out as part of the preparation of the environmental impact statement or which have been presented elsewhere by the applicant or others. Other sources of funds of the applicants must be considered and priority be given to organizations or communities directly affected by the project. The Study Group feels that this latter intention of giving priority to organizations or committees directly affected should not be interpreted so as to restrict any grants to other organizations or communities. Save for this, the Study Group finds that these criteria are reasonable guidelines to apply.

6.0 RESIDUAL ISSUES

6.1 LEGISLATING EARP

There were many different reasons why the Study Group has chosen to recommend that EARP be legislated. These include the implementation of changes to the process, the importance of the environmental assessment reviews being seen to be independent, concerns about the legal authority to include socio-economic concerns in EIA, and, most importantly, enhancing the credibility of EARP.

As noted throughout this report, the Study Group has recommended a number of changes to EARP. While some of these could be made without legislation, through changes in FEAR0 policies or through changes to the Order-in-Council for example, the subpoena powers identified in Section 4.3.3 would require legislation in order to be properly implemented.

The important principle of carrying out environmental reviews in a way that is independent of both the proponent and the government implies that FEAR0 should be perceived by the public to be at arms length from the Department of the Environment (and from other government departments). For this reason it would be desirable that FEAR0 become a separate independent entity to administer the Process. We suggest that FEAR0 not be linked in any manner to the Department of the Environment but report to Parliament through the Minister of the Environment. This would require legislation.

One question raised before the Study Group related to the legislative authority to include in environmental reviews any consideration of social or economic impacts. The question arises because the authority for environmental impact assessment is the Government Organization Act, 1979, SC. 1978-79, c. 13, s. 14, which addresses only “the natural environment”. Because it is recognized by most submittors and by the Study Group that socio-economic concerns are an essential part of environmental impact assessment, the Study Group feels that EARP legislation which includes the need for dealing with socio-economic issues (as does the Order-in-Council) would resolve the question of legislative authority.

The credibility of EARP was raised as an issue by many submittors to the Study Group in a variety of ways. These included questioning the commitment of the government to a process it would not legislate and questioning the application of or commitment to the Process by individual government agencies. Basically, there is no legal obligation to implement EARP at present. The process exists only through the Order-in-Council; essentially it is the policy of the government but because the implementation is by Cabinet decision, many people fear that the process is vulnerable. Moreover, it was argued that some government agencies treat the Process less seriously because it is based only on an Order-in-Council and not on legislation. It is clear to the Study Group that legislating EARP will lead to more confidence in the Process and will lead people to treat with greater respect the federal government’s commitment to environmental impact assessment.

6.2 INITIAL ASSESSMENT CONCERNS

Many submittors to the Study Group raised concerns about the initial assessment phase of EARP. The main problem raised by members of the public was that the implementation of this phase of the process was poor. Sometimes there was no environmental screening at all of proposals. In other cases the environmental screening was not rigourous enough; proposals which should have been referred for a public review were not. In other cases a lack of opportunity for public involvement led to inappropriate decisions; this is especially a problem as public concern with a proposal is one indication that a referral is in order.

While initial assessment concerns are not within the mandate of the Study Group, these problems are clearly undermining the credibility of EARP and FEAR0 should investigate ways of improving the implementation of this phase of the process. It seems clear to the Study Group that legislating the process will contribute to that end.

Another concern mentioned by some submittors (generally representing government or industry) was the importance of continuity between the initial assessment phase and the public review phase. It was argued that work undertaken by the proponent or the initiating department during the initial assessment phase should be used as a part of the basis for the public review. The Study Group is convinced that this is now being handled fairly well and that when higher quality work is done in the initial assessment phase, panels and panel secretariats will make better use of it.

6.3 IMPLEMENTATION OF PANEL RECOMMENDATIONS

Submittors complained that there is no sufficiently formal follow-up procedure to ensure, for example, that conditions imposed on a proponent are in fact carried

As a result of studies I have conducted on the procedure used under the federal process, I do not believe that it needs to be made more formal. Its informal nature is a great advantage. The main problem. however, is the need to clearly identify FEAR0 and the panels within the process itself, to establish c/ear/y their roles to better distinguish them from proponent departments and furthermore to ensure they have a certain influence on decisions being made.

René Parenteau
University of Montreal

. one frequently hears the call that EARP be legislated. .. Sometimes the speaker means that FEAR0 should be given the formal protection of the law, so that the existence of the office is not merely at the whim of Cabinet. Others advocate that the EAR Process itself should be legislated. . . . In my view, the latter two questions are rather more important than the one the Study Group seems to be addressing. . . .

William E. Rees
University of British Columbia
Vancouver

The most obvious weakness of this process is its "optional" nature. The discretionary decision-making power on the part of "initiators" as to the application of this process must be altered.

Walter Robbins
Concerned Citizens of Manitoba Inc.,
Winnipeg

. . Every environmental assessment of a hazardous project can fail to anticipate problems. Citizens need a built-in monitoring and compensation system as a net, should things go wrong. . . .

Sister Rosalie Bertell
International Institute of
Concern for Public Health
Toronto

The EARP mandate is too narrow, focussed mainly on natural environment matters. Inuit argue that EARP's mandate must be broadened to include the social and economic consequences of development. In the Arctic, environmental matters are inextricably linked with social and economic matters and must be treated with equal concern. . . . leads us to conclude that EARP lacks rigour in its evaluation of information and evidence. It lacks authority to ensure its conclusions are reflected in government decisions. It fails to adequately represent our interests, placing the people most directly affected by northern development proposals in a reactive posture by awarding us intervenor rather than adjudicator status. . .

Donat Milortuk
Tungavik Federation of Nunavut,
Ottawa

. . . The current procedures give government departments a role of adjudicator and interested party, therefore resulting in a net advantage for political issues over environmental issues. . . .

Jean-Pierre Beaumont
Association des biologistes du Québec
Montréal

Some departments and Crown corporations do not refer their projects to EARP. A glance at the Bulletin of Initial Assessments under FEARO, April 1 to August 31, 1986, indicates there are 10 pages, single spaced, of projects reviewed, but a number of departments and Crown corporations are not mentioned.

Carson H. Templeton
Consultant, Victoria

Another matter of which you may be aware is the Subsidiary Agreement between Alberta and Environment Canada concerning environmental assessments of projects in Alberta having implications for both Alberta and Canada. This agreement sets out the parameters for establishing which EIA process will apply in particular instances so as to avoid duplication and confusion. We believe this agreement is illustrative of the type of federal-provincial cooperation that is possible.

Fred J. Schulte
Alberta Environment, Edmonton

out. This refers specifically to Panel recommendations that have been approved by the initiating department. In fairness it must be said some proponents have also complained that some panels have made recommendations which are impossible or impractical to carry out. Once the recommendations have been made and approved, imposing certain conditions on the proponent, it cannot be allowed of its own volition to avoid fully complying with them. The approval should be sufficiently specific to make clear what conditions recommended by the panel must be complied with. Unfortunately, the duties of the panel cease once its report is made; therefore, it must be the environmentally responsible agency that ensures subsequent follow up investigations are made at regular intervals in order that the proposal as approved is being properly implemented, without unauthorized modifications. Moreover, the Study Group feels that panels and government decision makers should pay more attention to the feasibility of implementing their recommendations.

6.4 JOINT FEDERAL-PROVINCIAL REVIEWS

Frequently, proposals may be subject both to EARP and to a provincial environmental assessment review process. In order to avoid duplication of hearings and possible conflict in the findings it is desirable to conduct joint hearings. In this situation the procedures used are modified to the mutual satisfaction of FEAR0 and the province concerned. Such joint reviews have been common and have taken place in several provinces.

In meetings with the Study Group provincial representatives indicated that they could reach agreement with FEAR0 on satisfactory procedures to be used for joint reviews. The Study Group believes that the desired result of avoiding duplication will continue to be attained by cooperation and mutually satisfactory arrangements with all the provinces.

7. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

This section presents a summary of the conclusions and recommendations reached by the Study Group.

1. The Study Group recommends that hearing procedures which are generally informal should continue to be used in EARP public reviews. Informal hearing procedures are more compatible with the purposes of the public hearings than were quasi-judicial procedures, the other basic model used for environmental public hearings in Canada. Specific conclusions in support of this recommendation are the following:
   a) informal hearing procedures are superior in terms of promoting effective public participation;
   b) informal hearing procedures permit questioning of information at least as effectively as do more judicial procedures; and
   c) any effort to apply judicial or extremely formal rules of procedure to public hearings which are consultative and not decision-making would inevitably lead to the sterilization of that mechanism.
2. A public hearing is not a privilege granted to the population, but a service requested of the public by the government to help the government make a better decision and to favor a harmonious relationship between economic development and environmental protection.
3. The purposes of public hearings are to examine environmental issues related to the proposal being reviewed and to hear from the public about these issues.
4. The Study Group recommends that the principles of ethics for public hearings as stated in Section 3.2 be adopted as the basis for public hearings in EARP.
5. Developing the terms of reference for the referral of a proposal for public review is a responsibility of the government. These terms of reference must be clear and unequivocal and must permit a useful public review to be conducted.
6. Participants at a public hearing must be fully questioned by members of the panel and by other participants in order to promote a full and dynamic exchange of ideas.
7. Subpoena powers are needed by panels in order to provide them with better access to information they may need. These subpoena powers are unlikely to be used frequently. In the Inquiries Act, these powers are combined with the powers to swear in participants which should not be given to EARP panels. The Study Group suggests that subpoena powers, but not powers to swear in participants be provided in special legislation for EARP. Until this legislation is passed, powers similar to those in the Inquiries Act can be given to panels but participants should not be sworn.
8. Principles of fairness as defined by the courts and as set out in our principles of ethics should be adopted into EARP public hearing procedures. Specific examples of this include panels not receiving any further submissions after the public hearings are concluded and not hearing submissions in private, as a general rule.
9. The public hearing procedures used should be sufficiently flexible to be adaptable to the different types of hearings and reviews generally encountered in EARP.
10. FEAR0 should monitor, evaluate and document the public hearing procedures used in each review in an effort to improve future procedures.
11. Members of environmental assessment panels must be unbiased with respect to the proposal being reviewed and yet collectively have special expertise related to the proposal; they must be able to function effectively as members of an interdisciplinary panel; they must understand and respect the purpose of the review process generally and the hearing process specifically; and they must be able to get the necessary information from the public hearings.
12. Panel members must be independent of the government and of the proponent. Neither the proponent nor any special interest group should have the right to a representative on the panel.

13. The present method of selecting the panel chairperson from FEAR0 staff and other members from outside of the public service is satisfactory. Better education and training of the ad hoc panel members is required regarding the purposes, ethical principles and procedures for public hearings.
14. Intervenor funding is extremely important and should be made available for participants in public reviews in accordance with the following principles.
    a) The government has the responsibility for assuring the availability of funding and for its allocation.
    b) Whatever the source of the funds, the proponent must not excercise any control over their allocation.
    c) Eligibility criteria for intervenor funding must be developed and made known early.
    d) A funding allocation committee independent of the panel should be established.
    e) Funding should be made available early enough to allow receiving groups sufficient time to organize themselves, prepare submissions, and, where appropriate, to undertake necessary investigations.
15. The Study Group recommends special legislation for EARP. This legislation is necessary to implement some of the changes suggested in this report, to make clear the legislative authority to do environmental impact assessments properly and to increase public credibility in the process.
16. Social and economic concerns are an essential part of environmental impact assessment.
17. Problems with the initial assessment phase of EARP are undermining the credibility of the Process. FEAR0 should investigate ways of improving the implementation of this phase of EARP.
18. Panels should pay more attention to the feasibility of implementing the recommendations which they make.
19. Government decision makers should be sufficiently specific in their approval to make clear what conditions recommended in the report must be complied with.
20. In the implementation of approved proposals, proponents must not be allowed, of their own volition, to avoid complying fully with a panel recommendation accepted by the initiating department. To avoid such problems, more attention to the implementation phase of EARP is required.
21. There appears to be no fundamental difficulties in reaching agreements on satisfactory procedures to be used for joint federal-provincial reviews.

8. CHANGES NEEDED IN LEGISLATION AND ORDER-IN-COUNCIL TO GIVE EFFECT TO RECOMMENDATIONS

The Study Group concludes that certain changes will be necessary in legislation and in the Order-in-Council if full effect is to be given to these recommendations. It is not within the scope of the mandate of the Study Group nor would it be appropriate for it to advise on the nature and wording of consequential amendments necessitated by recommendations which are accepted, as these would be matters to be dealt with by the Department of Justice. However, it is desirable for us to direct attention to certain changes which we feel would be necessary.

1. Sections 6(1)(a)(ii) of the Government Organization Act, 1979 refers to "the quality of the natural environment" and section 6(2) uses the words "environmental quality". It could appear doubtful therefore whether section 4(1)(a) of the Order-in-Council which refers to "social effects directly related to those environmental effects", section 4(2) which refers to "socio-economic effects" and also sections 19(l)(ii), 22(c), 25(l)(b) and 25(3) which make similar references, are properly authorized by the Act. Since the Study Group recommends that these matters should properly be included in an environmental review, unless specifically excluded, this should be clarified by appropriate legislation.

2. We recommend that the EARP process be legislated for the following reasons:
   (a) to enable panel chairpersons to have the power to issue subpoenas but not to swear in witnesses;
   (b) to increase public credibility in the process and in the independence of EARP;
   (c) to provide for intervenor funding which we consider extremely important; and
   (d) to provide clear authority to include socio-economic concerns.

3. The Order-in-Council presently in effect will in any event require amendment in order to be applicable to our recommendations.

   (a) No provision is made for intervenor funding. The Study Group has not examined the question of whether this would require legislation or can be done by amending the Order-in-Council but if no legislation is adopted to provide for it, then some method of providing it should be found as it is a necessity.

   (b) Section 22(c) requires that panel members have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review. While we recommend that it is desirable that a majority of panel members be so qualified, we do not conclude that this must apply to all panel members. Specifically, for example, a chairperson appointed from FEAR0 staff may have experience and ability to conduct reviews but not technical knowledge for any given review over which he or she is called to preside. Moreover, this may be in conflict with section 23 unless it is intended to make a distinction between panel "members" and a panel "chairperson" who is nevertheless a member.

   (c) If, by legislation, the panel chairperson is to be given the power to subpoena witnesses (or is given the power by Order-in-Council under the Inquiries Act) then section 27(3) of the Order-in-Council which specifically prohibits this would have to be deleted.

   (d) In our recommendations we foresee that situations may arise when proprietary or confidential information will only be disclosed to the panel subject to conditions which it imposes to enable the submittors to present it. Section 27(1) provides that all hearings shall be public hearings. Section 29 of the Order-in-Council provides that all information submitted to a panel shall be public information and the public be allowed access to it. Although the section refers to "prior to a public hearing" some clarification will be required to provide for information presented during a hearing on condition that it only be disclosed to the panel.

ENVIRONMENTAL ASSESSMENT HEARING PROCEDURES

STUDY GROUP

ALLISON A.M. WALSH

(CHAIRMAN)

WILLIAM A. ROSS

MICHEL VERGEAU

APPENDIX A

CANADA

(Extract from the Canada Gazette ***Part II, dated July 11, 1984)***

(*Extrait de la* Gazette du Canada ***Partie II, en date du I I juillet 1984)***

Registration
SOR/84-467 22 June, 1984

GOVERNMENT ORGANIZATION ACT, 1979

Environmental Assessment and Review Process Guidelines Order

P.C. 1984-2132 21 June, 1984

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to subsection **6(2)** of the Government Organization Act, **1979***, is pleased hereby to approve the annexed Guidelines respecting the implementation of the federal policy on environmental assessment and review, made by the Minister of the Environment on June 11. 1984.

GUIDELINES RESPECTING THE IMPLEMENTATION OF THE FEDERAL POLICY ON ENVIRONMENTAL ASSESSMENT AND REVIEW

Short Title

1. These Guidelines may be cited as the ***Environmental Assessment and Review Process Guidelines Order.***

Interpretation

2. In these Guidelines,

"Environmental Impact Statement*' means 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; ***(énoncé des incidences environnementales)***

* SC. 1978-79, c. 13, s. 14

Enregistrement
DORS/84-467 22 juin 1984

LOI DE 1979 SUR L'ORGANISATION DU **GOUVERNE**-MENT

Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement

C.P 1984-2132 21 juin 1984

Sur avis **conforme** du ministre de **l'Environnement** et en vertu du paragraphe **6(2)** de la **Loi** de 1979 **sur** l'organisation du **gouvernement***, il plait **à** Son Excellence le Gouverneur **général** en conseil d'approuver, **conformément à** l'annexe **ci-après,** le D&ret **sur** les lignes directrices visant la mise en **œuvre** du processus **fédéral d'évaluation** et d'examen en **matière** d'environnement pris par **le** ministre de **l'Environnement le** 11 juin 1984.

DÉCRET SUR LES LIGNES DIRECTRICES VISANT LA MISE EN **ŒUVRE** DU PROCESSUS FEDERAL **D'ÉVALUATION** ET D'EXAMEN EN **MATIÈRE** D'ENVIRONNEMENT

Titre abrégé

1. ***Décret sur les lignes directrices visant le processus d'évaiuation et d'examen en matière d'environnement.***

Définitions

2. Les definitions qui suivent s'appliquent aux priscntes lignes directrices.

«Bureau» Le Bureau **fédéral** d'examen des **évaluations environnementales** charge d'administrer **le** processus et relevant directement du Ministre. (Office)

• commissionn Commission **d'évaluation** environnementale **chargée,** en vertu de **l'article** 2 **1,** de realiser l'examen public d'une proposition. ***(Panel)***

• S.C. 1978-79, c. 13, art. 14

"department" means, subject to sections 7 and 8,

(a) any department, board or agency of the Government of Canada, and

(b) any corporation listed in Schedule D to the ***Financial Administration Act*** and any regulatory body;

(*ministère*)

"initiating department" means any department that is, on behalf of the Government of Canada, the decision making authority for a proposal; **(*ministère responsabfe)***

"Minister" means the Minister of the Environment; **(*Ministre*)**

"Office" means the Federal Environmental Assessment Review Office that is responsible directly to the Minister for the administration of the Process; (Bureau)

"Panel" means an Environmental Assessment Panel that conducts the public review of a proposal pursuant to section 21; ***(commission)***

"Process" means the Environmental Assessment and Review Process administered by the Office; **(*processus*)**

"proponent" means the organization or the initiating department intending to undertake a proposal; **(*promoteur*)**

"proposal" includes any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility. ***(proposition)***

«énoncé des **incidences environnementales»** Evaluation **détaillée** des r&percussions environnementales de toute proposition dont **les** effets **prévus** sur I'environnement sont importants, qui est **effectuée** ou fournie par **le** promoteur en **conformité avec les** directives Ctablies par une commission. ***(Environmental Impact Statement)***

- minist&em S'entend:

  a) de tout **ministère,** commission ou organisme **fédéraux,** ou

  b) dans **les** cas **indiqués,** l'une des corporations de la **Couronne nommées à** l'annexe D de la ***Loi sur l'administration financière ou*** tout organisme de **réglementation.**

  (department)

- minist&e **responsable» Ministère** qui, au nom du **gouvernement** du Canada, exerce **le** pouvoir de **décision à** I'igard d'une proposition. ***(initiating department)***

«Ministre» Le ministre de **l'Environnement.** ***(Minister)***

«processus» Le processus **d'évaluation** et d'examen en **matière** d'environnement, administri par **le** Bureau. (Process)

«promoteur» L'organisme ou **le ministère** responsable qui se propose de **réaliser** une proposition. ***(proponent)***

«proposition» S'entend en outre de toute entreprise ou **activité à l'égard** de laquelle le gouvernement du Canada **participe à** la prise de **décisions.** ***(proposal)***

Scope

3. The Process shall be a self assessment process under which the initiating department shall, as early in the planning process as possible and before irrevocable decisions are taken, ensure that the environmental implications of all proposals for which it is the decision making authority are fully considered and where the implications are significant, refer the proposal to the Minister for public review by a Panel.

4. (I) An initiating department shall include in its consideration of a proposal pursuant to section 3

(a) the potential environmental effects of the proposal and the social effects directly related to those environmental effects, including any effects that are external to Canadian territory; and

(b) the concerns of the public regarding the proposal and its potential environmental effects.

(2) Subject to the approval of the Minister and the Minister of the initiating department, consideration of a proposal may include such matters as the general &o-economic effects of the proposal and the technology assessment of and need for the proposal.

5. (1) Where a proposal is subject to environmental regulation, independently of the Process, duplication in terms of public reviews is to be avoided.

(2) For the purpose of avoiding the duplication referred to in subsection **(1),** the initiating department shall use a public review under the Process as a planning tool at the earliest stages of development of the proposal rather than as a regulatory mechanism and make the results of the public review

Portte

3. Le processus est une mtthode d'auto-&valuation **selon** laquelle **le ministère** responsable examine, **le** plus **tôt** possible au **cours** de **l'étape** de planification et avant de prendre des **décisions irrévocables, les répercussions** environnementales de toutes **les** propositions **à l'égard** desquelles **il** exerce le pouvoir de **décision.**

4.(1) Lors de I'examen d'une proposition selon **l'article** 3, **le** ministbre responsable Ctudie:

a) les effets possibles de la proposition sur I'environnement ainsi que **les** r&percussions **sociales** directement **liées à** ces effets, tant **à** I'intirieur **qu'à l'extérieur** du territoire **canadien;** et

b) les **préoccupations** du public qui **concernent** la proposition et ses effets **possibles** sur I'environnement.

(2) **Sous réserve** de I'approbation du Ministre et du ministre **chargé** du **ministère** responsable, **il doit être** tenu **compte lors** de **l'étude** d'une proposition de questions **telles** que **les** effets socio-iconomiques de la proposition, **l'évaluation** de la **technologie** relative **à** la proposition et **le caractère nécessaire** de la proposition.

5.(1) Si, **indépendamment** du processus, **le ministère responsable** soumet une proposition **à** un **règlement** sur **l'environnement, il doit veiller à** ce que **les examens** publics ne fassent pas double emploi.

(2) Pour Cviter la situation de double emploi visie au **paragraphe (1), le** ministtre responsable **doit** se **servir** du processus d'examen public comme instrument de travail au **cours** des premieres **étapes** du **développement** d'une proposition **plutôt** que comme **mécanisme réglementaire,** et rendre **les résultats**

available for use in any regulatory deliberations respecting the proposal.

Application

6. These Guidelines shall apply to any proposal

(a) that is to be undertaken directly by an initiating department;

(6) that may have an environmental effect on an area of federal responsibility;

(c) for which the Government of Canada makes a financial commitment; or

(*d*) that is located on lands, including the offshore, that are administered by the Government of Canada.

7. Where the decision making authority for a proposal is a corporation listed in Schedule D to the *Financial Administration Act,* the Process shall apply to that proposal only if

(a) it is the corporate policy of that corporation to apply the Process; and

(*b*) the application of the Process to that proposal is within the legislative authority of that corporation.

8. Where a board or an agency of the Government of Canada or a regulatory body has a regulatory function in respect of a proposal, these Guidelines shall apply to that board, agency or body only if there is no legal impediment to or duplication resulting from the application of these Guidelines.

9. (1) Where, in respect of a proposal, there are two or more initiating departments, the initiating departments shall determine which of the responsibilities, duties and functions of an initiating department under these Guidelines shall apply to each of them.

(2) Where the initiating departments cannot under subsection (1) agree to a determination, the Office shall act as an arbitrator in the making of the determination.

de I'examen public disponibles aux fins des délibérations de nature réglementaire portant sur la proposition.

Champ d'application

6. Les présentes lignes directrices s'appliquent aux propositions

a) devant être réalisées directement par un ministère responsable;

b) pouvant avoir des répercussions environnementales sur une question de compétence fédérale;

c) pour lesquelles le gouvernement du Canada s'engage financibrement; ou

d) devant être réalisées sur des terres administrées par le gouvernement du Canada, y compris la haute mer.

7. Lorsqu'une corporation nommée à l'annexe D de la *Loi sur l'administration financière* exerce le pouvoir de décision relativement à une proposition, le processus ne s'applique à la Proposition que si la corporation:

a) a comme politique générale d'appliquer le processus; et

b) est habilitée à appliquer le processus à cette proposition.

8. Lorsqu'une commission ou un organisme fédéral ou un organisme de réglementation exerce un pouvoir de réglementation à l'égard d'une proposition, les présentes lignes directrices ne s'appliquent à la commission ou à l'organisme que si aucun obstacle juridique ne l'empêche ou s'il n'en découle pas de chevauchement des responsabilitb.

9. (1) Lorsqu'il y a plus d'un ministère responsable à l'égard d'une proposition, ceux-ci décident entre eux de la répartition des fonctions et des responsabilités que les présentes lignes directrices attribuent à un ministère responsable.

(2) Lorsque les ministbres responsables visés au paragraphe (1) ne peuvent en arriver à une décision unanime, le Bureau agit à titre d'arbitre dans la prise de la decision.

INITIAL ASSESSMENT

Initiating Department

10.(1) Every initiating department shall ensure that each proposal for which it is the decision making authority shall be subject to an environmental screening or initial assessment to determine whether, and the extent to which, there may be any potentially adverse environmental effects from the proposal.

(2) Any decisions to be made as a result of the environmental screening or initial assessment referred to in subsection (1) shall be made by the initiating department and not delegated to any other body.

11. For the purposes of the environmental screening and initial assessment referred to in subsection 10(1), the initiating department shall develop, in cooperation with the Office,

(a) a list identifying the types of proposals that would not produce any adverse environmental effects and that would, as a result, be automatically excluded from the Process; and

ÉVALUATION INITIALE

Le ministère responsable

10. (1) Le ministère responsable s'assure que chaque proposition à l'égard de laquelle il exerce le pouvoir de décision est soumise à un examen préalable ou à une Cvaluation initiale, afin de dtterminer la nature et l'étendue des effets néfastes qu'elle peut avoir sur I'environnement.

(2) Les décisions qui font suite à I'examen préalable ou à l'évaluation initiale visés au paragraphe (1) sont prises par le ministère responsable et ne peuvent être déléguées à nul autre organisme.

11. Aux fins de l'examen préalable et de l'évaluation initiale vi&s au paragraphe 10(1), le ministère responsable dresse, en collaboration avec le Bureau, les listes suivantes:

a) une liste des divers types de propositions qui n'auraient aucun effet néfaste sur I'environnement et qui, par cons& quent, seraient automatiquement exclus du processus; et

(6) a list identifying the types of proposals that would produce significant adverse environmental effects and that would be automatically referred to the Minister for public review by a Panel.

12. Every initiating department shall screen or assess each proposal for which it is the decision making authority to determine if

(a) the proposal is of a type identified by the list described under paragraph 1 l(u), in which case the proposal may automatically proceed;

(6) the proposal is of a type identified by the list described under paragraph 1 l(b), in which case the proposal shall be referred to the Minister for public review by a Panel;

(c) the potentially adverse environmental effects that may be caused by the proposal are insignificant or mitigable with known technology, in which case the proposal may proceed or proceed with the mitigation, as the case may be;

(*d*) the potentially adverse environmental effects that may be caused by the proposal are unknown, in which case the proposal shall either require further study and subsequent rescreening or reassessment or be referred to the Minister for public review by a Panel;

(e) the potentially adverse environmental effects that may be caused by the proposal are significant, as determined in accordance with criteria developed by the Office in cooperation with the initiating department, in which case the proposal shall be referred to the Minister for public review by a Panel; or

(*f*) the potentially adverse environmental effects that may be caused by the proposal are unacceptable, in which case the proposal shall either be modified and subsequently rescreened or reassessed or be abandoned.

13. Notwithstanding the determination concerning a proposal made pursuant to section 12, if public concern about the proposal is such that a public review is desirable, the initiating department shall refer the proposal to the Minister for public review by a Panel.

14. Where, in any case, the initiating department determines that mitigation or compensation measures could prevent any of the potentially adverse environmental effects of a proposal from becoming significant, the initiating department shall ensure that such measures are implemented.

15. The initiating department shall ensure

(a) after a determination concerning a proposal has been made pursuant to section 12 or a referral concerning the proposal has been made pursuant to section 13, and

(*b*) before any mitigation or compensation measures are implemented pursuant to section 13,

that the public have access to the information on and the opportunity to respond to the proposal in accordance with the spirit and principles of the ***Access to Information Act.***

16. The initiating department, in consultation with the Office, shall establish written procedures to be followed in

b) une liste des divers types de propositions qui auraient des effets nefastes importants sur l'environnement et qui seraient automatiquement soumises au Ministre pour qu'un **examen** public **soit mené** par une commission.

12. Le **ministère** responsable examine ou **évalue** chaque proposition **à l'égard** de laquelle il exerce **le** pouvoir de decision, **afin** de determiner:

a) si la proposition est d'un type compris dans la liste **visée à** l'alinta 1 la), auquel cas elle est **réalisée** telle que privue;

b) la proposition est d'un type compris dans la liste **visée à l'alinéa** 1 lb), auquel cas elle est soumise au Ministre pour qu'un **examen** public **soit mené** par une commission;

c) si les effets **néfastes** que la proposition peut avoir sur l'environnement sont minimes ou peuvent Ctre **atténués** par l'application de mesures techniques connues, auquel cas la proposition est **réalisée** telle que **prévue** ou **à** l'aide de ces mesures, selon le cas;

d) si les effets **néfastes** que la proposition peut avoir sur l'environnement sont inconnus, auquel cas la proposition est soumise **à** d'autres **études** suivies d'un autre **examen** ou **évaluation** initiale, ou est soumise au Ministre pour qu'un **examen** public **soit mené** par une commission;

e) si, selon les **critères** Ctablis par le Bureau, de concert **avec** le **ministère** responsable, les effets nefastes que la proposition peut avoir sur l'environnement sont importants, auquel cas la proposition est soumise au Ministre pour qu'un **examen** public **soit mené** par une commission; ou

f) si les effets nefastes que la proposition peut avoir **sur** I'environnement sont inacceptables, auquel cas la proposition est **soit annulée, soit modifiée** et soumise **à** un nouvel **examen** ou evaluation initiale.

13. Nonobstant la determination des effets d'une proposition, faite **conformément à** l'article 12, **le ministère** responsable soumet la proposition au Ministre en vue de la tenue d'un **examen** public par une commission, chaque fois que les preoccupations du public au sujet de la proposition rendent un tel **examen** souhaitable.

14. Le **ministère** responsable voit **à** la mise en application de mesures **d'atténuation** et d'indemnisation, **s'il** est d'avis que celles-ci peuvent **empêcher** que **les** effets nefastes d'une proposition sur l'environnement prennent de l'ampleur.

15. Le **ministère** responsable **doit** s'assurer

a) **après** qu'une determination sur les effets d'une proposition a **été** faite **conformément à** I'article 12 ou aprb qu'une proposition a **été** soumise au Ministre **conformément à l'article** 13, et

b) avant la mise en application de mesures **d'atténuation** et d'indemnisation **conformément à** l'article 14,

que le public a acck **à** l'information concernant cette **proposition conformément à la *Loi sur l'accès à I'information.***

16. Le **ministère** responsable, de concert **avec** le Bureau, **établit** par Ccrit les procedures **à** suivre pour la determination des

order to make a determination under section 12 and shall provide the Office on a regular basis, with information, on its implementation of the Process with respect to the proposals for which it is the decision making authority.

17. The initiating department shall

(a) ensure that federal-provincial, territorial and international agreements reflect the principles of the Process with respect to proposals for which it is the decision making authority; and

(b) include in its program forecasts and annual estimates of the resources necessary to carry out the Process with respect to proposals.

Federal Environmental Assessment Review Office

18. It is the responsibility of the Office to

(a) provide initiating departments with procedural guidelines for the screening of proposals and to provide general assistance for the development and installation of implementation procedures;

(b) assist the initiating department in the provision of information on and the solicitation of public response to proposals early enough in the planning stage that irrevocable decisions will not be taken before public opinion is heard;

(c) publish in summary form the public information provided to the Office by an initiating department on proposals for which it is the decision making authority and for which a determination under section 12 has been made; and

(d) inform the Minister on a periodic basis, in a report to be made public, on the implementation of the Process by initiating departments.

Other Departments

19. It is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

(a) provide to the initiating department any available data, information or advice that the initiating department may request concerning

(i) any regulatory requirements related to the project, and

(ii) the environmental effects and the directly related social impact of those effects; and

(b) as appropriate, advocate the protection of the interests for which it is responsible.

Public Review

20. Where a determination concerning a proposal is made pursuant to paragraph 12(b), ***(d)*** or (e) or section 13, the initiating department shall refer the proposal to the Minister for public review.

2 1. The public review of a proposal under section 20 shall be conducted by an Environmental Assessment Panel, the members of which shall be appointed by the Minister.

effets d'une proposition selon l'article 12 et fournit régulièrement au Bureau des renseignements concernant I'application du processus aux propositions à l'égard desquelles il exerce le pouvoir de decision.

17. Le ministère responsable:

a) s'assure que les ententes des services fédéraux avec les provinces, les territoires et d'autres pays sont en accord avec les principes du processus, en ce qui concerne les propositions à l'égard desquelles il exerce le pouvoir de decision; et

b) inscrit dans ses previsions de programmes et ses budgets annuels les ressources nécessaires à I'application du processus à ces propositions.

Bureau fédéral d'examen des fvaluations environnementales

18. Il incombe au Bureau

a) d'émettre à l'intention des ministères responsables, des lignes directrices pour I'ivaluation initiale des propositions et pour aider ces ministères à instaurer des procedures d'application du processus;

b) d'aider les ministères responsables dans la prestation de renseignements et l'obtention de la reaction du public aux propositions, assez tôt au cours de l'étape de planification pour s'assurer que des decisions irrévocables ne sont pas prises avant que l'opinion du public soit entendue;

c) de publier, sous forme de résumé, I'information publique qui lui a été fournie par les ministères responsables au sujet des propositions à l'égard desquelles ces derniers exercent le pouvoir de decision et dont les effets sur I'environnement ont été determines conformément à l'article 12; et

d) d'informer le Ministre au moyen d'un rapport périodique à rendre public, au sujet de la mise en application du processus par les ministères responsables.

Autres ministères

19. II incombe à tout ministère à vocation spécialisée ou ayant des responsabilités à une proposition donnie:

a) de fournir au ministère responsable, sur demande, des données, des renseignements ou des avis concernant:

(i) les exigences réglementaires afférentes à la proposition, et

(ii) les effets de la proposition sur I'environnement ainsi que les repercussions sociales qui y sont directement liées; et

b) au besoin, de proposer des mesures de protection pour les ressources renouvelables dont il a la responsabilité.

Examens publics

20. Lorsque les effets d'une proposition ont été determines conformément aux alinéas 12*b*), ***d) ou e) ou*** à I'article 13, le ministère responsable soumet la proposition au Ministre pour examen public.

21. L'examen public visé à l'article 20 est réalisé par une commission d'bvaluation environnementale dont les membres sont nommés par le Ministre.

22. The members of a Panel shall

(a) be unbiased and free of any potential conflict of interest relative to the proposal under review;

(6) be free of any political influence; and

(c) have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review.

23. (1) The Executive Chairman of the Office or his delegate shall be the Chairman of a Panel unless, in the opinion of the Minister, the circumstances of a particular review deem it inappropriate.

(2) The Executive Chairman of the Office shall appoint the Executive Secretary of the Panel.

24. The Office shall provide a Panel with

(a) any support staff that it may require; and

(6) any logistical and administrative services that it may require for its public review and for its public information program conducted pursuant to subsection 28(1).

25. (1) The public review of a proposal shall include

(a) an examination of the environmental effects of the proposal; and

(6) an examination of the directly related social impact of those effects.

(2) The examinations under paragraphs (l)(u) and (b) shall be conducted by the same Panel.

(3) Subject to the approval of the Minister and the Minister of the initiating department, the scope of the public review of a proposal may include such matters as the general socio-economic effects of the proposal and the technology assessment of and need for the proposal.

26. (1) The Minister, after consultation with the Minister responsible for the initiating department, shall issue the terms of reference outlining the scope of the public review to be undertaken by a Panel.

(2) The Office, in consultation with the initiating department, shall draft the terms of reference referred to in subsection (I).

(3) The terms of reference for a Panel shall be made available to the public.

27. (1) All hearings of a Panel shall be public hearings conducted in a non-judicial and informal but structured manner.

(2) A Panel shall establish, in accordance with procedural guidelines issued by the Office, its own detailed operating procedures.

(3) Witnesses before a Panel may be questioned but may not be sworn or subpeonaed.

(4) A Panel may question the relevancy and content of any information submitted to it.

28. (1) Every Panel shall conduct a public information program to advise the public of its review and to ensure that the

22. Les membres d'une commission doivent:

a) faire preuve d'objectivité et ne pas être dans une situation où il y a risque de conflit d'intérêts quant à la proposition à l'étude;

b) être à l'abri de l'ingérence politique; et

c) posséder des connaissances particulières et une expérience se rapportant aux effets prévus de la proposition sur les plans technique, environnemental et social.

23. (1) Le prbident de chaque commission est le prbident exécutif du Bureau ou son délégué, à moins que le Ministre ne le juge pas indiqué en raison des circonstances d'un examen particulier.

(2) Le prbident exécutif du Bureau nomme le secrétaire exécutif de la commission.

24. Le Bureau fournit à la commission:

a) le personnel de soutien nécessaire; et

b) les services de soutien administratif et matériel dont elle a besoin pour mener son examen public et la campagne d'information visée au paragraphe 28(1).

25. (1) L'examen public d'une proposition comprend:

a) une étude des effets de la proposition sur I'environnement; et

6) une Ctude des &percussions sociales directement liées à ces effets.

(2) Les Ctudes visées aux alinéas (1)*a)* et 6) sont menées par la même commission.

(3) Sous réserve de l'approbation du Ministre et du ministre chargé du ministère responsable, I'examen public d'une proposition peut porter sur des questions telles que les effets socio-économiques de la proposition, l'évaluation de la technologie et le caractère nécessaire de la proposition.

26. (1) Le Ministre, après consultation avec le ministre chargé du ministère responsable, établit le mandat de chaque commission en précisant la portée de l'examen public qu'elle effectuera.

(2) Le Bureau rédige le mandat visé au paragraphe (1) en consultation avec le ministère responsable.

(3) Le mandat de chaque commission est rendu public.

27. (1) Les audiences d'une commission sont des audiences publiques qui sont menées de manière informelle suivant des règles déterminées mais non judiciaires.

(2) Chaque commission Ctablit une marche à suivre détaillée, conformément aux procédures générales Ctablies par le Bureau.

(3) Les participants aux audiences publiques d'une commission peuvent être interrogés mais non assermentés ni assignés à comparaitre.

(4) Une commission peut remettre en question la pertinence et le contenu des renseignements qui lui sont présentés.

28. (1) Chaque commission mène une campagne d'information pour tenir le public au courant de I'examen entrepris et

public has access to all relevant information that any member of the public may request.

(2) The public information program referred to in subsection (1) shall be in addition to any other public information program that may be conducted by a department or a proponent that is specifically relevant to the activities of that department or proponent.

29. (1) All information that is submitted to a Panel shall become public information.

(2) A Panel shall allow the public access to and sufficient time to examine and comment on the information submitted to it prior to a public hearing.

30. (1) Guidelines for the preparation of an Environmental Impact Statement may be issued by a Panel to the proponent in a public review.

(2) For the purpose of developing the guidelines referred to in subsection (I), a Panel may consult the public and any department.

3 1. (1) At the end of its review, a Panel shall

(a) prepare a report containing its conclusions and recommendations for decisions by the appropriate Ministers; and

(6) transmit the report referred to in paragraph (a) to the Minister and the Minister responsible for the initiating department.

(2) The Minister and the Minister responsible for the initiating department shall make the report available to the public.

32. Any of the requirements or procedures set out in sections 21 to 3 1 may be varied by the Office in the case of any federal-provincial review or any review that involves special circumstances.

Initiating Department

33. (1) It is the responsibility of the initiating department in a public review to

(a) ensure that the responsibilities of the proponent in the review are fulfilled;

(b) ensure that its senior officials and staff make presentations and respond to any questions for which it has responsibility;

(c) subject to subsection (2), decide, in cooperation with any other department, agency or board of the Government of Canada to whom the recommendations of a Panel are directed, the extent to which the recommendations should become a requirement of the Government of Canada prior to authorizing the commencement of a proposal;

(d) subject to subsection (2), ensure, in cooperation with other bodies concerned with the proposal, that any decisions made by the appropriate Ministers as a result of the conclusions and recommendations reached by a Panel from the public review of a proposal are incorporated into the design, construction and operation of that proposal and that suitable

s'assurer qu'il a accb à I'information pertinente qu'il peut demander.

(2) La campagne d'information visée au paragraphe (1) s'ajoute aux programmes d'information publique des ministères ou des promoteurs qui se rapportent directement à leurs activités.

29. (1) Tous les renseignements présentés à une commission sont rendus publics.

(2) La commission doit accorder au public suffisamment de temps pour lui permettre de prendre connaissance des renseignements qu'elle a reçus au sujet d'une poposition et de donner ses commentaires à ce propos.

30. (1) La commission établit à I'intention du promoteur des directives pour l'élaboration d'un énoncé des incidences environnementales.

(2) La commission peut consulter le public et les ministères pour l'élaboration des directives visées au paragraphe (1).

3 1. (1) Une fois I'examen terminé, la commission:

a) rédige un rapport contenant ses conclusions et Ies recommandations qu'elle adresse aux ministres responsables; et

6) fait parvenir le rapport visé à l'alinéa a) au Ministre et au ministre chargé du ministère responsable.

(2) Le Ministre et le ministre chargé du ministère responsable rendent public It rapport visé à l'alinéa (1)*a*).

32. Le Bureau peut modifier les exigences ou pro&lures énoncées aux articles 2 1 à 3 1, dans les cas d'examens conjoints fédéraux-provinciaux ou lorsque des circonstances spéciales l'exigent.

***Le ministère** responsable*

33. (1) Lors d'un examen public, il incombe au ministère responsa ble:

a) de s'assurer que le promoteur s'aquitte de ses responsabilitb;

b) de prendre les mesures nécessaires pour que ces hauts fonctionnaires et son personnel fassent des presentations et répondent aux questions sur les sujets relevant de sa compétence;

c) sous réserve du paragraphe (2), de décider, en collaboration avec d'autres ministères, commissions ou organismes fédéraux visés par les recommandations de la commission, de la mesure dans laquelle ces recommandations devraient devenir des exigences fédérales avant d'autoriser la misc en œuvre d'une proposition;

d) sous reserve du paragraphe (2), s'assurer, en collaboration avec d'autres organismes responsables, que les décisions prises par les ministres responsables à la lumibre des conclusions et des recommandations qu'a formulées une commission à la suite de I'examen public d'une proposition, sont pri-

implementation, inspection and environmental monitoring programs are established; and

(e) subject to subsection (2), determine in what manner the decisions made under paragraph (c) and those referred to in paragraph (*d*) are to be made public.

(2) Where the initiating department has a regulatory function in respect of the proposal under review, the responsibilities set out in paragraphs (l)(c), (*d*) and (e) shall be amended to account for and not to interfere with the decision making responsibilities of that initiating department.

ses en considération dans la conception, la réalisation et I'exploitation de cette proposition et que des programmes appropriés de mise en ceuvre, d'inspection et de surveillance environnementale sont Ctablis; et

e) sous réserve du paragraphe (2), de déterminer de quelle façon seront rendues publiques les décisions prises en vertu de l'alinéa c) et celles visées à l'alinia *d*).

(2) Lorsque le ministère responsable a un rôle de réglementation à l'égard de la proposition à l'étude, les responsabilités énoncées aux alinéas (1)*c*), *d*) et e) sont modifiées de façon à tenir compte des décisions de ce ministère et à ne pas y nuire.

Proponent

34. It is the responsibility of the proponent in a public review to

(a) prepare, in accordance with any guidelines established by the Panel pursuant to subsection 30(1), the Environmental Impact Statement and supporting documents;

(6) submit to a Panel, in such languages as are determined appropriate by the Panel, sufficient copies of the Statement and documents referred to in paragraph (a) as are required for the purposes of the public review;

(c) implement a public information program to explain the proposal under review and its potential environmental effects;

(*d*) in the event that the Panel identifies deficiencies in the Statement referred to in paragraph (a), provide sufficient copies as are required for the purposes of the public review, such additional information as may be requested by the Panel;

(e) ensure that senior officals and expert staff are present at public hearings of the Panel and that they make the appropriate presentations and respond to any questions put to them; and

(*f*) ensure that appropriate post-assessment monitoring, surveillance and reporting, as required by the initiating department, are carried out.

Le promoteur

34. Lors d'un examen public, il incombe au promoteur:

a) d'élaborer l'énoncé des incidences environnementales et de presenter les documents à l'appui, conformément aux directives Ctablies par la commission selon le paragraphe 30(1);

6) de presenter un nombre suffisant d'exemplaires de l'énoncé des incidences environnementales et des documents visés à l'alinéa a), pour l'examen public, dans les langues indiquies déterminées par la commission;

c) de mettre en ceuvre un programme d'information publique visant à expliquer la proposition à l'étude et ses effets possibles sur l'environnement;

d) dans les cas où la commission décèle des lacunes dans l'énoncé des incidences environnementales visé à l'alinéa a), fournir un nombre suffisant d'exemplaires de l'information supplémentaire, pour I'examen public;

e) s'assurer que les hauts fonctionnaires et le personnel spécialisé assistent aux audiences publiques de la commission et qu'ils fassent les présentations appropriées et répondent aux questions qui leur sont posées; et

f) de veiller à ce qu'après l'évaluation, un contrôle et une surveillance indiqub soient assures et que les rapports voulus soient présentés, comme que le demande le ministère responsable.

The Federal Environment Assessment Review Office

35. It is the responsibility of the Office in a public review

(a) to draft for consideration by the Minister, in consultation with the initiating department, the terms of reference referred to in subsection 26(1);

(6) to identify persons as potential members of a Panel and to make contractual arrangements for their services;

(c) where appropriate, to negotiate provincial or territorial participation in a public review, federal participation in a provincial review, or any other participation in any other cooperative mechanisms; and

(*d*) provide written procedures, and any other advice and assistance on procedural and policy matters, to ensure that there is procedural and policy consistency between the various public reviews by Panels.

Le Bureau fédéral d'examen des évaluations environnementales

35. Lors d'un examen public, il incombe au Bureau:

a) de rédiger, en consultation avec le ministère responsable, le mandat visé au paragraphe 26(1) pour qu'il soit soumis au Ministre pour étude;

b) de trouver les membres Cventuels d'une commission et de prendre des mesures contractuelles pour retenir leurs services;

c) au besoin, de négocier la participation provinciale ou territoriale à l'examen public, la participation fédérale à un examen provincial ou toute autre participation à des mécanismes coopératifs; et

d) de fournir un ensemble de procedures écrites ainsi que des conseils et de I'aide au sujet des questions de procedure et de politique, afin d'assurer l'uniformité sur le plan des procedures et de la politique entre les examens publics des diverses commissions.

Other Departments

36. In a public review, it is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

(a) provide to the Panel and any other participants in the public review any available data, information or advice that is requested from them;

(b) provide experts at public hearings of the Panel to make presentations or to respond to questions; and

(c) where appropriate, advocate the protection of the interests for which they have responsibility.

Autres ministères

36. **Lors d'un examen public,** il **incombe à** tout **ministère à** vocation **spécialisée** ou ayant des **responsabilités liées à** une proposition **donnée**:

a) de fournir, sur demande, des **données,** des renseignements et des conseils aux membres de la commission et aux autres participants de l'examen public;

b) **d'assurer** la **présence** de **spécialistes** lors des audiences publiques de la commission **afin** que ceux-ci fassent des **présentations** ou **répondent à** des questions; et

c) d'encourager, au besoin, la protection des **intérêts** dont il est responsable.

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

These Guidelines set out the requirements and procedures of the federal Environmental Assessment and Review Process and the responsibilities of the participants therein.

NOTE EXPLICATIVE

(La ***présente note ne fait pas partie du règlement et n'est publiée qu'à titre d'information)***

Cette **série** de directives **décrivent** les **exigences** et les **procédures** du Processus **fédéral d'évaluation** et d'examen **environnemental** ainsi que les **responsabilités** de **ceux** qui y **participent**.

Errata:

Canada Gazette Part II, Vol. 118, No. 12, June 13, 1984

SOR/84-4 14

FISHERIES ACT

Quebec Fishery Regulations. amendment, p. 2511

In the table to section 18, sub-paragraph (1)(*a*)(ii)

delete: "April to March 31"

and *substitute* therefor: "April 1 to March 31"

Canada Gazette Part II, Vol. 118, No. 14, July 11, 1984

SOR/84-467

GOVERNMENT ORGANIZATION ACT, 1979

Environmental Assessment and Review Process Guidelines Order, p. 2794

In paragraph 15(*b*)

delete: "section 13"

and *substitute* therefor: "section 14"

QUEEN'S PRINTER FOR CANADA, OTTAWA, 1984

IMPRIMEUR DE LA REINE POUR LE CANADA, OTTAWA, 1984

APPENDIX B

FEDERAL ENVIRONMENTAL ASSESSMENT AND REVIEW OFFICE

OPERATIONAL PROCEDURES AND RULES FOR THE CONDUCT OF PUBLIC MEETINGS BY ENVIRONMENTAL ASSESSMENT PANELS

Introduction

Under the federal Environmental Assessment and Review Process (EARP), federal departments and agencies are required to take environmental matters into account throughout the planning and implementation of projects, programs and activities that are

(a) initiatives undertaken directly by the federal government;

(b) proposals for which the federal government makes a financial commitment;

(c) undertakings on federally administered land, including offshore; and

(d) activities that may have an environmental effect on a matter of federal responsibility, such as national parks or international commitments.

This requirement is discharged by assessing the potential environmental effects of the proposal. If a preliminary assessment indicates that the proposal will have, or is likely to have, a significant effect on the environment and adequate mitigatory measures are not readily identifiable then the proposal must be referred, by the government agency concerned, to the Minister of the Environment (Minister) for a review by an independent Environmental Assessment Panel the members of which are appointed by that Minister. A referral to the Minister can also be made where public concern about a proposal is such that public review is desirable.

The Panel is composed of a group of persons knowledgeable in the subject matter likely to be raised before the Panel and are usually four to six in number. The persons may be federal, provincial or territorial public servants or people from the private sector. A practice has evolved that non-governmental outnumber governmental members. Prior to their appointment Panel members will be asked to make a declaration that they have no conflict of interest with their role as a Panel member and that they will not place themselves in a conflict of interest situation while serving as a Panel member. The Federal Environmental Assessment Review Office (FEARO) appoints an Executive Secretary and provides administrative support for the Panel. A Panel is customarily chaired by the Executive Chairman of FEAR0 or his delegate. The Minister shall issue terms of reference for each Panel appointed.

After completing a review of the proposal, the Panel will produce a report that outlines its conclusions and makes recommendations in accordance with its terms of reference. The report is submitted directly to the Minister and the Minister initiating the referral.

Prior to producing a report, the Panel will convene public meetings to permit an opportunity for the public to participate in the review process. The meetings will allow an opportunity to the proponent of the proposal to explain or respond to questions concerning the proposal as well as allow the public a chance to express any views about the proposal. These meetings, while structured, are informal and co-operative in nature. Each Panel decides the number, type and location of any meetings that would be appropriate to the proposal being considered. The Panel can call a general session meeting to consider views about the proposal's technical and non-technical aspects, or a special session meeting to consider a number of specific or limited issues. Therefore, a special session meeting could be a community session to allow a particular community to voice its concerns, a technical session to consider a particular aspect of the proposal in greater detail or an information session to raise issues and allow the participants to prepare for a general session meeting.

The purpose of this publication is to set out the basic core operational procedures of a Panel and the rules to be applied during public meetings which a Panel may expand upon for the purpose of establishing its own operating procedures. These procedures and rules are for general application and, depending on the complexity and nature of a specific review, the Panel concerned retains the option, in consultation with the Executive Chairman of FEARO, of adopting other measures that are appropriate to the circumstances. It is recognized that FEAR0 may be obliged to alter for specific instances any of these procedures

and rules in order to secure agreement with a province on a joint federal/provincial review or as a result of special conditions identified in a Panel's terms of reference.

Where a government agency refers a proposal to the Minister, the Minister, as soon as practical, shall make a public announcement or announcements about the referral. The announcement or announcements shall indicate that a referral has been received and shall identify:

(a) the proposal;

(b) the terms of reference for the review that the Panel will conduct; and

(c) the composition of the Panel.

CORE PROCEDURES AND RULES FOR PUBLIC MEETINGS CONDUCTED BY ENVIRONMENT ASSESSMENT PANELS

Short Title

1. These rules and procedures may be cited as the

Environment Assessment Panel Procedures and Rules.

Interpreta tion

2. In these procedures and rules,

"Chairman" means the chairman of the Panel;

"distribution" means distribution of material pertaining to a proposal to interested persons;

"EIS" means an environmental impact statement that 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 information requirements established by a Panel;

"general session meeting" means a meeting held to consider views about the technical and non-technical aspects of a proposal;

"Guidelines" means the *Environmental Assessment and Review Process Guidelines Order* (P.C. 1984-*2 132);*

"Minister" means the Minister of the Environment;

"Panel" means an Environmental Assessment Panel established by the Minister;

"proposal" includes an initiative undertaking or activity that has been referred to the Minister for public review in accordance with section 21 of the Guidelines;

"proponent" means the government agency involved or a private sector entrepreneur where such entrepreneur is making use of federal property or is receiving federal funding and includes any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility;

"public meeting" includes hearing, as referred to in the Guidelines;

"recommendation" means a recommendation made by the Panel to the Minister;

"special session public meeting" means a public meeting held to consider any specific or limited issues or objectives pertaining to any project including a community session to allow a particular community to voice its concerns, a technical session to consider a particular aspect of the proposal in greater detail or an information session to raise issues and allow the participants to prepare for a general session meeting.

PART I

OPERATIONAL PROCEDURES

3. As soon as possible after its appointment, a Panel shall

(a) establish and publish procedures for its review in accordance with the terms of reference announced by the Minister; and

(b) identify and publish its information requirements necessary for the conduct of the review.

4. The EIS will be prepared by the proponent of the proposal in response to the information requirements.

5. On receipt of a sufficient number of copies of the EIS from a proponent, the Panel will ensure its distribution or availability and allow a reasonable period of time for public review and comment.

6. (1) Where a Panel determines that its information requirements are not met it may request additional information from the proponent or other sources and in so doing it may request supplementary information and delay the proceedings until the requested information is received.

(2) Where a proponent referred to in subsection (1) does not submit information that is satisfactory to the Panel within a reasonable period of time, the Panel may

(a) proceed with a review using such information as it can obtain and reflect any perceived information gaps in its recommendation; or

(b) make a recommendation that the review of the proposal not be proceeded with until the requested information is received and reviewed.

7. Where an EIS has been submitted, and supplemented in accordance with section 6, and where, in the opinion of the Panel, a reasonable period of time for public review and comment has been allowed, the Panel shall proceed with its review of the proposal based upon the EIS and all other available public documents.

a. (1) A Panel may retain technical specialists to assist in the review process and shall make reports of such specialists available to the public.

(2) A Panel may, through the Executive Secretary, permit consultations between specialists retained by the Panel and participants in the review process.

9. (1) Representations concerning the review process shall be directed to the Executive Secretary.

(2) A Panel member should not communicate in private to anyone except another Panel member and staff about the substantive issues under consideration by the Panel.

(3) Submissions to the Panel should be in writing where possible.

10. (1) The Executive Secretary shall maintain a file containing all documents, correspondence and submissions respecting the proposal and the file shall be open for examination by the public at reasonable times and accordingly the Panel will not accept any confidential or restricted information.

(2) The Executive Secretary shall make copies available to anyone of material in the file and may require the payment of reasonable costs in connection with the copying.

PART II

RULES FOR PUBLIC MEETINGS

11. (1) Subject to subsection (2) the Chairman shall conduct all public meetings in accordance with these rules.

(2) Where a discrete situation requires, the Chairman may vary these rules to suit that situation and shall provide a rationale for each variation.

(3) The rules of procedures for conduct of the public meetings shall be published in advance by the Panel.

(4) The Chairman may arrange in advance of any public meeting, a pre-session conference to explain the rules of procedure for the public meetings and to finalize agendas and schedules.

12. A notice of a special session public meeting shall outline the issues to be considered at the meeting and the Chairman shall also outline the issues at the start of the meeting.

13. All public meetings respecting a proposal will be non judicial and informal but structured in nature and must be conducted in a non-confrontational manner; participants are not required to have legal counsel present.

14. In exercising control of public meetings, the Chairman may exclude interventions or questions that in the opinion of the Panel are outside the terms of reference or are needlessly repetitive in nature.

15. (1) The Executive Secretary shall ensure that sessional notices, outlining the times and location of all public meetings, respecting the proposal are reasonably publicized in such places and in such publications as he considers necessary.

(2) Anyone wishing to make a presentation to the Panel is requested to give to the Executive Secretary prior notice of that presentation.

(3) To facilitate the expeditious conduct of a public meeting, a person wishing to submit written material to the Panel in that meeting is encouraged to do so within a reasonable time prior to the meeting.

(4) Where written material is to be submitted in accordance with subsection (3), it can be given to the Executive Secretary.

(5) Where written material is submitted in accordance with this section, any oral presentation in

relation to that material should be limited to highlighting essential features of the material and responding to questions on it.

16. At the conclusion of a public meeting the Executive Secretary shall arrange for the preparation of a transcript or minutes of the proceedings and make them available to the public within a reasonable period of time and at a reasonable cost.

17. The Executive Secretary shall, where possible, accommodate requests for translation at a public meeting where reasonable notice is given and where translation is required for the proper conduct of the meeting.

18. The Chairman may permit questioning of intervenors making presentations to the Panel.

19. (1) Any person making a presentation to the Panel is encouraged to limit that presentation to a duration of fifteen minutes.

(2) Any person who wishes to use more than fifteen minutes for his presentation is requested to give prior notice of this intention to the Executive Secretary, who will forward it to the Panel for consideration.

(3) The Chairman may limit the duration of a presentation at a public meeting.

20. The Chairman may limit questioning where participants have substantially similar interests in the project.

21. The Chairman may limit the questions asked and may limit participants in presenting arguments or making submissions.

22. All questions shall be directed to the Chairman who may invite the appropriate participant to respond to the questions.

23. (1) Participants in a public review are encouraged to formulate written questions in advance of the public meetings and to submit them either through the Executive Secretary or direct to respondents with a copy to the Executive Secretary for addition to the public file maintained in accordance with section 10

(2) Where questions are submitted in accordance with subsection (1), written responses will be provided if the questions have been submitted sufficiently early to permit time for a written response.

(3) Any written question and response given in accordance with this section shall become part of the record of the proceedings.

APPENDIX C

BIOGRAPHY OF STUDY GROUP MEMBERS

Hon. Allison A.M. WALSH, Chairman

Justice Walsh obtained his law degree from McGill University and later completed a Certificat d'etudes françaises at the Universite de Grenoble in France. After practicing law in Montreal for a number of years he was appointed Puisne Judge of the Exchequer Court of Canada in 1964 followed by an appointment as Judge of the Court Martial Appeal Court of Canada in 1968. After being a member of the Trial Division of the Federal Court of Canada since 1971 Justice Walsh retired in 1986.

Dr. William A. ROSS

Dr. Ross graduated with a B.Sc. Degree (Manitoba) and subsequently obtained a Ph.D. in Physics from Stanford in 1970.

After doing post-doctoral research work at McGill University, Dr. Ross joined the Faculty of Environmental Design, The University of Calgary, in 1973, where he currently is Professor of Environmental Science.

He was a member of the Environmental Assessment Panels that reviewed the Banff Highway Project (km 0- 13) and (km 13-27) and the CP Rail Rogers Pass Development in Glacier National Park.

Dr. Ross has lectured on various aspects of environmental sciences including environmental impact assessment. He has also directed environmental research and published numerous papers.

Me Michel YERGEAU

Maitre Yergeau obtained his law degree from the University of Montreal in 1972 and has been a member of the Quebec Bar Association since 1974. He is currently practicing law with the firm of Lavery O'Brien in Montreal.

Mr. Yergeau specializes in the field of environment and is currently a member of the Association des Conseillers en environnement du Quebec and of the Fondation quebecoise en environnement. For 5 years he was a Vice president of the Bureau d'audiences publiques sur l'environnement (BAPE) du Quebec where he chaired and was a member of numerous environmental assessment panels.

Maitre Yergeau is also legal counsel in environment for a number of consulting firms, national and international industrial firms as well as environmental groups. He is president of Hydro-Quebec's environmental advisory committee.

APPENDIX D

LIST OF PARTICIPANTS WHO MADE WRITTEN SUBMISSIONS

Names and Organizations	
William J. Andrews	West Coast Environmental Law Association, Vancouver
Andre Beauchamp	Bureau d'audiences publiques sur l'environnement du Quebec, Quebec
Jean-Pierre Beaumont	Association des biologistes du Quebec — Montreal
Rosalie Bertell	International Institute of Concern for Public Health, Toronto
Glenn Bloodworth	Indian Environmental Protection Branch, Indian Affairs and Northern Development Canada, Ottawa
David Brooks	Friends of the Earth, Ottawa
Daniel D. Campbell	Yarmouth Co.,' N.S.
W.A. Coulter	Nova Scotia Department of the Environment, Halifax
Leandre Desjardins	Faculty of Social Science, University of Moncton, Moncton
Fred de Vos	Dr. Fred de Vos & Associés, Ottawa
Metro Dmytriw	Local Energy Systems, Pinawa, Manitoba
Anthony Downs	Conservation and Environment Branch, National Defence, Ottawa
Daniel Du beau	Hydro Quebec, Montreal
Wilson Eedy	Beak Consultants Ltd., Toronto
John Fox	C.P. Rail, Calgary
Stephan Fuller	Renewable Resources, Government of the Yukon, Whitehorse
Egon Frech	Atomic Energy of Canada Ltd., Pinawa, Manitoba
Donald J. Gamble	Rawson Academy of Aquatic Science, Ottawa
E. H. Gaudet	Chevron Canada Resources Ltd., Calgary
C. J. Goodman	Energy Resources Conservation Board, Calgary
J. Howieson	Uranium and Nuclear Energy Branch, Energy, Mines and Resources Canada, Ottawa
Michael I. Jeffrey	Ontario Environmental Assessment Board, Toronto
D.J. Kiell	Newfoundland and Labrador Hydro, St. John's
J.A. Kelly	Mobil Oil Canada Limited, Toronto
Louis Lapierre	Environmental Council of New Brunswick, Moncton

P.A. Larkin	Institute of Animal Resource Ecology, University of British Columbia, Vancouver
Cathy Major	Faculty of Law, University of Calgary, Calgary
Andre Marsan	Marsan et Associes, Montreal
Helen McDonald	Citizens for a safe Environment, Newtonville, Ontario
John Merritt	Canadian Arctic Resources Committee, Ottawa
Donat Milortuk	Tungavik Federation of Nunavut, Ottawa
Duncan Moffett	Eldorado Resources Ltd., Ottawa
J. O'Riordan	B.C. Ministry of Environment and Parks, Victoria
René Parenteau	Institut d'urbanisme, Universite de Montreal, Montreal
William E. Rees	School of Community and Regional Planning, University of British Columbia, Vancouver
Paul H. Rennick	Paul H. Rennick and Associates, Burlington, Ontario
Walter Robbins	Concerned Citizens of Manitoba Inc., Winnipeg
R. M. Robinson	Federal Environmental Assessment Review Off ice, Hull
Kath Rothwell	Environment Canada, Western and Northern Region, Edmonton
Penelope M. Rowe	Community Services Council, St. John's
Fred J. Schulte	Alberta Environment, Edmonton
R.G. Scott	Canadian Petroleum Association, Calgary
W.R. Derrick Sewell and Harold D. Foster	Delphic Consulting Ltd, Victoria
W.D. Smythe	Atomic Energy Control Board, Ottawa
Carson H. Templeton	Consultant, Victoria
George D. Tench	Consultant, Vancouver
Dixon Thompson	Faculty of Environmental Design, The University df Calgary, Calgary
Donna Tingley	Environmental Law Centre, Edmonton
Jim Vollmershausen	Environment Canada, Atlantic Region, Halifax
Brian Ward	Ontario Ministry of Environment, Toronto
Ron A. Wallace	Dominion Ecological Consulting Ltd., Calgary

APPENDIX E

LIST OF PARTICIPANTS WHO ATTENDED THE STUDY GROUP CONSULTATIVE MEETINGS

CALGARY, ALBERTA — APRIL 27 (2 sessions)

John Batteke	Esso Resources Canada Limited
Evan Birchard	Esso Resources Canada Limited
Doug Bruchet	Canadian Petroleum Association, Frontier Division
Peter Dickey	Shell Canada Limited
Phil Elder	The University of Calgary — Faculty of Environmental Design
Steve Herrero	The University of Calgary — Faculty of Environmental Design
Rick Hoos	Dome Petroleum Limited
A.R. Lucas	University of Calgary — Faculty of Law
Cathy Major	University of Calgary — Faculty of Law
Ed Pessah	Dome Petroleum Limited
Maryhelen Posey	Environment Council of Alberta
Phil Tsui	Mobil Oil Canada Limited
Barry Virtue	Canadian Petroleum Association, Frontier Division
Ron Wallace	Dominion Ecological Consulting Ltd.
Donald Wishart	Interprovincial Pipelines Limited

EDMONTON, ALBERTA — APRIL 28 (3 sessions)

Len Clarke	Public Works Canada
Alistar Crerar	Environment Council of Alberta
Fred Homeniuk	Energy Resources Conservation Board
Larry Hurwitz	IDS Systems Consultants
Alex Kachmar	Public Works Canada
Kath Rothwell	Environment Canada — Western and Northern Region
Robert Stone	Alberta Ministry of the Environment
Donna Tingley	Alberta Environmental Law Centre

MONTREAL, QUEBEC — MAY 12 (2 sessions)

Jean-Pierre Beaumont	Association des biologistes du Quebec
Louis Desilets	Association des biologistes du Quebec
Daniel Du beau	Hydro Quebec
Robert Ferrari	Marsan et Associes
Michel Gariepy	Universite de Montreal — Institut d'urbanisme
Helene Gauthier-Roy	Hydro Quebec
Bernice Goldsmith	Universite Concordia
Daniel Granger	Hydro Quebec
René Parenteau	Universite de Montreal — Institut d'urbanisme
Bruce Walker	STOP

QUEBEC, QUÉBEC — MAY 13 (3 sessions)

Andre Beauchamp	Bureau #audiences publiques sur l'environnement du Quebec
Jacques Bérubé	Roches et Associes
Yvon Bureau	Autorité du Port de Quebec
Pierre Chevalier	Bureau d'audiences publiques sur l'environnement du Quebec
Jean-René Côté	Bureau d'audiences publiques sur l'environnement du Quebec
Marc Delagrave	Roches et Associes
Andre Delisle	Union québécoise pour la conservation de la nature
Gilles Fontaine	Ami(e)s de la Terre, Quebec
Vincent Lemieux	Universite Laval — Departement de sciences politiques
Florent Poirier	Bureau d'audiences publiques sur l'environnement du Quebec
Louise Roy	Consultant

TORONTO, ONTARIO — MAY 20,21 (6 sessions)

Wes Able	Mobil Oil Canada Limited, Newfoundland
Pat Adams	Probe International
Don Bewes	Mobil Oil Canada Limited, Ottawa
Glen Case	Senes Consultants
Gordon Davies	Acres Consultants
Wilson Eedy	Beak Consultants
Peter Hamel	Anglican Church of Canada
Michael Jeffrey	Ontario Environmental Assessment Board
Chris Jones	Ontario Hydro
Jim Kelly	Mobil Oil Canada Limited, Toronto
Gene Koczkur	Senes Consultants
Pat Lawson	Port Hope, Ontario
Helen MacDonald	Citizens for a Safe Environment, Newtonville, Ontario
Niall McMillan	Ontario Ministry of the Environment
Lindsay Milton	Toronto, Ontario
Paul Muldoon	Energy Probe
Arthur Porter	Arthur Porter Associates
Dave Rachal	Mobil Oil Canada Limited, Newfoundland
Cal Ross	Mobil Oil Canada Limited, Nova Scotia
Steven Shrybman	Canadian Environmental Law Association
Robert Tim berg	Task Force on the Churches and Corporate Responsibility
Ian Veitch	Ontario Ministry of the Environment
John Veldhuis	Port Granby Monitoring Committee

ST. JOHN'S, NEWFOUNDLAND — MAY 26 (3 sessions)

Irene Baird	Petroleum Directorate of Newfoundland and Labrador
Bonnie Hill	I.D. P. Consulting
Cliff Johnson	City of St. John's
David Kiell	Newfoundland and Labrador Hydro
B. Moores	Environment Canada — Newfoundland
J. Neate	Environment Canada — Newfoundland
Ross Peters	Memorial University of Newfoundland — Faculty of Engineering
Penny Rowe	Community Services Council

HALIFAX, NOVA SCOTIA — MAY 27, 28 (2 sessions)

Robert Baily	Canadian Oil and Gas Lands Administration — Nova Scotia
W.A. Coulter	Nova Scotia Ministry of the Environment
Leandre Desjardins	Moncton University — Faculty of Social Science
Leslie Griffith	Griffith's, Muicke Consultants
Janice Harvey	Conservation Council of New Brunswick
Susan Holtz	Ecology Action Centre
David Kelly	Environment Canada — Atlantic Region
Louis Lapierre	Environmental Council of New Brunswick, Moncton
Donna McCready	Halifax, N.S.
Kirstin Mueller	Eastern County Community Library, Mulgrave, N.S.
Jim Vollmershausen	Environment Canada — Atlantic Region

WINNIPEG, MANITOBA — JUNE 2 (2 sessions)

Ken Adam	I.D. Systems Consultants
Randle Baker	North/South Consulants Limited
Metro Dmytriw	Whiteshell Nuclear Research Establishment
Stan Eagleton	Manitoba Clean Environment Commission
Martin Egan	Department of Indian Affairs and Northern Development
Egon Frech	Whiteshell Nuclear Research Establishment
Douglas Ramsey	Agassiz North Associates
Walter Robbins	Concerned Citizens of Manitoba Inc.
Don Sexton	Ducks Unlimited Canada
Barry Webster	Manitoba Clean Environment Commission

VICTORIA, BRITISH COLUMBIA — JUNE 15 (1 session)

Geoff Buck	Thurber Consultants
Graham Morgan	Thurber Consultants
Murray Rankin	University of Victoria — Faculty at Law
Barry Sadler	Consultant
Robert Williams	British Columbia Ministry of the Environment

VANCOUVER, BRITISH COLUMBIA — JUNE 16 (2 sessions)

Bill Andrews	West Coast Environmental Law Association
Leslie Cuth bertson	Society Promoting Environmental Conservation
Tony Dorsey	Westwater Research Institute
Margot Hearne	Islands Protection Society
John Higham	Consultant
Robert Hornal	Consultant
Diane McLeod	West Coast Environmental Law Association
George Tench	Consultant
Larry Wolfe	Quadra Planning Consultants
Colin Wykes	Environment Canada — Pacific Region

HULL, QUÉBEC - JUNE 22, 23 (5 sessions)

Glen Bloodworth	Department of Indian Affairs and Northern Development
David Brooks	Friends of the Earth
John Donahee	N.W.T. Department of Renewable Resources
Tony Downs	Department of National Defence
Roger Eaton	Health and Welfare Canada
Rainer Englehardt	Canadian Oil and Gas Lands Administration
Tom Fleck	Transport Canada — Ship Safety
Kim Forgie	Transport Canada — Harbour and Ports
Don Gamble	Rawson Academy of Aquatic Science
Robert Greyell	Energy, Mines and Resources Canada
Stephan Hazell	Canadian Wildlife Federation
Ken Kavanaugh	Department of National Defence
John Klenavic	National Energy Board
Julia Langer	Friends of the Earth
Duncan Moffett	Eldorado Resources Limited
Tim Raistrick	Environment Canada
Ian Reid	Transport Canada — National Shipping Policy
Dave Smith	Eldorado Resources Limited
Don Stalker	Environment Canada
Eric Stanfield	Public Works Canada
Robert Weir	Environment Canada
Paul White	Transport Canada — Airports

APPENDIX F

BIBLIOGRAPHY

In addition to the written submissions from participants listed in Appendix D and the oral contributions made by participants listed in Appendix E, the Study Group consulted the following reports.

— ***Environmental Assessment in Canada — 1985 Summary of Current Practice,*** published under the auspices of the Canadian Council of Resource and Environment Minister, July 1985.

— ***Advisory and Investigatory Commissions,*** Law Reform Commission of Canada Report #13, December 1979.

— ***Waste Not Wanted Incorporated and Her Majesty the Queen in Right of Canada, the Minister of Energy, Mines and Resources, Atomic Energy of Canada Limited,*** Judgement of the Federal Court of Canada, Trial Division, T-657-84, June 15, 1987.

— ***Environmental Assessment and Review Process, Observations and Recommendations,*** a report to the Minister of the Environment by the Canadian Environmental Advisory Council, Ottawa, November 1979.

— ***Initial Assessment Guide,*** Federal Environmental Assessment Review Off ice, April 1986.

— ***The Federal Environmental Assessment and Review Process,*** Federal Environmental Assessment and Review Office, 1987.

— ***The Establishment of a Public Hearing Process for Non-Adjudicative Bodies,*** presented at the Third Annual Administrative Law Seminar, by D. Byer, Legal Counsel, Federal Department of Justice.

— ***Pour que /es audiences publiques aient un sens,*** Michel Yergeau and Luc Ouimet, Le Devoir, Saturday July 14, 1984.

APPENDIX G

CHAPTER I- 13

An Act respecting public and departmental inquiries

SHORT TITLE

Short title

1. This Act may be cited as the ***Inquiries Act.*** R.S., c. 154, s. 1.

PART I

PUBLIC INQUIRIES

Inquiry

2. The Governor in Council may, whenever he deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof. R.S., c. 154, s. 2.

Appointment of commissioners

3. Where an inquiry as described in section 2 is not regulated by any special law, the Governor in Council may, by a commission in the case, appoint persons as commissioners by whom the inquiry shall be conducted. R.S., c. 154,s. 3.

Powers of commiaionen

4. The commissioners have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine. R.S., c. 154, s. 4.

Idem

5. The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in

CHAPITRE I- 13

Loi concernant les enquêtes relatives aux affaires publiques et aux départements

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre : ***Loi sur les enquêtes***. S.R., c. 154, art. 1.

PARTIE I

ENQUÊTES SUR LES AFFAIRES PUBLIQUES

Enquêtes sur les affaires publiques

2. Le gouverneur en conseil peut, chaque fois qu'il le juge à propos, faire instituer une enquête sur toute question touchant le bon gouvernement du Canada, ou la gestion de quelque partie des affaires publiques. S.R., c. 154, art. 2.

Nomination de commissaires

3. Si une enquête visée à l'article 2 n'est régie par aucune loi spéciale, le gouverneur en conseil peut, par commission *ad hoc.* nommer, à titre de commissaires, des personnes qui doivent poursuivre l'enquête. S.R., c. 154, art. 3.

Leurs pouvoirs

4. Les commissaires ont le pouvoir d'assigner devant eux tous témoins, et de leur enjoindre de rendre tdmoignage sous serment, ou par affirmation solennelle si ces personnes ont le droit d'affirmer en matière civile, oralement ou par écrit, et de produire les documents et choses qu'ils jugent nécessaires en vue d'une complète investigation des questions qu'ils sont chargés d'examiner. S.R., c. 154, art. 4.

Idem

5. Les commissaires ont, pour contraindre les tdmoins à comparaitre et à rendre témoignage, les mêmes pouvoirs que ceux

any court of record in civil cases. R.S., c. 154, s. 5.

dont sont revêtues les cours d'archives en matières civiles. S.R., c. 154, art 5.

PART II

DEPARTMENTAL INVESTIGATIONS

PARTIE II

ENQUÊTES CONCERNANT LES DÉPARTEMENTS

Appointment of commissioners

6. The minister presiding over any department of the Public Service may appoint at any time, under the authority of the Governor in Council, a commissioner or commissioners to investigate and report upon the state and management of the business, or any part of the business, of such department, either in the inside or outside service thereof, and the conduct of any person in such service, so far as the same relates to his official duties. R.S., c. 154, s. 6.

Nomination de commissaires

6. Le ministre qui preside à un ministère ou departement de la Fonction publique peut nommer, en tout ternps, sur l'autorisation du gouverneur en conseil, un ou plusieurs commissaires pour faire enquête et rapport sur l'état et l'administration des affaires totales ou partielles de ce département, dans son service interne ou externc, et sur la conduite, en ce qui a trait à ses fonctions officielles, de quiconque y est employé. S.R., c. 154, art. 6.

Powers of commissioners

7. The commissioner or commissioners may, for the purposes of the investigation, enter into and remain within any public office or institution, and shall have access to every part thereof, and may examine all papers, documents, vouchers, records and books of every kind belonging thereto, and may summon before him or them any person and require him to give evidence on oath, orally or in writing, or on solemn affirmation if he is entitled to affirm in civil matters ; and any such commissioner may administer such oath or affirmation. R.S., c. 154, s. 7.

Leurs pouvoirs

7. Le ou les comrnissaires peuvent, pour les fins de l'enquête, pénétrer et demeurer dans tout bureau public ou dans toute institution publique et ont accès à toutes ses parties, et peuvent examiner tous papiers, documents. pieces just ificat ives, archives et regist res de toute sorte qui appart iennent à ce bureau ou à cette institution ; et ils peuvent assigner toute personne devant eux et la contraindre à rendre témoignage sous serment, oralemtnt ou par écrit, ou sur affirmation solennelle si elle a le droit d'affirmer en matière civile ; et chacun de ces commissaires peut faire prêter ce serment ou recevoir cet te affirmat ion. S.R.. c. 154, art. 7.

May issue subpoena or summons

8. (1) The commissioner or commissioners may, under his or their hand or hands, issue a subpoena or other request or summons, requiring and commanding any person therein named to appear , at the time and place mentioned therein, and then and there to testify to all matters within his knowledge relative to the subject-matter of such investigation, and to bring with him and produce any document, book, or paper that he has in his possession or under his control relative to any such matter as aforesaid ; and any such person may be summoned from any part of Canada by virtue of the subpoena, request or summons.

Peuvent émettre des assignations

8. (1) Les commissaires peuvent émett t re, sous leurs seings, un bref d'assignation ou autre mise en demeure ou somination, enjoignant et commandant à toute personne y designee de comparaître au temps et au lieu y mentionnés, et la et alors de deposer de tout ce qui est à sa connaissance concernant les faits qui font le sujet de l'enquête, et d'apporter et de produire tous documents, livres ou pieces qu'elle a en sa possession ou sous son contrôle et se rattachant au sujet de l'enquête, comme il est susdit ; et toute personne peut être ainsi assignee d'une partie quelconque du Canada, en vertu de ce bref d'assignation, cette mise en demeure ou cet te sommation.

Expenses

(2) Reasonable travelling expenses shall be paid to any person so summoned at the time of service of the subpoena, request or summons.

Frais de route

(2) Des frais de route raisonnables sont payés à toute personne ainsi assignee, lors de la signification du bref d'assignation, de la

R.S., c. 154, s. 8.

mise en demeure ou sommation. S.R., c. 154, art. 8.

Evidence may be taken by commission

9. (1) If, by reason of the distance at which any person, whose evidence is desired, resides from the place where his attendance is required, or for any other cause, the commissioner or commissioners deem it advisable, he or they may issue a commission or other authority to any officer or person therein named, empowering him to take such evidence and report it to him or them.

9. (1) Si, en raison de la distance à laquelle une personne, dont on désire le témoignage, demeure de l'endroit où sa presence est requise, ou pour toute autre cause, les commissaires le jugent à propos, ils peuvent dmettre une commission rogatoire ou quelque autre autorisation à tout fonctionnaire ou à toute personne y dénommée, l'autorisant à recevoir ce temoignage et à leur faire rapport.

Preuve par commission rogatoire

Powers for that purpose

(2) Such officer or person shall, before entering on any investigation, be sworn before a justice of the peace faithfully to execute the duty entrusted to him by such commission, and, with regard to such evidence, has the same powers as the commissioner or commissioners would have had if such evidence had been taken before him or them, and may, in like manner, under his hand issue a subpoena or other request or summons for the purpose of compelling the attendance of any person, or the production of any document, book or paper. R.S., c. 154, s. 9.

(2) Ce fonctionnaire ou cette personne, avant d'entreprendre une enquête, doit prêter devant un juge de paix le serment de fidèlement remplir les devoirs qui lui sont assignés par cette commission et possède, à l'égard de ce témoignage, les mêmes pouvoirs qu'auraient eus les commissaires si ce témoignage eût été rendu devant eux, et peut, de la même manière, dmettre sous son seing un bref d'assignation, une mise en demeure ou une sommation, dans le but de contraindre toute personne à comparaitre devant lui, ou à produire tous documents, livres ou pieces. S.R., c. 154, art. 9.

Pouvoim à cette fin

Witnesses failing to attend, etc.

10. (1) Every person who

(a) being required to attend in the manner provided in this Part, fails, without valid excuse, to attend accordingly,

(b) being commanded to produce any document, book or paper, in his possession or under his control, fails to produce the same,

(c) refuses to be sworn or to affirm, as the case may be, or

(d) refuses to answer any proper question put to him by a commissioner, or other person as aforesaid,

is liable, on summary conviction before any police or stipendiary magistrate, or judge of a superior or county court, having jurisdiction in the county or district in which such person resides, or in which the place is situated at which he was so required to attend, to a penalty not. exceeding four hundred dollars.

10. (1) Toute personne qui,

a) étant assignee de la manière prévue dans la présente Partie, fait défaut, sans excuse valable, de comparaitre en consequence,

b) ayant reçu l'ordre de produire quelque document, livre ou piece en sa possession ou sous son contrôle, ne le produit pas,

c) refuse de prêter serment ou de faire une affirmation, selon le cas, ou

d) refuse de répondre à quelque question pertinente que lui pose un commissaire ou une autre personne, ainsi qu'il est dit plus haut,

encourt, sur déclarat ion sommaire de culpabilité, devant un magistrat de police ou magistrat stipendiaire, ou devant un juge d'une cour supérieure ou d'une cour de comté qui a juridiction dans le comté ou district où reside cette personne, ou dans lequel est situ6 l'endroit où elle est assignee à comparaitre, une amende d'au plus quatre cents dollars.

Témoin qui fait défaut de comparaître, etc.

Justice of the peace

(2) The judge of the superior or county court aforesaid shall, for the purposes of this Part, be a justice of the peace. R.S., c. 154, s. 10.

(2) Le juge de la cour supérieure ou de la cour de comté susdite est, pour les fins de la présente Partie, un juge de paix. S.R., c. 154, art. 10.

Juge de paix

PART III

GENERAL

Employment of counsel, experts and assistants

11. (1) The commissioners, whether appointed under Part I or under Part II, if thereunto authorized by the commission issued in the case, may engage the services of such accountants, engineers, technical advisers, or other experts, clerks, reporters and assist ants as they deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.

Experts may take evidence and report

(2) The commissioners may authorize and depute any such accountants, engineers, technical advisers, or other experts, or any other qualified persons, to inquire into any matter within the scope of the commission as may be directed by the commissioners.

Powers

(3) The persons so deputed, when authorized by order in council, have the same powers that the commissioners have to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence, and otherwise conduct the inquiry.

Report

(4) The persons so deputed shall report the evidence and their findings, if any, thereon to the commissioners. R.S., c. 154, s. 11.

Parties may employ counsel

12. The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of such investigation, to be represented by counsel. R.S., c. 154, s. 12.

Notice to persons charged

13. No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct alleged against him and he has been allowed full opportunity to be heard in person or by counsel. R.S., c. 154, s. 13.

PARTIE III

DISPOSITIONS GÉNÉRALES

Emploi d'avocats, d'expertr et d'aides

11. (1) Les commissaires, qu'ils soient nommés sous le regime de la Partie I ou de la Partie II, s'ils y sont autorisés par la commission émise dans la cause, peuvent retenir les services des comptables, ingénieurs, conseillers techniques, ou autres experts, commis, rapporteurs et aides qu'ils jugent nécessaires ou opportuns, et aussi les services d'avocats pour aider et assister les commissaires dans l'enquête.

Les experts peuvent recevoir des témoignages et faire rapport

(2) Les commissaires peuvent autoriser et déléguer quelqu'un de ces comptables, ingénieurs, conseillers techniques ou autres experts ou toute autre personne possédant les qualités requises, pour faire une enquête sur toute matière du ressort de la commission, selon que peuvent l'ordonner ies commissaires.

Pouvoirs

(3) Les personnes ainsi déléguées, lorsqu'elles y sont autorisées par décret, ont les mêmes pouvoirs que possedent les commissaires pour recevoir les tdmoignages, émettre des brefs d'assignation, forcer les témoins acomparaitre, les obliger à rendre tdmoignage et autrement conduire l'enquête.

Rapport

(4) Les personnes ainsi déléguées doivent faire rapport aux commissaires des témoignages reçus par elles et de leurs constatations, s'il en est, sur la question. S.R., c. 154, art. 11.

Les part iee peuvent employer un avocat

12. Les commissaires peuvent permettre à toutes personnes dont la conduite fait le sujet d'une enquête sous l'autorité de la présente loi, et doivent permettre à toute personne contre laquelle il est porté quelque accusation au cours de pareille enquête, d'être représentée par un avocat. S.R., c. 154, art. 12.

Avis aux accusés

13. Nul rapport ne peut être fait contre qui que ce soit, à moins qu'un avis raisonnable ne lui ait été donné de l'accusation de mauvaise conduite portée contre lui, et que l'occasion ne lui ait été donnée de se faire entendre en personne ou par le ministère d'un avocat. S.R., c. 154, art. 13.

PART IV

INTERNATIONAL COMMISSIONS AND TRIBUNALS

Authority to confer powers upon

14. (1) The Governor in Council may,

PARTIE IV

COMMISSIONS ET TRIBUNAUX INTERNATIONAUX

Autorixation de leur conférer des pouvoirs

14. (1) Le gouverneur en conseil peut,

whenever he deems it expedient, confer upon an international commission or tribunal all or any of the powers conferred upon commissioners under Part I.

Exercise of powers in Canada

(2) The powers so conferred may be exercised by such commission or tribunal in Canada, subject to such limitations and restrict ions as the Governor in Council may impose, in respect to all matters that are within the jurisdiction of such commission or tribunal. R.S., c. 154, s. 14.

lorsqu'il le juge opportun, conférer à une commission ou tribunal international la totalité ou partie des pouvoirs accordés aux commissaires en vertu de la Partie I.

Exercice de pouvoirs au Canada

(2) Les pouvoirs ainsi conférés peuvent être exercés par ladite commission ou ledit tribunal au Canada, sous réserve des limitations et restrictions que peut imposer le gouverneur en conseil, relativement à toute question qui ressortit à cette commission ou à ce tribunal. S.R., c. 154, art. 14.

QUEEN'S PRINTER FOR CANADA © IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA, 1970