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**Written Submission to the  
Expert Panel Review  
of Environmental Assessment  
Policy in Canada**

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## **1. Abstract**

Environmental assessment (EA) has been identified as an important component in the sustainable development of resources and the management of the environment. Public participation plays a critical role in the EA process and has been referred to as a cornerstone of sound EA practice. Despite public participation's noted importance, the process has been described by scholars as sorely wanting and ineffective. Criticisms of the current process range from inadequate notice, lack of information, and ineffective hearings. Evidence has suggested that these failures are due in part to poorly constructed EA policy.

Implemented properly, public participation can produce a range of benefits. The process can facilitate public learning and can provide society with a greater understanding of the environment. In an attempt to bridge the gap between current practice and the process' potential, the Government of Canada announced an Expert Panel review of EA in Canada. The topic of public participation has been listed as a key theme in the review. This paper addresses the role of public participation in EA with the objective of answering the questions posed by the Expert Panel.

Public participation has been widely covered by scholars and practitioners; from their writing, two immediate themes dominate. First, public participation is a vital tool and an integral part of sound EA. Second, public participation processes in EA have not been effective. Approaches such as regional planning and incorporating a civics mindset have been listed as possible solutions. As society places a greater value on sustainable development, it is imperative that a more effective policy govern the EA process.

## **2. Introduction**

Since the 1970s, society has placed an increasing value on the management and protection of the environment (Glasson et al., 2012). In response to this shift in values, Canada and countries around the world have legislated environmental assessment (EA) policies. In Canada, the EA process is guided by the Canadian Environmental Assessment Act, 2012 (CEAA, 2012). Hanna (2005) describes EA as “a process for identifying and considering the impacts of an action”. Perhaps most importantly, EA is a powerful tool to help decision-makers achieve the goal of sustainable development (Noble, 2006). It is important that quality work contribute to the EA process. Regardless of the outcome, the decision that follows an EA will have a significant impact.

In 2016, the Minister of Environment and Climate Change established an Expert Panel to review CEAA, 2012. Through public consultation and written submissions, the Expert Panel has been reviewing prominent themes within EA. This paper will address a question within the theme of public participation. The question for this paper is in two parts as follows:

What information do you need during an environmental assessment to allow you to effectively participate? And what capacity support should be provided and at what stage in the process would that support enable meaningful engagement?

Part one of this paper, a literature review, will present an overview of public participation, its key components, current criticisms, and recommendations for the future. Part two will explore the evolution of public participation in the EA process in Canada. Part three will address the problems associated with public participation with particular attention to the aspects of the process mentioned in the above question. Part four will provide an analysis on the options to address the problems. Finally, part five will provide a list of recommendations to the Expert Panel on EA reform in Canada.

### 3. Literature Review

Sinclair and Diduck (2005) describe the term participation as it currently exists as the “active involvement of the public in the EA process through various means, ranging from open houses to panel reviews”. They believe, however, that a gap exists between that definition and meaningful participation. In their words, meaningful participation is “a process that incorporates all of the essential components of participation, from information sharing to education, and it includes the active and critical exchange of ideas among proponents, regulators and participants” (Sinclair and Diduck, 2005). There is an overwhelming view that the process is highly desirable and that “the key issue for scholars and practitioners is to find ways of making it more effective” (O’Fairchealligh, 2009).

Sinclair and Diduck (2005) have outlined five key provisions for the public participation process: adequate notice, access to information, participant assistance, public comment, and public hearings. Following a project proposal submission, the proponent must provide the public with adequate notice of the development. Sinclair and Diduck (2005) state that “adequate notice is fundamental to fair and meaningful public participation”. Notice is generally given through media releases such as newsprint and broadcast media, and should reach interested stakeholders (Sinclair and Diduck, 2005).

The earlier public participation occurs, the more likely the process will produce meaningful engagement. Noble (2006) identified the normative and strategic stages as particularly important for public input. Sinclair and Diduck (2016) state that “early participation is essential to next generation EA approaches such as sustainability”. Contrary to this benefit, current EA practice encourages proponents to complete the project description and finish the preliminary EA prior to any public participation process (Sinclair and Diduck, 2016).

Properly facilitated public participation has both theoretical and practical benefits (Sinclair and Diduck, 2005). One of the most theorized benefits is that “participation actualizes fundamental principles of democracy and strengthens the democratic fabric of society” (Sinclair and Diduck, 2005). Public participation in EA can also help to empower both individuals and communities (Fitzpatrick and Sinclair 2003). Another benefit is that it has been recognized as a vital tool in enhancing the sustainability of projects (Doelle and Sinclair, 2006).

Public participation offers opportunities for stakeholders, proponents, and governments to learn about the natural environment and can help further the development of education programs. The documents and information pertaining to a project can be complex, highlighting the need for non-formal education (Sinclair et al., 2008). EA education can occur through two means: one is education through EA, and two, education about EA (Sinclair et al., 2008). Learning through EA can create what Sinclair et al. (2008) have described as double-loop learning. For example, some organizations have learned to advance the policy surrounding resources at a much broader level, outside the project scope (Sinclair et al, 2008).

Despite these benefits, the process of engaging the public in EA has been deficient and ineffective (Doelle and Sinclair, 2006). Sinclair et al. (2008) have identified the proponent's role in facilitating the process as a contributor to this deficiency, claiming that those in support of the development process lack the incentive to construct a more meaningful framework for public participation. Proponents view the public participation process as a necessary component to project approval (Doelle and Sinclair, 2006), rather than a process that encourages meaningful engagement (Sinclair and Didurck, 2016). One of the consequences of this form of participation process is the case of the non-participant (Diduck and Sinclair, 2002). Those who have participated in the EA public consultation process often leave with

feelings of discouragement (Sinclair et al., 2008).

Two types of planning processes that could increase the effectiveness of public participation are regional planning and the civics approach. The civics approach, focuses on developing understanding through communication, adaptive learning and collaborative engagement (Sinclair and Diduck, 2016). The process is “founded on an active citizen base” and incorporates “the full decision process from project conception, planning, and assessment” (Sinclair and Diduck, 2016). Important aspects of EA civics include dialogue focused planning, cooperation, and mutual learning (Sinclair and Diduck, 2016). Regional planning involves the incorporation of the values of all stakeholders in the same region. The goal is to develop a vision for land and resources in the area (Sinclair and Diduck, 2005).

#### **4. Evolution of Practice**

Since the 1970s, there has been an increasing emphasis on developing more open and transparent decision-making processes in resource and environmental management (Sinclair and Diduck, 2002). In Canadian policy, this was reflected by the establishment of the Environmental Assessment Review Process (EARP) in 1974. The EARP was administered by the Federal Environment Assessment Review Office (FEARO). In 1992 the process was adopted through Canadian legislation, and became formerly recognized as CEAA (Government of Canada).

Internationally consensus and support for the protection of the environment and the sustainable development of resources have grown since the creation of EARP in 1974. The Rio Declaration on Environment and Development from 1992 placed an emphasis on public participation in helping integrate environmental and economic factors into sustainability (Doelle and Sinclair, 2006). In 1995,

the Canadian Environmental Assessment Agency was formed to aid in the proper implementation of the CEAA legislation. Amendments were made to CEAA in 2003 and 2010, giving more responsibility to the Agency. CEAA, 2012 represented a change in federal responsibility in managing and protecting the environment and resource development in Canada (Doelle, 2012).

Since the early years of EA in Canada, faults within the public participation process have been identified. FEARO released a report in 1988 indicating that broad participation is strained by information deficiencies (Diduck and Sinclair, 2002). Other deficiencies that have been identified since the legislation of CEAA including a lack of resources, lack of impact on ultimate decisions, and a lack of motivation to participate (Diduck and Sinclair, 2002).

## **5. Statement of Problem**

Literature on current practices and past experiences with EA in Canada have identified a list of problems associated with the public participation process. Problems such as poor information, inaccessible information, lack of support (Sinclair and Diduck, 2005), and a focus on process rather than outcomes (Doelle and Sinclair, 2006) have been identified as major deficiencies. Issues have arisen as a result of the exclusion of the public from the early normative and strategic planning stages of the EA process (Noble, 2006). As a result of these common deficiencies, the public participation process has failed to facilitate meaningful participation. This has led to a rise in non-participation and disinterested citizens (Sinclair and Diduck, 2002).

The communication of information has been identified as a common failure within public participation. In particular, inadequate notice, inaccessible knowledge, and lack of dialogue have prevented



meaningful participation (Sinclair and Diduck, 2005). There are two forms of inaccessibility that exist in terms of information sharing with the public: physical and cognitive. Physical inaccessibility has been linked to limited hours of public consultation (Sinclair and Diduck, 2005). In terms of cognitive inaccessibility, Sinclair and Diduck state that “the overly technical language and general lack of readability of EISs [i.e. Environmental Impact Statements] and other EA documents remain a concern for public participation practitioners because these problems tend to impede broad and active participation” (p. 67, 2005). Also related to the cognitive inaccessibility of the technical EA documents is the complex EA legislation (Sinclair and Diduck, 2005).

The lack of public participation during the early stages of project planning is an area of concern (Diduck and Sinclair, 2002; Sinclair and Diduck, 2005). Participation can occur at three stages of project planning: the normative level (what should be done), the strategic level (what can be done), and the operational level (what will be done) (Sinclair and Diduck, 2005). Despite the fact that the earlier stages of planning are most likely to facilitate meaningful public participation (Sinclair et al., 2008), most cases of participation take place in the operational stage. This failure represents a significant opportunity cost in the search for sustainable development.

## **6. Addressing the Problem**

Canada must find a new approach to addressing the deficiencies within the public participation process of EA. Problems are created by a lack of early participation and a shortage of participant funding. The current framework does not include sufficient provisions to address these problems, resulting in dissatisfied participants and non-participation (Sinclair and Diduck, 2005). Two approaches are available to address the problem. One would be incorporating regional planning into project

development and EA processes. And two, an EA civics approach is needed, one that incorporates early participation and shared funding responsibilities between government and proponents (Sinclair and Diduck, 2016).

Regional planning, with the objective of “bringing together local communities, First Nations, industry and environmental groups to develop a vision for land and resource use in a specific area” (Sinclair and Diduck, 2005) has numerous benefits. One, the process brings people together and facilitates learning and the sharing of knowledge (Sinclair and Diduck, 2012). Two, bringing people together can help reach a consensus on a definition of sustainable development (Doelle and Sinclair, 2006). Regional planning also offers an excellent outlet for public education. The uncertainty surrounding many “resource and environmental decisions underscores the importance” of public learning (Sinclair et al., 2008).

The EA civics orientation is described as a process that develops “common understanding through communication, adaptive learning and collaborative engagement” (Sinclair and Diduck, 2016). The goal of EA civics is to foster a shared decision-making process between stakeholders who are actively interested in the management of the resource (Sinclair and Diduck, 2016). Properly implemented, this process begins at the project conception stage and should continue through the monitoring and decommissioning phase of any project (Sinclair and Diduck, 2016).

Completion of an EA civics process involves changing the current framework of participation. Earlier public participation is required. Sinclair and Diduck (2016) call for a fundamental shift in the point of first contact. Shifting the initial public discussion to the project conception and selection phase may reduce tensions typically created during the early stages (Sinclair and Diduck, 2005).

Sinclair et al. (2008) outlined five components of meaningful participation: early, inclusive, deliberative, transparent, and empowering. The benefits of early participation are numerous (see literature review). Inclusiveness represents diverse perspectives. A deliberative process stimulates communication and mediates conflict. Transparency builds trust, and empowerment fuels socio-political action (Sinclair et al., 2008). The EA civics approach and regional planning include all of these components and therefore offer feasible solutions for addressing problems within public participation.

## **7. Recommendations**

The public participation process has the potential to play a key role in the sustainable development and management of the natural world. Doelle and Sinclair (2006) have identified a major flaw in public participation as the focus on process rather than outcomes. With this fault in mind, I believe the Expert Panel should construct an EA policy that is focused on two outcomes: sustainability and incorporating meaningful public participation. An emphasis must first be placed on achieving sustainable development as a goal. The literature available indicates that when properly implemented, public participation can help society move in the direction of sustainability.

In my opinion, the largest contributing factor to the problems associated with EAs is the focus on projects rather than policy. The EA process is triggered by project proposals, leaving the narrative of sustainable resource use in the hands of the proponent. O'Faircheallaigh (2009) states that proponents will push for rapid development of the project at the "least possible cost, while other interests such as environmental or indigenous groups will likely push for other outcomes". As the resources in question

belong to the public, decisions should reflect the broader values of society.

To achieve the goals of sustainable development and meaningful public participation, I recommend that the Expert Panel implement three provisions into EA policy. One, adopt the civics approach. Two, implement regional planning. Three, incorporate early participation into the EA process. Proper facilitation of these processes will require significant monetary costs and increased time requirements for all stakeholders. It is likely that the public will require more assistance than is presently available. I believe, as suggested by Sinclair and Diduck (2016), that assistance should come from both the government and the proponents.

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