

Consumers' Association of Canada (Manitoba) Inc.

June 2021

Your Voice Matters. Really?!

Consumer and Public Participation in Regulatory Proceedings.



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By: Jacqueline Wasney, CAC Manitoba Board Member

For several decades, the Manitoba Branch of the Consumers' Association of Canada (CAC Manitoba) has championed a fair, just and sustainable marketplace. In particular, promoting the consumer interest through the education and information opportunities of regulatory tribunals, such as those established for public utility, environmental or telecommunications reviews, is a significant part of the organization's mandate.

The simple phrase, "have your say" is a central theme of a two year research project conducted by CAC Manitoba between May, 2019 and March 2021. The project, a comprehensive examination of public participation and engagement in a regulatory environment, highlighted several interesting goals including, defining participation best practices, identifying barriers to and enhancements for participation, and evaluating the process, the public participation and the outcomes from a sample of previously held hearings and tribunals.

An extensive literature review provided an overview of key terms and definitions of public participation and engagement common in related fields such as healthcare and political science. Further, the necessity to recognize the rights, challenges and diversity of a population or citizen group in order to promote procedural success, was also highlighted. Recognizing and respecting the inherent rights of Indigenous Peoples as guiding principles in the definitions and mandate of hearings and tribunals, and recognizing the unique challenges of minority groups, reduces barriers and promotes inclusion, fairness and justice.

In addition to the literature review and case studies analysis, the research method included panel presentations, workshops and consumer focus groups. To further reveal best practices and barriers, a judicial review of regulations and legislation for public consultation was carried out citing examples from Canadian and international jurisdictions.

Based on the research results and analysis, CAC Manitoba proposed several recommendations including, capturing the promotion and information benefits of social media, recognizing the need for sustainable funding to help “level the playing field” and providing participants with opportunities to examine and appeal decisions. Further, revisiting the formal application requirements for oral hearings and lengthening the notice period, would also enhance participation. Finally, a “digital divide” exists in Canada strictly limiting access to technology, and thus, further imposing additional barriers to citizen participation for many.

The right to cast a ballot in municipal, provincial and federal elections is an important cornerstone of citizen participation. Nonetheless, relying on the broad scope of an election platform poses the risk that critical decisions are made contrary to the public interest. Regrettably, if Canada’s public interest voice is not supported and raised, many creative and thoughtful solutions to the technological, environmental and financial challenges of the future will be lost, underscoring the importance of the recommendations made from this project.

"The idea behind citizen engagement, citizen participation and non-industry advocacy groups is to help to mitigate or to avoid complete regulatory capture by the industries who are the targets of regulation. The hope was that their broader range of values and interests and voices could be heard in the regulatory process."

Dr. Paul Thomas, Workshop, February 24th, 2021

Sometimes we call it 'elite capture'... that powerful forces in the polity, in the economy, are able to capture regulators.

Advisory Group Member

We live at a time where it seems like the democratic processes are being curtailed...this is such an important topic, looking at, practically, how do regulators engage with people to do things right at a time when probably opportunities to do so are diminishing...there's that broader context.

Advisory Group Member

The starting point for the journey of discovery detailed in this report must be that continual tension between "the powerful forces in the polity", and the right of citizens, consumers, to be heard – to have a voice in making decisions for the marketplace.

The Manitoba branch of the Consumers' Association of Canada (CAC Manitoba) has a long history of participation in regulatory proceedings representing the consumer interest, involving a variety of industries, both at the provincial and at the federal level. For decades, the organization has advocated for better practice in public engagement and consumers' right to a voice in the marketplace.

Right now, in Canada, and around the globe, consumers are facing the prospect of, or have already experienced, significant change in regulatory oversight - in the power, and independence of regulators, and in the system of checks and balances (including public and policy community participation) that help to maintain the balance of power in the marketplace. CAC Manitoba has become convinced of an urgent need to "raise

the volume” on this discussion, to broaden the debate before consumers lose ground, before the opportunities that currently exist for public participation are diminished.

Background

In 2018, CAC Manitoba began to search for the resources necessary to conduct research, from a consumer perspective, into public participation and consumer engagement in regulatory proceedings. How exactly was the situation evolving? What qualified currently as good practice? What were the barriers and challenges, and were they changing? What role did the legislative framework play in enabling or disabling participation and engagement, and how was that changing in this current environment? How could these difficulties be overcome to maintain access to, and enhance, public and consumer engagement? Where there were missed opportunities or What were there lessons to be learned from other jurisdictions outside of Canada?

In the spring of 2019, the organization was awarded funding to conduct this research by the Office of Consumer Affairs, through its Contributions Program.

The project was designed to span roughly 23 months, beginning in May of 2019. It included a number of research tools:

- Creation of an Advisory Committee to ensure the research encompassed a broad spectrum of perspectives
- Review of relevant literature and research
- Key informant interviews, again including a wide variety of marketplace perspectives
- Case studies of six tribunals, spanning the following regions of Canada (Northern, Western, Ontario, Quebec, and Atlantic Canada)

- Review of relevant legislation and regulatory framework in Canada and internationally, with a focus on the five jurisdictions identified above
- Workshops with regulators, industry, organizations, and consumers
- Focus groups with consumers in five jurisdictions in Canada

The workplan was designed so that the results of each aspect of the research fed into the next, or was in tandem with other ongoing aspects. For example, the review of literature determined four major themes that flowed through much of work that followed. The case studies and regulatory framework review were companion pieces, working in tandem. All of that work determined speakers and breakout group topics for the workshops, and all of that combined to determine the direction of the focus group discussions in various regions.

The advent of Covid 19 in early 2020 made the planned engagement opportunities (workshops, focus group) more cumbersome and difficult to realize, but creativity and perseverance prevailed, and each phase of the research was completed.

About this report

Many of the research tools were contracted, by CAC Manitoba, to academics, external researchers, and consultants working in related or complimentary fields. The following sections of this document will review each individual aspect of the research. In some cases, the contractor report is included in the main body of this document. In some cases, excerpts or summaries of the contractor reports are included in the main body, and in those cases the full report is appended.

The final sections will be devoted to a discussion of overall project results, leading to CAC Manitoba's recommendations.

Purpose and Participation

One of the first activities conducted as part of this project was the bringing together of an Advisory Committee. This group was intended to be diverse, and included representation from industry, academia, community, and Indigenous organizations. Its purpose was to help keep the research on track...to ensure that the research remained centred and surrounded by the entire spectrum of perspectives on this issue, not just a few facets.

Participants were promised anonymity so that they could advise CAC Manitoba freely, without concern for repercussions. The Committee met in person three times over the two-year project period, and offered insight and feedback numerous times by e-mail during that time period. Consultant Wendy Nur became the liaison between the Advisory Committee and CAC Manitoba.

Thanks

The Committee offered feedback on everything from what voices should be on the Committee, to what research methods should be explored, to issues CAC Manitoba had failed to address, and right down to how research results led to recommendations.

CAC Manitoba would like to thank its Advisory Committee members for sharing their time, experience, expertise, and unflinching honesty to encourage and guide our work.

By: Dr. Patricia Fitzpatrick (Academic-in-Residence, Public Interest Law Centre) with support from Katrine Dilay (Attorney at the Public Interest Law Centre)

Introduction

What should consumers consider when reviewing administrative processes to ensure that they have an opportunity to effectively and meaningfully participate? This paper reviews the state of public participation theory and practice in Canada, focusing on the planning, public administration, political science and resource management literatures.

The paper begins by considering what is public involvement. Importantly, this section provides basic definitions of key terms used in the literature. It then reviews seven questions which should be considered when designing participatory processes, including who participates, how they could participate, and frequency of participation. Section three addresses the question, “what makes participation *meaningful*?” In doing so it considers three important guiding principles, and characteristics which contribute to making participation meaningful.

Methods

This report is a desk review of available literature focusing on opportunities to involve the public in decision-making. Data collection relied on Proquest Central, which includes more than 45 databases across disciplines, with material dated from 1970 to the present. The search focused on the presence of one of twelve phrases in the abstract:

| | | | | |
|---------------------|-----------------------|----------------------|--------------------|-------------------------|
| Citizen engagement | Community engagement | Consumer engagement | Public engagement | Stakeholder engagement |
| Citizen involvement | Community involvement | Consumer involvement | Public involvement | Stakeholder involvement |

Citizen participation Community participation Consumer participation Public participation Stakeholder participation

The search terms used were identified based initially on common terms in resource management literature, including “public involvement”, “citizen involvement”, “public participation” and “community engagement”. These terms were expanded by consideration of various possible characterizations of potential participants, including “consumer”, “public”, and “stakeholder”. The above matrix was created to capture possible combinations of these common phrases. With more than five thousand entries, the results were refined in Proquest Central to exclude medical journals, and material not written in English. 2181 citations remained, which were supplemented by forty-two relevant scholarly sources from past research. Figure 1 illustrates the breakdown of articles by decade.

Citations were exported into Endnote X8 and grouped according to discipline (Figure 1); phrase & decade (Table 1); and discipline and phrase (Table 2).

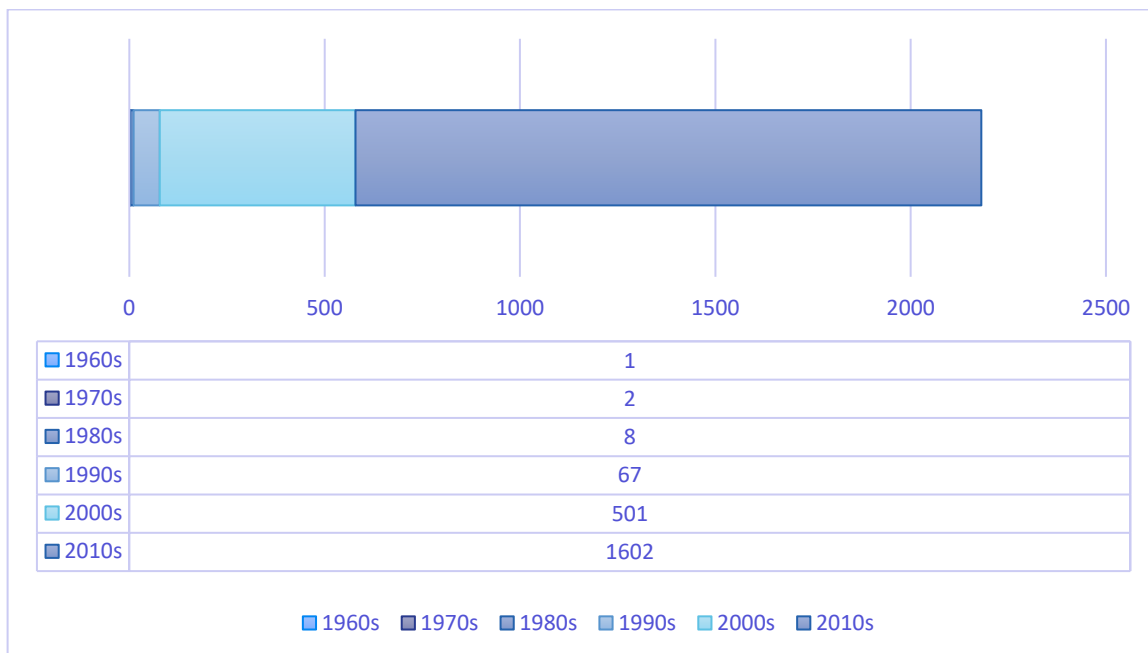


Figure 1: Breakdown of 2,181 articles by decade. To clarify 1960s include one article; the 1970s two articles; the 1980s have eight articles; and the 1990s have 67 articles.

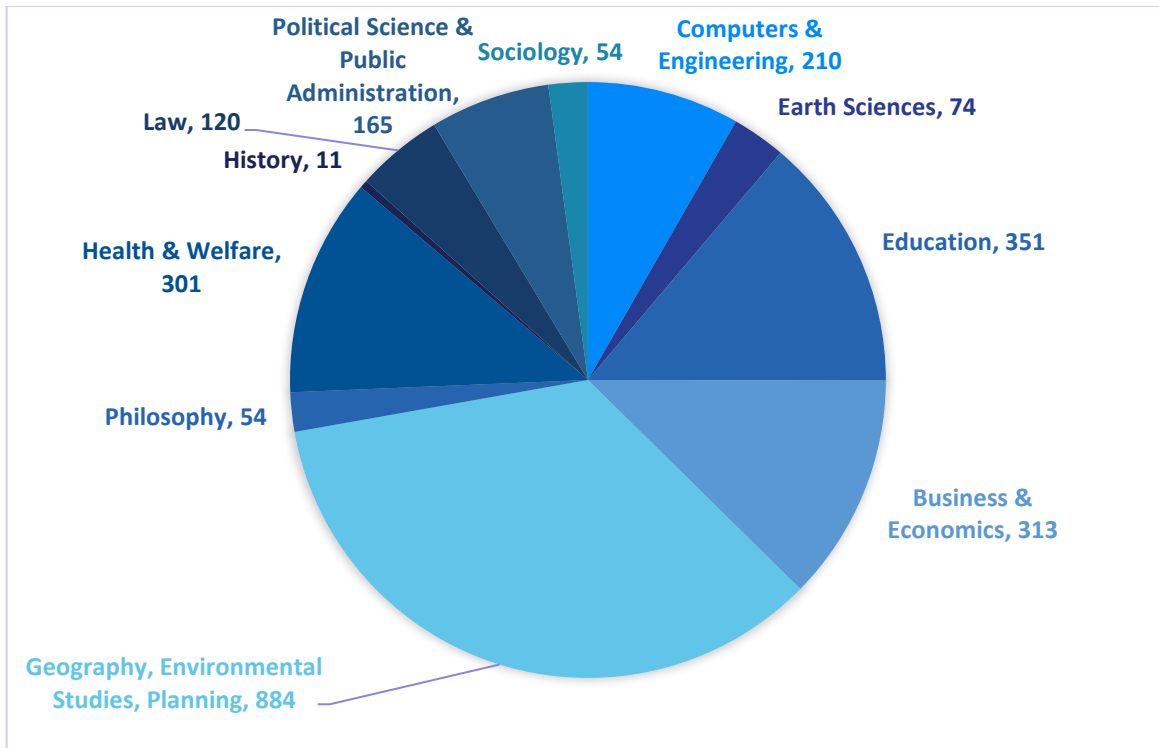


Figure 2: Articles by discipline. Please note interdisciplinary articles are classified in both subject areas (thus N=2537).

Understanding Public Involvement

There is growing public expectation and demand for greater involvement, and less willingness to accept that ‘experts’ know what is best (Mitchell, 2002, p. 83).

The literature surrounding public involvement is voluminous¹, spans a range of disciplines², and addresses all aspects of program development.³ At the heart of this material is the principle that people want a say in the decisions which affect them. As noted by Warren(2009, p. 3), “the democratic potential of government resides in the

¹ See section 1.1 which outlines the range of articles

² Including Geography, Public Administration, Sociology, Education, Political Science, Health Studies, Engineering and Education.

³ Including the intent, design, implementation and evaluations stages.

potentially responsive linkages between what governments do and what citizens receive.” This relationship was traditionally thought to be achieved through the electoral process.

Over time, challenges emerged, including recognition that (Warren, 2009):

- Elections require aggregate choices, not policy-specific decisions ;
- Plurality in society is increasing , without commensurate representation in electoral sphere;
- Constituencies are not spatially restricted; and
- Wicked, complex issues typically extend beyond geographic scope of electorate.

Even if one assumes that decision-makers are fully representative of their constituents, it is unrealistic to assume that the same values and experiences trickle down to be reflected in the administrative state appointees, who are often delegated decision-making powers. Opportunities for direct involvement, if structured well, provide opportunities for different voices to be heard in the decision-making process.

Specifically, a well-designed and implemented public involvement plan can:

- Impact public perception of the process, by strengthening trust and confidence. This may lead to
 - increased transparency surrounding the process and outcomes, including the costs, benefits and risks of different options (Winfield, 2016)
 - increased legitimacy of process and outcomes(Davies, Blackstock, & Rauschmayer, 2005; Diduck, Reed, & George, 2015; Fung, 2006; Winfield, 2016);
- Foster more rich deliberation of issues by improved representativeness (Davies et al., 2005; Diduck et al., 2015; Fung, 2006), particularly when designed to ensure the interests of minorities are reflected in actions (Pateman, 1970); and
- Enhance learning & innovation by all involved (Diduck et al., 2015),

In doing so, it is possible for policy makers to make better decisions and have greater success at implementing those (Davies et al., 2005; Diduck et al., 2015; Fung, 2006).

Terminology

Despite the proliferation of material across a range of disciplines, terminology varies across time and along disciplines. Table 1, for example, illustrates the introduction and trajectory of “participation”, “involvement” and “engagement” in the literature collected as part of this review. As illustrated by this small cross-section of literature, “participation” has the longest history dating back to the 1960s. “Engagement” – although a relatively new term – was used in more than 46% of the articles published in the last decade.

Table 1: Articles by term and year. Note some articles includes more than one phrase, thus N=2638.

| | Engagement | Involvement | Participation |
|-----------|------------|-------------|---------------|
| 1960-1969 | 0 | 0 | 1 |
| 1970-1979 | 0 | 1 | 2 |
| 1980-1989 | 0 | 2 | 7 |
| 1990-1999 | 1 | 29 | 49 |
| 2000-2009 | 150 | 177 | 253 |
| 2010-2020 | 921 | 452 | 593 |

Table 2 focuses on differences by discipline (specifically political science, education, health and geography) and noun (citizen, community, consumer, public or stakeholder). As illustrated in this data:

- Political Science and Geography have a proclivity for *participation*;
- Education for *engagement*; and,
- Health for *involvement*.

With respect to the “whom”:

- Political Science has a preponderance of articles focused on the *public*;
- Education focuses on *community*; and
- Health and Geography write about *stakeholders*.

In terms of phrase of choice, the results differ again.

- “Public participation” is the focus of Political Science and Geography

- “Community engagement” the focus of Education; and
- “Stakeholder engagement” the focus of Health literature.

Table 2: Articles by major discipline and phrase. Note some articles includes more than one phrase, thus N=1141.

| | Political Science | Education | Health | Geography |
|---------------|----------------------|-----------|--------|-----------|
| Engagement | 57 | 283 | 148 | 284 |
| Citizen | 4 | 0 | 1 | 2 |
| Community | 11 | 195 | 45 | 51 |
| Consumer | 0 | 0 | 0 | 2 |
| Public | 26 | 30 | 17 | 57 |
| Stakeholder | 16 | 58 | 85 | 172 |
| Involvement | 37 | 55 | 164 | 262 |
| Citizen | 1 | 0 | 0 | 5 |
| Community | 2 | 15 | 12 | 31 |
| Consumer | 0 | 0 | 0 | 0 |
| Public | 14 | 4 | 84 | 84 |
| Stakeholder | 20 | 36 | 68 | 142 |
| Participation | 112 | 64 | 101 | 612 |
| Citizen | 24 | 9 | 12 | 77 |
| Community | 0 | 5 | 8 | 27 |
| Consumer | 4 | 2 | 6 | 23 |
| Public | 54 | 21 | 34 | 315 |
| Stakeholder | 30 | 27 | 41 | 170 |

In short, participatory processes lack a common lexicon (Aubin & Bornstein, 2012). Thus, definitions become particularly important. For purposes of this report, the following definitions are used, based on the review of the literature and the author’s experience in this area:

The *public* or *general public* include the collective citizens and residents of a state, who may or may not be interested in, or may be affected by a particular issue. Stakeholders are individuals or organizations with an interest in an issue, and therefore something at stake in a deliberation and decision. This does not include government authorities.

Another useful approach is to map out members of the *policy community*. This approach focuses on a specific issue or policy, and then attempts to identify all who may have an interest or be active in that particular field. This includes different sectors, including different levels of government, non-governmental organizations, and the general public. The system is then visually represented in concentric circles, with those closest to the centre having the greatest power and influence over the decision. The action – involvement, participation, or engagement – relates to either the type of interaction proffered to the group.

Involvement - “Moving beyond the basic tenants of representative government to allow the public an opportunity to provide advice which may be used in the decision-making process.” (Dorcey & McDaniels, 2001, p. 249)

Participation – “Forums for exchange that are organized for the purpose of facilitating communication between government, citizens, stakeholders and interest groups, and businesses regarding a specific decision or problem.” (Renn, Webler, & Wiedemann, 1995, p. 2)

Engagement - The process of building relationships and developing trust to ensure the public can meaningfully contribute to long-term societal goals, in addition to shorter term economic, environmental, social and cultural actions.

Indigenous People

No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation and partnership.

Prime Minister Justin Trudeau

Indigenous people may be members of the public or be stakeholders in the process. Critically important, however, is that First Nations, Metis and Inuit have inherent rights which transcend roles as participants or stakeholders.

There is a significant body of literature which explores the dynamics of reconciliation, including the need to recognize, support, and implement Indigenous legal orders concurrent (equal but separate) with civil and common law (e.g., Borrows, 2016; Craft, 2013, 2014; Craft, 2016; Mills, 2010, 2016; Thompson, 2018). The teaching of Elders and Knowledge Keepers from each Indigenous Nation should guide the decision and engagement processes with each Nation. For specific direction on these matters, it is essential to speak with the Elders, Knowledge Keepers and leadership of each Nation.

Who participates

When designing participatory processes, it is important to understand who the target audience is. “Some participatory processes are open to all who wish to engage, whereas others invite only elite stakeholders such as interest group representatives,” (Fung, 2006, p. 66). As such, it is important to contemplate who *can* become involved in the process, and what must be done in order to become involved.

Fung ‘s (2006) typology includes eight types of participants. At one end is the state, which includes administrative experts and professional politicians typically engaged in decision-making. At the other end of the spectrum is the public- at- large. In the middle are five types of “mini-publics” which can be used as a proxy for the public. This includes professional stakeholders; lay stakeholders; random selection; open, targeted recruiting; open self-selection (see also Bherer & Breux, 2012, p. 385; Fung, 2003).

The categories can be arranged along a spectrum of “exclusivity” with open, self-selection considered more inclusive.

Newton and Elliot (2016) offer a different typology. This approach does not focus on exclusivity, but rather the interest of participant. In doing so, it groups participants into users of the system (including extractors, inputters, benefactors); affectees, or those who are not users, but will feel the repercussions of the decision; and influencers, those who have concerns associated with the broader issues which frame the ultimate decision. This typology is more closely affiliated with the policy community approach, which permits entry into decision-making through different routes.

To evaluate “who participates”, Fung (2006, p. 67) offers the following questions:

- “Are they appropriately representative of the relevant population or the general public?”
- Are important interests or perspectives excluded?
- Do they possess the information and competence to make good judgements and decisions?
- Are participants responsive and accountable to those who do not participate?”

In addition, it is important to consider what elements are in place to support the desired spectrum of participants. For example:

- What steps were taken to recruit representative members of the public?
- How does time commitment reflect the capacities of participants?
- What resources are available to support participation?
- How do these supports address the needs of each type of participant (e.g., industry association, not-for-profit, charity, individual member of the public)?

Stakes

What is at stake in the decision? This aspect addresses the vested interest of those involved in the participatory process. Fung (2003) argues that the higher the stakes, the more robust deliberation emerging from the participatory process.

Modes of Participation

Modes of participation focus on how the structure of the process engages the participant. Fung's (Fung, 2003, 2006) identifies a range of five opportunities: listener as spectator; express preferences; develop preferences; aggregate & bargain; and, deliberate & negotiate. The intensity of the activity increases across the spectrum, with those involved in deliberation & negotiation requiring more knowledge, and a higher level of investment. This approach prioritizes the action of the participant, rather than the design elements of the process. For example, when contemplating public hearings, Fung (2006, p. 68) observes the vast majority of those who attend... do not put forward their own views at all. Instead, they participate as spectators who receive information."

Perhaps a more useful strategy is to consider the potential interaction offered by mode of participation. For example, Sinclair and Diduck (2016) arrange typical methods for participatory processes according to potential types of exchange (information, input, problem-solving). Table 3 categorizes 40 different modes of participation.

Design evaluation could consider:

- what was the reach of the technique (i.e., who participated? How many people participated?);
- did it achieve its goal (i.e., information, input, problem-solving);
- did the design includes accommodations to hear from hard-to-reach groups?;
- did the mode/method meet the needs of the designers?; and,
- did the mode/method meet the needs of participants (and non-participants)?

Table 3 Participation techniques (Sinclair & Diduck, 2016, p. 81)

| Passive public information techniques | | | |
|--|------------------------|--------------------------------------|-----------------------|
| Advertisements | Feature stories | Information repositories | News conferences |
| Newspaper inserts | Press releases | Print materials | Technical Report |
| Television | Websites | | |
| Active public information techniques | | | |
| Briefings | Central contact person | Community fairs | Expert panels |
| Field offices | Field trips | Information hotline | Open houses |
| Technical assistance | Simulation games | | |
| Small-group public input techniques | | | |
| Informal meetings | In-person surveys | Interviews | Small-format meetings |
| Large-group input techniques | | | |
| Public hearings | Response sheets | Mail, telephone and internet surveys | |
| Small-group problem-solving techniques | | | |
| Advisory committees | Citizen juries | Community facilitation | Consensus-building |
| Mediation & negotiation | Panels | Role playing | Task forces |
| Large-group problem-solving techniques | | | |

| | | | |
|---------------------------|---------------------|-----------------|-----------------------|
| Workshops | Interactive polling | Sharing circles | Websites & chat rooms |
| Future search conferences | | | |

Scope of Participation

This aspect considers the nature of the matter under public review. The scope of participation refers to the nature of the subject under review, from narrow to broad in nature (Bherer & Breux, 2012; Fung, 2003). Smith (1982) provides additional guidance, organizing the participation themes among three categories⁴:

- normative – the broadest scope, addressing societal values and premises which inform a range of decision themes. For example, should Canada engage in the diamond industry?
- strategic – considers the range of alternative means of achieving the normative direction. For example, is mining an appropriate means of contributing to the diamond industry or are there alternative technologies available.
- operational – involving a specific, narrow application. For example – should this diamond mine be permitted.

It is important to ensure that the public has an opportunity to provide input into normative and strategic issues which inform operational exercises. Furthermore, the expectations of participants must match with (or be accommodated through) the objectives of participatory experience.

Frequency of Participation

⁴ Examples are based on the northern diamond mine industry, as explored in Fitzpatrick (2008)

This aspect considers the “reoccurrence and iteration” of the participatory process (Fung, 2003). A single event may lend itself to the provision of information or simple input opportunities (see section 2.4) but matters where specific background knowledge is needed require multiple interactions.

Empowerment

Empowerment is an important theme in participation literature. The degree to which voices are considered in the final decisions has repercussions, including confidence in process and final decision.

The seminal work in this area, penned by Arnstein (1969), likened the extent of agency afforded to participants as steps in a ladder (see Figure 3). At the lowest rungs, participatory events are designed to placate the public. Activities are designed to educate the participants, engineer support or divert attention from other issues. At the highest rungs, participatory processes are designed to share decision-making power with those involved.



Figure 3: Arnstein's (1969) ladder of participation. Green blocks represent manipulative efforts to involve citizens; yellow represent token efforts and blue represent methods which foster citizen power.

The International Association of Public Participation (IAP2) later revised the spectrum of participation. This approach moves from eight to five levels inform, consult, involve, collaborate, and empower. At the lowest level, inform, the goal is to provide the public with the necessary information to understand topic. At the empowerment stage, the public is given the final say in the decision-making process. Each stage includes commitments to the participant designed to clearly communicate how the goal will be implemented.

What Makes Participation Meaningful?

Meaningful public participation ... ensures that all interested persons and organizations have the opportunity to contribute their knowledge and views, and to see how their contributions are used. As a result, proponents and government decision makers receive better information — enabling them to more effectively address public concerns — and final decisions better reflect values.” (Canadian Environmental Assessment Agency, 2001, p. 22)

A meaningful process moves beyond the seven design elements reviewed in Section 2. This section summarizes recent work on *meaningful participation*. In doing so it identifies three principles which should inform the design of any participatory process, and key elements which contribute to an accessible, meaningful program.

Principles of Participation

A meaningful process is open to all (Canadian Environmental Assessment Agency, 2001, p. 22). It can be accessed by all who are interested (Expert Panel Review of Environmental Assessment Processes, 2017, p. 14), and is accessed by representative members of the public (Doelle, 2018; Stewart & Sinclair, 2007, see also section 2.2)

Meaningful participation requires reliable data. The record “...must be entirely based on evidence that is, and is seen to be, unbiased, accurate, accessible and complete.” (Expert Panel Review of Environmental Assessment Processes, 2017, p. 14). It is important to note that this does not mean evidence follows one specific knowledge system, such as science; it simply means that the evidence must be reliable as per the worldview in which it is situated. The process should demonstrate that the information was heard by decision-makers, and “ had a chance to influence the ultimate decisions.” (Expert Panel Review of Environmental Assessment Processes, 2017, p. 14; Stewart & Sinclair, 2007)

Process integrity, through transparency and accountability is essential. “[P]eople must be able to see and understand how the process is being applied and how decisions are being made. Without this transparency, no process will be trusted.” (Expert Panel Review of Environmental Assessment Processes, 2017, p. 13).

Components of Meaningful Participation

There are several design components which are said to contribute to a meaningful participation program. This includes:

- Involvement early in process so participants can shape decision (Doelle, 2018)
- Notice and sufficient time to prepare an informed submission (Doelle, 2018; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007)
- Participant assistance (Doelle, 2018; Stewart & Sinclair, 2007), including funding and capacity building
- Modes of participation which promote Two way dialogue (Stewart & Sinclair, 2007), which can allow for learning (Doelle, 2018; Stewart & Sinclair, 2007)
- Access to information (Sinclair & Diduck, 2016)
- Implementing the principles of natural justice (Doelle, 2018), including access to process, through hearing requirements, written and oral comments, and the

right to challenge decisions lead administrators to believe public has greater influence on decision (Woods, 2009)

- Reporting back on how feedback was addressed, through tools such as an issues tracking table.

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Excerpts from Key Interview Report

By: Wendy Nur, Independent Consultant

This report discusses the qualitative data which arose in several key stakeholder interviews. While CAC Manitoba's intent is to examine public participation from a consumer-friendly perspective, attempts were made to include as many voices as possible. The following report is an attempt to reflect these voices, along with the perspectives of the individuals interviewed. Section 2 describes the methods of the key interviews process discusses the underlying methodology informing the key interviews piece. Section 3 looks at selected results arising from the qualitative data, and is followed by of the main themes in Section 4. Section 5 concludes the report and offers recommendations.

Methods

Policy Community Perspectives

The key interviews were conducted with individuals representing a variety of perspectives with regard to public participation in regulatory proceedings. We spoke with:

- Representatives of regulatory bodies;
- Representatives of government departments that receive recommendations from, or oversee, regulatory bodies or tribunals;
- Representatives of regulated industries; and
- Representatives of advocacy and interest groups who have acted as intervenors in regulatory processes

Key Questions

The methodological approach informing the design of the key interviews piece was to look at the themes/questions which arose from the initial pieces of research-mainly the literature review and the review of the legislative framework and build on these themes. The interview questions were designed with these themes in mind. Some of these questions included:

- *What has been your regulatory experience?;*
- *What benefits/challenges do you see to public participation in the marketplace in regulatory proceedings?;*
- *What role, if any, does public participation play in fostering transparency in the regulatory process, in particular?*
- *What are some specific barriers to engagement faced by your policy community and what suggestions could you offer in order to mitigate these barriers?*

Participant Selection

Potential interviewees/ stakeholders were identified by members of the research team and approached regarding potential interviews. Efforts were made to contact individuals across Canada, and interviews were offered in either French or English-dependent on interviewee choice.

Interview Design

The interviews were approximately one hour in length. Interviewees were guaranteed both anonymity and confidentiality with regard both their participation and their comments, and were provided written copies of the interview questions in advance. Due to the constrictions of the pandemic, all interviews were conducted virtually, and were offered by telephone, via Zoom, or via Microsoft Teams. Informed and ongoing consent was obtained verbally and practiced for each interview and recordings were made (with consent) for later reference.

Various aspects of the research methodology and the tools for the key interviews were shared with the advisory panel for review and feedback. Members of the advisory panel were generous with their time and insight. They provided valuable guidance to the research team, and their input helped to shape both the questions that were asked and the approach to data analysis.

Approach to Data Analysis

Because interviewees represented such a diverse range of perspectives, an intuitive approach was applied to the qualitative data analysis. This approach was endorsed by

members of the advisory panel and consisted of noting recurring words or themes which emerged in the interview notes.

In listening to responses, there were certain ideas/phrases which repeatedly emerged. Some of these include: resource barriers; information barriers; time barriers; knowledge barriers; two-tiered participation; level playing field; transparency, internet access; limited feedback; complex reports; inaccessible data; marginalized voices; democracy; level playing field.

Key Themes Arising in the Results

From the earlier research for this project, four major principles for meaningful public engagement which had emerged:

1. Public participation, to be meaningful, must be accessible to everyone. There needs to be meaningful, 2-way engagement.
2. The data need to be reliably recorded and accessible. This is the first of a two-part requirement for public trust.
3. The second requirement for public trust is that there needs to be feedback which displays how public participation was used/not used, how it influenced or did not influence the decision, and the reasoning behind this.
4. Legislation that doesn't enable could disable.

The qualitative data were explored using the above principles as a framework, resulting in the following themes:

1. Accessibility to and consistency of information is complex.
2. Opportunities for feedback are limited.
3. A lack of resources limits meaningful public participation.
4. The regulatory process is not always a "level playing field."

In summary, most interviewees saw accessibility and consistency of data as key to meaningful public participation, but shared that, in their experiences, information is often complex and difficult to access. They agreed that transparency and trust are

supported by feedback, but shared that in their experiences, feedback was often very limited. They pointed to the lack of resources (for intervenors, policy communities, as well as for regulatory bodies) as a limitation for opportunities for meaningful engagement. While a diversity of voices in regulatory processes was seen as a major benefit, certain groups were seen to be at greater risk of marginalization or exclusion due to multiple barriers.

Conclusion and Recommendations

Public Participation is a Vital Component of Participatory Democracy

The process of public participation is intended to be a democratic means by which all voices can be heard, and ideally, one which should influence public decision-making processes. As interviewees pointed out, the goal of public participation is to create an inclusive society, to hear as many voices as possible and for those voices to have the power to shape the regulatory proceedings which impact their lives. Interviewees differed as to what public participation should look like and how much weight it should hold, however all agreed that public participation on some level was a vital part of regulatory decisions-making process. As one interviewee observed,

I strongly believe the voice of the public is the most important voice and it is easy for people in positions where they're setting policy or they are decision makers to sometimes let their personal biases drive those decisions and don't really consider what their true mandate is and what's in the interest of everyone. And it's human nature, right, we get wrapped up in ourselves.

Remove Social Structural and Socio-Economic Barriers

While the interviewees had very different roles, experiences, and opinions with regards to the regulatory process, one theme was particularly salient across perspectives; public participation is currently “not a level playing field”. The experiences drawn up by interviewees were ones where social structural and socio-economic barriers created a power dynamic that advantaged the powerful and further disadvantaged the already marginalized. Several barriers were acknowledged (resource barriers, knowledge barriers, information barriers, access barriers, geographical

barriers, attitudinal barriers). Considering the importance placed on public participation by the interviewees, the mitigation of these barriers is of primary importance not only with regard to fostering public participation in regulatory hearings- and to participatory democracy itself. To conclude in the words of one interviewee,

Disadvantage is a huge barrier to participating in the democratic process at any level... If governments are interested in getting better at hearing from marginalized/disadvantage groups, they have to...be willing to find fixes...To me, one of the essences of democracy is its recognition of those who are disadvantaged for any reason and then its ability to act to support that group to have some strength to present its case to the rest of Canadians...If you are going to create an inclusive society, then that inclusion has to be at all levels and be in all places...level the playing field.

Level the Playing Field

What can be done to improve access to information? How can deeper, more meaningful public participation in regulatory process be facilitated? What can be done to address limits in resourcing? How can we level the playing field? Interviewees were asked not only about the barriers their policy communities and others face with regard to public participation in the regulatory system. This report will conclude with their recommendations:

1. Improve websites and databases so that they are more user-friendly, so that information is easier to understand, locate, and access. Language used to facilitate public participation in regulatory proceedings needs to be plainer and more invitational to foster informed participation and transparency .
2. Improve online engagement, both with individuals and with organizations. This would include access to public comments and feedback on comments so that they can recognize that they are being actively listened to. When regulators hear feedback from the public, they should disaggregated the information, summarize the information thematically, to let the people know they had been heard and to make sure the marginalized voices have been heard.

3. Increase education of the public/consumers on decision-making processes, especially when it comes to marginalized communities such as newcomers (especially those for whom English is an additional language) or for First Nations communities (particularly those in remote or rural regions).
4. Mandate public participation but avoid rigid legislation. Interviewees expressed concern that regulations regarding public participation in regulatory proceedings should be focused on diversity and inclusivity, and should therefore be informed by a culturally sensitive lens and contain flexibility to adapt participatory engagement in regulatory proceedings accordingly.
5. Improve participant assistance (funding/ resources) to facilitate public participation in regulatory proceedings especially for those with limited access to or knowledge of the process, such as individual members of the public, consumers, and smaller groups who advocate for underrepresented consumers.
6. Expand and improve high speed internet access for those suffering from the digital divide so that they will have access to information, engagement platforms, and processes whereby which they can gain access to information about or standing in proceedings. The barrier to internet/data and therefore lack of information was reflective of systemic socio-economic barriers which, according to interviewees could only addressed at a provincial or federal level. Some of the voices which should be heard but were also at risk of exclusion were: First Nations; individuals/families living in poverty; rural, northern communities.
7. Government should continue to work towards eliminating systemic barriers, such as poverty, racism, and the impacts of colonialism.
8. Legislate, require, and support transparency in regulatory proceedings. Inform and involve the public at the beginning of the process. Ideally, the regulated industry should be the one to initiate and facilitate public participation. Funding for public participation should be outlined in the legislation.

9. Public participation is critical to implementation planning, and this understanding should inform the process of public participation in regulatory processes.

See the full *Key Interview Report* in Appendix A.

Excerpts from the Executive Summary of *More Than Talking Heads?!? How do administrative tribunals hear from the public?*,

By: Dr. Patricia Fitzpatrick and Babatunde Alabi

Background

Consumers and the general public want a say in the decisions which affect them. However, access to meaningful engagement in regulatory decisions is uneven across jurisdictions, as well as across types of tribunals. Scholarship on this subject describes meaningful participation as that which is open to all, is based on reliable data, ensures transparency and accountability, ensures early & ongoing engagement, has potential for participant funding, and is based on the principles of natural justice. But what happens in actual practice? The purpose of this research was to explore how consumers have and can be involved in the decisions which affect them. Specifically, this research: (i) examined how different tribunals implement statutory requirements for public engagement across Canada (ii) explored methods, dynamics, and nature of public engagement programs and, (iii) identified tools for engaging the public.

Methods

Using a comparative case study design, we assessed six administrative tribunals across Canada. A preliminary legislative review identified fifty-five tribunals with legislative requirements for public engagement, and evidence of recent opportunities for the public to be involved. Four categories of tribunals emerged from the dataset: Telecommunications, Public Utilities; Environmental; and, Securities Commissions. After applying a geographic lens to ensure representation across the country, cases were chosen based on timing, completion, comparability within categories, and scope of impact of the decision. We conducted a document review, as well as key informant, semi-structured interviews with one individual involved in each case study. Interviews

were recorded and transcribed, with responses coded and common themes identified for analysis.

Results - Findings revealed a varying degree of conformity to best practice, gaps in mechanisms for public engagement, as well as key opportunities for improvement across regulatory agencies. Specifically, the timeline between notice and final reports varied significantly across all types of tribunals and within tribunal categories. While most tribunals have social media presences, we observed a limited use of social media as a tool for notice. While each tribunal has legislative requirements for public participation, requirements vary. Participation through comment submission is generally open to all, whereas half of the tribunals assessed require the approval and invitation of participants for oral hearings. Legal representation is not required to participate in any of the tribunals reviewed, however most interviewees found that having some legal experience was useful. Although laden with constraints, participant funding was available for half of the cases (the administrative tribunals involved with telecommunications and rate setting. Neither of the impact assessment tribunals, nor the securities commission tribunals provided funding. Opportunity to appeal final decisions is not available in most of the cases.

Conclusion

While good practices were noted in all of the cases, there is still substantial room for improvement in order to fully democratize the regulatory decision-making processes. It is imperative for regulators to ensure good practice in all aspects of participation for meaningful engagement to take place. All aspects of participation are complementary, hence a weakness in one of them will water down the strength of others, thereby preventing meaningful engagement from happening. Our study shows that there is urgent need for improvement in public notice, participant assistance, and the ability of the public to challenge hearing decisions. Researchers have noted that a meaningful public engagement process promotes positive knowledge exchange, which leads to organizational and public learning. Ensuring that all aspects of participation meet the

required standards and fulfills public expectations will facilitate learning and confer on the regulator the legitimacy to operate on behalf of the public.

Recommendations

Based on our findings, we offer the following recommendations for improved public engagement and participation in regulatory hearings.

1. Social media has become a huge tool for reaching a broad range of audiences. Tribunals should employ and maximize the use of social media channels to facilitate meaningful participation.
2. Extending the period of notification may increase the number of participants involved in the process. Tribunals with longer notification periods (i.e. thirty days or greater) had higher numbers of participants.
3. Tribunals should remove the application process, and other barriers for participation in oral hearings.
4. Tribunals should increase the modes (i.e., methods) through which the public may get involved in the decision-making process. For example, public opinion polls, on-line focus groups, and semi-structured interviews, where appropriate, as employed by the CRTC, should be considered by other tribunals as a means through which to hear from the general public. Please note, these methods should not replace, but rather supplement existing methods for engagement.
5. There is a need for more transparency in the documentation of how participant input influences final decisions; decisions should reflect how participants' submissions were considered.
6. There is also a need for an opportunity to challenge tribunal decision; tribunals should establish mechanisms, through statute amendment, to create opportunity for the public to appeal decisions.
7. Tribunals should establish funding mechanisms that allow participants to be compensated for their time and other costs incurred in the process of participation. Such compensation should include considerations for providing some advance payments to participants.

See the full report, *More than Talking Heads?! How do administrative tribunals hear from the public?*, including references and interview questions, in Appendix B.

Research conducted by Heather Fast for the Public Interest Law Centre.

Analysis and summary.

By Chris Klassen for the Public Interest Law Centre

The Public Interest Law Centre was retained by CAC Manitoba to conduct a review of relevant regulatory and legislative frameworks in the project's six targeted jurisdictions, federally in Canada, and in select international jurisdictions, which included Australia, the United Kingdom, Germany, France and the United States. The jurisdictions and tribunals reviewed were decided upon in consultation with the PILC research team and CAC Manitoba. In selecting the jurisdictions and tribunals to review, effort was made to ensure that the review included diversity of geography. Broad representation of subject matter was prioritized also, however tribunals with mandates relating to telecommunications and financial services industries were selected from multiple jurisdictions to allow for consideration of any present similarities.

The specific questions which the research team sought to answer about each tribunal reviewed were informed by the elements of best practice identified by Fitzpatrick and Dilay (2020). For each tribunal, researchers collected identifying information including details about the tribunal's mandate, activities and statutory framework, as well as information on their offered modes of participation, the timing of participation, notice requirements, ease of access to information, the availability of participant assistance, public appeal mechanisms, standing requirements, and public reporting mechanisms.

This review assessed the enabling legislation and relevant regulations and policy documents pertaining to opportunities for public participation before select tribunals in the targeted jurisdictions. The review identified these tribunals' enabling legislation, mandate and responsibilities, as well as available modes of participation, timing of participation, notice requirements, standing requirements, participant assistance, opportunities for appeal, access to information and public reporting obligations.

The results of this review are attached to this report as Appendix “*”. Summaries of the tribunals reviewed as well as analysis of the relevant findings are presented here.

Analysis of the results of the legislative and policy review

For each jurisdiction and tribunal reviewed, opportunities for public participation have been assessed against criteria informed by the principles of best practice identified in the literature review conducted by Fitzpatrick and Dilay (2020).

No tribunal presented all elements of best practice. However, the observations described in Appendices C and D and the nature of the obligations and constraints imposed on regulatory tribunals provide a starting point for discussion. One possible trend identified in the results suggests that tribunals which have clear obligations to consult the public implement practices which are most creative and likely to align with best practice.

The United Kingdom’s Financial Conduct Authority possesses a general duty to consult, which is set out in its statutory mandate. To fulfil this obligation, this tribunal has taken creative steps to ensure that its opportunities for public participation are meaningful. Among these, notable examples include the creation of the various panels to explicitly seek input from specific policy communities, including consumers, and the requirement to ensure that public comments received and responses to them are reported on.

Conversely, tribunals whose mandates do not involve decision-making appear to provide the fewest and least meaningful opportunities for participation. Germany’s “UBA”, for example, conducts research and provides government with policy advice pertaining to environmental risks. It makes a significant amount of data publicly available, but opportunities for public comment are generally limited to written comments submitted by online form, but only pertaining to specific processes and with limited tribunal accountability.

There do not appear to be significant trends in our findings suggesting that the activities of tribunals in any individual jurisdiction are more consistent with best practice than other jurisdictions.

For three of the international jurisdictions reviewed, more than one tribunal was assessed. Despite some similarities between tribunals in the same jurisdiction, these similarities did not suggest that a particular jurisdiction is more compliant with best practice than others.

In the United States, for example, both the Federal Communications Commission and the Securities and Exchange Commission accept written comments in most proceedings with participation in oral hearings being available in select circumstances. Public notice requirements are present but are not longer or more aggressively disseminated than general practice. These Commissions can be commended for not imposing standing requirements, but do not otherwise appear to make efforts to ensure that their decisions are informed by affected individuals or policy communities.

Other examples of comparison between multiple tribunals from the same jurisdiction do not bear the same similarities as those from the United States. The United Kingdom's Gas and Electric Markets Authority and Financial Conduct Authority, for example, are not subjected to comparable reporting requirements relating to responses to comments received.

There also did not appear to be trends relating to subject matter. Our review considered tribunals from multiple jurisdictions with mandates relating to comparable subject areas (ex. Telecommunications, utility rate regulation, environmental impact assessment, etc.) One such subject involved tribunals responsible for regulating securities and financial markets from the United Kingdom, the United States, and the Canadian provinces of Manitoba and Ontario. These tribunals do not present significant similarities. All accept public comments and provide advance notice of

opportunities for comment, but only the Ontario Securities Commission and the United Kingdom's Financial Conduct Authority are required to publish the comments received and their responses.

Other comparisons among tribunals with mandates relating comparable subject areas did not suggest that consistency with best practice is correlated with subject area. Advocacy for improvement in opportunities for public participation may target legislative change or more meaningful exercises of flexibility and discretion on the part of tribunals. The goals of these efforts may be informed by best practices as described by Fitzpatrick and Dilay, but there are also examples from the jurisdictions and tribunals reviewed at Appendix "*" which invite consideration.

For example, there are examples in the United Kingdom and Australia of specialized tribunals constituting standing advisory bodies which operate outside of particular proceedings. The Consumer Consultative Committee of the Australia Competition and Consumers Commission, and the various advisory committees of the United States' Federal Communications Commission exist to provide broad input to their respective tribunals. Though these bodies do not replace or reduce the importance of meaningful public participation in decision-making processes, they do support the tribunal in developing and maintaining relevant expertise to inform its decision-making activities. These findings invite two comments in response.

First, tribunals' failures to implement best practices in public participation are not always the fault of the tribunal. Frequently, these shortcomings are a product of constraints in their enabling legislation. As statutory bodies, administrative tribunals only possess the authority set out in their enabling statutes or their regulations which frequently set boundaries that cannot be overstepped. This is made most clear, for example, in the availability of participant funding. The *Costs Rules* of the Nova Scotia Utility and Review Board, for example, is a regulation enacted under the Board's enabling legislation which expressly prohibits the Board from ordering intervener funding, while permitting the awarding of costs in some circumstances. No examples

were found of tribunals awarding costs without an explicit grant of statutory authority to do so.

However, constraints in enabling legislation do not absolve tribunals of their own failures to act within their delegated authority to provide opportunities for public participation consistent with best practices. In many cases, the laws which create and guide the activities of many administrative tribunals create ‘floors’, rather than ‘ceilings’, for opportunities for public participation. In other words, they create minimum standards above which the tribunal is free to operate at its discretion. A clear illustration of this reality can be identified in tribunals’ notice requirements. As described in Appendices C and D, where administrative tribunals are required to facilitate public participation they are generally also required to publish notice of these opportunities. These tribunals’ enabling legislation will frequently prescribe minimum time periods for notice, and in some cases the medium of publication. For example, Quebec’s *BAPE* must hold 30-day comment periods, and CRTC notices of public hearings must be published in newspapers.

Second, in most cases there appears to be nothing preventing tribunals from providing notice earlier, more frequently, or by more accessible means than required. The principle of urging tribunals to take advantage of this flexibility in their mandates is broadly applicable. Advocates for increased opportunities for public participation may wish to consider focusing part of their efforts on encouraging tribunals to exercise their discretionary authority to maximize public participation to the extent that their enabling legislation permits.

The jurisdictions and tribunals which were reviewed as part of this research are summarized here and presented in full at Appendices C and D.

Tribunals in Canadian jurisdictions – Federal and Provincial

Canadian Radio-television and Telecommunications Commission (CRTC) is a Canadian federal statutory tribunal empowered to regulate the broadcasting and telecommunications industries. The CRTC engages in licencing, enforcement, tariff approval and rate-setting, and through all of its activities, promotes reliance on competitive market forces.

The CRTC accepts written comments from the public with respect to its decisions and regularly holds public hearings at which the public may appear and make submissions. In addition to submitting written comments, any interested members of the public, including organizations, can participate in CRTC proceedings as interveners. Participant cost awards are available, subject to the CRTC's decision following an application, in relation to telecommunications matters.

The CRTC is required to provide public notice of all proceedings related to broadcasting and telecommunications regulations, hearings and consultations to provide a reasonable opportunity for comments to be provided.

The CRTC provides a range of publicly available information on its website, including hearing transcripts, reports, publications and decisions. The CRTC also engages in annual reporting to the public and government.

Nova Scotia Utility and Review Board

The Nova Scotia Utility and Review Board (NSUARB) is a provincial statutory tribunal which both regulates utility-related commercial entities and adjudicates a broad range of decisions of other provincial bodies.

Opportunities for public participation exist both in the submission of written comments in advance of decisions and, for individuals found to have a real and substantial interest in the subject, participation in oral or written hearings. Notice of

these opportunities is required, but the specific notice requirements vary depending on the nature of the proceeding.

The Board has no authority to fund interveners but may award costs against a utility to fund the intervention of a non-profit, public interest group. The Board is required to publish reasons for its decisions and must meet annual reporting requirements.

Yukon Utilities Board

The Yukon Utilities Board (YUB) is a statutory rate-setting tribunal with jurisdiction over two public utilities, the Yukon Energy Corporation and the Yukon Electrical Company Ltd.

YUB hearings are conducted either orally or in writing, with oral hearings being open to the public. The public may participate in both types of hearings either as presenters or interveners. Anyone may make a presentation, but interveners, which are granted full party status, must take a position on an application and demonstrate that their contributions will benefit the Board's deliberation.

The YUB may award costs to eligible hearing participants so long as they do not have a financial interest in the outcome of the proceeding. The YUB has established criteria related to the nature of an applicant's participation in the proceeding that applications for costs are assessed against.

The Board must provide written reasons for its decisions, which are appealable with leave to the Yukon Court of Appeal.

Documents associated with current and past proceedings are available on the Board's website along with Board policy documents and various reports.

Bureau d'audiences publiques sur l'environnement (BAPE) [Quebec]

The BAPE is responsible for conducting public education and consultation in relation to environmental impacts for the purpose of reporting to government and informing government decision-making.

Opportunities for public participation exist in public hearings and consultations. Public comments are accepted both on the scope of an environmental assessment study prior to the production of the assessment report as well as on the completed report before recommendations are provided to government. At least 15 days' notice must be provided in advance of the 30 day comment periods. Participant funding does not appear to be available.

As the BAPE provides only recommendations these cannot be appealed, but the Minister must make BAPE reports public after they are received.

Saskatchewan Ministry of Environment

Public participation in environmental decision-making in Saskatchewan is facilitated by the relevant government department rather than an independent tribunal.

Environmental assessment processes in Saskatchewan include opportunities for the public to provide written comments. However, the comment period opens upon notice being provided and unless extended by the Minister, closes after 30 days. Participant funding does not appear to be available and there does not appear to be a statutory appeal mechanism.

Manitoba Securities Commission

This Commission administers four Manitoba statutes related to financial services and securities, which involves developing regulatory policy, receiving and considering applications for licences, authorizing investigations and adjudicating hearings.

The Commission accepts written comments on rules proposed through its role as regulator, and 60 days' notice must be provided for these opportunities. Its hearings

are open to the public, but as these are conducted exclusively with respect to the Commission's enforcement responsibilities rather than its regulatory role opportunities for public participation is limited.

Ontario Securities Commission

The Ontario Securities Commission is an independent agency of the Crown responsible for regulating capital markets in Ontario by rule-making, investigation and enforcement. It is mandated to protect consumers from unfair and improper practices and foster confidence in fair and efficient capital markets to contribute to the stability of the financial system.

Members of the public may comment on proposed changes to rules and policies. 90 day comment periods are initiated with a consultation notice and the publishing of the proposed change. Final rules and policies adopted by the Commission are not appealable by members of the public.

As this Commission's hearings are held in relation to its enforcement responsibilities there are no opportunities for public participation, but the public is permitted to attend.

The Commission is required to publish its adopted rules and policies as well as a statement responding to comments submitted by the public.

International Tribunals

Australia Competition and Consumers Commission (ACCC)

The ACCC is an independent statutory authority responsible for enforcing a range of statutes⁵ targeting consumer protections and for promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.⁶

To do so, in addition to exercising its decision-making authority under its enabling legislation, the ACCC conducts public education and monitors the state of competition and consumers' interests across multiple industries and in relation to the impacts of relevant statutes. Its findings are regularly reported to government and the public.

The most consistent opportunity for public participation created by the ACCC is its acceptance of written comments both in its decision-making processes and in the preparation of its public reports. The ACCC is required to publish notice of such opportunities, but the timing of the notice is largely discretionary.⁷ The ACCC does not make provide participant funding.

The ACCC does, however, facilitate a "Consumer Consultative Committee", which is a standing committee representing consumers' interests that supports the ACCC in maintaining awareness of consumers' needs and interests.

L'Autorité de régulation des communications électroniques, des postes et de la distribution de la presse (Arcep)

Arcep is France's independent administrative authority for the regulation of electronic communications, postal services and press distribution. Its mandate includes the

⁵ ACCC, "Legislation", online: <<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/legislation>>

⁶ ACCC, "About Us", online: <<https://www.accc.gov.au/about-us/australian-competition-consumer-commission>>

⁷ CCA, *ibid*, s 28(2)(b).

protection of net neutrality, improvement in regional internet connectivity and the modernization of print media distribution.⁸

Opportunities for public participation in Arcep's processes appear limited to the submission of written comments prior to regulatory decision-making. The period of time for public consultation appears discretionary and there is no support available to the public to promote participation.

Arcep's decisions and the results of its public consultation processes are made public with the exception of commercially sensitive information.

Federal Communications Commission

The Federal Communications Commission (FCC) regulates interstate and international communications by radio, television, wire, satellite and cable across the United States. The FCC facilitates multiple forms of processes with varying opportunities for public participation. When it contemplates rule or regulation changes, public notices inviting comments are issued. When holding hearings, whether as part of its investigative obligations or related to environmental assessments, these hearings are open to the public. There are no restrictions placed on who may submit comments, but full participation as an Intervener may require leave of the Commission. It does not appear to the research team that the FCC facilitates the provision of participant funding. Additionally, the FCC has assembled multiple advisory committees, the members of which represent various constituencies and provide the FCC with expertise and advice.

Umweltbundesamt (UBA) [German Environment Agency]

The UBA is responsible for detecting environmental risks and threats and providing policy advice to government and other government agencies. The UBA's findings are also made available to the public.

⁸ L'Autorité de régulation des communications électroniques, des postes et de la distribution de la presse, "Who we are, what we do and how we do it: Our duties", online: < <https://en.arcep.fr/arcep/our-duties.html> >

The UBA's activities in the collection and dissemination of information are supplemented by public comment opportunities made available online. These opportunities are usually created prior to the finalizing of a decision or recommendation. Notice is generally provided through the UBA's own online platforms and newsletters.

The UBA also facilitates multiple subject-specific commissions and advisory boards to further support its work.

Western Australia Environmental Protection Authority (EPA)

The Environmental Protection Authority is an independent statutory body which conducts environmental impact assessments and grants related licences, develops environmental policy and provides advice to government.

Public participation is invited before various decisions are made, including the finalizing of proposed policy, the conclusion of environmental assessments and the granting of licences and licence exemptions. These comment periods begin at the outset of the Authority's processes and require the publishing of public notices. The length of the notice and the comment period depends on the requirements of the specific process in question.

The Authority is at times also required to hold public inquiries which also invite public participation. In all processes, there are no limitations on who may provide comment to the Authority and decisions of the Authority may be appealed by any person who disagrees with the outcome.

Financial Conduct Authority (FCA)

The FCA is the conduct regulator for financial services firms and financial markets in the United Kingdom. The FCA is an independent public body solely funded by fees charged to regulated companies.

The FCA is subjected to a general statutory duty to consult in all of its activities. The FCA primarily works to fulfil this duty through its various panels, including a Consumer Panel, by which it collects sector-specific input and expertise. Further to the work of these panels, opportunities for written public comment are part of most proceedings, and a limited category of proceedings also involves opportunity for the public to actively participate.

The FCA is required to provide notice of all opportunities for public participation, the requirements of which vary depending on the nature of the opportunity. Participant funding does not appear to be available before the FCA but may be available in limited circumstances in appeals of FCA decisions.

The FCA also has a statutory mandate to operate as transparently as possible, which it works to achieve by publishing a wide variety of reports and reference documents on its website. Importantly, when the FCA receives submissions from members of the public or affected stakeholders, it is required to publish an account of the representations made to it and its responses.

U.S. Securities and Exchange Commission (SEC)

The SEC is the primary body responsible for oversight and regulation of the United States' securities markets. Its role is to protect investors, maintain proper market functioning and facilitate growth of capital.

The Commission's meetings are generally open to the public, except when they concern confidential subjects. Many of the Commission's proceedings involve

opportunities for public participation. Members of the public may submit oral or written comments, including data, during time periods permitted by the Commission for the proceeding in question. The SEC must notify the public in advance of opportunities to provide comment, but the timing of this notice varies depending on the nature of the opportunity. It does not appear that the SEC facilitates the provision of participant funding.

Much of the documentation relied on by the SEC is made public including all comments received from the public. The SEC is also subject to reporting requirements, including by identifying actions taken in public dissemination of certain categories of information.

Gas and Electricity Markets Authority (GEMA)

The Gas and Electricity Markets Authority of the United Kingdom oversees the Office of Gas and Electricity Markets (Ofgem) and is responsible for ensuring that all consumers have access to quality utility services at reasonable rates. GEMA achieves this by implementing and enforcing price controls and other regulatory measures, as well as setting policy priorities for the Ofgem.

GEMA accepts written comments from the public pertaining to impact assessments, licences for transmission facilities, and service provider performance standards. This opportunity is generally open to all. Participant assistance does not appear to be available.

GEMA makes a range of information available on its website, including related to specific proceedings and its activities more broadly. However, GEMA is not required to produce written reasons for all its decisions.

GEMA also conducts ongoing consumer research including through its Consumer First Panel to maintain its understanding of issues facing consumers which are relevant to its mandate.

New York Public Service Commission

The New York Public Service Commission is responsible for ensuring safe, secure, and reliable residential and commercial utility services in New York State.⁹ The Commission's central responsibilities are the setting of utility rates and approving the locations of gas and electricity transmission infrastructure development.

Opportunities for public participation take place during Commission decision-making processes and include both the submission of written comments and full participation in public hearings. Participation as an Intervener is subject to the Commission's approval, but participant funding for participant parties may be available. Notice of all opportunities for public participation is required, but notice requirements vary.

Importantly, all proceedings and related documents must be publicly available in an accessible manner. The Commission must also publish reasons for its decisions, which are appealable.

The complete *Review and Analysis of Regulatory and Legislative Frameworks (Canada and International)* will be found in Appendices C (Canadian) and D (International).

⁹ NY Department of Public Service, "Mission Statement", online:
<<https://www3.dps.ny.gov/W/PSCWeb.nsf/ArticlesByTitle/39108B0E4BEBAB3785257687006F3A6F?OpenDocument>>

Two virtual workshops were hosted on February 24 and March 17, 2021. Each session consisted of a panel presentation and interactive workshop breakout session. The panels consisted of presenters who provided different perspectives on public participation in regulatory proceedings.

The interactive workshop sessions provided an opportunity for participants to discuss and respond to several key questions related to public participation in regulatory proceedings. 43 people participated in the session on February 24, and 36 people participated on March 17th.

A full report on the workshops, authored by Kate Robb (University of Winnipeg), is appended to this document, including a summary of both the panel presentations and workshop sessions from February 24th and March 17th.

Panels

The following speaker summaries are excerpts from Kate Robb's full workshop report, appended to this document.

February 24th

Dr. Paul Thomas, University of Manitoba – ***First Principles of Democratic Engagement in Society.***

Dr. Thomas opened his presentation by stating that the ideal democratic system involves inclusive and representative governance in which everyone's voice matters and can influence decisions. His presentation focused on the ways in which Statutory Regulatory Agencies (SRAs) can enable conditions for citizen engagement, as well as the associated challenges they face in doing so.

Dr. Patricia Fitzpatrick, University of Winnipeg – ***What is Necessary for Meaningful Public Engagement***

Dr. Fitzpatrick's presentation focused on the necessary components of meaningful public engagement. She began the presentation by providing context, which consisted of explaining the policy cycle and how it works. The policy cycle is a useful tool for considering administrative tribunals and how they operate. For example, a utility may apply to the board for a rate change, the board will then undertake its process, the decision is implemented, and then the cycle repeats. Dr. Fitzpatrick explained that while there are opportunities for public engagement at different stages within the process, the focus of her research is on the administrative tribunal stage.

Chris Klassen, Public Interest Law Centre – ***Regulatory Legislation: Enabling or Disabling***

Chris' presentation focused on legislative barriers and opportunities for public engagement. The information presented is the result of a broad review of enabling legislation and other relevant information for decision makers across Canada, conducted by the Public Interest Law Centre. The presentation covered how administrative tribunals operate, and associated opportunities and barriers stemming from their legislation.

Babatunde Alabi, University of Winnipeg – ***Looking at Current Practice in Canada – Case Studies***

Babatunde's presentation covered his recent research into understanding the current practice of public participation in administrative tribunals in Canada. A comparative case study of seven tribunals across Canada was done through a document review, interviews, and analysis. The tribunals included in the study included CRTC, public utilities, environmental issues, and securities. One federal level tribunal was included, and those at the provincial/territorial level included Quebec, Nova Scotia, Yukon, Ontario, and Manitoba.

Wendy Nur, Consultant – ***Various Perspectives, Recurring Themes***

Wendy presented the results of her recent research that included interviews with people from a variety of perspectives regarding their experiences with public participation in regulatory proceedings. The interview participants included the perspectives from regulatory bodies, groups who receive recommendations from or oversee regulatory bodies, industry representatives, and advocacy groups. The participants were asked about the benefits and challenges of public participation, the different roles within regulatory proceedings, their experiences, what public participation should look like, and barriers to participation.

March 17th

Dr. Darren Christle, Manitoba Public Utilities Board – ***Integrity and Transparency in Regulatory Proceedings***

Dr. Christle’s presentation covered three guiding principles for practitioners of public participation. The principles are: know your constituents, mediums of engagement, and reasons for engagement.

Glen Koroluk, Manitoba Eco-Network – ***Engaging the Public on the Environment***

Glen’s presentation focused on his own opinions and experiences as a seasoned practitioner in environmental decision making. He did not present on behalf of Manitoba Eco-Network. The focus of the presentation was on the Clean Environment Commission (CEC), following the general hypothesis that the CEC can sometimes be effective in bringing in the voice of the community in environmental decision-making.

Micheal Anderson, Research Analyst – ***Indigenous Persons’ Access to Regulatory Processes***

Micheal’s presentation covered the two parallel processes for Indigenous engagement: the regulatory process and the “Duty to Consult”. He began by discussing the regulatory process, which is available to all members of the public in Canada, including Indigenous people. Michael explained that regulatory processes are part of the toolkit

that can be applied as part of actions, initiatives, and campaigns to protect Indigenous rights and interests. Some examples of such processes are through the Manitoba Public Utilities Board, the Manitoba Clean Environment Commission, the National Energy Board, the Mining Board, and Legislative and Parliamentary Committees. Michael explained three important considerations as the first steps to participating in regulatory processes. Firstly, it is important to determine the “why”, or the reason for participating, as this can help to identify the appropriate regulatory process or tribunal. Next, determining the objectives can clarify the focus and content of the participation, engagement, or intervention. Third, determining the scope of the engagement will assist in identifying whether participation should be done as a presenter or intervenor.

What We Heard From Participants

Following each session, participants were invited to join breakout sessions to discuss four or five selected questions. Questions were different for each session in response to the content provided by each panel of speakers. Here are some themes that arose from participant input:

Barriers to Public Participation in Regulatory Proceedings

- Access to information
- Legislative constraints
- Inadequate notice

Opportunities to Bridge Barriers

- Providing better notice of engagement processes
- Using creative means of reaching the public
- Beginning the engagement activities prior to the formal hearing
- Organizations like CAC MB bridging the gap between the public and the processes
- Sharing best practice between tribunals

- Changing statutes to ensure flexibility in the engagement process to meet the needs of various groups
- Effective implementation strategies to complement legislation in enabling public participation

More Discussion and Information is Necessary

- The perspective of the consumer or general member of the public
- The need for the public to know their feedback was heard and considered
- The need to use plain language to ensure accessibility
- The need to use electronic media
- Strategies for addressing and surpassing legislative barriers
- Strategies for bridging access to information gaps
- Discussion surrounding hearing efficiency, cost, and timeliness of the process
- Discussion surrounding balancing procedural fairness and public input

Advice to Regulators

- Providing notice through broader means such as radio, social media, or websites
- Using and learning from best practice from other jurisdictions
- Beginning public engagement prior to formal hearings
- Work with consumer organizations
- Listen to the public and ensure decisions are in the public's best interest
- Speak for those who cannot, such as the environment

Advice to Organizations

- Work with and advise the regulator
- Begin engagement and information dissemination very early on
- Be patient
- Share everything with your networks
- Celebrate small victories
- Take advantage of all opportunities to speak to the issues of importance

Advice to Consumers/Members of the Public

- Educate yourself and engage in the processes
- Be open to other opinions and learning from others
- Manners matter, be polite and professional
- You are the expert of your own life, take the time to prepare your presentation

The full workshop report is available in Appendix E.

Building on the results of the literature and legislative reviews, the case studies, and the workshops, the focus groups with consumers in five regions of Canada were the culmination of this research from a consumer perspective. CAC Manitoba drafted the script for the sessions, with the advice and input of the project research team (Appendix F). ICA Associates, a professional research firm, was contracted to conduct the sessions which took place via video or telephone conference, or in-person where health regulations and space permitted.

Demographics

Sessions were scheduled with consumers living in Yellowknife, Saskatchewan, Peterborough, Halifax, and Montreal. The requirements for participants included First Nation, Metis or Inuit, a variety of income and education levels, and more vulnerable consumers including low income, consumers living with disabilities, and newcomers. In addition, some participants must have no internet or cell phone.

Recruiting Participants in a Pandemic

These sessions were held in March 2021, at the height of the pandemic. Because of pandemic rules recruitment for these session could not be done by posting notices or connecting in public places. Because we needed people with different types of internet access, and some with no access at all, we used personal connections and phone calls through social service agencies, volunteer groups and family networks to find the first 25 respondents, then personal connections, usually neighbours to find others, especially those with no internet or cell phone connection at all. It took 140 different contacts to get the final 41 for this study.

Each session invited 8-9 participants to reflect and respond to questions relating to the role of the public in administrative decision making. Many, but not all, participants had some degree of experience participating in or contributing to regulatory or administrative decision-making.

Across Regions

Participants in these focus groups generally agreed on the importance of public input in administrative decision making. Participants felt particularly strongly that those whose interests are directly impacted should have a say in decisions which affect them, but it was also a commonly-held view that no constraints should be placed on participation – if individuals want to provide input, they should be entitled to.

Divergent views which some participants held, calling for only those directly affected to be invited to provide input, or calling for only organizations representing policy communities to participate, were based not in the relative unimportance of the views that these participants proposed excluding. Rather, these suggestions were rooted in practicality and the proposition that an open invitation to provide comment may lead to inefficient processes and irrelevant considerations being put forward.

Participants generally agreed that information about decision-making processes and opportunities to provide input should take place early in the decision-making process. All agreed that these should take place before decisions had been made. Participants identified a wide variety of barriers to participation as well as specific communities and populations which may be expected to disproportionately face these barriers.

Participants were in general agreement that access to plain-language technical information as well as the support of experts are both important to enable meaningful participation. Participants also generally agreed that opportunities for participation as well as relevant information should be disseminated as widely as possible through as many modes of communication as possible to ensure that impacted individuals, or those who are interested, can learn about the opportunity. The importance of funding to enable meaningful participation was also emphasized due to its ability to enable

both procedural support through, for example, legal counsel, and technical support through the work of subject matter experts.

Participants widely acknowledged individuals with disabilities as experiencing significant barriers to participation in decision-making processes due to both the manner in which information is shared and collected as well as physical accessibility in hearing facilities.

Regional Demographics and Results

Yellowknife Focus Group

Participants:

1. Dene man mid 60s, Tribal decision maker, no personal internet connection
2. Dene man, early 40s, trapper and cultural worker
3. Caucasian woman, late 20s, govt worker
4. Caucasian woman, mid 40s, govt worker
5. Dene woman, early 30s, office worker
6. Dene woman, mid 60s, activist, invited Blake
7. Dene woman, mid 30s, office worker.
8. Dene woman from Lutsel k'e Dene first nation, early 40s
9. Dene woman, artist, late 20s.

Participants included:

- Two men; seven women
- Seven self-identified as Indigenous (Dene)
- Two self-identified as Caucasian
- One did not have a home internet connection
- Age:
 - o Two participants in their 20s
 - o Two participants in their 30s
 - o Three participants in their 40s
 - o Two participants in their 60s

Highlights:

- All participants said “Yes” when asked whether members of the public should have access to information about decisions being made by decision-making bodies.¹⁰
- “Decisions affect all people in Canada, and effects are not always favourable...transparency is key.”¹¹
- “I have made submissions to CRTC and NEB, but I found out by fluke how to do it. I didn't know before that decisions were going to be made. It needs to be easy for the public to be involved. People need to be aware of the decisions being made.”¹²
- When asked how information about decisions should be made available, two participants noted:
 - o “for local projects, closer to home stuff media and radio is important...”¹³
 - o “widely and multiple formats, so as accessible as possible. There needs to be a balance b/w proactive and responsive communication”¹⁴
- When asked when important information should be made available, multiple participants indicated that it depends on what’s being considered or decided, and on the impacts of the decision.¹⁵
- Reflecting on his Dene heritage, on participant noted “We’re very oral people, we need people to come to explain.”¹⁶
- “In the north, used to being able to have a say when it's something that might affect us. If I have an opinion, I should have the right to have some ability to speak up, even if my viewpoint may not always be heard/preferred, for decisions that affect me.”¹⁷
- “Sometimes I would like to be able to participate because some bodies aren't aware of their implicit bias. Because they don't know what they don't know, they

¹⁰ Question 3

¹¹ Participant 1, Question 3

¹² Participant 6, Question 3

¹³ Participant 4, Question 4

¹⁴ Participant 5, Question 4.

¹⁵ Participants 1, 4, 5, Question 5.

¹⁶ Participant 1, Question 5.

¹⁷ Participant 4, Question 6

might benefit from the input of people in the region, and shine a light on issues before the project is underway.”¹⁸

- When discussing barriers to participation, participants said:
 - o “Lack of understanding of information presented could inhibit participation. Need for plain language.”¹⁹
- Regarding the importance of maintaining a transparent public record, participant 2 said that it is “Important in any public process to not destroy evidence and keep it for posterity, for who made decisions and why. [For a] basis of accountability, every process should be accountable. Important for people to know in advance how their information may be used. People go to a public event and say something, they need to be accountable...”²⁰
- Most participants felt that participants in decision-making processes should expect to receive feedback about how their input was used.²¹ As one participant noted, “The reason is so people are not disconnected from the decision. So that people see their impact and aren't disempowered.”²²
- In response to a hypothetical situation in which participants planned to participate in a decision-making process which they felt strongly about, many participants felt they would benefit from advice about process, explanation of the terminology and the impacts of the decision being considered, and for some, funding for organizations to hire expertise.

Saskatchewan Focus Group

Participants:

1. Rural (acres non-farm) female in 30's.
2. Urban male 40's
3. Rural female 20's low income
4. Urban male immigrant 30's

¹⁸ Participant 9, Question 6.

¹⁹ Participant 1, Question 10

²⁰ Participant 2, Question 13.

²¹ Question 14a.

²² Participant 3, Question 14.

5. Rural male 20's bipolar
6. Urban female immigrant 40's
7. Urban female 40's
8. Rural male 60's

Participants included:

- Four men, four women
- Four urban, four rural
- Two immigrants to Canada
- One person with low income
- One person involved in rural local government as elected official
- Age:
 - o Two participants in their 20's
 - o Two participants in their 30's
 - o Three participants in their 40's
 - o One participant in their 60's

Highlights:

- Most participants in this focus group indicated that it is important for the public to have access to decisions which impact them, as one participant said, "especially if it affects me, my family or my community."²³
- One participant noted that access to information is not necessary for specialized decisions being made solely by experts.²⁴
- With respect to methods of sharing or communicating information, participants stressed that "all of the options should be used"²⁵ particularly because internet connectivity is unaffordable for some Canadians.²⁶ Participants were divided on the value of social media as a communications tool.²⁷
- When determining when information should be made available, one participant noted that "as much lead time as possible is necessary [so that] all stakeholder

²³ Participant 3, Question 3.

²⁴ Participant 4, Question 3.

²⁵ Participant 8, Question 4.

²⁶ Participant 2, Question 4.

²⁷ Participant 2, 6, Question 4.

groups can identify themselves and have the proper time to reach and provide input.”²⁸

- Participants noted that giving the public a “say” in decision making is not always appropriate, because some decisions are “best left to people who are experts in that field...”²⁹. One participant wanted to say that “yes”, the public should have say, but hesitated and said “no” because “the majority don’t have the expertise. I think the public should have awareness, but experts should make the decision.”³⁰
- If the public is to be given an opportunity to provide input into decision-making, 7 out of 8 participants found it to be important for the opportunity to take place early in the process, when more than one option is still being considered.³¹
- Most participants found that when decisions are being made about essential products and services, those proceedings should be open to the public.³²
- 6 out of 8 participants felt that only people directly affected by a decision should be allowed to provide input.³³
- Participants identified multiple possible barriers to participation. For example, “If a person doesn’t have all information available to make the decision, they could be discouraged. Also, not having enough finances committed to the process could result in lack of opportunities to engage.”³⁴ Other barriers identified include location of proceedings,³⁵ time,³⁶ accessibility,³⁷ and decision-makers’ failures to make opportunities for participation meaningful with adequate resources for proper processes.³⁸

²⁸ Participant 6, Question 5.

²⁹ Participant 2, Question 6.

³⁰ Participant 6, Question 6.

³¹ Question 7.

³² Question 8.

³³ Question 9b.

³⁴ Participant 3, Question 10.

³⁵ Participant 1, Question 10.

³⁶ Participant 5, Question 10.

³⁷ Participant 7, Question 10.

³⁸ Participant 4, Question 10.

- 7 out of 8 participants noted that public interest decision-making processes could be made more accessible by using a broad diversity of means of communication and modes of participation.³⁹
- All participants agree that that participants should receive feedback on how their input was used.⁴⁰
- Two participants described negative prior experiences with participating in consultation processes, one because they had to miss work to participate,⁴¹ and one because the process took place after the decision had already been made.⁴²

Peterborough Focus Group

Participants:

1. F, 30, Urban, Unemployed (low income)
2. M, 44, Rural, Working
3. F, 63, Urban, Retired
4. M, 63, Rural, Retired
5. M, 42, Urban, Working, New Canadian
6. F, 26, Rural, Working
7. F, 39, Urban, Working
8. F, 28, Rural, Working

Participants included:

- Four women, three men
- Four rural, four urban
- One new Canadian
- One person living with low income
- Two retirees
- Age:
 - Two participants in their 20's
 - Two participants in their 30's

³⁹ Participants 1-7, Question 12.

⁴⁰ Question 14.

⁴¹ Participant 1, Question 17.

⁴² Participant 6, Question 17.

- Two participants in their 40's
- Two participants in their 60's

Highlights:

- In discussing the importance of access to information about decisions being made which impact the public, one participant noted that “transparency protects everybody...”⁴³
- Generally, participants saw value in having a say in decisions which impact them.
 - “...it depends on what we're being asked to input into... Is it a service that impacts me directly as a product? Is it something that, you know, impacts the wetland next door? I guess if it's impacting me, I would like to have input.”⁴⁴
- 7 out of 8 participants said that proceedings for decisions relating to essential products and services should be open to the public so that citizens can participate.⁴⁵
- 6 out of 8 participants stated that there should be some limits placed on who is entitled to participate, whether by limiting participants to those directly affected, or by only permitting organizations representing policy communities to contribute. As one participant stated, “If you let anybody be involved in making the decision, then you just get a smorgasbord of people who are just going to make the process messier.”⁴⁶
- Participants identified language (both English/French proficiency and the need for plain language) as barriers to meaningful participation,⁴⁷ along with internet connectivity⁴⁸ and location accessibility.⁴⁹
- Individuals experiencing poverty and living with low incomes were identified as a group that is particularly disadvantaged, facing unique barriers preventing meaningful participation.⁵⁰

⁴³ Participant 1, Question 1.

⁴⁴ Participant 3, Question 6.

⁴⁵ Question 8.

⁴⁶ Participant 1, Question 9.

⁴⁷ Participant 1, Question 10.

⁴⁸ Participant 4, Question 10.

⁴⁹ Participants 6, 8, Question 10.

⁵⁰ Participant 1, Question 11.

- One participant noted that history of being disadvantaged in participating in decision-making processes is likely to be perpetuated. “If you’ve had the experience of never being heard, [...] you’re just going to believe your input doesn’t matter. Absolutely, that’s going to hold you back.”⁵¹
- When asked how public interest decision making processes could be made more accessible, one participant noted “I think having multiple options to participate in different ways, works. So have more than one focus group or have more than one location for the same topic and provide people with the options.”⁵²
- When asked what they would need in order to meaningfully participate in a consultation process, participants indicated that they would need access to time, expertise, and feedback on their input.⁵³ These participants indicated that without access to these resources, many of them would not participate and those that would expect to experience difficulties.⁵⁴
- Participants with experience participating in decision-making processes described varied experiences. One participant had had a positive experience because their participation resulted in positive change.⁵⁵ However, another participant had contributed to a consultation process in which the decision had already been made. This was described as a “frustrating” process.⁵⁶

Halifax Focus Group

Participants:

1. Female, late 60s, Caucasian, rural, middle income,
2. Female, early 50s, Caucasian, urban, low income
3. Male, early 50s, African Nova Scotian, urban, middle income
4. Male, late 50s, Caucasian, middle income, rural
5. Male, late 40s, Caucasian, low income, urban
6. Female, late 40s, Caucasian, low income, urban

⁵¹ Participant 6, Question 11.

⁵² Participant 5, Question 12.

⁵³ Participants 1, 2, 4, 5, 7, Question 21.

⁵⁴ Question 22b.

⁵⁵ Participant 7, Question 17.

⁵⁶ Participant 1, Question 17.

7. Male, late 40s, Caucasian, LGBTQ, middle income, urban
8. Male, late 50s, Caucasian, LGBTQ, upper middle income, urban

Participants included:

- Five men, three women
- Seven participants self-identified as Caucasian, one as African Nova Scotian,
- Six urban, two rural,
- Three low-income participants
- Age:
 - o Three participants in their 40's
 - o Four participants in their 50's
 - o One participant in their 60's

Highlights:

- All participants agreed that the public should have access to information about decisions being made about products or services either sometimes or all of the time.⁵⁷
- These participants agreed also that the public should have a say in decisions being made about products or services by decision-making bodies. One participant noted that “these decisions affect our lives”.⁵⁸
- All participants agreed that opportunities to provide input should take place before decisions are made, but the group was divided on whether that should be while multiple options are still being considered, or after a preferred option has been chosen.⁵⁹
- All participants agreed that proceedings related to decision about essential products and services should open to the public so that the public has the opportunity to participate.⁶⁰ Participants also agreed that there should not be limits on who is entitled to participate. Anyone who wants to participate or provide input into decision-making processes should be able to.⁶¹

⁵⁷ Question 3.

⁵⁸ Participant 1, Question 6.

⁵⁹ Question 7.

⁶⁰ Question 8.

⁶¹ Question 9.

- Participants identified multiple barriers that may discourage or prevent the public from participating. These included perceived risks of being negatively affected,⁶² internet connectivity,⁶³ the need for plain-language explanations of technical concepts,⁶⁴ and the need for information to be shared through appropriate mediums.⁶⁵
- Participants identified multiple populations as experiencing more barriers than others. These include rural residents, individuals with lower levels of education,⁶⁶ individuals living with low-income,⁶⁷ and “any community that is oppressed – cultural or economic.”⁶⁸
- There was some consensus among participants in explaining that public interest decision making could be made more accessible to all by making use of all available means of communications and modes of participation.⁶⁹

Montreal Focus Group

Participants:

1. Female, 38, Caucasian, urban, medium income, person with a disability.
2. Female, 70, Caucasian, rural, medium income, not an internet user
3. Male, 66, Caucasian, rural, medium low income
4. Male, 34, person of colour, urban, medium low income, newcomer to Quebec
5. Female, 29, Caucasian, urban, medium low income
6. Female, 55, Caucasian, urban, medium high income
7. Female, 31, person of colour, urban, low income
8. Male, 47, Caucasian, rural, medium high income

Participants included:

- 5 Female, 3 Male

⁶² Participant 1, Question 10.

⁶³ Participants 2, 4, 5, Question 10.

⁶⁴ Participant 3, Question 10.

⁶⁵ Participant 8, Question 10.

⁶⁶ Participant 1, Question 11.

⁶⁷ Participant 2, Question 11.

⁶⁸ Participant 7, Question 11.

⁶⁹ Participants 5, 8, Question 12.

- 5 urban, 3 rural residents
- Age:
 - 1 participant in their 20s
 - 3 participants in their 30s
 - 1 participant in their 40s
 - 1 participant in their 50s
 - 1 participant in their 60s
 - 1 participant in their 70s

Highlights:

- All participants agreed that members of the public should have access to information about decisions being made by decision-making bodies about products or services.
- Multiple participants expressed preferences for this information being made available by as many methods as possible,⁷⁰ and all agreed that it should be made available before decisions are made.⁷¹
- All participants also agreed that members of the public should have a say in decisions being made about products or services.⁷² Participants added that the accessibility of opportunities to provide input must be accessible, and that minority voices are very important to include.⁷³
- Participants also agreed that hearings regarding essential products and services should be open to the public.⁷⁴ Respecting who should be entitled to participate, the group was primarily split between preferring to not impose limitations on participation and prioritizing the participation of those who are most directly impacted.⁷⁵

⁷⁰ Question 4.

⁷¹ Question 5.

⁷² Question 6.

⁷³ Question 6, Participants 1, 4.

⁷⁴ Question 8.

⁷⁵ Question 9.

- Participants identified multiple possible barriers preventing groups from participating in such processes. Accessibility was highlighted,⁷⁶ as was the impression of futility that may be given if the opportunity to provide input is not meaningful, or if the decision is already made before input is gathered.⁷⁷ It was also emphasized that information provided for the purpose of enabling participation must be accessible and accessibly distributed.⁷⁸
- Participants also identified individuals and populations living with disability, with mental illness, and minorities as groups facing disproportionate barriers to participation.⁷⁹
- 7 out of 8 participants felt that when they provided input to a decision making process, they should expect to receive feedback on how their comments were used in the decision.⁸⁰
- When asked what resources they would need to meaningfully participate in a hypothetical consultation process, participants' responses include financing for experts, support in understanding technical information, and guidance regarding the process.⁸¹

The script used in all five sessions is found in Appendix F.

⁷⁶ Question 10, Participant 1.

⁷⁷ Question 10, Participants 2, 3.

⁷⁸ Question 10, Participant 6.

⁷⁹ Question 11, Participants 1, 2, 4.

⁸⁰ Question 14.

⁸¹ Question 21.

Beginning as far back as the review of literature, in the fall of 2019, four prominent themes began to emerge from this work, and these same themes have arisen over and over in every phase of the research:

Meaningful engagement

For public participation and consumer engagement to be meaningful, it must be two-way communication. Information received and information/input shared. This theme was echoed in the case studies and legislative review. There are so many different processes that “engagement” or “participation” is used to describe, not all of which constitute good engagement.

Public input must be recorded and accessible

The voices and feedback of public participants and policy communities should be recorded, not just “heard”. The recorded feedback should be publicly accessible, to promote transparency and accountability in decision-making.

Regulatory processes should demonstrate transparency and integrity

Regulators should indicate how they used public input in their decisions, or if they could not, why not. Regulators should be accountable for the reasoning behind the decisions they make.

The role of legislation in enabling or disabling good practice in public engagement

This can be a double-edged sword. Legislation that is too specific may inhibit evolving public participation. At the same time, legislation that is too prohibitive, or makes no mention of funding to cover costs of engagement, for example, may inhibit the creativity of regulators, making it more difficult for them to institute good practice.

Other themes that began to emerge, through the interviews, and later in the workshops and focus groups included:

Barriers to participation

Language, accessibility, availability of resources/funding, physical access, information, access to necessary technology, poverty/cost of spending time engaged, discrimination were some of the barriers cited by interviewees, workshop participants, focus group participants, and were supported in the literature.

Access to education and information

This theme flows directly from some of the barriers noted above, including language, discrimination, and lack of technology. Underrepresented populations, such as newcomers, lower income consumers, Indigenous consumers, those living with disabilities, seniors and youth, may be less likely to participate because they are concerned they will not know what the subject matter is, they are not sure how the process works, or what their role could be in the process. Access to information, or lack thereof, was a strong theme that emerged through the case studies.

Modes of participation

Another theme that emerged strongly in the case studies was a desire for more participation option – more different ways to participate. This included everything from the way notice was given and advertising of a proceeding was conducted to the ways in which individuals could participate. Technology, social media, and the Internet were raised, but so was concern for those who did not have access to those options. This last was a theme strongly echoed in some of the focus groups, particularly the north.

Judicious use of legislation and regulation

This resonated most in the review of legislative and regulatory frameworks, not only in Canada, but in other jurisdictions. There are some stunning examples from Australia and the United Kingdom, for example, of ways in which enhanced legislation can enable and provide creative scope for good engagement practice, such as maintaining participant expertise between hearings by holding information sessions when no

hearing is pending, for example. Also, legislation can create a statutory mandate for the development of good practice public processes, and can ensure the provision of funding to enable participants to access expertise, legal counsel, travel costs, as examples. The desirability of these as means of bridging barriers was supported in the interviews and the workshops.

Conclusions and Recommendations

Participants in all aspects of this project, from the key interviews to the workshops to the focus groups, were adamant about the importance of hearing the voice of the public, and consumers as members of that public, in regulatory decision-making. Many supported the notion that the role of the public in regulators' final decisions should be maintained and enhanced. The results reveal that efforts to improve access to public involvement often fail because of systemic barriers or challenges such as lack of access to the Internet or to technology, a focus on cost and timelines without recognition that the public face the possibility of losses in terms of time and money as well when they decide to participate. Use of technical language, lack of access to information, and systemic racism are only a few of the other challenges faced by willing, but daunted, consumers.

The evidence gathered as part of this project has strengthened CAC Manitoba's resolve to pursue continued and enhanced public involvement in regulatory decision-making in Canada, and to engage government, regulators, and regulated industries in its quest for more transparency and integrity in regulatory processes and more varied, robust, and accessible avenues for public involvement. As part of our work to achieve this goal, we offer a series of recommendations for action.

Flowing from the results of the literature review, key information interviews, case study research, review of legislation and regulation, workshop, and focus groups, CAC Manitoba makes the following recommendations:

1. Remove barriers to meaningful participation for regulatory proceedings both oral and written.
 - a. Tribunals should remove the application process, and other barriers for participation in oral and written hearings.
 - b. Extending the period of notification may increase the number of participants involved in the process. Tribunals with longer notification periods (i.e. thirty days or greater) had higher numbers of participants in the case studies.

- c. Language used to facilitate public participation in regulatory proceedings needs to be plainer and more invitational to foster informed participation and transparency .
 - d. The barrier to internet/data (the digital divide) and therefore lack of information was reflective of systemic socio-economic barriers which, according to interviewees could only be addressed at a provincial or federal level. Some of the voices which should be heard but were also at risk of exclusion were: First Nations; individuals/families living in poverty; rural, northern communities.
 - e. The condensed time frame - In-person process and the value of participant buy-in
 - f. Recognizing that participation takes time and there may be costs involved, ensure that participants are able to access funding to cover costs, travel, and time incurred, including those with limited access to or knowledge of the process, such as individual members of the public, consumers, and organizations who advocate for underrepresented consumers
 - g. Government and tribunals should continue to work towards eliminating systemic barriers, such as poverty, racism, and the impacts of colonialism.
2. Increase opportunities for, and access to, education for the public/consumers on decision-making processes, especially when it comes to underrepresented communities such as newcomers (especially those for whom English is an additional language) or for First Nations, Inuit, and Metis communities, individuals living in northern, rural and remote settings, those living with disabilities and low incomes, seniors, and youth.
 - a. Include education regarding the process itself, the availability of intervenor or participant funding, and the opportunity to appeal decisions.
 - b. Improve websites and databases so that they are more user-friendly, so that information is easier to understand, locate, and access.
 3. Tribunals should increase the modes (i.e., methods) through which the public may get involved in the decision-making process. For example, public opinion polls, on-line focus groups, and semi-structured interviews, where appropriate, as employed by the CRTC, should be considered by other

tribunals as a means through which to hear from the general public. Please note, these methods should not replace, but rather supplement existing methods for engagement.

4. Access to information:
 - a. Social media has become a huge tool for reaching a broad range of audiences. Tribunals should employ and maximize the use of social media channels to facilitate meaningful participation.
 - b. Expand and improve high speed internet access for those suffering from the digital divide so that they will have access to information, engagement platforms, and processes whereby which they can gain access to information about or standing in proceedings.

5. There is a need for more transparency in the documentation of how participant input influences final decisions; decisions should reflect how participants' submissions were considered.
 - a. Improved online engagement, both with individuals and with organizations. This would include access to public comments and feedback on comments so that they can recognize that they are being actively listened to. When regulators hear feedback from the public, they should disaggregated the information, summarize the information thematically, to let the people know they had been heard and to make sure the marginalized voices have been heard.
 - b. The public should be both informed and involved at the beginning of the process, and ideally the regulated industry should be the one to initiate and facilitate public participation.

6. Tribunals should establish, or enhance, funding mechanisms that allow both participants (policy communities, organizations, members of the public) to be compensated for their time and other costs incurred in the process of participation.
 - a. Such compensation should include considerations for providing some advance payments to participants.

- b. Expenditures of time, travel, and other costs incurred for all participants in the process should also be considered.
- 7. Public participation in regulatory proceedings should be focused on diversity and inclusivity, and should therefore be informed by a culturally sensitive lens and contain flexibility to adapt participatory engagement in regulatory proceedings accordingly.
 - a. Key interviewees were in favour of mandating participation but cautioned against rigid legislation that may exclude some participants.
- 8. Urge tribunals and decision makers to exercise their creativity, discretion, and flexibility in their statutory mandates to comply with best practice and implement the above recommendations to the extent that their mandates permit. This includes:
 - a. Longer notice periods and comment periods,
 - b. More accessible public notices and information regarding regarding processes and opportunities for participation
 - c. Multiple modes of participation (beyond only online comment forms),
 - d. Public reporting of and responses to public input,
 - e. Ensuring non-confidential public information is navigable and accessible,
 - f. Ensuring a balance between the regulated industry's need for confidentiality of commercially sensitive info and the public's right to be informed.
- 9. Governments should enact legislative changes, where necessary, to empower tribunals to overcome statutory barriers to best practice in public participation. Depending on the tribunal, these barriers may include:
 - a. Lack of statutory mandate to create meaningful and inclusive opportunities for public and policy community participation,
 - b. constraints on eligibility for participation,

- c. opportunity to challenge tribunal decisions; governments should establish mechanisms, to create and enhance opportunity for the public to appeal decisions, through statutory amendment if necessary.
 - d. lack of available participant support and intervener funding,
10. Urge tribunals to consider including the public in their efforts to develop and maintain subject-matter expertise outside of individual proceedings.
- a. Examples from other jurisdictions include the Consumer Consultative Committee (Australia), the FCC's advisory committees, and the United Kingdom's Financial Conduct Authority's Consumer Panel.
11. Governments, tribunals, regulated industries, and decision-makers should adopt a definition of meaningful participation, in line with information flowing from the literature review and input from key informants and our advisory committee, including:
- a. Involvement early in process so participants can shape decision (Doelle, 2018)
 - b. Involvement in implementation planning and the evaluation of implementation (Key informant interviews and advisory committee feedback)
 - c. Notice and sufficient time to prepare an informed submission (Doelle, 2018; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007)
 - d. Participant assistance (Doelle, 2018; Stewart & Sinclair, 2007), including funding and capacity building
 - e. Modes of participation which promote Two way dialogue (Stewart & Sinclair, 2007), which can allow for learning (Doelle, 2018; Stewart & Sinclair, 2007)
 - f. Access to information (Sinclair & Diduck, 2016)
 - g. Implementing the principles of natural justice (Doelle, 2018), including access to process, through hearing requirements, written and oral comments, and the right to challenge decisions lead administrators to believe public has greater influence on decision (Woods, 2009)

- h. Reporting back on how feedback was addressed, through tools such as an issues tracking table.

The following documents are labelled Appendices A through F:

Appendix A – Key Informant Interviews

Appendix B – More Than Talking Heads?!? How Do Administrative Tribunals Hear from the Public?

Appendix C – Canadian Regulatory Tribunals – Case Studies

Appendix D – International Regulatory Tribunals – Case Studies

Appendix E – Workshop Report

Appendix F – Focus Group Script