

The Walkerton Inquiry

Notes on the Expert Meeting

“Public Involvement in Drinking Water Safety”

**180 Dundas Street, 19th Floor Conference Room
Toronto, Ontario
June 5, 2001**

Topics Discussed

Stakeholders and resources for decisions concerning policy, projects, monitoring and enforcement, emergency planning and response, and finance

Public Participation thresholds and decision points

Participatory mechanisms, the role of surveys and focus groups, and the role of the public service

Resources for effective public involvement

Public education, outreach and transparency

Potential improvements to present legal instruments and proposed legislation

The notes for this expert meeting have been prepared to brief the Commissioner and to facilitate participation in Part 2 by those who were not present at the meeting. The notes are intended to represent the major items of discussion and positions put forward by participants. They are based on notes taken by Rapporteurs and are not intended to be an official report or transcript of the meeting. They do not represent the views of the Commissioner.

Meeting Summary

The agenda, prepared for the meeting by the Chair, provided the framework for the meeting notes. The notes summarize the main points of contention and agreement between the parties under the themes of the agenda:

1. Stakeholders and resources for decisions concerning policy, projects, monitoring and enforcement, emergency planning and response, and finance:

With respect to policy, projects, monitoring and enforcement, emergency planning and response, and finance, who should be at the table and what information and resources do they need?

Opportunities for public intervention exist at multiple levels and through a variety of models. Public participation is critical for the establishment of legitimate standards, implementation of programs and ongoing monitoring initiatives. Participation should be also included at the local level to ensure community involvement and effective communication is critical. Emergency response plans should be community specific, include a range of actors and institutions and have sufficient resources for sustainability and ongoing review. Public documentation of a water sector's assets and performance would serve as a "buffer" against political variability.

2. Public Participation and decision points: *For policy or projects, what are the public participation significance thresholds for decision-making processes? For water systems, what are the key decision points?*

There was some consensus that government had a responsibility to involve the public in different decision points related to water safety and management. It was suggested that different decision points required different types of public participation and that a flow chart from policy to enforcement (and protection) be constructed to identify the key decision points and see where the public can participate effectively.

3. Participatory mechanisms, the role of surveys and focus groups, and the role of the public service: *With regard to participation, what criteria (mechanisms) should guide entrance to the process (broad representativeness? special sub-populations? knowledge? how measured?). What is the role of surveys and focus groups? What is the role of the public service?*

The Canadian Environmental Network, Remedial Action Plans, and watershed-based models were offered as potential mechanisms for public participation. There was consensus that survey and focus groups are not a substitute for public participation, although they are useful tools. There was general agreement that these tools are not value free and therefore require public review and debate. Results from surveys and focus groups should be publicly available in an accessible format. A strong role for the public service was recognized for participatory exercises. Debate is a necessary part of the process.

4. Resources for effective public involvement: *With regard to information and other resources for effective public involvement, how can intervenor funding yield the “best bang for the public buck”, and how should it be managed? What categories of information should routinely be published and by whom? What information management system investments are needed?*

There was a consensus that based on the expired model of the Intervenor Funding Project Act (IFPA), a mechanism should be in place to provide financial resources for citizen participation. The logistics of source money collection (private or public?), viability for small waterworks systems and funding eligibility were discussed. The model of an Ontario Environmental Network, as previously envisioned under the Environmental Bill of Rights was discussed as a low cost method for information provision and technical assistance as required. The network could be extended to include information on all outbreaks (food and water) as most of the required information is already being collected by industry.

5. Public education, outreach and transparency: *Does good public education, outreach and transparency reduce the demand for, or time required for, other forms of public involvement?*

There was general agreement that public education, outreach and transparency may reduce the demand for more costly forms of public involvement and later stages in the decision making process. It was also noted that making time available in the participation/consultation process will save time and resources in the long run by creating a legitimate outcome.

6. Potential improvements to present legal instruments and proposed enactments: *In general, how might present legal instruments (Environmental Bill of Rights, Environmental Assessment Act, etc.) be improved, and do proposed enactments (e.g. Safe Drinking Water Act) fill all the holes?*

A “gap analysis” of current legislation needs to be conducted. CELA’s proposed draft recommendations for a Safe Drinking Water Act were discussed. Improvement may need to be made in light of privatization pressures.

Meeting Participants and Affiliations

Chair	Harry Swain
Issue Paper Author, University of Guelph	Doug Powell
Government of Ontario Ministry of the Environment (MOE) Smith Lyons	Jim McLean Jim Ayres
Ontario Water Works Association/ Ontario Municipal Water Association (OWWA/OMWA)	Joe Castrilli Judy MacDonald
Ontario Public Service Employees Union (OPSEU)	Tim Hadwen Nancy Johnston
Concerned Walkerton Citizens/ Canadian Environmental Law Association (CELA)	Paul Muldoon
Canadian Environmental Defense Fund (CEDF)	Bryan Davis David Donnelly Eva Ligeti
Pollution Probe	Rick Findlay
Conservation Ontario (CO)	Adele Freeman
Member of the Public	Henry Malec
Walkerton Inquiry Staff:	James Van Loon
Rapporteur Team Leader	Carolyn Johns
Rapporteurs	Sarah Wolfe Sarah Hartley

Discussion of Substantive Issues

1. PUBLIC PARTICIPATION, INFORMATION AND RESOURCES

With respect to policy, projects, monitoring and enforcement, emergency planning and response, and finance, who should be at the table and what information and resources do they need?

Opening comments outlined the relevant contributions from related issue papers, public participation and reporting initiatives in different jurisdictions, and different pathways for participation and funding in Canada and Ontario in the past and presently.

1.1 Policy

1.1.1 Risk Assessment, Standards and Management

- The two step (federal-provincial; provincial) Canadian standard setting process is very bureaucratic and does not lend itself to public participation (Swain)
- For the process of setting standards, we need to carefully consider our capacity at the federal or provincial levels. The federal government has an important role in health based risk assessment and it necessitates public dialogue. However, this is not occurring at the federal or provincial level (PP, CELA).
- Public interest groups have been involved in standard setting where they had a seat at the table and resources to debate. This involvement is critical to the process of establishing "legitimate" standards which can only be attained through public participation by both government and public. Regarding the inclusion of public participation at the policy level - policy is broader than just standards - also guidelines, monitoring, permit issuing process and is equally important (CELA).
- The US risk assessment (for food) includes a published draft and federal regulatory procedures posted on the Internet open to comment. This attempts to ensure that the assumptions are transparent and the public is aware of how the numbers are derived. There cannot be a homogenous method of providing information because interplay of differing interpretations of information. In the absence of government providing information, then the public must rely on only 'sound-bytes' of information. Overall, risk assessment works well when expectations are low; it is not vigorous enough to help at the public level and making it meaningful to them. The so-called "experts" will be representatives from community groups or non-governmental organizations (NGOs) (Powell).
- Swain noted that Ontario has a two-step process for setting standards for water, neither levels have a lot of room for public input.
- Swain tabled a query to the group regarding a proposal to establish guidelines through a provincial - federal committee related to drinking water. Standards don't cover all interesting or necessary information required. Would a standing public advisory committee including NGOs, academics, etc be appropriate?

- It was noted that an advisory group needs to be formed that will identify emerging issues to facilitate “forward setting” of standards (OWWA/OMWA)
- CELA noted that there are different models and many protocol issues. The difference between "advice" and "decisions" must be identified and incorporated into a committee’s mandate. There would also be an issue of who holds the federal/provincial advisory committee accountable.
- Concern was raised about the capacity of the system to appreciate even a federal/provincial advisory committee. Progress is glacial in many cases – the real issue is the resources required to support engagement and involvement are not available (PP, OPSEU)
- Public involvement at the community level is important. Consumer Confidence Reports (CCRs) should be geared toward a local community’s specific issues so that the community will be interested in its focused results. Advisory level and local level need to be separated (OWWA/OMWA).
- The public wants to know: What is going on? How will it impact me? What can I do about it? In the setting of standards for water, funding an interest group to get specific experts involved is important (OWWA/OMWA).
- Malec had concerns about how one gets government to listen to the public when setting standards.

1.2 Projects

- OWWA/OMWA noted that "projects" does not capture the range of projects involved. Narrowly interpreted it refers to only waterworks facilities whereas a broad perspective includes, at a minimum, projects that relate to non-point sources of pollution. OWWA/OMWA noted further that some projects are subject to the public consultation process of the Environmental Assessment Act.
- OPSEU proposed that the term “projects” should also include public involvement in remediation efforts.

1.2.1 What type(s) of information needs to be put into play and available to the public in terms of projects?

- Public involvement and opinions must be given the consideration and legitimacy they warrant. Public meetings and opportunities for submissions are wonderful but public should to have an impact. There should be a public hearing on environmental consequences - feedback after a decision has been made about why it was made (Malec).
- Access to information through the media is a first step but may be useless unless there is the ability to analyze and interpret. We need to consider how the public participation process is structured in terms of funding, access, analysis and roles. Information must be packaged to meet goals of public understanding OR ensure that there is funding available so experts can work on the public’s behalf (CEDF)

- CO noted that they had a well-established culture of public participation through the experience on watershed planning. The culture of participation needs to be underpinned with the knowledge of watershed operation. First element is source protection which is where participation should start. Public education is the first step and should happen at the watershed level.

See Section 4. for additional details on funding for projects.

1.3 Monitoring and Enforcement

- OWWA/OMWA noted that the CCR will not be enough in and of itself to inform the public about the quality of their drinking water, increase public confidence and provide information for those who may be at risk. Communication programs need to be community specific and must be part of a broader communications strategy. IN the US, nobody knows if the public is reading the CCRs. Communication programs need to start at the source and extend to the tap (including everything in-between) in order to build trust. In order to implement this program, training staff and communication people are required. The questions of how to best use the media must be considered. Hruday's 10-step program was cited as a good risk communication program for drinking water.
- Swain stated a good relationship with the community was an element of an effective monitoring and enforcement program.

1.4 Emergency Planning and Response

1.4.1 Development of an Emergency Response Plan and a role for the Public

- Powell presented a summary of lessons and conclusions from his paper: Regarding emergency preparedness (planning and response). The perspective is that we hope it never happens but must assume that a plan framework exists. It is critical to be able to get information to relevant people to reduce negative impacts. This goal requires a systematic examination of weaknesses, notification procedures and is highly dependent on resources available. In terms of the logistics of emergency, assigned roles for communication and media coverage/relations, documenting incoming calls/concerns, publicly televised meeting need to be planned. There is a huge amount of detail that must be incorporated into an emergency plan. The necessary elements are: preparedness, communications and infrastructure systems; public relations needs to be underpinned by monitoring and enforcement.
- Swain asked whether there is a role for public involvement for an emergency plan development?
- OWWA/OMWA reiterated the need for building a relationship beforehand to ensure an ongoing information flow to build relationship with local media.
- Powell cited the loss of extension people in rural communities who have acted as facilitators as an issue.

- CEDF cited their experience when attempting to secure information from North Bay boil water advisory; it was very difficult to get information and waited four days before receiving a response.

1.4.2 Resources for Emergency Response Plans

- Walkerton was cited as a “perfect example of where resources are required” in order to establish local capacity. If there had been funding available for citizen utility boards etc, then emergency preparedness would have been better. In terms of monitoring state of preparedness, should be citizen's responsibility (CEDF).
- OPSEU stated that the process of developing an emergency plan would expose structural weaknesses and would help institutions appreciate each other's roles and abilities. The public would have a greater understanding of who is accountable for what. This represents a valuable educational opportunity for all involved.
- Walkerton citizens represent a major resource as a representative sample of people to develop an emergency preparedness plan. A discussion begins with recognition that a plan is needed. The annually, local consumer confidence reports can be part of the annual review of the emergency plan (CO).
- OWWA/OMWA argued that emergency preparedness is more difficult in food and water [than a natural disaster type incident – hurricane etc] because of time lag and lack of monitoring system. There needs to be greater depth of triggers for the decision-making process and identification of what constitutes an emergency.
- Interview evidence illustrated that the decision making process for “what is an emergency” is in a black box. Many different factors affect the process and monitoring of background prevalence [of a water contaminant for example] is critical to illustrate anomalies (Powell).

1.4.3 Emergency Communication

- There are limitations to the Internet as an emergency communication tool as not everyone has access. Existing neighbourhood or community systems (Neighbourhood Watch etc) should be used. Community infrastructure must be established [if not already functional] and maintained for effectiveness. (Powell).
- OWWA/OMWA noted that telephone and communication systems in rural areas must have the capacity to deal with a crisis.
- Emergency communication is just risk communication faster.(Powell)
- Who holds the responsibility for notifying the public? The situation is fragmented and should be clarified. What timing requirements should be in place for situations of acute emergencies (CEDF)?
- Swain cited the Dobell paper and the costs of making incorrect statements. Measurement system is very poor and chance of identifying a risk is fuzzy. He expressed concern that applying absolute timing figures without leaving room for judgment causes concern and may have broad, negative implications and costs.

1.5 Finance

- Regarding the sustainability of financial systems over the long term and the public's "right to know" about management and financing of water systems. The European Union (EU) has a policy framework that would be helpful to examine. Their term is "river basin management plans". The policy framework does identify public involvement is a critical component. (PP - *to provide reference to the Inquiry*)
- PP noted that Canada charges one of the lowest amounts for water in the world. What we really need to do is put the provision of water on a long term and sustainable financial basis. We need to examine all assets and costs, a process which is built upon a model that requires full engagement of the public. A public registry of assets, for example the assets of a drinking water system - life cycle, replacement, costs, would be publicly accessible and this availability of information would buffer the system from the political influences and irregularities. Capacity building would be critical so that the public would be able to play a full role.
- Swain noted that SuperBuild is trying to get a full understanding of these assets in the province.

2. THRESHOLDS AND KEY DECISION POINTS OF PUBLIC PARTICIPATION

2.1 For policy or projects, are there significance thresholds of public participation and if so how should they affect decision-making processes? For water systems, what are the key decision points?

- PP noted that it was clearly the responsibility of the government, at end of the day, to make a decision, but only after hearing all the evidence. It was not certain that consensus is the ultimate goal.
- OWWA/OMWA suggested that the significance of the project should be considered for public participation.
- It was suggested a flow chart from policy to enforcement (and protection) be constructed to identify the key decision points and see where the public can participate effectively (CELA, CO)

3. PUBLIC PARTICIPATION

3.1 What criteria and mechanisms should guide entrance to the process? representativeness? special sub-populations? knowledge? how measured?

- CELA noted the Canadian Environmental Network model as a mechanism for bringing small or sub-national groups to the table, and as a means for government to identify stakeholders. Larger groups have individual status and get a separate

invitation for participation. This Network allows groups to self-identify their areas of expertise.

- It's not a question of *who*, but rather one of *how* (CELA). Groups still require resources to get to the table, the Network facilitates access if funds are available. Lack of resources is major problem, particularly as they must organize to the government agenda in order to have any influence.
- Powell noted some similar networks in the agricultural community.
- Swain noted the significance of this type of network in terms of the ability for government to make one call to reach a multitude of contacts.
- OPSEU noted the success of the Remedial Action Plan process for engaging people to participate. The Public Advisory Committees were asked to the table to participate in decision-making during the problem definition and implementation stages of the process.
- The CO recommended the watershed model as a potential mechanism to facilitate public participation. This process of decision-making includes as many stakeholders as possible. A simple re-tooling would be required to use this mechanism for water management.

3.2 What is the role of surveys and focus groups?

- CEDF stressed the importance of public access to the results of these types of studies.
- Indeed, the information is only useful if made public (Swain)
- OWWA/OMWA noted that surveys best capture the opinions of the average customer.
- CO argued that neither focus groups or surveys were better, rather they are just different means of data collection. These methods were seen to be useful for testing at the community level, allowing decision-makers to gauge how much people on the ground actually know about the issues which may affect policy development.
- The limits of surveys and focus groups must be recognized (Powell, CO)
- CEDF warned of the differing agendas of respondents, for example between environmentalists and farmers.
- CELA pointed out that science is not value-free, and that different values would skew the results of surveys and focus groups. Further, if science is not value free, then public discourse is needed to debate the different interpretations. There was some general agreement with this point (Powell, Swain, CEDF)
- MOE noted that focus groups require careful thought and planning, but serve a useful purpose in the way of gathering together expert opinions which can then be taken back to a broader audience for feedback.
- CELA noted that MOE seemed to be working with a different definition of "focus group", one with experts, rather than lay people.

3.3 What is the role of the public service?

- Malec noted that public officials have become politicized to achieve their objectives.
- At the provincial level, public servants should be risk managers for drinking water safety. There is a need for technical and policy advice (OWWA/OMWA).

- CEDF noted that for the public participation process, the public service role should include: gathering information, disseminating information, transparency, and making the rules clear at the outset. It was noted that changing the rules once the process has begun is extremely confusing for the participants and results in negative perceptions of the process and outcome, and a lack of trust. Any changes to the rules must be negotiated through consultation with participants.
- There are three types of civil servants: politicians, managers, and those that deliver government policy (CELA). Deliverers must act in the public interest even if they do not like it.
- CELA noted that the civil service has been so demoralized and reduced by cutbacks etc., we should consider whether the public service has the capacity to provide the services which are expected. The Chair's question should be "what *should* the role of the public service be", rather than "what *is* the role".
- There is a need to retain expertise and commitment in the public service with regard to participation (CELA, OPSEU). More resources are needed to do this (CELA OPSEU)
- OPSEU noted a culture of fear in the MOE, where managers encouraged employees from NOT participating in the Walkerton Inquiry and the public generally. This breeds distrust and hinders effective public service roles.
- The public service role is to facilitate public engagement. To do this requires increased resources and support from the communications branch of government (OPSEU).
- The public service has legislation to foster its functioning: The Public Service Act. Some amendments need to be made to this Act. First, the Public Service Amendment Act provides ministers with the ability to delegate authority to other ministers or sectors. This dilutes ministerial accountability. Second, Bill 25 increased the ability to use people on short and mid-term contracts. This reduces job security by reducing the willingness to use long term employment. Third, legislation is needed to clarify the desirability and protection of whistle-blowing. This type of legislation needs to be available due to the current culture of fear (OPSEU).
- Swain noted that the obligation of the public service is to support the government of the day and to represent public views. There appear to deep concerns about the role of the public service: the drift towards a four year dictatorship model; old expectations of public service expertise; public interest; and accountability is being strained.
- The Dobell paper identifies the role of the public service as a filter of the public interest and as articulator of information and issues. It also shapes and provides opportunities for public participation. For the public service to fulfil these roles, resources must be available (OPSEU).
- OPSEU stressed the importance of public service culture for effective public participation. Ministry cutbacks have caused a decline in the culture of public participation over recent years. The public service must be able to speak the truth to politicians about what the public wants - without fear, and the public must be able to speak freely with the public service. A quote was read regarding the "need to build a strong policy community among departments - a community of policy managers who can share best practices and address common problems concerning policy

management and methods" as recommended in the Gibbons Report. [for full citation see Mohan Kaul *Better Policy Support*, Managing the Public Service: Strategies for Improvement Series, London: Commonwealth Secretariat, 2000, p.32]. (OPSEU)

4. INFORMATION AND OTHER RESOURCES FOR EFFECTIVE PUBLIC INVOLVEMENT

4.1 Intervenor Funding

- CEDF stated that in Ontario, the Boards (the Environmental Assessment Board, the Ontario Energy Board and the Ontario Municipal Board) who were hearing certain cases, received applications. Approximately 60% of applicants received funding. At the conclusion of the hearing, there was a possibility of a "top up" of funds depending on participation. Overall, the money that was provided was small compared to actual amounts of project money.
- CELA explained that through the old system of funding for Board interventions, citizen groups were required to present their entire strategy to a Board in order to get funding. This ensured, almost by default, that the cases were well argued by the citizens groups. In a survey conducted by Boards about the Act - Boards thought the Act was useful and needed to ensure well-funded groups, unfortunately, the results of the Survey were not released when the Act expired. Another report by University of Windsor professors provides an in-depth analysis of the Act and their only recommendation was that the Act could be more extensive (CELA, to *provide reference to the Inquiry*);(CEDF agreed).
- OWWA/OMWA's pointed out that the Intervenor Funding Act (IFPA), an act that was allowed to sunset in 1996, did not apply to the Ontario Municipal Board (OMB) when it presided over Planning Act cases alone. This is particularly important if land use implications are considered as an important part of non-point source water pollution problems. OWWA/OMWA expressed the opinion that application of intervenor funding requirements to the OMB could be "doable" under a revised IFPA. For example, a new act could apply to every new subdivision application as a small percentage of project capital costs, so that the project's proponents funded their opponents.
- CEDF agreed that IFPA was only narrowly applied and that private sector funding was critical. OWWA/OMWA noted that applicants/opponents are not looking for financial parity with proponents but at a minimum opportunity for active participation.
- The issue of proponents' response to the funding charges was raised. Would a major political campaign be mounted to derail the process? On the other hand, if the money for funding opponents was just 'set aside' by the government then it would be an obvious target for budget cutters (Swain)

- CEDF's opinion was that full cost pricing for the development industry is on its way (for example the Smart Growth Initiative) and that funding should be made available so "people think the process is fair". The previous intervenor funding legislation was effective in bringing out voices however there should be inclusion of participant funding rather than intervenor funding.
- Swain questioned whether there was consensus that we do have a model to work with in the IFPA?
- CEDF stated they would like to see participation funding - not just intervenor funding under judicial type decision making processes. Particularly if the Environmental Bill of Rights (EBR) is used. The Ontario Environmental Network was originally funded as part of EBR then cut.
- OWWA/OMWA agreed that the IPFA provided a model generally but stressed the need to think about the applicability to drinking water and particularly small systems. Agrees there is a need for project based and baseline (policy) funding.
- CELA outlined that funding is not an endpoint - a means for being at the table. We need to ask "for what"? The notion of public participation is at a historic low point in Ontario. There is a lack of good process. The last 20-30 years have seen the evolution of various public participation mechanisms, for example the advisory committee system, but the culture of public participation has radically changed. The EBR is not the sole mechanism. There has to be different mechanisms. More useful to discuss decisions related to water and then appropriate public participation.
- CO noted that the process costs for consulting the public is significantly less than going to the courts or OMB.
- As it is always the will of the government that influences the outcome, it doesn't matter what level of participation or resources are available. The example of the Olympics in Toronto and unlikelihood of a Federal environmental assessment being conducted was cited (CEDF).

4.2. Who is entitled to funding with respect to water issues and what are the limits to funding?

- Who should be eligible for funding would be contingent on the issues involved and geographic factors (i.e. where is the water?). Community interests should be included and there is potential to have intervenor participation wherever decisions are being made. This could be through an Ontario environmental network which provides low cost information to people. This network would represent an extension of the "right to know" and provide technical assistance as required. Without recognition of the right to participate the public would be cut out of the decision making process (CEDF).

- Powell argued that the focus of an information network should but extended to include information on all outbreaks (food and water). Most of the required information is already being collected by industry.
- OWWA/OMWA questioned whether, in the context of drinking water, the IFPA model would be applicable to smaller systems where the full cost of new or expanded infrastructure may require outside funding sources. In those circumstances, the old IFPA template might not apply because the bulk of funding may be coming from outside the small system's tax base. We need to consider a new template and whether it should be different for small systems.

4.3. What categories of information should routinely be published and by whom; what information management system investments are needed?

- Through Regulation 459 – there is a requirement for waterworks to provide a huge amount of information that will then be channeled into the public arena. This information is increasingly managed electronically and will extend public opportunities for access. The government is finding a more challenging problem with the interpretation of information and its provision to different audiences and interest groups (MOE).
- CO inquired whom the government had been surveying in terms of what should be posted on the web.
- MOE responded that a range of parties including academics, public interest, local representatives etc have approached them.
- Money should be set aside for a position at the Environmental Commissioner's office with the public as their client to ensure additional accountability. Regarding interpretation of information - local waterworks can provide some interpretation for government (CEDF).

5. PUBLIC EDUCATION, OUTREACH & TRANSPARENCY

5.1 Does good public education, outreach and transparency reduce the demand for, or time required for, other forms of public involvement?

- There was general agreement with this agenda point (OWWA/OMWA, CEDF).
- However, CEDF noted that public input requires time, and that time must be allowed for full discussion. Making time available in the participation/consultation process will save time in the long run by creating a legitimate outcome (CEDF, CO).
- CO noted that time taken for public participation would often save spending weeks at OMB hearings.
- Powell asked for a definition of “public education”, noting there were lots of ways to compel people without educating them.
- CEDF suggested that public education is simple and direct (fire education, anti-littering). It is supported by law, and informs the public about the consequences of action. It's aim is to engage people.

- Powell noted there were many ways to engage the public without consultative mechanisms or expense (word of mouth, precautionary campaigns)
- PP suggested that the goal should be to strive for education between the consumer and provider (as in the US system). Consumers should be involved and actively engaged in the process. A good relationship, in this regard, is lubricated by information.

6. IMPROVING LEGAL INSTRUMENTS FOR PUBLIC INVOLVEMENT

6.1 In general, how might present legal instruments (Environmental Bill of Rights, Environmental Assessment Act, etc.) be improved, and do proposed enactments (e.g. Safe Drinking Water Act) fill all the holes?

- The CEDF and CELA suggested a need to conduct a “gap analysis” of current legislation to find out where the gaps are. CELA has attempted to do this in its draft recommendations for a Safe Drinking Water Act.
- CELA outlined that its proposed Safe Drinking Water Act include recommendations for public participation. The new regulations in Ontario are a good start but they are not sufficient. Statutory protection is needed. A Safe Drinking Water Act is a good place to put all the reforms. One innovation in this draft proposal is that people of Ontario will have a right to clean drinking water - this needs to be solidified in statute. The draft goes into some detail on public participation. Recommendations 11 and 12 are consistent with views today that the right to know aspects/provisions should be put into legislation, including public notice provisions, treatment and testing of equipment, consumer confidence reports, and an electronic drinking water registry which summarizes information and acts as a repository. CELA noted that even if the Act was enacted with all the proposals included, it would not be radical compared to other places in Canada or the rest of the world
- Swain noted there was consensus that CELA's draft drinking water act has been an important contribution to the discussion.
- The CO suggested that the key elements which the public requires to participate must be enshrined into the Drinking Water Act: access to information, monitoring opportunities, and timelines for reporting.
- Right to know, or "must produce the following information" should be non-negotiable (CELA)
- The CEDF noted certain fears with the right to know. While information may be freely available, without resources and tools, it may be difficult or impossible to do anything with it.
- Along with the right to know principle, the "right to understand" is needed This is what people really need and want (PP).
- Improvement needs to be made in light of privatization pressures. There are a number of areas of legislation that do not apply to private industry. For example the Freedom of Information Act. If privatization of the water industry occurs, then public right to know will have to be re-considered (CEDF).
- Swain noted that it could be made a requirement that these pieces of legislation are

applicable to privatized industries.

- CEDF noted a potential conflict of interest between public participation and private interest. Private companies may refuse to participate.
- MOE noted that some legislation already applies to private organizations, although these tend to be smaller private groups.
- Building on the US Safe Drinking Water model of annual consumer confidence reports with specific content requirements, OWWA/OMWA would like to change the title of consumer confidence reports (CCRs) to water quality reports which include source protection information and drinking water information. OWWA/OMWA also noted that utilities must be encouraged to implement AWWA's policies of source water protection, multiple barrier treatment, effective disinfection, distribution system maintenance and continuous improvement programs.
- PP agrees with OWWA/OMWA's emphasis on continuous improvement. While PP is respectful of the US model, it prefers a more flexible approach.