

Public Participation in Drinking Water Safety Decision-Making

**Submission to the

Walkerton Inquiry
The Hon. Justice O'Connor**

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RECOMMENDATIONS

- **Establish the right to participate in decision-making concerning water safety.**
- **Ensure adequate resources to make public participation in decision making meaningful.**

Introduction

Public participation is critical for the protection of Ontario's drinking water. In particular, the public must be allowed to participate in the:

- establishment of drinking water safety standards;
- protection of source waters;
- implementation of programs; and
- the ongoing monitoring of water safety.

Many of the programs that have previously been established to address the public's need to participate in environmental decision-making have been cut by the provincial government. For example, before its funding was cut, the Ontario Environmental Network provided a clearing-house for information under the Environmental Bill of Rights and was a model of a low cost method for providing public information and technical assistance on environmental issues as they arose. The *Intervenor Funding Project Act* was sunsetted by the previous provincial government in 1992. In 1996, MOE staff concluded the Act was effective and fair, but to conform to the government's streamlining objective, the Act was allowed to lapse.

Many other programs facilitating public participation in decision-making, including programs of public education and outreach, and technical support and assistance, have been reduced or eliminated. These programs led to better decisions, ultimately saving lives, avoiding unnecessary hardship, and better protecting the environment. Such programs reduced the demand for more costly forms of public involvement at later stages in the decision-making process. Properly handled fair and full public information and participation saves time and resources in the long run by leading to a better and more durable outcome.

Establish the right to participate in decision-making-concerning water safety.

The key elements of the public right to participate must be enshrined in legislation and not just in policy. For example, they could be included in the proposed *Safe Drinking Water Act*. These elements should include access to information, monitoring opportunities, and timelines for reporting. Right-to-know should be non-negotiable. Public interest groups and members of the

public should have the right to be involved in standard setting where they have a seat at the table and resources to present their ideas in a professional manner. Public involvement is critical to the process of establishing standards. Public participation at the policy level includes participation in the formulation of guidelines, monitoring, permit issuing process and all levels of decision-making.

Public access to information is a first step but will be useless unless there is the ability to analyze and interpret data. How the public participation process is structured in terms of funding, access, analysis and roles needs to be carefully formulated. While information may be freely available, without resources and tools, it may be difficult or impossible to do anything with it. Walkerton itself was an example where resources were required in order to establish local capacity.

The use of 'environmental networks' provides a mechanism for government to identify stakeholders. Larger public interest groups develop areas of expertise. However groups of all sizes require resources to get to the table. Networks can facilitate access if funds are available. Environment groups have no financial incentive or reward for organizing around a government agenda.

Government staff should provide support for the public's participation by gathering and disseminating information, and making the participation process clear at the outset. Changing the rules once the process has begun is extremely confusing for the participants and results in negative perceptions of the process and a lack of trust. Any changes to the rules must be negotiated through consultation with participants. The issue of who holds the responsibility for notifying the public is fragmented and should be clarified. Clear requirements should be in place for situations of acute emergencies. Public input requires time. But making that time available in the participation process saves time in the long run by creating a more legitimate outcome.

Improvement to the public's right to participate needs to be made in light of privatization pressures. There are a number of areas of provincial legislation that do not apply to private industry. For example, the *Freedom of Information Act* does not apply to private corporations. If privatization of the water industry occurs, then public right to know would have to be re-considered. It would be better to incorporate explicitly from the onset, provisions to include public participation in the activities of private industry that impact water safety.

Ensure that the public is adequately resourced to make participation meaningful.

The last 20-30 years have seen the evolution of various public participation mechanisms. The EBR is one mechanism; another was the system of public advisory committees with

representatives of stakeholders to advise government decision-makers. The EBR, is a good method of achieving public participation. However, it should be noted that the EBR has limited application, which would need to be reviewed, and its application expanded in order to provide full public rights.

The previous intervenor funding legislation was effective in bringing out voices. The record of funding for Board interventions shows that citizen groups were required to present a legitimate and useful strategy to a Board in order to get funding and that overall, the money provided was very small compared to actual amounts of project money.

The Canadian Environmental Defence Fund was commissioned by the MOE in 1989 to conduct a study of the effectiveness of intervenor funding in Ontario. In general, the study concluded:

Intervenor funding is an important part of the environmental decision making process in Ontario, and although it can be taken for granted, it is essential in providing environmental justice. Funding intervenors should not only be made a permanent regulation, it should be strengthened as recommended in this study and the province should make a continuing commitment to the funding of participants so that private or environmental interest group resources are not constantly threatened by new projects or policy changes.¹

Funding is not an endpoint – it simply provides a means for the public being at the table. Progress forward requires the inclusion of participant funding rather than just intervenor funding.

Participation should be available at the local level to ensure community involvement and at the public interest group level. Timely communication, access to information, adequate resources and access to technical expertise are critical elements of a full and fair participation process. Government should guarantee, through legislation, the right of the public to be involved in key decisions related to water safety and management, while recognizing that different decision points require different types of public participation.

Mechanisms should be established to provide financial resources for citizen participation. At present, citizens must fund participation primarily by private contribution.

¹Heather Campbell, *Intervenor Funding and the Intervenor Funding Project Act in Ontario*, ed. Dr. R. Pushchak (Toronto: Canadian Environmental Defence Fund, May 1991), p. 122.

A troubling consequence of a lack of resources to fund interventions is inequality of access. This guarantees that public participation in important decision-making processes is the preserve of the few who can afford it. Funding for citizens will restore a semblance of balance to the process. Participants were not looking for financial parity, but at a fair opportunity for active participation. Funding should be extended to parties involved any environmental proceeding, e.g. permits under EPA, OWRA, Planning Act, etc. There is a need for project-based funding for drinking water, particularly for small systems. The process costs for consulting the public is significantly less than going to the courts or the Ontario Municipal Board.

There is an urgent need to fund the programs and opportunities contained within the Environmental Bill of Rights. There are a number of *EBR* processes that must be funded via a participant funding program. Financial assistance should be made available for individual groups to access and monitor the Environmental Registry. A Registry monitoring and assistance program for ENGOs is an essential support mechanism for the public, such as the one done by the Ontario Environment Network. Finally, assistance should be available to prepare Applications for Review or Investigations and respond to proposals for Acts, policies, regulations, and instruments posted on the Registry, and, for the preparation of comments on proposals for Acts, policies, regulations, and instruments.

Funding should be made available for litigation measures such as court actions, which allege harm to a public resource and the use of the quasi-judicial process of seeking leave to appeal a decision on an instrument. Similarly, funding for participation in mediation and negotiation is strongly recommended.

Substantial work reviewing the models and options for funding has already been performed by the CEDF. These studies found that a broad, participant funding program as an essential element of any reform that will require more public involvement in the protection of safe drinking water. Who should be eligible for funding would be contingent on the issues involved and geographic factors. Groups seeking funding would apply for funding as part of any preliminary application. Finally, administration of this program could be absorbed by a neutral organization with funding experience.