ENVIRONMENTAL ASSESSMENT PROCESS SUBSTITUTION: IS MEANINGFUL PUBLIC PARTICIPATION POSSIBLE?

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INTRODUCTION

Environmental assessment (EA) is widely viewed as a planning tool. As such, projects and undertakings are publicly considered from a future-oriented perspective, embodying the principle of "look before you leap." The notion of EA as a planning tool is, however, presented much differently in the literature than in practice. In the literature, the debate about EA as a planning tool is mainly about the limits of project EA, and the need for integration of project EAs with strategic EA, planning processes and integrated decision making. In practice however, the debate revolves around how best to harmonize EA with regulatory processes in an effort to achieve more efficient reviews. The result of such harmonization has often led to processes that focus on regulatory approvals (e.g. should the proponent be allowed to disturb a watercourse) rather than considering the broader planning implications of the project and alternatives to it (e.g. is the project the best way to meet the identified need). Joint assessments and substitution are examples of harmonized processes that have eroded the use of project EAs as a planning tool (Doelle 2008).

Federally, the Minister of the Environment has the power to substitute processes under subsection 43(1) of the *Canadian Environmental Assessment Act* (CEAA), which reads:

> Where the referral of a project to a review panel is required or permitted by this Act and the Minister is of the opinion that a process for assessing the environmental effects of projects that is followed by a federal authority under an Act of Parliament other than this Act or by a body referred to in paragraph 40(1)(d) would be an appropriate substitute, the Minister may approve the substitution of that process for an environmental assessment by a review panel under this Act.

As we have outlined in more detail previously (Schneider et al. 2007), the push for process substitution has largely been driven by industry under the guise of eliminating what they refer to as "duplication and overlap", which, they argue, impacts the efficiency of the EA process. For example, during the Five-Year Review of the CEAA, the Canadian Energy Pipeline Association mentioned substitution a number of times in their brief. The Association has a long history with the National Energy Board (NEB), and indicated in their brief that:

> We also believe improvements in process efficiency and timeliness would occur if the NEB process is automatically substituted for pipeline projects requiring panel review. This would eliminate the time needed to establish the panel and recognizes the synergies between the NEB legislated obligations and the obligations under (the Act).

The NEB moved the substitution issue along by requesting that its process be substituted for the CEAA requirements, as provided for under sections 43 of the Act in the case of the Emera Brunswick Pipeline (National Energy Board 2005; Schneider et al. 2007). The Board noted that both agencies have an obligation to "optimize environmental assessment", and the federal EA process duplicated aspects of its own review. It argued that with a decade of experience working for inter-jurisdictional coordination of EA through harmonized, joint hearings processes, there was an opportunity now to "reduce unnecessary complexity and uncertainty in its regulatory process, and [doing so] would be responsive to the need for efficient, effective EA of federally-related energy infrastructure" (National Energy Board 2005: 1). No public consultation was undertaken prior to the decision by the Federal Minister of the Environment to substitute the NEB process for that of the CEAA process, despite the fact that this decision marked the first attempt at process substitution under the CEAA.

The problem many people had with this substitution decision relates to the differing mandates of the Canadian Environmental Assessment Agency (CEA Agency) and the NEB and the approach of the NEB to public participation (Schneider et al. 2007; Fitzpatrick and Sinclair 2009). In our initial assessment of the Emera case, we established that the CEAA is meant to "achieve sustainable development by conserving and enhancing environmental quality and by encouraging and promoting economic development that conserves and enhances environmental quality" through EA. The NEB, conversely, exists to "regulate international and interprovincial aspects of the oil, gas and electric utility industries" (Schneider et al. 2007). The differing mandates underscore the planning versus regulation responsibilities of the organizations. In terms of public participation, the NEB process uses quasi-judicial hearings, which contravene the intent and process of public hearings under the CEAA and limit the potential of deliberations to narrowly focused issues (Fitzpatrick and Sinclair 2009). Our first look at participation in this case indicated that most members of the public who engaged in the Emera Brunswick Pipeline hearing entered into the process with little or no understanding of the NEB regulatory process and were intimidated by it (Schneider et al. 2007).

The purpose of this paper is to present the first hand experiences of people who participated in the environmental impact assessment of the Emera Brunswick Pipeline, the first and only substitution of a panel review under the CEAA for that of the NEB. In doing so we pay particular attention to the basic tenets of meaningful public participation and consider the extent to which the public was able to raise and discuss issues related to the planning mandate of the CEAA.

APPROACH

We followed a qualitative approach to carrying out our research in order to elicit the stories of people who participated in the Emera Brunswick Pipeline hearings. Invitations were sent out to members of the public who took part in the hearings to come to a focus group in Saint John. We selected the focus group approach to allow people to share their stories with one and other and so that we could meet personally with the participants. A premium was placed on being able to observe people and gauge the type of emotions the

group expressed about various aspects of the NEB process followed. We consulted the participant list created by the NEB to recruit participants for our work. In doing this, we used a snowball sampling technique, enlisting the help of people who participated in the NEB hearings to identify other active participants.

Thirteen people attended the workshop, held on January 15, 2009 at the Public Library in Saint John, New Brunswick. Most of the people in attendance had participated in the NEB hearings held for the Emera Brunswick pipeline project. Our discussions indicated that each had worked incredibly hard to prepare for the hearings by familiarizing themselves with the material, learning the process and seeking out support. They followed all of the rules of the game: attending information sessions, applying for participant funding, and filling out many, many forms and applications. As volunteers, they spent hours tracking down experts that might be able to help and sought support from the NEB.

Data was collected at the focus group meeting through direct note taking and through the use of notes collected on flip charts. While a guide had been established to help facilitate discussions at the workshop, participants were given time to discuss points that they deemed important. Our goal was to keep the session as open as possible allowing participants to focus on the aspects of the NEB hearings that stood out for each of them. It took some effort to get discussion underway as the participants appeared somewhat reluctant to speak. However, rather than intervening we let the momentum build. Once a few individuals were willing to "speak their mind" others quickly joined in, demonstrating their shared experience and a shared trust among the participants. Data analysis was done through transcribing meeting notes, followed by each of the authors doing an iterative search for themes grounded in the data. These themes were then related to the components of meaningful public participation from the literature. This report is based on our collective discussion of the issues within each of the themes.

It is important to note that this paper was conceived before the federal government announced in late 2008 its interest in further devolution of environmental assessment. Originally, we planned to further study the potential substitution of the federal process to bodies such as the NEB and the Canadian Nuclear Safety Commission. It seems clear now that the present government is also eager to look at substitution by provincial processes as well.

In 2007, the CEA Agency presented Terms of Reference for the Evaluation of the Substituted Brunswick Pipeline Project Environmental Assessment Process. The Terms of Reference state that the Emera Pipeline substitution was undertaken on a pilot basis to assess the application of the CEAA substitution provisions, and that it is therefore necessary to perform an evaluation to draw conclusions on the substituted process. The federal government is moving forward with a proposal that increases the likelihood of substitution without actually having thoroughly studied the lessons from the first and only substitution to date, the Emera Brunswick Pipeline. The CEA Agency is working on a final evaluation, using the Ipsos-Reid report along with information gathered from other departments. Presumably, this evaluation will be used to determine what future

substituted processes might be considered and under what criteria. Unfortunately, the evaluation was not complete at the time of this publication or prior to the federal government's stated intention to embark on the path of further substitution.

As part of our approach, we looked at the Ipsos-Reid evaluation and tried to view the document in light of the stories we heard from our focus group participants. Our findings add further data that needs to be considered before decisions about any further substitutions are made.

MEANINGFUL PUBLIC PARTICIPATION IN ENVIRONMENTAL ASSESSMENT

As observed by Sinclair and Diduck (2005), Petts (1999), Wood (1995) and others, public participation has long been recognized as a cornerstone of EA. In fact, for some, the basic legitimacy of an EA process is questionable if the process does not provide for meaningful participation (Gibson 1993; Roberts 1998). As such, public participation can be found as a theme in the preamble and purpose sections of many EA statutes in Canada. For example, the preamble of the *Canadian Environmental Assessment Act* states that:

> the Government of Canada is committed to facilitating public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada and providing access to the information on which those EAs are based.

The purpose section of the CEAA states in paragraph 4(1)(d):

> The purposes of this Act are (d) to ensure that there be opportunities for timely and meaningful public participation throughout the environmental assessment process.

The benefits of public participation in EA have been clearly described in both theoretical and practical terms. A key theoretical argument is that participation actualizes fundamental principles of democracy, and strengthens the democratic fabric of society (Parenteau 1988; Sinclair and Diduck 1995; Shepard and Bowler 1997; Petts 2003). This argument situates EA as a key channel through which the public can choose to participate directly in the decisions that affect them. A related point is that EA provides a vehicle for individual and community empowerment (Fitzpatrick and Sinclair 2003). This recognizes that meaningful participation in decision making enables individuals and organizations to adapt to environmental change, and also to generate change through the expression of human agency. Another suggestion is that participation is conducive to broad-based individual and social learning that could enable the transition to sustainability (Webler et al. 1995; Palerm 2000; Sinclair and Diduck 2001; Diduck and Mitchell 2003; Fitzpatrick and Sinclair 2003). Such a view clarifies the link between the need for learning to occur at multiple levels to achieve sustainability goals.

In practical terms, the benefits of public participation are numerous and touch on law, politics, conflict resolution, planning, and decision making (e.g., Susskind and Cruikshank 1987; McMullin and Nielson 1991; Smith 1993; Meredith 1995; Webler et al. 1995; Shepard and Bowler 1997; Petts 1999; Usher 2000). Sinclair and Diduck (2005), Fitzpatrick and Sinclair (2003) and Petts (2003) provide lists of these practical benefits including outcomes such as; access to local and traditional knowledge from diverse sources, broadening the range of potential solutions, more balanced decision making and avoiding costly and time consuming litigation.

In light of these benefits, much consideration has been given to what might constitute the basic elements of meaningful public participation in EA. During the Five-Year Review of the CEAA, then-Minister of Environment David Anderson indicated to Canadians that one of the three key goals of the review was the identification of provisions for more meaningful public participation. He established that:

> Meaningful public participation in an environmental assessment 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 (CEA Agency 2001: 22).

Stewart and Sinclair (2007) take these ideas further and establish the basic elements of meaningful participation based on research with public, private and civic sector EA participants in Canada (Table 1).

More recently, the Canadian Environmental Assessment Agency (CEA Agency) took steps to introduce new guidance material for regulatory authorities on public participation (CEA Agency 2008). Section 4 of this new guidance material outlines the basic elements of meaningful participation and establishes that the "planning and implementation of meaningful public participation will help to:

- make better informed, better quality decisions;
- obtain valuable information about the environment and potential impacts;
- enhance understanding of the public's interests, concerns and priorities;
- create a positive foundation for working with interested parties to build trust, resolve problems, make informed decisions and reach common goals;
- increase communication, transparency and accountability with the public;
- avoid or minimize adverse environmental effects;
- meet the Ministerial Guideline's key elements for meaningful public participation;
- meet the purpose of the Act to ensure opportunities for timely and meaningful public participation throughout the EA process;
- address public concerns early in the process, thereby reducing likelihood for conflicts, costly delays, stoppages, litigation, etc.;
- correct misinformation or rumours about proposed projects;

- align the project design with public priorities and expectations before significant resources have been invested in detailed project planning; and
- increase the credibility of EA decisions and decision makers (CEA Agency 2008).

Table 1: Essential elements of meaningful public participation

Integrity and accountability Transparency (including transparent results) Sincerity of lead agency Process intentions are clear
Influence
Fair notice and time
Appropriate timing of participation
Inclusiveness and adequate representation Engaging interested and affected public
Participant support
Fair and open dialogue Positive communicative environment Capacity building Interactive formats (workshops / fieldtrips)
Multiple and appropriate methods Multiple techniques Staged process Appropriate techniques Consult on design
Adequate and accessible information
Informed participation

EMERA BRUNSWICK PIPELINE – PARTICIPANTS SPEAK ABOUT THEIR PARTICIPATION IN A PILOT SUBSTITUTION

Given the stated components of meaningful public participation in environmental assessments, did the Emera Brunswick Pipeline hearing meet these goals? The elements of meaningful public participation identified in Table 1 were used as a framework around which to present our findings. The following presents the data from the focus group that related to the elements, painting a picture of a process that did not have the characteristics of meaningful public participation from the participant's perspective.

INTEGRITY AND ACCOUNTABILITY

It is one thing to expect industry to fully participate in an environmental assessment process; they have existing legal staff, familiarity with the process and the ability to write-off costs for tax purposes. In addition, industry participants usually have the most to gain financially, so spending $500,000 to participate in an assessment can be a sound fiscal risk if you stand to make billions when the project moves ahead. The general public, on the other hand, rarely has adequate funds and for the most part donates their time when they participate in these processes. Public participants also regularly face serious repercussions as a result of their participation within the community itself, being viewed as against progress, development and job creation.

Given these inherent disadvantages, the concepts of integrity and accountability are closely linked to meaningful public participation. Integrity in this case refers to the adherence to moral and ethical principles – fairness, if you will. Accountability in the realm of environmental assessment covers all participants – from the public to the industry to the governments to the decision makers. When properly conducted, EA is an open and accountable decision-making process. Unfortunately, the integrity and accountability within the substituted NEB process was found to be lacking.

Focus group participants commented on how their local and federal politicians had let them down. Politicians who appeared to be interested in the process in the early stages later pulled out of the hearings, including one federal MP who was at an auction next door to the hearing room. One of the focus group participants recalled asking him why he was not participating in the hearings and reported that he stated, “I don’t have time for this.”

One participant said that the process was designed for lawyers in the oil and gas industry. “We had no legal training. No oil and gas company would ever send a new lawyer, untrained, to something like this.” The Friends of Rockwood Park (FRP), a local citizens group, received $50,000 under the federal Participant Funding Program. They were interested in hiring a lawyer to provide them guidance during the hearings. They were told by the CEA Agency that lawyers were discouraged and may not be funded. It seemed as though the CEA Agency did not recognize that the NEB hearing was markedly different from a regular panel review under the CEAA.

Appendix 1 provides a revealing excerpt from the NEB web site describing their Public Hearings Process. A careful read of this excerpt reveals a number of things for public participants that are much different than the CEAA hearings process. The quasi-judicial process advocated by the NEB is a process that is not learned in a two-hour information session or through a 15 minute demonstration video. Citizens and public interest groups who are seeking to meaningfully participate become overwhelmed by the burdensome nature of the process. The CEA Agency should have recognized that the NEB hearing process does not engage or support public participants in the way that the CEAA hearing process encourages. Some balance may have been achieved if the public participants had access to a skilled lawyer who understood and had experience with NEB hearings. It is important to recognize that legal advice and support is only one of the tools necessary to effectively participate in this quasi-judicial process. Public participants also need

support to engage with technical experts in a timely manner in order to put forward the evidence necessary for a persuasive case. The public participants in the Emera Brunswick Pipeline hearings had no support for legal expertise and very little support for technical experts.

Given that most of the focus group participants had no history with the oil and gas industry, they struggled to find independent, affordable expertise able to offer assistance. Partly this was due to timing – participants said they tried to find help but it was too short a time after the money was actually made available. There was also a problem identifying just who would be able to provide credible information. One participant said "We had no idea, no clue, as to who to call for expertise." While the oil and gas industry has a bevy of consultants they have used in the past and can afford to draw upon, the public has no such list nor can they afford to compete against industry for experts. There is far less professional expertise in this area to help public groups who lack the bankroll of the project proponents, such as oil and gas companies.

The third area of expertise where participants felt unfairly disadvantaged was in the area of assistance with the environmental assessment process itself. As one participant put it, "We talk about lawyers a lot, but we really needed someone with experience in these hearings, not just the law." There is little fairness in the process if one side feels like the deck is stacked against them. Participants commented that the quasi-judicial process may work well to test technical design issues, but it does not lend itself to a fulsome presentation of community values and sustainability aspects of the EA process.

In the context of integrity and accountability, focus group participants also commented on their concerns with the nature and actions of the NEB panel. CEA Agency review panels tend to be made up of individuals who have expertise in relevant aspects of the EA and an ability to understand the project and the potential environmental and social effects. For example, the recent White's Point Quarry and Marine Terminal joint federal-provincial panel was made up of prominent residents of Nova Scotia: Dr. Robert Fournier, oceanographer; Dr. Jill Grant, professional planner; and Dr. Gunther Muecke, geologist/geochemist. All three individuals brought expertise to the table that added value to their evaluation of the proposed project. As well, all three had spent time in the area where the project was proposed. A more detailed description of their backgrounds and qualifications can be found in Appendix B.

In the Lower Churchill Joint Panel Review recently announced for a hydro-electric development in Labrador, a five-member panel has been appointed. The panel includes Lesley Griffiths, planner and EA expert; Herbert Clarke, senior-level experience in energy and industrial projects; Dr. Meinhard Doelle, lawyer and EA expert; Dr. Keith Chaulk, biologist and resident of Labrador; and James Igloliorte, former judge and resident of Labrador. The panellists have a mix of backgrounds and cultures that will hopefully stand the people in Happy Valley-Goose Bay in good stead. A more detailed description of their backgrounds and qualifications can be found in Appendix B.

The make-up of the NEB panel for the Emera Brunswick Pipeline was dominated by

individuals with backgrounds in regulatory boards and expertise in the energy sector. Although the panel chair had some background in natural resource issues, she was not well versed in environmental impact assessment and her colleagues had virtually no experience in this area. The panel members did not have experience or demonstrated expertise in planning, the backbone of EA, and none of the panel members were residents of New Brunswick. Detailed information on the backgrounds and qualifications of the panel members can be found in Appendix B.

As with the above-mentioned federal joint-review panels, the NEB panellists are qualified people from different backgrounds. However, there is less diversity in their experience, all have backgrounds with oil and gas industry or energy regulatory agencies, and they are all from outside the area. As well, a perhaps small but important point is that the panel members are employed by the regulator (the NEB). Participants in the focus group repeatedly mentioned the need for an impartial panel. To many of the participants in the Emera Pipeline hearing, the panel appeared to be more closely aligned to the oil and gas industry than to the local citizens. Several participants talked about watching NEB panel members staring off into space, as if what the public had to say did not matter, and that panellists seemed dismissive of the public.

One participant said that the "judges" should not have been from the NEB. The fact that the Chair moved up to become Vice President at the NEB in 2008 made them even more suspicious. "If she'd ruled against a pipeline company, they would complain and she'd not be a Vice President," said one participant. Another felt as though the opponents of the pipeline were "put into straightjackets." The reactions and frustrations evidence the problems with the integrity and accountability of the substituted NEB process.

SINCERITY OF LEAD AGENCY

Many of the focus group participants felt that the NEB clerical staff was very helpful, saying staff members were "outstanding" and helping whenever they could. As noted above, the reaction to the panel itself was quite different. A more systemic problem that goes beyond the personalities of the staff or panellists, especially in the case of federal regulators, is that there is existing ill will that has built up over a long period of time. Part of this stems from the mandates of the regulators, a problem that will continue to foil attempts to build public trust. An example of this is the ongoing spat between the province of New Brunswick and the NEB. Many New Brunswick industries cannot access natural gas in desired quantities, even in areas serviced by laterals from the existing pipeline. Most Scotian shelf natural gas goes directly to the Boston-New England market. In a recent paper entitled *Atlantica: Myths and Reality*, Scott Sinclair describes the situation.

> In 2002, the government of New Brunswick made an application before the NEB to attempt to redress this situation. The legislation governing the NEB still requires that "the Board may not approve the export of natural gas from Canada unless it is satisfied that the quantity of gas to be exported is surplus to reasonably foreseeable Canadian needs.

> Since 1987, however, the Board's practice has been to authorize natural gas exports through short-term orders, circumventing the legislative requirement to consider Canadian needs. Approximately 75% of annual Canadian gas exports are authorized under short-term orders. As the New Brunswick government pointed out, "with respect to Scotian offshore gas, only one export license has been issued representing roughly 10% of the gas being exported from these Canadian reserves.
>
> New Brunswick tried unsuccessfully to convince the NEB to establish a set of rules that would apply when the board considers applications for short-term export orders for new supplies of Scotian offshore gas, such as from the Deep Panuke project. Such rules would have provided for public notice and comment on gas export applications, creating a speed bump that could allow local consumers the opportunity to acquire gas at market prices prior to export.

In *Scotian Gas: Breaking the Free Trade Consensus*, authors Fred Wilson and Steven Shrybman found that "In the wake of the Enron and other corporate debacles, New Brunswick's application has exposed the close relationship between North America's largest energy companies and the National Energy Board. Gas export "orders" are routinely issued by the NEB without any public review and only perfunctory regulatory oversight. The huge increase in natural gas exports to the US has taken place through ex parte (granted without public notice or hearing) "short term orders, distinct from exports authorized by an export license as the National Energy Board Act envisages."

These actions continue to create hard feelings, as they bar Atlantic Canadians from potentially-significant socioeconomic and environmental benefits. In order for substitution to successfully take place, it will be critical that the public has trust in the process.

INFLUENCE

For public participation to be meaningful, participants must understand the decisions that they can influence and that they in fact can have some influence over those decisions. In the case of the Emera Brunswick Pipeline substitution, the interface between the CEAA decisions and NEB decisions was not at all clear to participants.

During the course of the NEB hearings, there was considerable misunderstanding around the final decision-making process. The fact that the substitution provisions apply only to the review panel and not any other aspect of the CEAA was never explained to the public. Adding to the confusion, the NEB staff members who attended public information sessions did not appear to understand the role of the CEAA in the decision-making process and therefore could not answer questions about how decisions would ultimately be made. Questions were referred to the CEA Agency, which was not represented at the public information sessions.

The focus group participants expressed pride in their ability to take on a seemingly insurmountable task of reviewing the proponent's documentation, becoming familiar with many of the technical issues, meeting the many timelines and quasi-judicial requirements and coming forward despite setbacks and intimidation to speak to the issues during the hearing process. However, even as the NEB decision on the Emera Brunswick Pipeline was released to the public, those that actively participated questioned whether their efforts played any role whatsoever in the final decision.

There was general agreement among focus group participants that it was the fact that their participation appeared to have no meaning in the decision-making that has led to their sense of defeat, not the fact that the pipeline will ultimately proceed. Many of the focus group participants indicated that they have been left with a clear sense that these processes that claim to engage average citizens are not genuine in their intent. Many have not given up completely on the role of the citizen in improving decision-making but they will look to venues outside of the formal process to effect change. In the last Municipal Elections in Saint John three of the intervenors were newly elected into Common Council.

There was a strong sense from the focus group participants that the quasi-judicial process favours business and government and that this is not just a slight advantage, it is insurmountable. One focus group participant who received approximately $5,000 in participant funding to complete two studies described a defining moment in the process when, upon entering the hearing room, she realized that the suits and shoes of the proponent's lawyers were worth more than the money she received to prepare for the hearings.

Participants indicated that the formal nature of the process made it almost impossible to effectively participate without significant financial support. The community intervenors did receive approximately $50,000 in participant funding but because the funding was not received in a timely fashion and they were specifically discouraged from using the funds to hire a lawyer, they felt that they were unable to put their points forward in a way that would be seriously considered by the review panel members.

In our earlier paper (Schneider et al. 2007) we detailed issues that arose from the participant funding being managed by the CEA Agency, which appeared to be almost completely out of touch with the reality of the NEB hearing process. Several focus group participants commented on how the failure of the CEA Agency to deliver the funds in a timely fashion significantly impeded their ability to find and hire experts to speak to their concerns during the hearings. Participants recounted telephone calls and email communications with experts who were very interested in assisting them but could not prepare for the hearings in the short period of time available.

The community intervenors were eventually able to secure a pipeline expert who agreed to review the proponent's documentation and speak to it at the hearings. Several commented that it was the decision by the proponent to not cross-examine their expert witness and by the Panel to not require him to appear for questioning that led them to the

conclusion that the proponent did not take them seriously and the Panel had no interest in their comments.

Focus group participants all expressed concern about the make-up and behaviour of the panel members. As described in the section on fair and open dialogue, the interactions between the panel members and the citizen intervenors ranged from no interaction to expressed frustration. The participants could not recall one directly positive interaction with the Panel where they determined their comments or comments of their experts were being given serious consideration. Even though many continued until the very end to hold out hope that their hard work would pay off and their comments would be appropriately weighted by the Panel, they all sensed from the early days that the panel members were not impartial and the ability of the community intervenors to influence the decision did not really exist.

The following instruction provided by the Chair on the first day of the hearings is symbolic of the intervenors' sense that the decision was made long before the hearing began:

> Also at the back of the room you will find some other documents including the Order of Appearances, as we've discussed, and procedural directions. You will also find a copy of the draft conditions which the Board has considered should a Certificate of Public Convenience and Necessity be granted. This document in no way infers leanings from the Board. It is a routine part of the hearing process that has evolved from case law which stipulates that parties are entitled to know what types of conditions the Board anticipates might be appropriate, should the Board decide to approve a project (S. Leggett, Chair, Order GH-1-2006, Volume 1, item 27).

Comments such as this left intervenors wondering if the months of volunteer effort, financial and emotional expense would have any value.

FAIR NOTICE AND TIME TO PREPARE

While it is convenient to say that everyone in the Emera hearing had to follow the same timelines, many of the public participants found it a difficult if not impossible task. Our earlier paper (Schneider et al. 2007) demonstrated how intervenors were forced to meet tight deadlines that made it difficult for them to be fully involved.

> The NEB Regulatory process establishes narrow windows of time for review of and response to documentation. Such an approach may be very efficient but only intervenors with full-time staff members available to prepare and submit information can work effectively in this environment. In an effort to make the timelines more generous for public participants in the Emera Brunswick Pipeline hearing one of the intervenors submitted a motion to have all information requests and responses to information requests carry a preparation period of not less than 15 business days. The NEB promptly denied this notice of motion.

Trying to "build everything from scratch" in a short period of time created many difficulties for participants. Where do you find qualified experts in a hurry, especially when you have little money for reimbursements? As a volunteer, how do you battle against short timetables? It was nearly impossible for the public to attend all meetings. They were at different times and it was difficult for people who were working to meet the NEB's schedule. If you missed a meeting, you'd be "in the dark" and wouldn't know what had gone on, a situation regularly faced by participants. They would ask a question at a meeting and be told that "the question has already been asked and dealt with at the last meeting."

These were members of the public who were putting themselves on the line to protect something that they felt was important – whether that was Rockwood Park, the health of their children, their water, their property values or the environment at large. The tight timelines made one participant say "I am no longer interested in the process – I don't trust them; it is set up for industry."

Not all the timing issues were the fault of the NEB. Some of the problems were just a natural occurrence from working with volunteers who had many other demands on their time. One participant said "we were aware too late and needed to get involved earlier." Another said she "didn't get involved until she worried about the water in the city," and that if she had known ahead of time about the terminal and all the other parts of the overall work, she would have gotten involved earlier.

APPROPRIATE TIMING OF PARTICIPATION

Since most public participants are volunteers with careers and occupations to attend to, the timing of activities that involve the public is very important. Workshop participants noted that the hearings for the Emera Brunswick Pipeline were scheduled to run from November 6 – 20, 2006, from 9:00 am to 6:00 pm. The timing of the hearings was an issue for focus group participants. Public intervenors asked to have the mornings free to allow them an opportunity to prepare for sessions in the afternoon. This was particularly important, because as volunteers they had many demands on their time and no staff support. The NEB Panel denied this request. A few days into the hearings the NEB determined that they were not progressing quickly enough. To deal with this they chose to extend the daily schedule rather than extending the period for the hearings. They also decided that it would be appropriate to hold hearings on the afternoon of Remembrance Day (a statutory holiday) in order to make-up time. A number of workshop participants commented that holding hearings on Remembrance Day was "inappropriate".

INCLUSIVE AND ADEQUATE REPRESENTATION

The quasi-judicial NEB Regulatory process is formal and complex. Members of the public who wished to fully participate in the Emera Brunswick Pipeline hearing process had to register as intervenors. As intervenors they were required to file motions, prepare and submit affidavits and evidence, cross-examine witnesses, be prepared for cross

examination by lawyers, produce rebuttals and offer final arguments. Some participants felt that this formality kept people from participating and noted in particular that no youth, First Nation or women's groups participated in the hearings.

As the hearings proceeded participants also understood that in order to adequately represent themselves at the hearings they needed a lawyer. This despite the fact that during the information sessions on the NEB hearing process, intervenors were not encouraged to engage lawyers to represent them at the hearing and legal support was not funded through the CEA Agency. A simple answer to the lack of representation may be to ensure that public participants have adequate funds available to hire lawyers. However, it was clear from the focus group session that participants found the fact that a lawyer was needed meant that the NEB process failed to effectively engage the public in meaningful participation. Most participants would prefer to engage in the process directly, but in order to do so the process must engage them and not create barriers to their participation.

PARTICIPANT SUPPORT

The provision of funding to participants in EA has long been promoted as critical to good decision making given the resources available to the proponent and public government decision makers (Wood 2003; Gibson 1993; Canadian Environment Network 1988). Support can take many forms, but in the case of hearings, financial support for the activities of participants is common. In the Emera Brunswick Pipeline hearings, the public was given notice of the availability of funding support through the CEA Agency participant funding program. While focus group participants indicated that they welcomed the opportunity for support, they noted many issues related to getting and using the funding.

Some noted confusion around the CEA Agency being the vehicle for funding since it had virtually no presence or visible linkages to the NEB hearings process for the Emera project. Many also noted that the money arrived "far too late" for them to even think about being able to hire the experts that they wanted to engage. The group discussed that one of the intervening organizations received a first instalment of funds on August 25, 2006, while the deadline for submission of information requests on the Emera Application was 10 days earlier (August 15, 2006). The intervening group had no funding available to hire experts to assist them in review of the Application. Furthermore, the final deadline for submission of evidence for the hearing was September 13, 2006, a mere 12 business days after funds were received. One person indicated that they tried to "hire people to do studies and called all over Canada and the US but just could not do it in two weeks". Another person noted that the money arrived so late they were not able to spend what they had been allocated.

There were also comments at the workshop about the adequacy of the amount of funding received. There was a strong feeling among participants that the NEB pitted a well-funded proponent against a very poorly-funded public, who were portrayed as opponents,

instead of everyone trying to work together to ensure that the EA process did what it was supposed to do – protect the environment.
Sound administrative support is also critical to ensuring that a hearing process runs smoothly. In this situation, participants indicated generally that they were pleased with the level of support that they had received from NEB administrative staff, as discussed further under information access.

FAIR AND OPEN DIALOGUE

Did the NEB Substitution hearing for the Emera Brunswick Pipeline proposal promote fair and open dialogue? From what we heard from focus group participants, it is difficult to reach this conclusion. There were many barriers inherent in the process that combined to reduce the quality of the dialogue.

Quasi-judicial process

Community members who participated in the hearing entered into the process with very little knowledge of or experience with quasi-judicial processes. They understood that the proponent would be represented by a lawyer. They did not understand until after the beginning of the hearings how the formal nature of the process and the financial inequities that existed between the proponent and community members would impact their ability to effectively participate. The quasi-judicial process clearly favoured legal experts who were capable of speaking the language of law and navigating the complexities of the process.

As we discussed in a previous paper (Schneider et al. 2007) the presentation of evidence and the role of cross-examination of witnesses are part of the NEB hearing process, although generally not part of the CEAA panel process. The earlier paper discussed the difficulties encountered by the intervenors at the Emera Brunswick Pipeline hearings in attempting to cross-examine the proponent's experts. Cross-examination may arguably be a fair means of presenting evidence but it does not facilitate open dialogue. Members of the focus group admitted that prior to the hearings they were intimidated by the fact that they would likely be cross-examined by the proponent's legal counsel, but they spent many hours reviewing the data to prepare themselves. However, they were stymied by the fact that none of the community intervenors or their experts were cross-examined by the proponent or even asked questions by the panel members. "Dialogue" is defined as "a conversation in which two or more take part; an exchange of opinions or ideas; free interchange of different points of view; discussion"(Avis, Walter 1989). The focus group participants described an environment at the hearings that did not include dialogue.

The following quotes from the NEB Panel Chair Sheila Leggett on the first day of the hearings set the tone for the type of communication that would be supported during the hearings:

> As always, we are concerned that the hearing time be used as effectively and as efficiently as possible. We remind parties in this regard that the principal purpose of cross-examination in our proceedings is to clarify and test the

> evidence that has already been filed. Parties should not reiterate their own evidence nor repeat cross-examination questions that have already been asked (S. Leggett, Chair, Order GH-1-1006, Volume 1, item 17).
>
> At this point, I would like to remind everyone that the Panel is here to listen to the evidence, not to engage in debate or answer questions from parties. My role as Chair of this Panel is to ensure that the proceedings unfold in an efficient and respectful manner and I look forward to everyone's full cooperation on both accounts (S. Leggett, Chair, Order GH-1-1006, item 20).

Given the quasi-judicial nature of the NEB process it clearly favours intervenors that have expert legal representation. The lawyers that represented the proponent during these hearings were experienced in the hearing process and knowledgeable of the oil and gas industry. The community members had no legal representation, no legal training and little detailed knowledge of the oil and gas industry.

Factors of Intimidation

Participants in the focus group spoke frequently about the strong sense of intimidation that pervaded the pre-hearing and hearing process. The following points summarize feelings expressed by the focus group participants:

- The setting was intimidating with the three members of the panel seated on a raised platform and an atmosphere of formality.
- The number of lawyers to support the panel and the proponent was intimidating given the community members did not have legal representation.
- Armed police officers, some in plainclothes, attended the hearings giving participants the sense that there was some level of threat during the hearings.
- The location of the project and hearings presented overwhelming problems - everything from people being afraid to sign petitions, appear as intervenors or help as expert witnesses because of their direct or indirect connection to the primary employer in the City.

A number of participants in the focus group commented on the role of the Emera lawyer, Mr. Laurie Smith, who sat directly across from the intervenors, along with two associate lawyers. They found this to be very intimidating because he appeared to play such a key role in directing the three panel members. Mr. Smith had been an NEB lawyer prior to leaving for private practice. Focus group participants commented on how frequently Mr. Smith made suggestions to the Panel Chair on how to proceed with the hearings. As one participant concluded, “If this is being tolerated, an intervenor should also be permitted to make suggestions to the Chair on how to proceed.

One could argue that even in the face of an intimidating environment and financial inequities, fair and open dialogue could have been achieved if the intervenors believed that the Chair and panellists supported such dialogue. The focus group participants described an environment where they were often interrupted by the Chair, who found their comments or the framing of their questions to be out of order. The participants

described the other two panellists as disinterested and not engaged. None of the panel members asked questions of the intervenors or sought elaboration on the points raised. In fact, they stated that the Chair was the only panel member who ever spoke and that in most instances it was merely to cut the intervenor off or require them to re-phrase the question. The following example, taken from the hearing transcript (Order GH-1-2006 Volume 4) of an exchange between the Chair and an intervenor illustrates the tenor of the communication during the hearings:

> 5402. **MR. P. COURT:** Okay, thank you. Madam Chair, I'm going to be quite long on the route because I'm going to detail it from where it starts till it ends and I know all the streets. I grew up in the northend. And I'll be quite long tomorrow so it's past five after and I'm sitting here in pain and I wonder if we can be excused till tomorrow morning.
>
> 5403. **THE CHAIRPERSON:** Yes, Mr. Court. And in doing so, I would ask you maybe if you could look at your questions and make sure that they're concise and framed appropriately for this panel so that we can move along as effectively and efficiently as we can.
>
> 5405. **MR. P. COURT:** So come back tomorrow at nine o'clock.
>
> 5406. **THE CHAIRPERSON:** Well organized, please, sir.
>
> 5407. **MR. P. COURT:** Thanks.

One of the conditions of substitution under the CEAA is to ensure that the public will be given an opportunity to participate in the assessment. The Panel members carried the responsibility during the hearings to ensure that this condition was met. As described in the purpose section of the CEAA, participation in this context includes “meaningful” participation. Members of the focus group did not describe a “positive communication environment” during the hearings. Some examples of the environment described by the focus group members include:

- The process for expert panels was confusing. It was impossible for citizens to attend every expert panel presentation. Frequently when community intervenors attempted to ask questions of the expert panels they were interrupted by the Chair and told; “You have to ask that of another panel”, or “that question was asked yesterday”.
- Many of the focus group participants had stories about questions not being answered. One participant asked about the pipeline going by the hospital area and never received an answer.
- One participant told of hearing powerful interventions during one of the sessions but no questions were asked of the presenter.

MULTIPLE AND APPROPRIATE METHODS

As outlined in Schneider et al. 2007, the NEB Emera Brunswick Pipeline hearings process included activities other than the hearing itself, such as the opportunity to provide written comments on the scope of the assessment. During the focus group session, discussions centred around the hearings component of the process. As noted, the NEB followed a strict quasi-judicial hearings procedure that did not include multiple public involvement techniques for obtaining input from the public. The NEB did hold several open sessions for members of the public to present their comments in the evening. These sessions were not quasi-judicial and did provide a less complicated means of participating in the process. However, focus group participants clearly felt that these sessions had absolutely no influence on the panel members or the decision. Groups and individuals who sought to play a role in the decision-making process determined early on that they would have to become intervenors. It is also important to note that the participants had no input to the procedures that would be followed. It was actually quite the opposite – they were informed of how they were expected to behave at the hearings. Issues of panel procedure are dealt with under other headings in this report.

ACCESSIBLE INFORMATION

The appropriate exchange of information is critical to the success of any EA and there were quite a few comments from workshop participants about information. Participants all felt that there was "lots" of information on the project. Yet many expressed a sense of being "overwhelmed" by the amount of information that they had to review, as well as the requirement to provide information to all of the intervenors. Many of the participants indicated that they had worked very hard to become familiar with the documentation in order to identify concerns and construct arguments. In fact, based on the discussion in the room, there was a general sense of pride over their ability to absorb so much information that was not directly related to their own fields of expertise. One interesting point also made was that while there was an abundance of information on the proposed project there was no information on the substitution of a CEAA hearing for an NEB hearing. These findings are similar to a review of the Sable Island Gas project, where Fitzpatrick and Sinclair (2003) found that participants felt that the panel secretariat was effective at providing information to members of the public, and that the public was overwhelmed by the amount of information and the lack of any road map for how to use effectively use it.

INFORMED PARTICIPATION

A meaningful EA process requires that all parties should have the opportunity to build a high level of understanding of the process, issue, alternatives and of the various perspectives and views of participants. We have considered various aspects of this above and focus here on participants' understanding of process, as such understanding is a critical on-ramp to effective participation. Participants indicated that efforts were made to help the public to understand the NEB hearings process. This included training sessions run by the NEB on how to be an intervenor and an NEB video on how to participate in a hearing. Despite these efforts the dominant feeling expressed by focus group participants was that they did not have enough guidance to prepare themselves for

what happened in the hearing room. The nature of the proceedings and the strictness in how "rules" were implemented surprised people. Our own participation in the training sessions and viewing of the NEB video underscores the input we received. The 11-minute NEB video and some supporting documents on their website are quite clear on how burdensome it may be to participate in a public hearing. In stark contrast to the input of focus group participants as outlined above, the video shows Board members who are always interested, taking notes, asking questions and not interrupting the presenter. As well, the adversarial nature of the hearings described by workshop participants is nowhere captured in the video. It was clear that our focus group felt that although the sessions and information provided by the NEB gave them the basic elements of the process, it in no way informed them of the reality of what was to take place. It is important to recognize that focus group participants did not support more training and more information sessions as the solution to the overwhelming nature of the process. Improving the training to reflect the reality of the process and reducing the burden on intervenors may provide some solution to these concerns.

THE IPSOS-REID STUDY

As noted above, Ipsos-Reid was hired by the CEA Agency to survey Emera Brunswick Pipeline NEB hearing participants. Ipsos-Reid drew a very different response through their telephone interviews, however, than what the authors' learned in Saint John at our focus group meeting. Part of that difference was obviously attributable to Ipsos-Reid's surveying a broader range of participants. But there is a tonal quality to the report that, like the NEB substitution, seems to place more weight on some opinions than others. Here is how the report begins:

> Keep it simple, ensure it is meaningful, that people have access, and that people can say their piece. We need to be sanguine about groups that seek to delay the process and it is their interest to not have things happen. In the public interest let's have people see what is going on, test what is being proposed, have their say and let the people who are in place make their decisions… I think the substituted authority should be the way we do this because it is simpler for the general public as people can have their say and question the people with the information (Intervenor).
>
> It [the general public] had little or no understanding of either the CEAA Review Panel process or the NEB Regulatory process, and there seems to be no benefit to the public in this Substituted EA Process because the members of an NEB Hearing Panel are all full-time employees of the NEB and seem by definition to be inclined to put more weight on energy development than on the best possible environmental protection. Therefore a case could be made that the proven CEAA Review Panel process should be used in future hearings (Intervenor).

Beginnings are always said to be so important and this is true in surveys and reports as well. From all the quotes that would have been available to choose, they chose these two to frame the argument. One opinion seeks to ensure that groups wanting to delay the process, to "not have things happen", are allowed to have their say but not influence

decisions. The other opinion says that the NEB is weighted more towards energy development and not environmental protection. Looking at these two quotes, a reader might think that the truth lies somewhere in the middle – that we can tweak the system and have some, but not all, assessments done through substitutions.

In some ways, it is like asking the friend of a bully and the friend of a victim for an opinion. The bully's friend says "the victim got in the bully's face and so deserved a beating" and the victim's friend says "he was just walking down the street and the bully starting beating on him." Yet because we have more knowledge of bullies and victims, we do not automatically make the assumption that the truth lies somewhere in the middle between the two stories. We don't say that the bully was wrong but the victim shouldn't have been walking on the sidewalk at that time. No matter how we frame polarities, the truth does not always lie in the middle.

So it is curious that the report chose to set the stage with these two quotations.

The overall objective of the Ipsos-Reid evaluation was "the examination of the substituted process that took place for the Emera Brunswick Pipeline, with findings to be used to inform the Minister in future consideration of whether, when and how to use his or her discretion under the substitute provisions of the Canadian Environmental Assessment Act."

Thirty five participants in the hearings, representing people who were both for and against the pipeline, were surveyed by telephone in 2008. The evaluation found "two main viewpoints on the success of the substituted process that emerged from this research: approximately half of the respondents interviewed were broadly satisfied with the overall process, while the remaining half were to some degree dissatisfied with the process."

These results come as no surprise, since the proponents of the pipeline won the right to build it, while the proponents who wanted to protect Rockwood Park lost. Given this result, it is reasonable to expect that some of the people would have found the process to be very satisfactory while others would have found it deficient.

The terminology used throughout the report tends to be problematic in two key areas. The first is the use of the terms "perceived" and "perception" dozens of times throughout the document. In common usage, these are somewhat loaded terms, not weighted nearly as much as "factual" evidence. The following quotation from the report (Ipsos-Reid, page 39) is an example of this use:

> A key concern outlined by several respondents was their perception that there was no allowance for the discussion of "incrementalism," or gradualism; they had expected that a formal hearing on the pipeline would allow for this type of analysis.

Clearly, “their perception” could have been left out of the sentence without weakening it or removing clarity. So it is there for a reason. Here is another example (Ipsos-Reid, page 4):

> As noted, many general public respondents did find participation challenging because of the “quasi-judicial” nature of the hearings; there was a perceived imbalance inherent in their lack of legal counsel to assist in countering procedural rulings and this often, in their minds, restricted evidence crucial to investigating environmental impact. As the proponent was seen to have almost unlimited resources including very experienced legal counsel, legal representation of some sort for all participants was seen to be one possible solution to the perceived imbalance.

If there was a balanced usage of the terms between proponents of the project and supporters of Rockwood Park, then such use could be more easily justified. But the use is almost strictly related to comments made by the public. This leads to the second problem of making the distinction between “professionals” and “the public”. Again, it could have just as easily been divided into “those who have a vested financial interest in seeing the project go through” and “those who have a vested interest in protecting their local environment”. The following paragraph (Ipsos-Reid, page 5) illustrates this problem:

> Some respondents that came from within the ranks of the general public felt that the public hearings did not meet their expectations primarily because they did not believe that their views were considered in a meaningful way. By contrast, most professionals had their expectations met; these expectations would have been based on previous experience, and so would reasonably reflect what they actually knew would take place. Many of professionals also believed that although the process could be improved in terms of public participation, it did allow for timely and meaningful public input.

Listening to our focus group participants brought a more fulsome understanding of the use of terminology, not only in the Ipsos-Reid report, but throughout the NEB process. They felt that the “professionals” within the oil and gas industry were taken seriously while the opinions of those within the “ranks of the general public” were somehow less valuable.

CONCLUSIONS

In the view of our focus group participants, the NEB substitution for the Emera Brunswick Pipeline project did not come close to satisfying basic components of meaningful participation. In fact, many participants came away feeling bitter, disrespected, marginalized and wasted. “If you lose in a fair process, you can be devastated but still not hate the process because it was fair,” said one participant. “In this process, everyone felt it was unfair.” That was a common theme heard throughout our focus group discussion. Participants were not complaining about the results of the hearing, though they obviously would have preferred a different outcome. Most of their complaints were directed at the process, how they felt it was stacked against them from

the beginning.

The process took a toll on the intervenors. During our discussions they reeled off quotes from the NEB Chair as though they were still fresh in their minds, the sting still quite evident. While the participants enjoyed being at the focus group meeting and seeing each other, it was obvious that they had put a lot of effort into the process and felt somewhat betrayed.

Looking back on the NEB hearing process, the focus group gave many examples to illustrate how most of elements of meaningful participation were not satisfied. Even for elements such as participant support, where actions were taken to help participants, the story of participants indicates that poor implementation and minimal funding made what should have been a positive outcome weak. The lack of dialogue at the hearing itself also clearly undermined any attempt to develop solutions to the problems that were raised. The mean-spirited way in which the Panel and lawyers for the proponent handled themselves further undermined the publics' ability to participate in a meaningful way.

The location of the project and hearings also presented overwhelming problems - everything from people being afraid to sign petitions, appear as intervenors or help as expert witnesses because of the fear of reprisal from the Irvings. In addition, Saint John is a city with only one newspaper, which is owned by the Irvings, so participants felt there was an incredible media bias in favour of the project. The newspaper headlines in Saint John the day after the NEB Panel arrived in town read "NO PIPELINE - NO ENERGY HUB" - clearly an attempt to influence public opinion. Participants still feel their provincial government is heavily influenced by the Irving Corporation and look to the federal government to provide unbiased, un-influenced environmental assessment.

In the NEB video on how to be a participant one of the final statements is that the public hearing process "ensures that the board decision will be made in the public interest". The findings of our research work now and in 2007 led us to question who the NEB thinks the actually is the public. If the ability to participate is so hindered by the overwhelming and judicial nature of the process that the public has great difficulty participating or will not participate, as our findings show, how can the Board claim that they are making decisions in the public interest?

This makes the fact that the Federal government is looking to substitute the EA process for other federal regulatory processes and with provincial processes even more disturbing. In the situation of the provinces, such a move would go beyond harmonization agreements and let the provincial processes rule, even over areas of federal jurisdiction. The devolution to federal bodies such as the NEB and the Canadian Nuclear Safety Commission is problematic, but since they are federal agencies, such moves could be reversed with relative ease. Devolution of EA responsibilities to provincial governments would be much more difficult to reverse. Once that power over federal jurisdiction is surrendered, it will be nearly impossible to recover.

In our previous paper (Schneider et al. 2007), we laid out the "Next Steps" that we thought the CEA Agency should take regarding substitution. We feel there has been some, but not nearly enough, action on these proposals. Despite the recent movement within the federal government to move ahead on substitution, there is little evidence to support that this would be a positive move for Canada's environment – including its citizens. The "independent and transparent" evaluation of the Emera Brunswick pilot substitution still needs to be completed and put out for public scrutiny. Substitution still needs to be thoroughly explored to see if it will actually solve any of the problems with EA process it purports to resolve. If we find that it does, then there still would need to be an open, transparent public process to develop the ground rules of substitution, including the expectations for effective public participation that have developed under the CEAA review panel process.

If the Canadian government is truly committed to continuous improvement of environmental assessment, it will ensure that no shortcuts are taken when undertaking these tasks. Otherwise, participants will continue to feel as though they are unfairly disadvantaged. There was a strong feeling that the NEB process pitted a well-funded proponent against the public, instead of everyone working together to ensure that the environmental assessment process protects the environment. If processes are not fair, it will not take long before the public stops participating in them. That is not the result that Canadians are looking to achieve.

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APPENDIX A

Excerpt from the NEB web site describing their Public Hearings Process

Intervenors - either individually or as a group - sometimes hire expert witnesses to present their evidence - people whose knowledge and experience qualifies them as specialists or experts.

To save time, the evidence in the public hearing process is filed, either electronically or as a paper document, with all the participants before the hearing takes place. This gives everyone the opportunity to review the evidence before the hearing. It also allows them to submit written information requests - or IRs - asking questions about the evidence put forward by other participants. Every piece of evidence that's accepted gets an exhibit number. Throughout the process and at the hearing, evidence is referred to by its exhibit number.

By hearing day, everyone involved, should have a good understanding of each participant's evidence and interest in the application. Now, the oral public hearing process begins.

The presiding Board member, the Chair, opens the hearing. Administrative and preliminary matters, and motions, are dealt with first. The applicant's witnesses are then sworn in and adopt their evidence. At this point, intervenors may cross-examine them.

Cross-examination is your opportunity to ask questions that are relevant to the issues, and, to test the applicant's evidence. This is why it's important to be familiar with the evidence, and prepare relevant, concise questions in advance. Being well-prepared will help you overcome any nervousness you may feel when it is your turn to question the witnesses. Here's an example.

Intervenor 1: "I have a question for Ms. Dunn about the caribou herd. In Exhibit C-28-3, the ministry estimated the herd at 100 animals. Ms Dunn, in Exhibit B-54, you estimate the herd at 150 animals. I'd like to know why there's two different sets of numbers and whose numbers are accurate."

Ms Dunn: "Yes, I'm aware of the discrepancy. It's my understanding that Exhibit B-54 refers to the combined BC and Alberta herd and the numbers in Exhibit C-28-3 refer only to that part of the herd that's in BC."

Intervenor 1: "Ms Dunn, if you're not sure of the number of caribou, how will you know if your project is affecting the herd?"

Notice that the intervenor asks a question that points to an inconsistency in the applicant's evidence. He/she doesn't promote his/her own position - that is done at the final argument.

Now the intervenors and their witnesses are sworn in and adopt their evidence. When you adopt evidence, you're confirming for the record that you prepared your evidence or that it was prepared under your direction and that it's accurate. If you do not have a lawyer, Board counsel will lead you through the steps.

After intervenors are sworn in and adopt their evidence, it's their turn to be cross-examined. As an intervenor, you may be cross-examined by the applicant's lawyers and by Board counsel, and you may be asked questions of clarification by Board members. Few of us really enjoy being questioned. But you might try thinking of it as an opportunity to help the Board members understand the facts, as you see them.

When cross-examination is complete, the applicant and the intervenors sum up their positions in a final argument. Final argument gives you the opportunity to state your position and to refer to the evidence that supports it. Here's an example of a final argument.

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APPENDIX B

Panel members for the joint federal-provincial Panel Review of the White's Point Quarry and Marine Terminal:

Dr. Robert O. Fournier (Chair) received a Ph.D. in Biological Oceanography from the University of Rhode Island in 1967. In 1971, he joined the teaching team of Dalhousie University in Halifax where he has been specializing in Oceanography.

Dr. Jill Grant received a Ph.D. in Regional Planning and Resource Development from the University of Waterloo in 1991. Dr. Grant pursued teaching at the Nova Scotia College of Art and Design as a professor in Environmental Planning (1988-2001) and has been a professor at Dalhousie University's School of Planning and a member of the Graduate Faculty since 2001.

Dr. Gunter Muecke started his teaching and research career as a field geologist for Shell Canada (1960-1963) and then became a lecturer in Mineralogy at Oxford University (1968-1970). In 1969, he received a D.Phil. in Geochemistry from Oxford University. He then pursued a teaching career at Dalhousie University, in the Department of Geology and Earth Sciences (1970-1998) and at the School of Resource and Environmental Studies (1985-1998). Since 1998, he assumed post-retirement appointments as Associate Research professor both at the School of Resource and Environmental Studies and at the Faculty of Science (Geographic Information Systems). Dr. Muecke has a long-standing interest and involvement in the geological aspects of environmental issues.
Three prominent Nova Scotians – an oceanographer, a social scientist and a geologist – looked at the issues, heard arguments from all sides and made a decision to not move ahead with the quarry.

Panel members for the Lower Churchill Joint federal-provincial Panel Review:

Co-chair Lesley Griffiths is Co-principal of Griffiths Muecke, a consulting firm that provides services in the areas of consultation and consensus-building processes, environmental impact assessment, resource management and community development. Ms. Griffiths has developed and implemented information and consultation strategies for community and social planning, community economic development, resource developments and various types of waste management planning.

Co-chair Herbert Clarke is a former member of the Canada-Newfoundland Offshore Petroleum Board until July 2008. He held several senior deputy minister positions in the Government of Newfoundland and Labrador and senior executive positions in industry for the Voisey's Bay Nickel Company and Fishery Products International. He was also founding Chairman of the Fisheries Resource Conservation Council.

Dr. Meinhard Doelle is an Associate Professor specializing in environmental law at the Dalhousie Law School. He is the Associate Director of the Marine and Environmental Law Institute and the Director of the Marine & Environmental Law Programme. From

1996 to 2001, he was the Executive Director of Clean Nova Scotia. He has been involved in the practice of environmental law in Nova Scotia since 1990 and in that capacity served as drafter of the Nova Scotia *Environment Act*.

Dr. Keith Chaulk is a biologist and Director at the Labrador Institute of the Memorial University. He occupied several positions in the public sector as biologist and scientist in particular, for the Canadian Wildlife Services, the Department of Lands and Natural Resources of the Nunatsiavut Government, Environment Canada and the Labrador Inuit Association. Dr. Chaulk is a resident of Happy Valley-Goose Bay.

James Igloliorte is a former law magistrate and Provincial Court Judge in Labrador. He retired from Provincial Court in 2004. In 1999 he was awarded a National Aboriginal Achievement Award in the field of law. He was honorary colonel of Five Wing Goose Bay for a year and has recently stepped down as Labrador Director with the Innu Healing Foundation. Mr. Igloliorte graduated from Memorial University with a bachelor's degree in science and education in 1974. In 1985 he received his bachelor of law degree from Dalhousie University in Halifax.

Panel members for the NEB hearings for the Emera Brunswick Pipeline Project:

Chair Sheila Leggett has a Bachelor's degree in Biology from McGill University and a Master's degree in Biology from the University of Calgary. She has regulatory experience as well as a background in environmental issues. Ms. Leggett was appointed as a temporary Board Member of the NEB in July 2006 and in September 2006 she was appointed as a Board Member. Before joining the National Energy Board, Ms. Leggett was a Board Member with the Natural Resources Conservation Board (NRCB) which conducts hearings into natural resource development projects in Alberta.

Strater Crowfoot has extensive experience in both the business and board governance worlds. As Executive Director and CEO of Indian Oil and Gas Canada (IOGC), Mr. Crowfoot led the organization for eight years before leaving to accept the position of Chairman of the Indian Taxation Advisory Board, where he was for the next three years. Mr. Crowfoot returned to IOGC in 2008 as Executive Director and CEO. The organization is responsible for oil and gas on Indian reserve lands across Canada; it's a special operating agency within Indian and Northern Affairs Canada. In addition to his work with IOGC, Mr. Crowfoot served as Head Chief of the Siksika Nation on two separate occasions; first from 1988-1995 and then again in 2004-2005. Mr. Crowfoot was also board member with the NEB from August 2006 until the resumption of his duties with IOGC.

Kenneth Bateman holds a Bachelor of Laws degree from the University of Alberta and a Masters degree in International Business Management from the American Graduate School of International Management. Mr. Bateman has extensive experience acting as senior legal counsel for a variety of organizations including investment consortiums and technology companies. Most recently, Mr. Bateman was vice-president of Legal Affairs at ENMAX, a vertically integrated utility corporation in electricity generation,

transmission, distribution and retail services. He has also acted as interim Regulatory Department head where he reviewed transmission and distribution applications, refilings and implementation of EUB decisions.