

MORE THAN TALKING HEADS?!?

**How do administrative tribunals hear
from the public?**



**A report prepared for the Consumers' Association of
Canada – Manitoba Branch**

By

Dr. Patricia Fitzpatrick and Babatunde Alabi

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EXECUTIVE SUMMARY

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

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

Results - Findings revealed a varying degree of conformity to best practice, gaps in mechanisms for public engagement, as well as key opportunities for improvement across regulatory agencies. Specifically, the timeline between notice and final reports varied significantly across all types of tribunals and within tribunal categories. While most tribunals have social media presences, we observed a limited use of social media as a tool for notice. While each tribunal has legislative requirements for public participation, requirements

vary. Participation through comment submission is generally open to all, whereas half of the tribunals assessed require the approval and invitation of participants for oral hearings. Legal representation is not required to participate in any of the tribunals reviewed, however most interviewees found that having some legal experience was useful. Although laden with constraints, participant funding was available for half of the cases (the administrative tribunals involved with telecommunications and rate setting. Neither of the impact assessment tribunals, nor the securities commission tribunals provided funding. Opportunity to appeal final decisions is not available in most of the cases.

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

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

1. Social media has become a huge tool for reaching a broad range of audiences. Tribunals should employ and maximize the use of social media channels to facilitate meaningful participation.
2. Extending the period of notification may increase the number of participants involved in the process. Tribunals with longer notification periods (i.e. thirty days or greater) had higher numbers of participants.
3. Tribunals should remove the application process, and other barriers for participation in oral hearings.
4. Tribunals should increase the modes (i.e., methods) through which the public may get involved in the decision-making process. For example, public opinion polls, on-line focus groups, and semi-structured interviews, where appropriate, as employed by the CRTC, should be considered by other tribunals as a means through

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

5. There is a need for more transparency in the documentation of how participant input influences final decisions; decisions should reflect how participants' submissions were considered.
6. There is also a need for an opportunity to challenge tribunal decision; tribunals should establish mechanisms, through statute amendment, to create opportunity for the public to appeal decisions.
7. Tribunals should establish funding mechanisms that allow participants to be compensated for their time and other costs incurred in the process of participation. Such compensation should include considerations for providing some advance payments to participants.

Retainer Details - This research was commissioned by the Consumer's Association of Canada, Manitoba Branch (CAC MB). As outlined in the original application and subsequent retainer letter, The University of Winnipeg, directed by Dr. Fitzpatrick, was commissioned to:

- *Develop a matrix for the evaluation of existing public engagement models used in conjunction with regulatory proceedings;*
- *Using the matrix, conduct a document review of five case studies;*
- *Direct interviews with one individual involved in or working with each of the chosen case studies;*
- *Contribute to the organization of workshops bringing together the different pieces of the CAC MB research project; and,*
- *Prepare this report summarizing the results of the case studies.*

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	II
1.0 INTRODUCTION	1
2.0 BACKGROUND	3
3.0 METHODS.....	4
4.0 RESULTS	7
5.0 DISCUSSION.....	11
6.0 CONCLUSION & RECOMMENDATIONS	14
7.0 REFERENCES	16
APPENDICES	18
APPENDIX 8.1: SEMI-STRUCTURED INTERVIEW QUESTIONS.....	18

1.0 INTRODUCTION

At the heart of this research is the principle that people want a say in the decisions which affect them. Warren (2009, p. 3) remarks “the democratic potential of government resides in the potentially responsive linkages between what governments do and what citizens receive.” To this end, there is a significant body of literature that considers the dynamics of public engagement in government decision-making processes. This material considers a range of topics (see Fitzpatrick & Dilay, 2020), including:

- *who participates;*
- *the stakes involved for different types of participants;*
- *the approach to participation (also called mode);*
- *the nature of the matter under public review;*
- *the frequency of participation; and,*
- *mechanisms for empowering the public in the process, and potentially outcomes.*

There is also a significant body of literature which considers what makes participation “meaningful” (e.g., Fitzpatrick & Dilay, 2020; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007). Meaningful public participation (Canadian Environmental Assessment Agency, 2001, p. 22):

... 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 (of the public).

In short, meaningful participation should be open to all, based on reliable data, and ensure transparency and accountability for the public. But what does this mean in practice? What opportunities do members of the public have to participate in the range of government administrative tribunals which inform government powers and functions?

The purpose of this project is to examine opportunities for consumers to participate in a variety of administrative tribunals. To this end, this project undertakes a comparative case study to: i) examine how different tribunals implement statutory requirements for public engagement across Canada (ii) explore the methods, dynamics and nature of public engagement programs; and, (iii) identify tools for engaging the public.

Section 2 summarizes the key aspects which enable meaningful participation (the matrix evaluation) used to frame the analysis of this report. Section 3 identifies the research methods, which included a detailed document review

and one key informant interview per case study. Following a description of the process of data analysis, this section identifies important limitations to this study.

Sections 4 and 5 identifies key findings, and the implications of the work. Our findings reveal that in Canada, access to meaningful participation in regulatory decisions varies by jurisdiction and type of tribunal. Although some good practices were identified across cases, there is still much space for improvement in order to ensure that regulatory decision-making is built on meaningful engagement of the public.

2.0 BACKGROUND

To frame our analysis of the Canadian case studies, we adopted the components of meaningful participation identified by Fitzpatrick and Dilay (2020). Specifically, we considered:

- The timing of participation (e.g., when does the public get the opportunity to be involved in the tribunal process);
 - Public notification, including the methods through which the public could learn about the tribunal review, and the amount of time the public was afforded to consider becoming involved;
 - Standing for participation, which focused on if participation is unlimited or if there are rules about who can get involved;
 - Modes of participation, meaning the various ways through which the public could be involved in the tribunal process;
 - Opportunity for participant assistance (i.e., if and how funding was made available to the public to support engagement in the tribunal process);
 - Access to information, namely the opportunity for the interested public to review material for the tribunal process; and,
 - Ways through which the tribunal communicated how the public input influenced the final decision or recommendation.
- In addition to these design elements, we also identified the:
- Strengths of the tribunal process, as identified by participants or through best practice literature;
 - Weaknesses of the tribunal process, as identified by participants or through best practice literature; and
 - Opportunities to improve the tribunal process, as identified by participants.

3.0 METHODS

Research activities relied on a comparative case study design focusing on seven administrative tribunals across Canada. A preliminary legislative review across Canada identified fifty-five tribunals with legislative requirements for public engagement and evidence of recent (i.e., last five years) opportunities for the public to be involved (Fast, 2019). Four categories of tribunals emerge from the dataset: Public Utilities; Impact Assessment; Securities Commissions; and, Communications tribunal (federal).

Next a geographic lens was applied. In this way the different regions of Canada (Northern, Western, Central, Atlantic and Federal) were represented in the case studies. Specific cases studies were chosen based on the following criteria:

- *timing, with newer activities considered more favourable;*
- *completion, with activities having received a final decision considered more favourable;*
- *comparability within categories, with similar type projects within a sector considered more*
- *favourable;*
- *impact of the decision, with a larger geographic impact considered more favourable (e.g.,*
- *provincial vs local).*

Table 1 identifies and describes the cases selected for study. Although seven cases were selected, the nature of the Securities Commission process led to an integrated analysis (see Fast, 2020 for a detailed summary of regulatory requirements for the select case studies).

We consulted public registries and websites of the six tribunals and reviewed documents including those concerning notice of hearing/consultation, written comments, tribunal transcripts, and final reports/decisions. Table 2 below highlights the cases, documents reviewed and URL to the documents. The amount of information available to access varies by case. While some tribunals (YUB, BAPE) have dedicated registries where links to all documents relating to the hearing can be found on one page, others (CRTC, EASB, OSC) have information spread across different pages of their websites or mixed with those of other unrelated projects. For the NSURB, it seems the decision is the only document available on its website.

Table 1: Case studies selected as part of this analysis. Please note the description of each tribunal is not exhaustive.

TRIBUNAL	JURISDICTION	CASE	DESCRIPTION
Telecommunications			
Canadian Radio-television and Telecommunications (CRTC)	Federal	Report regarding retail sale practices of Canada's Large telecommunication carriers	The CRTC is the independent federal agency which, for the purpose of this case study, regulates the communications system in the interest of the public. In 2018, the CRTC initiated a public review on the sales practices of the larger phone providers.
Utilities			
Nova Scotia Utility and Review Board (NSURB)	Nova Scotia	Nova Scotia Power Annual Capital Expenditure Plan for 2018	NSURB is a provincial agency that provide oversight for public utilities. In 2017, the Board initiated a review of the capital expenditure plan by Nova Scotia Power Inc.
Yukon Utilities Board (YUB)	Yukon	2017-2018 YUB General Rate Application	YUB is a territorial agency which regulates utilities, including rates. In 2017, the Board initiated a review of the application by Yukon Energy Corporation to set its rates.
Impact Assessment			
Bureau d'audiences publiques sur l'environnement (BAPE)	Quebec	Nicolas-Riou Wind Farm	BAPE is an independent organization, reporting to Quebec's Minister of Sustainable Development, Environment, Wildlife and Parks. In 2014, BAPE established a commission to undertake a public hearing into the proposed wind project.
Environmental Assessment and Stewardship Branch (EASB)	Saskatchewan	Blue Hill Wind Energy Project	EASB is a provincial regulatory agency with duties related to impact assessment. In 2017, EAAB facilitated an assessment of the proposed wind energy project.
Securities			
Securities Commission	Ontario/Manitoba	Reducing regulatory burden for Investment Fund Issuers	While each province has jurisdiction over its securities laws, the Canadian Securities Administrators (CSA) coordinates regulation across the country. This proposal considers changes to investment fund laws, which would have potential implications across Canada. As such, the Securities Commissions for each province (we focus on Manitoba and Ontario) facilitated a public review of the proposed changes

Table 2: Case, documents reviewed and registry/website URL

Case	Documents reviewed and URL
CRTC	Notice of Consultation: https://crtc.gc.ca/eng/archive/2018/2018-246.pdf# Transcripts: https://crtc.gc.ca/eng/transcripts/2018/index.htm Opinion Poll Result: https://bit.ly/3etpLov Final Report: https://crtc.gc.ca/eng/publications/reports/2018_246/
NSURB	Decision: https://www.canlii.org/en/ns/nsuarb/doc/2018/2018nsuarb86/2018nsuarb86.html#_Toc512413819
YUB	Public registry: https://yukonutilitiesBoard.yk.ca/proceedings/yukon-energy-corporation-2017-2018-general-rate-application/
BAPE	Public registry: https://archives.bape.gouv.qc.ca/sections/mandats/eole_nicolas-riou/index.htm
EASB	Notice: https://publications.saskatchewan.ca/#/products/90230 Decision: https://publications.saskatchewan.ca/#/products/91583
Securities Commission	Notice and Request for Comment: https://docs.mbsecurities.ca/msc/notices/en/421383/1/document.do Comment letters: https://bit.ly/3azF7Xr

We applied for, and received a certificate of ethics approval from the University of Winnipeg. We undertook key informant, semi-structured interviews with one individual involved in each case study. Of the six participants, half were members of the tribunal (e.g., Board members or staff) and half participated in the process (as a member of a larger organization). We assigned code names to ensure the confidentiality of research participants.

Interview questions canvassed a variety of topics including: tribunal practices (in general), case specific areas, and ideas for innovation. Appendix 8.1 includes a copy of the interview questions. Interviews were recorded and transcribed. We used a deductive coding technique, relying on the themes described in section 2.0. Preliminary results were shared as part of an on-line workshop hosted by the Consumer’s Association of Canada, Manitoba in February 2021.

Importantly, our results are limited both in terms of number of participants, and affiliation of those participants. As such, these findings are best considered in conjunction with the other components of the Consumer’s Association of Canada Manitoba project.

4.0 RESULTS

Table 3 provides a basic timeline and participation numbers for each case study. As illustrated, the total time between notice and tribunal outcome varied significantly, from a minimum of 88 days (EASB) to a maximum of 541(YUB). Timelines varied across both type of tribunal (e.g., utilities Boards, securities commissions, etc.) and within tribunal categories (e.g., between the two wind farm case studies). There is also variation in time between tribunals which held oral hearings (i.e., CRTC, NSURB, YUB, BAPE) and those which did not (i.e., EASB, Securities Commissions).

Table 3: This table identified key milestones (notice, reports, total time), and important participation numbers for each tribunal.

Case	Notice (dd/mm /yr)	Number participants/ organizations(*)	Number of participants in oral hearing (**)	Outcome type	Date of Report/ Decision (dd/mm/yr)	Total time (days)
CRTC	16/07/2018	2,300	31	Report	28/02/2019	227
NSURB	25/11/2017	5	4	Decision	25/04/2018	151
YUB	4/07/2017	5	3	Decision	27/12/2018	541
BAPE	9/07/2015	175	2	Report	27/01/2016	202
EASB	8/06/2018	30	N/A	Decision	4/09/2018	88
Securities Commission	12/09/2019	21	N/A	N/A	On-going	

(*) total participation; there may be overlap when public participation program included more than one stage.

(**) These numbers were identified from the material listed in Table 2. Participants for CRTC, NSURB and YUB were specified as registered intervenors. It is not clear from the literature if participants in the BAPE process are intervenors.

Four tribunals (YUB, EASB, NSURB, BAPE) were triggered by an application from a proponent. The Securities Commission was triggered by the Canadian Securities Administrators (CSA) which sought changes to regulatory instruments. The CRTC was activated by a directive issued by the Governor-in-Council. This directive shaped the scope and outcome of the hearing which was a report rather than a decision. The process employed by one tribunal (BAPE) made it possible for participants to have a say in the scope of what should be considered in the hearing. In fact, the hearing may not have been held had it not been requested by the public.

Notice is much more diverse than anticipated (see table 4). Utilities offer the least notice at 17 days. The Securities Commissions offered the greatest notice at 90 days. Importantly, all tribunals employ websites for notification. The YUB case study relied not only on the tribunal website, but also

advertised the review on the proponent’s website. Five tribunals (CRTC, NSURB, YUB, BAPE, EASB) advertised in newspapers. Some provide regionally significant tools. For example, YUB advertises by radio, an important vehicle in the north. The CRTC, NSURB and BAPE sent out direct invitations to select constituencies.

Surprisingly, the case studies demonstrate limited use of social media as tool for notice. However, as noted in table 4, this number may be higher than reported. At present, five of the tribunals have social media sites (CRTC, NSURB, YUB, BAPE, Securities Commission). Twitter accounts are listed for each of the five tribunals. Other social media links include Facebook (CRTC, YUB) and YouTube (YUB, Ontario Securities Commission). No social media accounts are prominently listed for EASB nor the Manitoba Securities Commission.

Table 4: Methods of notice employed for each case. Please note this table may be incomplete.

Case	Time, in Days	Website/ News Release	Email	Social Media (**)	Direct Invitation	Newspaper	Field Offices	Radio
CRTC	30							
NSURB	Approx..17 (*)							
YUB	17							
BAPE	45/78 (**)							
EASB	30							
Securities Commission	90							

(*) Unable to determine notice for this case, we calculated 17 days. Notice was published on 25/11/2017. A preliminary list of issued to be considered was published 4/12/2017. The final list of issues was issued 12/12/2017. These dates form the basis of our calculation.

(**) This was the first notice period (to request a hearing). Subsequent notification included 12 days for the first round of hearings, and 21 days for the second round of hearings, after which letters of comment were due.

(**) it is challenging to locate the original notification on various social media sites. As such, this number may be higher than reported.

While each tribunal has legislative requirements for public participation, requirements vary. Two tribunals (NSURB, YUB), both in the utilities sector, have statutes which empower them to first approve individuals before they are allowed to participate in hearings. For the CRTC, participation is generally open to all. However, the majority of those invited to physically attend oral hearings were official interveners. In the case of BAPE, all interested members of the public can participate in the different stages of tribunal proceedings, as there are no tribunal-facilitated restrictions to participating. For EASB, everyone interested in participating is able to provide comment. As suggested by the interviewee from this sector, participation in the

securities commission is open to all, but input is targeted to industry, rather than the public.

Although lawyers are not required to participate in any of the cases, four of the six interviewees found that having some legal experience was useful (Participants 1, 2, 3, 5). Two (Participants 3, 5) noted that participating organizations were represented by lawyers, either through design (i.e., council engaged as part of the hearing) or by happenstance (e.g., organization led by a lawyer, individual participating was a lawyer, etc.). One participant (Participant 2) noted the importance of basic legal skills, such as witness preparation. Participant 1 felt that legal representation is advantageous for participants:

It's not necessary to have legal representation, but sometimes it's advantageous. Certainly my impression that the [tribunal] takes more seriously the interveners that have legal representation...

Only one tribunal participant (Participant 4) was emphatic that legal representation was not required. This person noted that its tribunal is “not a legalized process. Lawyers are not prohibited, but it’s not a legalistic event.”

All tribunals permitted written comments. Four of the six cases (CRTC, NSURB, YUB, BAPE) had public hearings.

Three tribunals (BAPE, YUB and EASB), have statutes that allow for pre-hearing conferences, open houses, or information sessions. BAPE held a three-day information session which was facilitated by a panel of experts including the proponent and government. These sessions allowed information sharing by the proponent and for the public to ask questions regarding the project. A total of 98 individuals were reached during this process. Although the law enables it to conduct a pre-hearing conference, YUB did not conduct one in the case under examination. In the case of EASB, the law provides for proponent driven public information meetings to be held. The ministerial decision notes that the proponent-held open houses are aimed at introducing the project and collecting information from the public. However, it remains unclear whether this open house meeting, where project information handouts and maps were given to the public, was held in the presence of decision makers from EASB.

The CRTC contracted IPSOS Public Affairs, an external firm, to seek input from into public for its hearing. Methods included surveys, focus groups and interviews. Three types of surveys, reaching 8,679 Canadians were employed: one hosted on the CRTC website (n=7,075), one paper version (n=1), and one on-line panel with a random, stratified sample (age, gender and region) across Canada (n=1603). Surveys were followed up by demographic-specific interactions, including 10 focus groups (six on-line, two in person) with cohorts representing seniors; the general public (rural); official language minority; and third language at home. Additionally, ten interviews were conducted with individuals with disabilities.

Participant funding was available for three cases (CRTC, NSUB, YUB), tribunals involved with telecommunications and rate setting. Neither of the impact assessments (BAPE, EASB) provided funding, despite this being often identified as an important component of meaningful involvement in these processes (e.g., Sinclair & Diduck, 2016; Stewart & Sinclair, 2007). In all three cases where funding was available, participants, while appreciative, identified challenges with the program. All participants noted that costs were awarded after the decision. This requires both a significant investment by the participant organization, and also a risk, as not all costs may ultimately be covered. In two of the three cases, costs were limited to organizational expense lines (e.g., travel, external expertise). Only one included organizational hours, at a level deemed "reasonable" by the tribunal.

In all the cases examined, reports, transcripts and final decisions are available to the public through the tribunals' websites. Additionally, the CRTC posts reports on social media; EASB notifies participants of final decisions via a letter; and NSUB's proceedings and decisions get media publicity. The law mandates Ontario Securities Commission to publish its decisions and a summary of the written comments received in its bulletin. However, the summary of written comments is not yet available as comments are still under review.

The final outcomes include information to varying degrees about the nature of the public input. Three tribunals (Securities Commission, BAPE, NSUBB) met the expectations of the participants. Nonetheless, two participants (who we are not identifying) expressed concerns about a lack of transparency with respect to how the tribunal arrived at the decisions.

"...how those decisions are arrived at. It would be nice to know."
(Participant 1)

"But over the years... this has gotten less and less obvious about why. They don't take the time anymore to summarize what people submitted to them...you have to assume they looked at [what the public had to say], but it's not there." (Participant 2)

Only YUB gives an opportunity to appeal final decisions. In two other cases (CRTC and Nova Scotia Utility and Review Board) where some form of opportunity to appeal exists, it is limited to questions bordering on law and jurisdiction and not on the final decision.

While all interviewees noted the importance of public participation, four (Participants 1, 2, 4, 5) identified challenges for the general population. As summarized by Participant 2 "I worry about the public's point of view being well argued in front of the regulator." Participant 5 commented on "a big disparity in power between citizens and [proponents & government]. Participants are volunteers with family obligations, and other constraints..." And Participant 3 observed that although the tribunal hosted a public night, "it's very rare that anybody would come."

5.0 DISCUSSION

No tribunal reflected all the best practice components of engagement.

It appears that the mode of participation adopted by the tribunals influenced the number of people who participated in the various tribunal processes. The more opportunities provided by a tribunal, the higher the number of participants. For instance, the CRTC explored various modes of participation, hence the large number of participants recorded. Also, as exemplified by the CRTC, the availability of online mediums for engagement may have a significant impact on the level of participation.

Most people who participated in oral hearings represented groups or organizations. These organizations or groups are usually those who have a particular vested interest in the project for which the hearing is commissioned. They are therefore usually well versed in the subject matter, have the information required to make an informed submission, and are able to engage in what is usually a quasi-judicial and technical process. They are also often able to fund the different aspects of their involvement and are able to commit their time to the process. Therefore, while written submissions usually include a large number of stakeholders, attendance at oral hearings is usually limited to groups or organizations.

Most tribunals saw more people participating through submission of written comments than through attendance at oral hearings. This may be connected to the restrictions to participation created by the need for advance registration and prior approval required by some tribunals before participants can attend an oral hearing (CRTC, YUB, NSURB). There are usually no such restrictions to submission of comments, that is, participants do not need to be approved by the tribunal to submit comments. Additionally, other barriers to participation such as funding, internet access, etc. do not have a huge impact on the ability of the public to submit comments.

Participant assistance is another factor which may make tribunals more accessible. However, each of the three cases that provide funding (CRTC, NSUB, YUB) had challenges which necessitated significant up-front and/or in-kind contributions. Not only should tribunals consider financial support for public interventions, it is important to develop these programs in a more equitable manner. To do so, tribunals need to carefully consider (or reconsider) what is eligible for funding, and the remuneration process. Relying on volunteer hours by organizations, uncertainty surrounding the funding envelope for each organization, and compensation only post-decision creates a significant burden on not-for-profit organizations.

The availability of adequate notice to prepare an informed submission has been described by many scholars as a key component of public engagement

that contributes to meaningful participation (e.g., Doelle, 2018; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007). How notice is issued and the amount of time available for the public to participate goes a long way in ensuring that stakeholders can have their say in public decision-making. From our findings, BAPE and Ontario Securities Commission both represent examples of better practice. For instance, the multistage participation program practiced by BAPE allows notice to be issued at every stage of engagement. Similarly, the three months' notice by the Ontario Securities Commission is noteworthy, as it gives more room for participants to engage in the process through background research on the subject. Although a small sample size, it would appear that cases with longer notice (table 4) had higher numbers of participant organizations (table 3). We argue that the availability of sufficient time for participants to provide their input will give room for a more robust and in-depth examination of the subject matter. The multiple views that might emerge from providing adequate notice would give tribunals the opportunity to have a more holistic assessment of the issues.

The manner by which notice is issued to the public is crucial to meaningful participation. To ensure wide coverage of the public, appropriate means and tools must be deployed for notification. Methods of notification should take into consideration socioeconomic and cultural factors. This means that regulatory tribunals must make relevant information easily available and accessible in order to increase social awareness and improve citizens' participation. In order to achieve this, tribunals may need to consider using of a wide range of public communication methods. In our findings, while all the cases studied used at least two methods of notification, BAPE and ESAB went further to make available physical copies of the environmental impact statement and other relevant documents in offices and locations around where the projects will be located. BAPE's practice includes opening a field office in the region where project construction is occurring, to make available project documents that can be reviewed by residents. This approach helps the public to have relevant information about the project, and provides them with facts to assist them in making their submissions.

Ready access to information and feedback regarding tribunal decisions is a vital component of meaningful participation (e.g., Doelle, 2018). The ability of the public to access information held by regulators, and the willingness of regulators to clearly articulate their decisions, justifications, and findings is the bedrock for transparency and accountability. Access to information creates important opportunities for public learning. By sharing information, regulators allow the public to observe their activities and hold them to account. Our findings reveal that all tribunals examined use at least one similar method to disseminate regulatory decisions to the public. In all the cases examined, reports are made available on tribunal websites. However, a better practice is exemplified by ESAB which makes a deliberate effort to notify participants of the tribunal's decision. Individuals or organizations who provided comments during the public review period were informed of the decision by letter. The letter included a copy of the approval and the reasons

for the decision. This type of feedback helps participants know how their input was considered in arriving at a final decision (Sinclair & Diduck, 2016). This is also an important way of demonstrating openness, integrity and accountability by the tribunal. An example of such openness is demonstrated by BAPE. The tribunal dedicates one of the seven chapters in its report to considerations of participant opinions and concerns, which consists of 20 pages of the 125-page report.

The ability of the public to challenge decisions of tribunals creates a system of checks and balances. While three of the cases examined do not provide opportunity to appeal decisions, and two others only allow for appeals that border on issues of law and jurisdiction, better practice is demonstrated by the Yukon Utilities Board where two levels of appeal exist. Participants must first apply to the Board for a leave to appeal and proof that the Board made an error in law or in their decision. If the Board accepts that, then the decision will be reviewed. If the Board decides that no error exists in their decision, then the participant may approach the Yukon Court of Appeal. Opportunity to appeal tribunal decisions helps to ensure that decision makers are constantly reminded that the public has greater influence in tribunal decisions (Woods, 2009).

For most of the cases examined, there is no discrepancy between the provisions of the law and what happens in practice, that is, opportunities for participation are limited to what is stipulated in the relevant laws and other regulations guiding tribunal processes. The CRTC, however, made particular effort to hear from a range of its constituency through its contract with IPSOS Public Affairs. Seeking out the views of the general public through on-line site-specific surveys, and representative public opinion polls may go a long way in ensuring that the voices of the public can be heard in administrative tribunal processes. The use of focus groups and interviews to amplify the voices of difficult-to-reach, low-income, and other key demographic constituencies contributes to a more robust dataset. A cost-benefit analysis of this type of engagement strategy should be considered.

6.0 CONCLUSION & RECOMMENDATIONS

As people lobby for policies that promote their interests and challenge the scientific and economic rationalization for regulatory decisions, many seemingly technical decisions have become sites of public controversy (e.g., Kahane, 2012; Mitchell, 2019). This position has been echoed consistently by many advocacy groups within and outside of government, which have advocated for the need for regulatory authorities to increase opportunities for citizen participation and to be more transparent and accountable in regulatory decision-making processes (Nash & Walters, 2015).

This case study reveals that access to meaningful engagement in regulatory decisions is uneven across jurisdictions and types of tribunals in Canada. While some good practices were noted in some of the cases examined, there is still substantial room for improvement in order to fully democratize the regulatory decision-making processes. It is imperative for regulators to ensure good practice in all aspects of participation in order for meaningful engagement to take place. All aspects of participation are complementary, hence a weakness in one of them will water down the strength of others, thereby preventing meaningful engagement from happening. Our study shows that there is urgent need for improvement in public notice, participant assistance, and the ability of the public to challenge hearing decisions. These aspects are where most tribunals fall short of expectations.

Researchers have noted that a meaningful public engagement process promotes positive knowledge exchange, which leads to organizational and public learning. Ensuring all aspects of participation meets the required standards and fulfils public expectations will facilitate learning and confer on the regulator the legitimacy to operate on behalf of the public (Domosh, Neumann, & Price, 2015; Freeman & Langbein, 2000).

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

1. Social media has become a huge tool for reaching a broad range of audiences. Tribunals should employ and maximize the use of social media channels to facilitate meaningful participation.
2. Extending the period of notification may increase the number of participants involved in the process. Tribunals with longer notification periods (i.e. thirty days or greater) had higher numbers of participants.

3. Tribunals should remove the application process, and other barriers for participation in oral hearings.
4. Tribunals should increase the modes (i.e., methods) through which the public may get involved in the decision-making process. For example, public opinion polls, on-line focus groups, and semi-structured interviews, where appropriate, as employed by the CRTC, should be considered by other tribunals as a means through which to hear from the general public. Please note, these methods should not replace, but rather supplement existing methods for engagement.
5. There is a need for more transparency in the documentation of how participant input influences final decisions; decisions should reflect how participants' submissions were considered.
6. There is also a need for an opportunity to challenge tribunal decision; tribunals should establish mechanisms, through statute amendment, to create opportunity for the public to appeal decisions.
7. Tribunals should establish funding mechanisms that allow participants to be compensated for their time and other costs incurred in the process of participation. Such compensation should include considerations for providing some advance payments to participants.

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APPENDICES

APPENDIX 8.1: SEMI-STRUCTURED INTERVIEW QUESTIONS

Preliminary Questions:

1. *Where do you work and what is your role? How long have you done this?*
2. *What was your role in the xxxx project?*

General Questions about Public Participation

3. *What ways did the public have to be involved in the xxx project?*
 - a. *How was notice sent out? What options did the public have to participate? Were there different types of participation?*
 - b. *Was there a hearing? If so, did participants need legal representation? Was there participant funding?*
4. *Were participants able to find out how the decision-maker took their comments into consideration?*
 - a. *(if yes) How? Was it in the report? Or a supplemental table? Or Something else?*
5. *Is this consistent with similar projects under xxx legislation? In other words, was this a typical engagement process?*
 - a. *Follow-up if answer is "not typical" – why do you think that?*
6. *Was the decision appeals?*
 - a. *If so – ask the participant to describe that process*
7. *What is your understanding of public participation in the xxx process?*
 - a. *Is it important? Why/why not?*
 - b. *What is it designed to achieved?*
8. *As you best recall, did the decision reflect some of the aspects that you heard from the public?*
 - a. *Why/ why not?*
 - b. *Is there an example you can think of to share?*

9. *What do you consider to be the strengths of the current engagement process*
10. *What do you consider to be the weakness of the current engagement process?*
11. *Are there any improvements you think should be made to how people can be involved?*
 - a. *Different times when the public should get involved?*
 - b. *Different ways in which the public should get involved?*
 - c. *Anything that you have thought about since we moved primarily on-line with COVID?*
12. *Is there anything else you would like to add?*