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Purpose

The purpose of our research was to establish how selected EA laws address public participation and to explore the opportunities for changing these laws in ways that would respond to some of the key weaknesses in EA participation activities.

Approach



EA Participation Issues



Legal Context

- Defining the public role Participation in assessment as opposed to decision (CEAA; MB; AB).
- Notice Most provinces provide for notice at the report or EIS stage. ON the strongest.
- Information provisions / most provinces leave this to regulation and include general reference of the need for access to information. CEAA has the strongest provisions.

- Provision for public comment Repealed BC Act provided most detail. Some such as ON, NFLD and MB make provision for comment without detail on timing or quality.
- Nature of involvement Little or no direction outside of panel review. Most leave this in the hands of the Director.
- Panel review provisions Most have provisions.
 CEAA, BC, ON and NS provide the most detail.
- Participant resources Number of provinces provide for it in a variety of forms e.g. Minister may... Only CEAA and MB use.

Essential Components

- Access and purpose Establish "overriding objective". EA law should make clear whether purpose is to exchange information or facilitate participation in decision making meaningfully.
- Notice For consistency EA law should place obligation on agency with approval authority, should establish form of notice and should require notice before decision.

- Access to information EA law should centain provisions regarding transparency. Convenient access should be a fundamental principle.
- Provision of resources EA law should recognize the imbalance between proponents and public. Resources should be provided at all stages. Assistance need not always be monetary.

Process Activities

"Public participation should not be a little add-on box... it should be holistic and part of the whole EA process".

This runs contrary to the opportunities for participation that tend to be at discrete points.

EA statutes should recognize the need for participation to begin early - at the plandevelopment stages and continue through operational stages, implementation, follow-up and decommissioning.

Types of engagement and dispute resolution EA law should not dictate a toolbox of techniques but should "encourage night degrees of participation characterized by an ongoing and constructive exchange of information and ideas" Default forms of participation, such as open houses and town hall meetings, would therefore be viewed as on-ramps to more participatory involvement.

EA law should recognize that various forms of dispute resolution could be used at any point in the process.

Proponent control of participation problematic. EA laws should make government agencies responsible for ensuring meaningful participation. Criteria should be established in law to inform evaluation.

Accountability
 There should be greater accountability regarding how public input is used. This could be part of the reporting procedures.

Conclusions

- Legal reforms suggested in regard to essential components are modest and in line with current thinking.
- Process-related changes more complex and require not only legal reform but a reconceptualization of participation from proponent driven opportunities at discrete points to public driven participation through the project cycle.
- Review of other jurisdictions did not reveal any legal provisions that could be implemented as a quick fix.