

Meaningful public engagement in government environmental decision-making

OAIA 2016 Annual Conference

October 25, 2016

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Mississaugas of the New
Credit, on whose traditional
territory this conference is
being held.

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Disclaimer

- This presentation contains legal information about environmental assessment law and policy in Ontario.
- The contents do not constitute legal or other professional advice and must not be relied on as such.
- If legal advice related to specific circumstances is required, please seek competent legal counsel.

Overview of presentation

- Purposes/Principles
- Review Ontario's *Environmental Assessment Act*
- Concerns with Ontario's current EA program
- Review Ontario's commitments to Open Government
- Summarize preliminary recommendations for improving Ontario's public engagement in EA
- NOTE: Leaving the important issue of engagement of indigenous communities to other sessions

Purposes of public participation in environmental decision-making

- O'Faircheallaigh (2010) suggests:
 - Public information
 - Public involvement
 - Reconfiguring decision-making

O'Faircheallaigh, Ciaran. "Public participation and environmental impact assessment: Purposes, implications, and lessons for public policy making." Environmental impact assessment review 30.1 (2010): 19-27.

Public Participation Components: Aarhus Convention

- Early (when all options open), adequate, timely, effective notice
- Sufficient time to respond
- Access to information, free of charge
- Make submissions, in writing or at hearings/inquiries
- Decision-maker takes responses into account
- Also applies when decisions are reconsidered/updated

Public Participation Components: Ontario's *Environmental Assessment Act* (1)

- Proponent to consult with interested persons when preparing Terms of Reference (s5.1) and explain how addressed when submitting to government (s6(3))
- Proponent to give notice of Terms of Reference (s6)
 - “Inspect” at places/times set (s6(3.5))
 - Submit comments in writing for consideration by Minister by deadline (s(3.6))

Public Participation Components: Ontario's *Environmental Assessment Act* (2)

- Proponent to give notice of Environmental Assessment (s6.3)
 - “Inspect” at places/times set (s6.4(1))
 - Submit comments in writing for consideration by Minister by deadline (s6.4(2))
- Ministry review of Environmental Assessment to take public comments into account (s7(1))

Public Participation Components: Ontario's *Environmental Assessment Act* (3)

- Director to give notice of completion of the review (s7.1)
 - “Inspect” at places/times set (s7.2(1))
 - Submit comments in writing for consideration by Minister by deadline (s7.2(2))
 - Can request referral to Environmental Review Tribunal for hearing (s7.2(3))
- Minister can refer to Environmental Review Tribunal for hearing and decision (s9.2)

Concerns about implementation of Ontario's *Environmental Assessment Act*

- ToR/EA process is not the norm:
 - Exemptions/Designation Regulations
 - Declaration Orders
 - Class Environmental Assessments
- Accessing information challenges
- Hearings not used
- Participant funding halted
- Legislative exemptions for proposals/plans/programs (eg, *Far North Act, 2010, Greenbelt Act, 2005*)

Ontario's Open Government Initiative: Three Commitments

- “... more opportunities to weigh-in on government decision-making, in order to help us improve the programs, policies and services”
- “... sharing government data with you online”
- “... providing you with information you want and need, to help you better understand how your government works.”

Ontario's Public Engagement Framework (2016)

- Share: Does government need to tell the public about a government initiative? (one-way communication)
- Consult: Does government need to gather feedback from the public about a problem? (provide views)
- Deliberate: Does government need help from the public to frame or solve a problem? (help identify issue/strategy that will be implemented)
- Collaborate: Does government need help from the public to find and implement a solution? (shared decision-making)

Preliminary Recommendations*

- Apply Ontario's Engagement Framework to strengthen environmental assessment program
- Expand projects subject to EA & public participation (eg, mines, quarries)
- Re-introduce an intervenor/participant funding program (funded by proponents)
- Refer EAs to the Environmental Review Tribunal for public hearings
- Implement strategic or regional strategic environmental assessments
- Enhance engagement with First Nations and Métis communities consistent with UNDRIP

*See more <http://www.cela.ca/sites/cela.ca/files/EABriefing.pdf> |



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Thank you for your attention!

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