

UNLEASHING THE POWER OF CONSULTATIONS AND PARTNERSHIPS THROUGH ABORIGINAL PARTICIPATION

Mai Nguyen (York University)

Draft paper prepared for presentation to the annual meeting of the Canadian Political Science Association, Montreal, Quebec, June 2, 2010.

Please Note: This is a draft copy, comments are welcome. Revisions will be made before final publication.

Since the drafting of the Trudeau *White Paper, 1969*, and the affirmation of Aboriginal rights in *The Constitution Act, 1982*, a changing political relationship between Aboriginals and the Canadian state has taken place. This changing relationship revolves around Aboriginal peoples' quest for self-determination and removal from their status as "wards of the state". Part of this changing relationship has gained a footing behind the backdrop of neoliberalism and the increasing demands of Aboriginal peoples to be stakeholders in the policy-process. One of the avenues in which Aboriginals stake their right to participate is through public consultation with all levels of government. But, has this focus on consultation afforded Aboriginals the opportunity to affect decisions or more importantly, enter into partnerships with governments on matters which directly affect them? This paper argues that government consultation with Aboriginal peoples does not afford Aboriginals equal opportunity to affect policy decisions because the consultation process does not allow for genuine participation, but instead general participation by Aboriginal peoples. For the purposes of this paper, genuine participation implies the ability and the opportunity to have an impact on the decision-making process. While general participation denotes participation without the opportunity to affect the process and/or outcomes.

In order to demonstrate this argument the first section of this paper is dedicated to understanding the relationship between public consultation and aboriginals through an examination of the public consultation literature. The second section develops an aboriginal specific framework for evaluating the consultation process. The development of such a model is not merely concerned with Aboriginal peoples and public consultation but more importantly, focuses on distinguishing between what I label as "general" versus "genuine" consultation. Distinguishing the differences between these two processes allows for an evaluation of Aboriginal participation and the role of Aboriginals in the consultation process. Essentially, what this model does is seek to determine the influence Aboriginals have over the process. The last section involves applying this model to two case studies, "Environment Canada's Aboriginal Consultations on Wastewater" from 2008, and the Government of Alberta's 2004 "Grades 10–12 Social Studies Consultation". These case studies illuminate the role of consultations in practice. Ultimately, this paper will demonstrate that participation in public consultations has not empowered Aboriginals to become meaningful partners in the policy-making process and the democratic process at large.

PUBLIC CONSULTATION: HERE AND NOW

In Canada, public consultations have come to the forefront for two reasons: the movement towards public sector reform in the 70's and the changing political culture which emphasizes greater democratic participation. In respect to the former, since the 1970s New Public Management (NPM) has been the management model of choice for bureaucratic reform in advanced industrial countries (Britain, United States, Canada, Australia, etc). The shift from the bureaucratic organization to the post-bureaucratic organization of NPM stipulates that governments should operate more like a business by adopting private-sector characteristics. Some of these characteristics include a transition from: organization-centred to citizen-centred; rule-centred to people-centre; independent action to collective action; status-quo-oriented to change-oriented; process-oriented to results-oriented; centralized to decentralized; budget-driver to revenue-driven; and monopolistic to competitive (Kernaghan et al. 2000, 3). The list is

extensive and numerous external factors (globalization, technological revolution, etc.) as well as internal factors (debt reduction, changing political culture, etc) are the driving forces behind public sector reform. Within this framework, the call for greater public participation (often described as participatory democracy) has led to an array of consultation mechanisms (Kernaghan et al. 2000, 180) occurring within government, and between governments and citizens. Since the inception of NPM, public consultations have become an important and on-going process pertaining to public sector reform and Canada's changing political culture.

Part of this changing political culture is embedded in the so-called "democratic deficit" in which citizens feel disconnected from their governments. Participatory democracy theory claims that much of these feelings are rooted in increasing distrust towards democratic politicians and processes, and declining levels of participation in organized political society (Nylen, 2003). Therefore, citizens seek a more hands-on approach to democratic participation which would allow citizens more control over the outcomes. According to B.R. Barber, participatory democracy:

Denotes the form in which people literally rule themselves, directly and participatorily, day in and day out, in all matters that affect them in their common lives...participatory democracy involves extensive and active engagement of citizens in self-governing process; it means government not just for but by and of the people. (Barber 1995, 921)

In Canada, the desire for greater participatory democracy is nowhere more evident than at the polls. Voter turnout during federal elections is at an all time low. Julie Abelson and Jean-Pierre Gauvin (2004) note that numerous studies are confirming that Canadian citizens are looking for a political space to engage in public policy discussions and decisions outside of the traditional political sphere. As Abelson and Gauvin state,

Citizens are also looking for new ways to define democracy – ways that recognize their desire to play a more active role in decisions that affect them at the individual and societal levels...Reforming traditional political institutions will not, on its own, solve the problems of voter turnout unless reform includes a space for citizens." (Abelson and Gauvin 2004, 1)

Furthermore, other proponents of participatory democracy see political participation as a collective action strategy needed for furthering the interests of the repressed, excluded and ignored individuals and groups (Nylen, 2003). In Canada, the majority of Aboriginal peoples are by and large members of these groups. Part of this problem lays in the fact that Aboriginals do not benefit from the electoral system and consequently, have actively sought different forms of engagement outside of traditional representative democracy. As Peter Niemczak and Celia Jutras state, "Aboriginal people around the world (including Canada) have expressed frustration with their lack of both political representation in and influence on government operations (2008, 1)". Furthermore, Nils Lasko states:

The history of many indigenous peoples shows that the indigenous populations have had great problems in communicating with the nation-state and that they are

frequently excluded from the general processes of decision-making. They have little influence on various questions concerning their welfare within the administrative and other power bodies of the state. (1987, 78)

Moving away from the tradition form of political representation, Aboriginal peoples are seeking more effective and creative ways to express their self-determination.

In Canada, the Aboriginal struggle for self-determination and political inclusion has expressed itself in various ways (days of action, land claims, self-government agreements, claims to treaty federalism, Supreme Court of Canada's "Duty to Consult", creation of Nunavut, national Aboriginal political organizations, etc) and through various degrees of participation (Abele and Prince, Chapter 6 of Rocher and Smith, 2003). Dale Turner (2006, 37) argues that the presence of Aboriginal participation began after the release of Pierre Trudeau's *White Paper of 1969*. Turner states that Indian leaders felt the White Paper was a move towards greater assimilation while simultaneously ignoring Aboriginal perspectives. Fed up with this kind of treatment Aboriginal peoples began to organize through the inception of national organizations. Aboriginals began to play a larger role in shaping Aboriginal politics at a national level and this became much more of a reality with the repatriation of the constitution, which entrenched the rights of Aboriginal peoples and forced governments to consultation with Aboriginal groups, and the inception of NPM. Under the latter, governments began to offload services to individuals and in this case, back to Aboriginal communities, in an effort to remedy the national deficit. This move allowed for greater Aboriginal control over policy matters and part of this move has been achieved through consultation. Therefore, what is occurring in Aboriginal societies is a set of pushes and pulls in which *The White Paper* and constitutional issues pushes or compels Aboriginals into action, while NPM pulls them in.

Generally, in Canada there is also growing widespread expectation that governments consult with the public on public policies and there is no evidence of this trend slowing down anytime soon (Bartram, 2007). The Department of the Environment Canada defines public consultations as,

An interactive and iterative process that seriously elicits and considers the ideas of citizens and encourages their involvement in decision-making in the tasks of vision-setting, policy development, issues resolution and in the design and delivery of government programs. (Department of the Environment, 1992 from Kernaghan et al. 2000, 176)

Public consultations can take many forms such as citizen juries, citizen panels, electronic voting, planning cells, conferences, etc (Rowe and Frewer 2005, 257). The general consensus among participatory democracy proponents is the belief that allowing citizens a role during the policy-making process will, improve the quality of decisions regarding the content and delivery of policies and programs, generate greater trust in government and overall, strengthen democracy via social and political inclusion (Nylen, 2003). The degree to which this can occur varies based upon the chosen form of consultation. However, this paper is not concerned with the varying consultation mechanisms but instead, with the consultation process. Therefore, the overarching

goal of this paper is to understand if the process of public consultation allows Aboriginals the opportunity to affect policy through an evaluation of the consultation process.

SEEKING GENUINE PARTICIPATION – EVALUATION FRAMEWORK

There is no one-size fits all approach to consultation. However, there are common characteristics of the consultation process that distinguish between general/phoney/tokenistic and genuine/authentic (these words will be used interchangeably) consultations and therefore, distinguishing between general and genuine participation. This paper seeks to develop a framework to evaluate and distinguish between general and genuine consultations. For the purposes of this paper general consultation refers to a consultation process in which the government controls the process and outcomes. While genuine consultation symbolizes a sharing of the enterprise in which a partnership is formed allowing both government control and Aboriginal control of the consultation process and outcomes. This does not mean the model advocates for complete success in impacting the outcomes. Instead, it advocates for the opportunity to allow participants a fair and equal chance at impacting the outcomes. The changing degree of control between the two parties can be visualized by a continuum (see Figure 1), where allowing Aboriginals more control over the process leads to genuine participation and subsequently, signifies genuine consultation. Unfortunately, the myriad of literature on public consultations have yet to develop a consensual framework for evaluating the effectiveness of the public consultation process through the lens of the participant. More importantly, there is even less of an effort to develop a framework suitable for evaluating Aboriginal participation in this process.

Given the social, economic and more importantly, the political alienation of Aboriginal peoples in these arenas of Canadian life, it is important to evaluate whether the process of public consultations will bring aboriginals closer to becoming meaningful participants in Canadian society via their role in public consultations. Therefore, this paper sets out to develop a preliminary framework for evaluating public consultations, which is Aboriginal specific. It does so by extracting various criteria evident in the public consultation literature to develop a workable framework for the purposes of this paper. It is important to note that the development of such a framework is not to evaluate the effectiveness of governments when engaged in consultations. Instead, the *raison d'être* is to evaluate the effectiveness of such processes in respects to allowing Aboriginals a seat at the table for participation. Generally, this framework is designed to determine whether genuine participation resulting in genuine consultation is taking place.

King et al. defines authentic participation “as the ability and the opportunity to have an impact on the decision-making process.” (King et al. 1998, 320) However, in their view many efforts at public consultations are ineffective and unauthentic because of what they call the “practitioner-client hierarchy” in which decision-making, agenda-setting and gate-keeping authority remains in the hands of the administrator (King et al. 1998, 320). Therefore, authentic participation means that the public is part of the deliberation process from issue-framing to decision-making (King et al. 1998, 320). The question then is how do we achieve authentic participation? This paper argues that authentic participation is shaped by the consultation process

which is broken down into three stages: developmental, empowerment, and decision-making. Each stage contains specific features and must answer certain questions.

Stage one, the developmental-stage, ultimately sets the agenda. At this stage of the evaluation process the questions that need to be asked is who gets to decide the purpose and form of consultation? Since the cases put forth in this paper pertain to consultations with Aboriginals, then the more appropriate question is do Aboriginals have a voice in deciding what is the matter subject to consultation and the form to be employed? The Public Service 2000 Report, *Service to the Public Task Force*, states that for consultation to be effective, “The agenda and process of consultation should be negotiable. The issues, objectives and constraints should be established at the outset.” (Public Service 2000, 1990) If this does not occur, it can hinder the consultation process ineffective. For example, during *Environment Canada’s Aboriginal Consultation on Wastewater* (2008) Environment Canada found that Aboriginals understood consultation to be akin to negotiations and therefore, Aboriginals found the process misleading. On the other hand, the Department of the Environment believed the department was fulfilling its consultation duties by encouraging dialogue and exchanging information (Environment Canada 2008, 8). Because of the different perspectives on what it means to “consult”, the consultation process was hindered and ultimately, ineffective because Aboriginals believed accepting, through their participation, the department’s consultation method would have a negative impact on future consultations and negotiations on other matters.

Part two of the question pertains to the form of consultation employed and more importantly, which party decides the consultation mechanism that will be adopted. This is important because the form chosen will determine the degree of influence participants will have on the outcomes. A useful way to conceptual this in the form of a spectrum, presented by Turnball and Aucoin in, *Fostering Canadians’ Role in Public Policy: A Strategy for Institutionalizing Public Involvement in Policy*, and created by the *International Association for Public Participation* (IAP2) (see Figure 2). At the start of the spectrum the terms “inform” and “consult” signify different mechanisms of consultation which allow participants no control over the process or final outcomes. While the far end of the spectrum, under the categories of “collaborate” and “empower” allow participants a stake in the enterprise. Therefore, the ability to choose which form of consultation will be adopted can allow participants a greater role in determining the final policy outcomes. In addition, allowing all parties a say in the selection process removes the ability for one party, usually the government, to retain a hegemonic position over the process. The Treasury Board of Canada Secretariat understands the importance of this step, noted in the department’s report, *Guidelines to Effective Regulatory Consultations*, and states that,

The consultation plan should include an assessment of the most appropriate consultation tool based on the size and scope of the proposal, regional considerations, and the types of stakeholders. Engaging stakeholders early in the pre-consultations gives them the opportunity to help decide which consultation tools would be best. (Treasury Board of Canada Secretariat 2007, 12)

This is most important in the Aboriginal context because Aboriginals and the governments of Canada recognize that Aboriginal peoples know what is best for their culture and their communities (Turcotte and Zhao, 2004). As Van Den Burg states,

A substantial part of the problem with consultation is that the government has failed to devise an appropriate mechanism for consultations. A method of joint decision-making between Aboriginals and non-Aboriginals must be conducted. Few policy-makers...do not possess the field experience to understand their target population, making it difficult to design programs that properly address Aboriginals' needs. (Van Den Burg 2009, 20)

In other words, when Aboriginal input is sought during the developmental process, this prepares Aboriginals for participation in the next stage of consultation.

The empowerment-stage, stage two, focuses on the twin issues of inclusivity and effective participation. At this stage evaluators need to determine first, who was called for participation and how were representatives of the group in question chosen and second, were the necessary tools for empowerment (participation) made available to participants? In regards to the first set of questions, Turnball and Aucoin state that one of the limitations of public consultation is that "they offer a role only to those citizens who volunteer to participate. Governments do not always actively recruit a diverse set of opinions." (Turnball and Aucoin 2006, 1) More importantly though, Catt and Murphy state that the failure of governments to seek input from members of ethnic, national and religious minorities will result in major obstacles in the domain of both legitimacy and efficacy (Catt and Murphy 2003, 411). In the Canadian case, this would apply to Aboriginal societies.

In regards to the question of group representation, Catt and Murphy state that the question to be asked here is, who speaks for or represents the group, and how are these representatives chosen? (Catt and Murphy 2003, 411) Governments have several ways to go about this task, such as random sampling. However, though this mechanism has its merits (it best approximates the principle of individual equality) it provides Aboriginals with no choice in the matter. Catt and Murphy argue that allowing parties to pick their own representatives is most effective and is especially important for historically disadvantaged or marginalized groups who may not trust the government to choose someone who will honestly and effectively represent their interests (Catt and Murphy 2003, 412). Therefore, a better mechanism put forth by Catt and Murphy is to have governments provide for a process of *group selection*, "wherein particular government-designed groups or associations would chose their own representatives to speak on their behalf." (Catt and Murphy 2003, 412) In these cases, the group in question may choose to elect their representatives or to choose them through informal methods. Catt and Murphy argue that the importance and benefits of this mechanism, *group selection*, is that it allows representatives to be directly accountable to the members it represents and in ensuring that those representatives provide an accurate account of the perspectives and priorities they represent (Catt and Murphy 2003, 412). This is essential to the groups whose interests are at stake and to the government who requires as accurate an account as possible in order to achieve efficacy and legitimacy in the policy-making process. To this end, given the cultural sensitivity of Aboriginal policies, Aboriginal participation can only be effective if members can choose who they believe will best represent their interest.

The second set of questions in this stage is concerned with determining the appropriate avenues/resources to allow for meaningful participation. Participation cannot be meaningful if

the appropriate resources (internet, transportation cost, access to information, sufficient time, etc) and information (pertaining to the issue) are not made available to participants. As Turnbull and Aucoin state, "The effort to make participants as informed as possible enhances the civic education aspect of the deliberation exercise. It also helps to "level the playing field" between those participants who initially are knowledgeable about the issue and those who are not." (Turnball and Aucoin 2006, 9) Furthermore, the Treasury Board of Canada Secretariat states, "To make meaningful contributions, participants must have access to neutral, timely, and relevant information. Inherent in the notion of accessibility is the need for terminology and language to be appropriate, relevant, and understandable to the stakeholders." (Treasury Board of Canada Secretariat 2007, 19) In addition, the Treasury Board notes that stakeholders should be provided with documents supporting the consultation effort, all information needed during the process, supporting rationales, technical or scientific information, analyses performed, costs and benefits, and potential impacts and consequences (Treasury Board of Canada Secretariat 2007, 19). Without this information, knowledgeable input cannot and will not occur which will result in government officials pushing their agenda on Aboriginal participants (Van Den Burg, 20). Therefore, access to information will allow for inclusion and equality in the process. As Catt argues, "the ability to take part in the democratic process is an important step in attaining equality...Even if all have the same access to the democratic procedures there are other conditions that need to be met, such as availability of information." (Catt 1999, 8)

On a more comprehensive level, King et al. argues that citizens need to be educated with a focus on teaching specific organizing and research skills and leadership training for effective participation to take place (King et al. 1998, 324). Given the disadvantaged nature of Aboriginal societies (i.e. low education levels, high unemployment, poor health and housing, etc) and therefore, restrictions to democratic participation, governments must provide the necessary resources (transportation cost, computer and internet access, communication devices, professional staff, access to expert consultants, etc) needed to allow for genuine participation. By creating an environment conducive to authentic participation citizens and administrators can work together from the beginning when issues are being defined and framed. More importantly, such an environment encourages participants to make connections and develop relationships to allow for legitimate policy outcomes and subsequently, a decrease in alienation and an increase in community inclusion (King et al. 1998, 324); therefore, bringing Aboriginals closer to the policy-making process and the democratic process at large.

Stage three, the decision-making-stage, deals with decision-making or more specifically, how the findings, participants' input and comments were incorporated into the final decision. Turnbull and Aucoin highlight that governments do not always commit to using public input in decision-making and more importantly, consultations also often occur late in the process and citizens are left to respond in a context where commitments have been made and ideas hardened (Turnball and Aucoin 2006, 1). Furthermore, the authors state that,

It must be clear to participants in the deliberation process that their efforts are not simply for consultative purposes or to validate decisions that have already been taken...if citizens are to be expected to sacrifice the considerable time and energy required by meaningful public deliberations, they must be assured that the result of their deliberations "matter". A deliberative procedure that fails in this regard

will be interpreted as a shallow commitment to public involvement and may even undermine, rather than enhance public trust in government. (Turnball and Aucoin 2006, 7)

Many scholars (Arnstein, Catt and Murphy) refer to this as “tokenism” or phoney consultation. For example, Catt and Murphy state that,

Indeed, many view as tokenistic any process of consultation that does not give citizens control over decisions. A somewhat more cynical view is that consultation can be used by government to provide policy makers with a veneer of legitimacy without actually incorporating into the policy any of the input it gathers. (Catt and Murphy 2003, 419)

Therefore, in order to move away from a tokenistic form of consultation towards more meaningful/genuine consultation, Aboriginals must have an equal opportunity to affect the final outcomes.

Looking again at the IAP2 spectrum (Figure 2) and Figure 1, we see that at the beginning of these spectrums there is little room for genuine participation because control of the process remains firmly in the hands of government, while the other end of the spectrums provides participants with the opportunity to make real decisions. This is most important for Aboriginals as they endeavour to remove the reigns of colonialism and work towards political inclusion for self-determination. Helen Catt states that,

Democratic decision making as a means of obtaining self-governance to fulfil the ideal that no person should be decided for another is an important strand of argument in justifications for democracy...The other strand to the argument of self-government is that all decisions should be made only after each person has had an opportunity to express their view. Only if the decision is made by all is it legitimate. (Catt 1999, 8)

To this end, decision-making power through the consultation process is a step towards political inclusion and thus, self-determination for Aboriginal peoples. Ultimately, consultations should aim to place participation at the furthest end of these spectrums thereby allowing Aboriginals an equal share of control over the consultation process (see Figure 1). As the Public Service 2000 Report states, “Effective consultation is about partnership. It implies a shared responsibility and ownership of the process and the outcome.” (Public Service 2000, 1990) Without a sharing of the enterprise, governments will continue to impose their agenda on participants through a veneer of legitimacy, or what they call consultation. This is demonstrated in the case studies examined below.

PUBLIC CONSULTATION IN PRACTICE

This paper looks at two specific case studies on public consultation with aboriginals, the Federal Government of Canada’s, “Environment Canada’s Aboriginal Consultations on Wastewater”, from 2008, and the Government of Alberta’s, “Grades 10–12 Social Studies

Consultation”, 2004. It is important to examine consultation at both levels of government because though the historical relationship between Canada and Aboriginals has been one premised on the federal government’s colonial power over aboriginal peoples, governments, scholars and policy-makers are finding that for many reasons (social services, programs, education, and reserves) provincial governments are becoming increasingly important in the lives of aboriginal peoples (Hawkes, 1989; Noel and Larocque, 2009). The rationale for choosing Alberta pertains to the fact that Prairie Provinces house a large percentage of the Aboriginal population in Canada. It should be noted that as of yet there is no precedence for “the duty to consult” at the municipal level and therefore, this paper does not examine local/community consultations. In addition, in order to examine the concept of political inclusivity, the cases reviewed here are not exclusively Aboriginal specific. Though Aboriginals seek participation on policies of an Aboriginal nature, Aboriginals also look to broaden the scope of public policy making and therefore, should be involved in issues affecting Aboriginals but not necessarily of an Aboriginal nature.

Before beginning, a few caveats must be outlined. First, this paper is a work in process, on a complex issue and requires more research, including interviews with key actors and data collection. Second, the examination of these case studies is thus far limited to government documents that are available to the general public. Therefore, the aboriginal perspective has not been incorporated into the findings. In addition, government reports on consultation usually deal with the outcomes via the feedback governments receive during the consultation process. It is unusual to find a document which concentrates on the effectiveness of the process itself. Therefore, some of these findings, until further research is conducted, are speculative.

Environment Canada:

In 2003 Canadian federal, provincial and territorial governments, under the Canadian Council of Ministers of the Environment (CCME), agreed to work together to develop a Canada-wide strategy for the management of municipal wastewater effluent. According to CCME,

The proposed strategy will focus on improving management within the wastewater sector to improve environmental and human health protection. The proposed strategy will also provide a harmonized and collectively agreed-to regulatory framework for municipal wastewater effluent management in Canada. The strategy addresses issues related to both the performance and the governance of the wastewater sector in Canada. One of the main outcomes of the strategy is to reduce the risks to human health and the environment posed by municipal wastewater effluent contaminants (CCME, 2006).

By October 2007 Environment Canada created a Proposed Regulatory Framework for wastewater (EC framework) based on the core elements of the above CCME Canada-wide strategy for the Management of Municipal Wastewater Effluents (Environment Canada, 2008). The objective of the proposed regulations is to reduce the risks to ecosystem health, fisheries resources and human health by decreasing the level of harmful substances deposited to Canadian surface water from wastewater effluent. To achieve the objective, the proposed regulations would set national effluent quality standards that would require secondary wastewater treatment,

or equivalent, in wastewater system across Canada. Essentially, the goal is to ensure wastewater is disposed of correctly for safe use of water, such as for drinking.

Under the Government of Canada *Cabinet Directive on Streamlining Regulation, 2007*, departments and agencies are responsible for conducting consultations at all stages of a regulatory development process (Environment Canada, 2009). In creating a three-phase consultation process, stakeholders (Aboriginal peoples and their organizations, municipalities and organizations, and federal departments and agencies) became involved in the second-phase in which Environment Canada sought feedback and comments on the EC framework. Phase two of Environment Canada's Wastewater Consultation ran from November 2007 to January 2008 and consisted of twenty-six one-day consultation sessions in locations across the country (Environment Canada, 2008). Though there were three "streams" of stakeholders, Environment Canada focused much attention on consultations with Aboriginal peoples and their organizations because management of wastewater affects Aboriginal livelihood based on their lands, fish and other wildlife on the lands. Taking the evaluation framework developed above, it will become evident in this instance, that Environment Canada was not engaged in genuine consultation with Aboriginals. Instead Environment Canada sought general participation, or what the IAP2 refers to as "consult".

Beginning with the developmental-stage, upon examination of the consultation process it is evident that Environment Canada controlled the 'development' of the process. For example, in regards to selecting the method of consultation, Environment Canada states in its National Report,

The objectives of these sessions were to provide participants with *contextual information and an opportunity to comment* on the EC Framework...The consultation sessions for all streams were designed to be *participative* and to enable *open discussion and feedback* (emphasis added). The consultations did not aim to build consensus on any issues, nor were recommendations voted upon. (Environment Canada 2008, 1 and 7)

Referring back to the IAP2 spectrum, it can be observed that the process employed by Environment Canada can be categorized under the "consult" category. In addition, since the consultation method was decided by Environment Canada a priori consultation, there was little room for Aboriginal participants to exercise a share of control over the process. More importantly, this lack of partnership created an environment of distrust between the Department and the participants. This manifested itself in the differing views between Aboriginals and the department of what is meant by "consultation". For example, the Management Response and Final Report states that, "The majority of Aboriginal participants did, state that they did not consider the process to be one of consultation with Canada's Aboriginal peoples; rather, they considered it to be more of a dialogue or discussion...this has an impact on the consultation process and its evaluation." (Environment Canada 2009, iii). Though the report does not specifically state "how" or "why" this difference affected the process, the important thing to draw out is at this stage Environment Canada retained control of the developmental process.

In the second stage, the empowerment-stage, after an examination of the reports it is evident that here too, Environment Canada retained control of the process through the appointment of representatives. Furthermore, Environment Canada did not provide the tools/resources necessary for genuine participation by Aboriginal participants. Beginning with the former, the Report notes that, on the issue of cultural sensitivity, Environment Canada appointed a team of the department's experts without Aboriginal input. As the Final Report states,

The Department agrees that it is appropriate to have a culturally sensitive team that is aware of Aboriginal priorities and issues and that can advise the departmental staff. Environment Canada does have such a team in place that acts as the departmental centre of expertise on Aboriginal consultations and public participation. (Environment Canada 2009, vii)

Furthermore, Environment Canada put into place contracts with selected Aboriginal organization to prepare impact analysis documents and position papers. This also occurred without Aboriginal input. However, though prior to consultation Environment Canada allowed each Aboriginal community to nominate participants, many participants expressed concerns regarding the session's attendance (Environment Canada, 2008). In the National Report participants suggested that,

representation from NWT communities at the session would have been helpful, particularly since the session was referred to throughout the distributed documentation as a 'consultation session'. They questioned why equal invitations to attend the session (with travel cost paid) were not extended to all communities. The lack of attendance of senior administrative officers, Chiefs, band managers, or municipal representatives was also noted. (Environment Canada 2008, 11).

Drawing from participants' feedback, it can be ascertained that, aside from the nomination of participants, Environment Canada controlled who was invited and involved in the process and thereby, limiting the representation of Aboriginals and the expression of Aboriginal interests.

In regards to the availability of resources, there was a common consensus between the majority of participants that Environment Canada did not provide enough time for a meaningful discussion of the topic and more importantly, the timelines to provide written comments on the consultation documents could have an impact on the ability to have these discussions with the appropriate leadership (Environment Canada, 2008). Therefore, in this case insufficient timelines was one of the impediments to genuine consultation (time frames are noted as one of the features to genuine consultation posited by Frances Abele et al. – "The process is sufficiently long to permit deliberation to a satisfactory end; it will rarely comprise a single isolated event." (Abele et al., 2000, 1,)). In addition, several participants were concerned with the lack of information provided to First Nations and believed this would affect their ability to provide informed input (Environment Canada, 2008). Overall, Aboriginal participants raised concerns regarding, the lack of clarification on the issue, the lack of opportunity and the independent technical capacity to gain a greater understanding of the matters, and lack of education, risk assessments, monitoring and, compliance aspects (Environment Canada, 2008). This evident lack of resources

suggest that it will be increasingly difficult for Aboriginal participants to make informed and knowledgeable decisions and therefore, difficult for the participants to affect the outcome.

Given the lack of opportunity and resources provided to the participants, it is not surprising that in the final stage of the evaluation process, the decision-making stage, it can be observed that Aboriginals were not granted an opportunity to share in the decision-making process. This is illustrated in the following statement made by Environment Canada, “Environment Canada will *consider* all of the feedback received from interested parties to finalize negotiations with provincial and territorial governments... The consultations *did not aim to build consensus* on any issues, nor were recommendations voted upon.” (Emphasis added) (Environment Canada 2008, 2 and 7) In other words, the real decision-makers were governments and feedback was requested and gathered only prior to final negotiations with the other levels of government. Overall, what is observed is two-fold: one, the group in question did not have a say at the Developmental stage regarding which method of consultation was to employ, and two, because of this the group’s ability to influence the final policy outcome of the consultation was absent. Therefore, in the case of the Environment Canada Consultation on wastewater, Aboriginals were not given the opportunity for genuine participation and therefore, removing the “partner” in partnership.

Alberta Learn:

The Alberta “Grades 10-12 Social Studies Consultation” was based on the findings of the Alberta Government’s *Needs Assessment Report (2000)* which recommended a revision of the grade 10-12 Social Studies program to be more issues-focused, infused with multiple perspectives, and focused on the core concepts of citizenship and identity (Alberta Learning, 2004). Once again, in this consultation session Aboriginal participants were not the main actors but played a large role in contributing to the revision process. The role of Aboriginal stakeholders was to ensure “content validation, accuracy and delivery of outcomes that will reflect Aboriginal identity, history, lands, rights, languages, and contemporary perspectives on wellness and other issues.” (Alberta Learning 2004, 3) The consultation process ran from October and ended in December 2003 (Alberta Learning, 2004). Using the same evaluation framework, it will be demonstrated that, in this instance the Government of Alberta was not engaged in a partnership with Aboriginal actors.

In stage one of the evaluation process there was no indication in the report as to which party decided on the definition of “consultation”. In addition, there was no mention as to whether or not the method of consultation was a consensual decision. However, what was indicated in the report was the method of consultation employed by the department. The report noted that the consultation process consisted of an online questionnaire, face-to-face consultations and written submissions (Alberta Learn 2004, 1). Twenty face-to-face consultation sessions were held across Alberta, Yellowknife and the Northwest Territories. This method of consultation is akin to what the IAP2 considers to be “consult” which means participation is limited to feedback, comments and discussion, therefore, providing little room for influence on the final decisions and limited participation.

In regards to stage two of the evaluation process, it was stated that in addition to twelve general sessions, seven Aboriginal consultation sessions were conducted in Alberta and one in the Northwest Territories with the purpose to ensure the recognition of Aboriginal perspectives and to meet their unique needs (Alberta Learning 2004, 1). The department allowed for Aboriginal organizations and communities to send representatives to each consultation session. As the report states,

In preparation for the extensive provincial social studies consultation process, letters were sent out to all First Nations Education Directors, the Métis Nation of Alberta, Métis settlements and to all superintendents with First Nation, Métis and Inuit (FNMI) education programs. Each was invited to send one representative to participate in one of the consultation sessions. (Alberta Learning 2004, 3)

In total there were fifty Aboriginal participants. Though Aboriginal organizations were empowered to appoint representatives, only one representative was allowed to attend. More importantly, prior to the consultation sessions Alberta Learning had unilaterally decided which Aboriginal organizations would receive invitations to send representatives. Therefore, the process of selection limited the scope of participation and representation of Aboriginal interests. This was further exacerbated by the limited resources made available to the participants. Several Aboriginal participants noted that there were inadequate reading resources to send to participants for preparation. In addition, other criticisms consisted of the following: internet dialogue was ineffective, time was a major problem, agenda of consultation was vague, and plan needed to be more specific (Alberta Learning, 2004).

In the final stage of the evaluation process, the report documents that participants provided general feedback on the program and Aboriginal communities and Aboriginal educators were provided with the opportunity to *join together and review* the Social Studies Grades 10-12 Program of Studies (emphasis added) (Alberta Learning 2004, 3). The report provided no indication as to how the feedback and comments were going to be used in the final decision. Even though the conclusions made here are some what speculative, it can be ascertained that, similar to the Environment Canada session, the Alberta Learning consultation did not afford Aboriginals a space for genuine participation, due to a lack of representation and resources, therefore, decision-making power remained under government control.

TOWARDS MEANINGFUL PARTNERSHIP?

In an era of increasing citizen participation in the democratic process, governments are finding it more difficult to evade public input. Nowhere is this more evident than in respect to Canadian Aboriginals. Aboriginals in Canada are consistently finding increasingly effective ways to participate in the policy process. They are no longer allowing governments to chart their future. However, this is a daunting task and Aboriginals, more so than other Canadians, experience numerous obstacles which affect their abilities to genuinely participate. This paper has examined some of these obstacles (lack of representation, lack of resources, lack of knowledge, etc) in relation to public consultation. Through the development of a preliminary framework for process evaluation, this paper has argued that government operated consultations

are not partnerships and therefore, do not allow Aboriginals an equal opportunity to affect policy decisions. The framework developed in this paper distinguishes between general and genuine participation based on three criteria: the ability to participate in the design of the consultation; the ability to nominate representatives and gain access to all necessary resources; and the opportunity to affect the final outcome. Based on this criteria, this paper has demonstrated, via the Environment Canada and Alberta Learn consultation sessions, that such consultations have not afforded Aboriginal participants the opportunity for genuine participation. Therefore, such sessions cannot be considered genuine consultation.

Though, in theory public consultations have the ability to allow for political inclusivity, in the Canadian context this has not occurred. Governments, when engaged in consultation with Aboriginals, have not provided Aboriginals with the independence to be meaningful participants. In both case studies, this was demonstrated through the inability of Aboriginal participants to develop appropriate consultation mechanisms and nominate adequate representation. Furthermore, the final policy decisions remained under government control. Ultimately, the research here reveals that consultation between governments and Aboriginals is not a stepping stone towards more formal arrangements of partnerships, thereby, limiting the ability of Aboriginals to affect the policy-making process. Until improvement in the consultation process occurs, public consultation with Aboriginals will amount to little more than “phoney” or “tokenistic” consultation resulting in limited/general participation for Aboriginals.

FIGURE 1.

PUBLIC CONSULTATION CONTINUUM:

**General Consultation
(Government Control)**

**Genuine Consultation
(Aboriginal Control)**




General Participation

Genuine Participation

FIGURE 2.¹

IAP2 PUBLIC PARTICIPATION SPECTRUM

INCREASING LEVEL OF PUBLIC IMPACT 				
INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:
To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision, including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
Promise to the Public:	Promise to the Public:	Promise to the Public:	Promise to the Public:	Promise to the Public:
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
Example Tools:	Example Tools:	Example Tools:	Example Tools:	Example Tools:
<ul style="list-style-type: none"> • fact sheets • web sites • open houses. 	<ul style="list-style-type: none"> • public comment • focus groups • surveys • public meetings. 	<ul style="list-style-type: none"> • workshops • deliberate polling. 	<ul style="list-style-type: none"> • citizen advisory committees • consensus-building • participatory decision-making. 	<ul style="list-style-type: none"> • citizen juries • ballots • delegated decisions.

© Copyright IAP2. All rights reserved.

¹ Used with permission from IAP2

BIBLIOGRAPHY

- Abele, Frances, Katherine Graham, Alex Ker, Antonia Maioni and Susan Phillips. *Talking with Canadians: Citizen Engagement and the Social Union*. Ottawa: Canadian Council on Social Development. 1998. http://www.ccsd.ca/pubs/archive/twc/es_twc.htm
- Abele, Frances and Michael J. Prince. "Aboriginal Governance and Canadian Federalism: A To-Do List for Canada". Chapter 6 of Rocher, Francis and Miriam Smith. *New Trends in Canadian Federalism*. Peterborough: Broadview Press. 2003
- Abelson, Julia and Francois-Pierre Gauvin. *Transparency, Trust and Citizen Engagement: What Canadians Are Saying About Accountability*. Ottawa: Canadian Policy Research Networks. 2004. http://www.cprn.org/documents/33621_en.pdf
- Barber, B.R. "Participatory Democracy". in S.M Lipset (ed.) *The Encyclopaedia of Democracy*. London: Routledge. 1995. pp. 921-924
- Bartram, Mike. "Public Consultation and User Engagement". *Consumer Policy Review*. Vol. 17:5. 2007
- CCME. *Municipal Wastewater Effluents in Canada*. Ottawa: Canadian Councils of Ministers of the Environment. December 2006. http://www.ccme.ca/assets/pdf/mwwe_general_backgrounder_e.pdf
- Catt, Helena. *Democracy in Practice*. New York: Routledge. 1999
- Catt, Helena and Michael Murphy. "What Voice for the People? Categorising Methods of Public Consultation". *Australian Journal of Political Science*. Vol. 38:3. November 2003
- Department of Education. *Grades 10-12 Social Studies Consultation Report*. Alberta: Alberta Learning. April 2004. http://education.alberta.ca/media/774571/sr_report.pdf
- Department of the Environment. Transition Steering Committee on Consultation and Partnerships. *Consultations and Partnerships: Working Together with Canadians*. Ottawa: Environment Canada. 1992. p. i. from Kernaghan et al.
- Environment Canada. *National Report Wastewater Consultations – Summary of Input*. Ottawa: Environment Canada. 2008. <http://www.ec.gc.ca/eu-ww/default.asp?lang=en&n=4B94EB4A-1>
- Environment Canada. *Evaluation of Environment Canada's Aboriginal Consultations on Wastewater – Management Response and Final Report*. Ottawa: Environment Canada. 2009. http://ec.gc.ca/ae-ve/EADEFD83-4D1F-4C9D-91B8-C6574B91E021/COM888_EC%20Abrgnl_CnsltsonWW_Mngt_%20E_03.pdf

Hawkes, David C. *Aboriginal Peoples and Government Responsibilities – Exploring Federal and Provincial Roles*. Ottawa: Carleton University Press. 1989

International Association of Public Participation (IAP2). *IAP2 Spectrum of Public Participation*. 2007. <http://www.iap2.org/associations/4748/files/spectrum.pdf>

Kernaghan, Kenneth, Brian Marson, and Sandford Borins. *The New Public Organization*. Toronto: The Institute of Public Administration of Canada. 2000

King, Cherly Simrell, Kathryn M. Feltey and Bridget O’Neill Susel. “The Question of Participation: Toward Authentic Public Participation in Public Administration”. *Public Administration Review*. Vol. 58:4. 1998

Lasko, Nils. “The Importance of Indigenous Influence on the System of Decision-Making in the Nation-state”. in *Self-determination and Indigenous Peoples: Sami Rights and Northern Perspectives*. Copenhagen: IWGIA. 1987. p. 78

Niemczak, Peter and Celia Jutras. *Aboriginal Political Representation: A Review of Several Jurisdictions*. Ottawa: The Parliamentary Information and Research Service. 1994. <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/bp359-e.htm>

Noel, Alain and Florence Larocque. “Aboriginal Peoples and Poverty in Canada: Can Provincial Governments Make a Difference?”. Paper prepared for the Annual Meeting of the *International Sociological Association’s Research Committee*. Montreal. August 20, 2009. http://www.cccg.umontreal.ca/RC19/PDF/Noel-A_Rc192009.pdf

Nylen, Williams. *Participatory Democracy versus Elitist Democracy: Lessons from Brazil*. New York: Palgrave MacMillan. 2003

Privy Council Office. *Public Service 2000: The Renewal of the Public Service of Canada*. Ottawa: Privy Council Office. 1990. <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=ar-ra/1rept92/chap1-eng.htm>

Rowe, Gene and Lynn J. Frewer. “A Typology of Public Engagement Mechanisms”. *Science, Technology, & Human Values*. Vol. 30:2. Spring 2005

Treasury Board of Canada. *Guidelines for Effective Regulatory Consultations*. Ottawa: Treasury Board of Canada. 2007. <http://www.tbs-sct.gc.ca/ri-qr/documents/gl-ld/erc-cer/erc-cer-eng.pdf>

Turcotte, Martin and John Zhao. “A Portrait of Aboriginal Children Living in Non-Reserve Areas: Results from the 2001 Aboriginal Peoples Survey”. *Statistics Canada Housing, Family and Social Statistics Division*. Ottawa: Statistics Canada. July 2004. <http://www.statcan.ca/english/freepub/89-597-XIE/2001001/pdf/89-597-XIE2001001.pdf>

Turnball, Lori and Peter Aucoin. *Fostering Canadians' Role in Public Policy: A Strategy for Institutionalizing Public Involvement in Policy*. Ottawa: Canadian Policy Research Networks. March 2006. http://www.cprn.org/documents/42670_en.pdf

Turner, Dale. *This Is Not a Peace Pipe: Towards A Critical Indigenous Philosophy*. Toronto: University of Toronto Press. 2006

Van Den Burg, Gina. "The Absence of Democracy in Aboriginal Self-Government Policy". *Federal Governance Journal*. Vol. 5:6 Kingston: Queen's University. 2009.
<http://www.queensu.ca/iigr/apps/journal/fedg/content/volume5.6/van%20den%20Burg.%20Gina%20-%20The%20Absence%20of%20Democracy%20in%20Aboriginal%20Self-Governance%20Policy.pdf>