

**Barriers to Aboriginal Participation in Environmental Assessment:  
*A Case Study of the Wuskwatim Generating Station, Manitoba***

By

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A Thesis Submitted to the Faculty of Graduate Studies  
in Partial Fulfillment of the Requirement for the Degree,

Master of Natural Resources Management (M.N.R.M.)

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## ABSTRACT

Environmental assessment (EA) is an integrative planning tool used to assess the sustainability, or environmental acceptability of a proposed development project. Public participation has become a fundamental component of EA, serving as a window through which the public can exercise their rights to influence decisions being made about projects or undertakings that might affect them or their surrounding environment. Despite the importance of public involvement in EA, Aboriginal people have frequently been identified as non-participants. The case study research focused on identifying barriers faced by Aboriginal participants involved in the Wuskwatim EA process and discussing process related strengths and weaknesses for participation. A related goal of the research includes making recommendations to improve to EA processes for Aboriginal publics based on the findings.

A case study approach was employed to conduct the research on the EA process for the Wuskwatim Generating Station and Transmission Lines Projects. The research was exploratory in nature and conducted in an unobtrusive manner relying exclusively on existing information/documentation generated in association with the Wuskwatim EA process. All data relied upon for the research was located within the public domain. Data sources included public registries, websites maintained by the project proponent and regulatory authorities, as well as media coverage of the Wuskwatim EA process. Verbatim Transcripts of the public hearings held as part of the Wuskwatim EA by the Manitoba Clean Environment Commission were a central source of data. A database was constructed using QSR NVivo 2.0 containing the research documentation. The analysis occurred in an iterative fashion and involved coding and classification of the data into research categories.

The study identified nine general barrier types including: resource deficiencies, accessibility, information deficiencies, communication barriers, inadequate consultation, timing and scheduling constraints, lack of trust, lack of understanding, and coercion and control of dissent. In addition to barriers, strengths and weaknesses of the Wuskwatim EA participation process were also discussed. Key strengths included the award and allocation of intervener funds, pre-hearing activities, public hearings, and key elements of the proponent public involvement program such as geographic breadth, multiple techniques, and staged delivery. Weaknesses identified as a result of the research were related to the provision of translation services, the timing and location of public hearings and meetings, balance between timing and funding provisions, impact of technical discourse, formal structure of public hearings, format of information, the scheduling of supplementary process, and problems associated with the design, integration and monitoring of proponent led consultations.

In addition to the current case study research others have also studied the development of the Wuskwatim Projects. Although the focus of other studies differed, common findings were noted. Key points of convergence included general concerns regarding resource provisions, information, accessibility, the adversarial and intimidating nature of the process, timing related issues, evidence pointing to the use of coercive tactics to minimize minority concerns, and a lack of understanding among Aboriginal publics about potential project impacts and their implications.

The case study findings indicate that more often than not the barriers to Aboriginal participation identified in association with the Wuskwatim EA process were procedural in nature. Thus ameliorating barriers to participation could in part be addressed through

improvements to the design and implementation of participatory processes. Similarly, discussion of strengths and weaknesses for the Wuskwatim EA process generally points to process related components that were either well implemented, or require further improvement. The case study research also identified a number of interrelationships between and among various barrier categories suggesting that process related problems cannot be addressed in isolation and that an effort to reduce them in one area should result in improvements in others. Finally, the research provides a comprehensive set of recommendations aimed at improving the design and implementation of future EA process. Areas which require further research and follow up were also noted.

## **Acknowledgements**

Thank you to my advisor, John Sinclair for your patience, advice, and feedback. This took longer than it should have. I would also like to thank my committee members Drs. Alan Diduck, Iain Davidson-Hunt, and Patricia Fitzpatrick for their insight and thoughtful comments - much appreciated. A big thank you also goes out to my wife Fio – you've been more than patient with me as I tried to finish what I started. I would also like to thank the Social Sciences and Humanities Research Council and the Province of Manitoba for providing partial funding for this thesis research.

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## CHAPTER 1: INTRODUCTION

### 1.1 Background

Environmental assessment (EA) is an integrative planning tool used to determine the sustainability, or environmental acceptability of a proposed development project. Public participation has become a fundamental component of EA, serving as a window through which the public can exercise their rights to influence decisions being made (Webler et al. 1995, Sinclair and Diduck 2009). In effect, provisions for public participation in EA processes act in support of the democratic principles on which Canadian society is founded. Some authors have suggested that participation in EA processes can result in improved opportunities for collective action through enhanced communication, trust building, deliberation, and problem-solving (Webler et al. 1995, Diduck 1999, Armitage 2005). Barriers to participation then, are problematic as they limit effective decision-making, lead to potential capture of the EA by the proponent, restrict the scoping of problems and potential solutions, and result in heightened levels of conflict that lead to increased use of litigation by frustrated publics (Mulvihill and Baker 2001, Doelle and Sinclair 2006, Sinclair and Diduck 2009).

Although requirements for public participation are set out within legislation governing EA at both provincial and federal levels, the manner in which civic engagement is pursued is often contentious. Arnstein (1969) identified three broad characterizations of citizen involvement. At the lowest end are strategies associated with non-participation, which focus on “curing” affected citizens through public

relations campaigns. The middle rungs are characterized by tactics oriented towards tokenism which offer the public a chance to be heard but not necessarily heeded.

Bocking (2004) for example, suggests that this approach supports a traditional view of environmental management where decision-making is confined to “iron triangles”, or a small community of government administrators, experts and industry representatives. As a result, the public is largely excluded from having any real influence over the issues impacting their lives. At its highest rungs, civic engagement is inclusive and tends towards partnership or citizen control. Here public concerns are weighted equally against those of other societal actors with decision making occurring as a collaborative exercise (Arnstein 1969, Petts 1999, Diduck 2004).

Essentially, the higher up the ladder participation occurs, the greater the public’s ability to have an influence on decision outcomes, resulting in planning processes that are more open, accountable and transparent. The benefits of participation in EA processes are well understood and can include greater legitimacy for decisions being made, a more knowledgeable and empowered public, projects that are ultimately more acceptable and sustainable (Petts 1999, Dorcey and McDaniels 2001, Doelle and Sinclair 2006). For example, Sinclair and Diduck (2005: 54-55) highlight some of the key benefits of public participation in EA processes found in the literature.

- provides access to local and traditional knowledge from diverse sources;
- enhances the legitimacy of proposed projects;
- helps define problems and potential solutions;
- permits a comprehensive consideration of factors upon which decisions are based;
- ensures that projects meet the needs of the public in terms of both purpose and design;
- brings alternative and ethical perspectives into the decision-making process;

- broadens the range of potential solutions considered;
- furnishes access to new financial, human, and in-kind resources;
- prevents ‘capture’ of EA agencies by project proponents;
- encourages more balanced decision making;
- increases accountability for decisions made;
- facilitates challenges to illegal or invalid decisions before they are implemented;
- illuminates goals and objectives necessary for working through value or normative conflict;
- furnishes venues for clarifying different understandings of a resource problem or situation, which is key to resolving cognitive conflict; and
- helps avoid costly and time consuming litigation; and reduces the level of controversy associated with a problem or issue.

### ***1.1.2 Barriers to Aboriginal Participation in Environmental Assessment***

Despite the importance of public involvement in EA, Aboriginal publics have frequently been identified as non-participants (Duerden et al. 1996, Diduck and Sinclair 2002, Sinclair and Fitzpatrick 2002). Researchers have noted a number of barriers inhibiting Aboriginal participation in EA and related planning processes, which include a lack of community resources, inadequate timeframes, language barriers, narrowly defined project scope, inappropriate use of traditional knowledge (Paci et al. 2002, Baker and McLelland 2003), and community isolation (Armitage 2005). Furthermore, some authors have suggested that barriers to participation faced by Aboriginal publics may be more a function of a cultural incompatibility with EA processes (Mulvihill and Baker 2001, Paci et al. 2002, Isaac and Knox 2004).

Recent Supreme Court of Canada (SCC) rulings have established the legal duty for both federal and provincial governments to enter into meaningful consultation with Aboriginal communities regarding potential decisions, or actions that can infringe on Aboriginal and Treaty Rights. Aboriginal and Treaty Rights are

generally seen as being tied to the landscape based on prior occupation, traditional use areas, Treaty and Aboriginal Title (Natcher 2001, Isaac and Knox 2004). Meaningful consultation becomes important when decisions or actions by government allow a proposed resource development to proceed and runs the risk of limiting the ability of Aboriginal communities to exercise their rights. Although the Crown may infringe upon these rights in special circumstances related to settlement, economic development or conservation needs, decisions to do so must be coupled with consultations that address clear substantive reasons for the proposed infringement. Invariably this entails questioning the underlying need for a proposed infringement and evaluation of available alternatives (see for example *R. v. Sparrow*, [1990] 1 S.C.R. 1075, 1990, *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 1997 and others).

Legal history has shown more often than not that government has been found in breach of its duty to enter into meaningful consultations with Aboriginal communities. For example, in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73, the SCC ruled against the provincial government over the transfer of Tree Farm License (TFL) 39 between industry giants Weyerhaeuser and McMillan-Blodel. The issue at stake was the Province's failure to engage the community and address their concerns regarding the use of lands integral to Haida history and culture. Ultimately, this case served to highlight the need for meaningful consultation with potentially affected Aboriginal communities with regard to resource development projects. The failure to include Aboriginal perspectives in EA and other permitting or regulatory processes limits opportunities

for effective environmental decision making, leading to increasing levels of conflict and use of litigation. As such, improvements to the design and implementation of participatory processes are needed in order to facilitate improved levels of Aboriginal participation in EA processes.

## **1.2 Purpose and Objectives**

The need to establish a more inclusive EA processes underpins this thesis work. The barriers facing Aboriginal communities and their general lack of involvement in EA suggest that there is room for improvement. As such, the primary purpose of my research was to explore ways of improving opportunities for Aboriginal participation in EA processes. The objectives of the research were to:

1. Identify barriers to Aboriginal participation in the Wuskwatim EA process;
2. Discuss the strengths and weaknesses of the Wuskwatim EA participation process for Aboriginal publics; and
3. Make recommendations to improve Aboriginal participation in future EA processes.

## **1.3 Methods**

The research approach employed an adaptive and interactive approach to a qualitative case study design (Yin 1984; 2003). Case selection was based on legal jurisdiction (i.e. cases assessed under the Canadian Environmental Assessment Act), geographic location (Manitoba and Saskatchewan), timeframe (1997-2005), EA type (larger screening, Comprehensive Study Reports, and Panel reviews), readily available and accessible information, as well as evidence pointing to a significant level of Aboriginal participation in the EA process. Data collection and analysis

relied exclusively on the review of existing documentation (reports, media coverage, and verbatim transcripts). Data analysis was facilitated through the use of QSR NVivo, a qualitative research software package used to conduct the analysis by coding, sorting data and organizing ideas into barrier categories. Further discussion of the details of the case selection and approach to the study can be found in Chapter Three.

#### **1.4 Thesis Organization**

Chapter Two is a literature review focusing on Aboriginal participation in EA and related processes. Chapter Three addresses research methods including case selection, data collection and analysis. Chapter Four discusses the research findings. Chapter Five considers the strengths and weaknesses of the EA process under review. Chapter Six offers concluding thoughts and recommendations on ways of improving the implementation of EA processes and mitigating barriers to participation faced by Aboriginal publics.



## CHAPTER 2: PARTICIPATION IN ENVIRONMENTAL ASSESSMENT

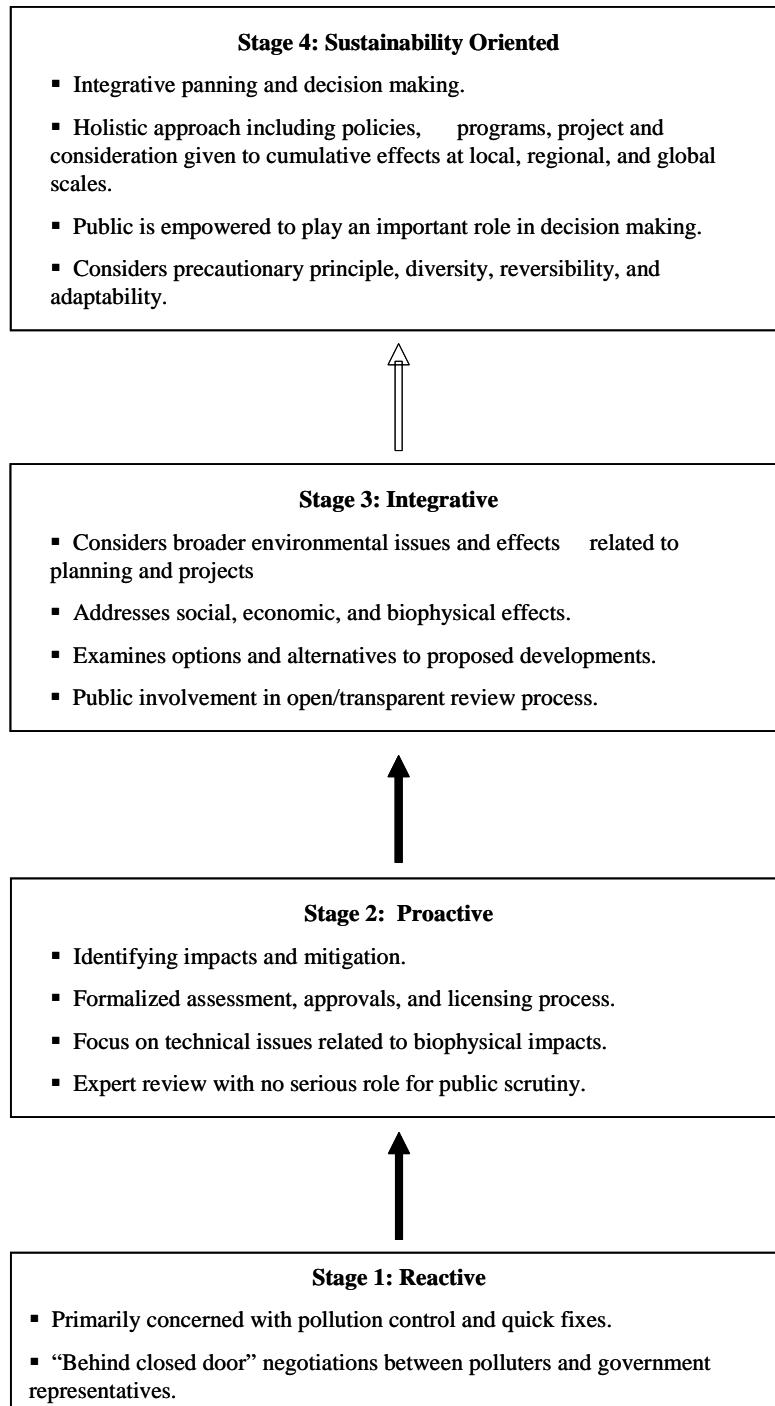
### 2.1 Environmental Assessment

Gibson and Hanna (2005) indicate that in Canada EA is a collection of processes aimed at predicting the potential impacts of proposed development in order to make better informed decisions. Meredith concurs, suggesting that it requires both “...a commitment to forethought...[and] some ability to foresee” (2004: 469). The predictive (foreseeable) component of EA revolves around the notion of scientific inquiry regardless of the paradigm in which it is grounded (i.e. western-scientific or indigenous/traditional modes of inquiry). A commitment to forethought on the other hand is inherently political recognizing the role of public perception and public opinion in shaping EA outcomes (Meredith 2004). As a planning tool EA processes are then grounded in the social context that frame the issue(s) they are expected to address.

In Canada, EA at the federal level has evolved over the last thirty years to become a central legislative planning tool. In its early inception it was primarily employed as a reactive instrument that dealt with problems associated with pollution control. Currently EA's take a larger role in resource and environmental management by integrating social, economic and biophysical considerations into its assessment of a proposed development (Gibson and Hanna 2005). Figure 1 illustrates what Gibson and Hanna (2005) identify as four stages in EA evolution. Based on their assessment, Canada as a whole has not reached the third or integrative phase. The fourth and final stage represents the pinnacle of what EA has the potential to become. Here there is a *bonafide* orientation towards sustainability that includes a holistic approach to

planning that accounts for cumulative effects at multiple scales, as well as an active and empowered public to participate in the decision-making process.

**Figure 1 Evolution of Environmental Assessment in Canada**



(adapted from Gibson and Hanna 2005)

As both a policy instrument and legislative tool EA finds itself in a unique position to be able to create the necessary “political space” for deliberation in the pursuit of sustainability. Doelle and Sinclair agree that “[e]nvironmental assessments...have come to be recognized as a central tool in the efforts of societies to achieve sustainable development” (2006: 185). As affirmed by Kirkby et al. (1995), Diduck (1999) and others, sustainable development requires reconciliation of the tensions between economic development, social equity and declining environmental quality in order to “...meet the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development 1987: 8).

Using EA as an entry point for their work, some researchers have suggested that public participation, as a central component of EA, is necessarily linked to the notion of sustainability. Here sustainability may be achieved through participatory processes aimed at consensus, or at least mutually agreed upon outcomes (Meredith 2004, Sinclair and Diduck 2009). This builds on the notion of rational enlightenment where sustainability is determined in a collaborative manner through dialogue and debate, allowing stakeholders to understand each other’s concerns, objectives and motivations. Although public participation is viewed as a central component of EA and related planning processes, real opportunity for the public to share in decision making is often limited (Webler et al. 1995, Konisky and Beierle 2001, McCool and Guthrie 2001, Mascarenhas and Scarce 2004, Sinclair and Diduck 2009). However, as we come to better understand the complexity, uncertainty and conflict ridden nature of environmental issues, it becomes clear that the types of decisions which need to be

addressed are less about technical matters and more about the societal issues framing the problem itself (Diduck 1999, Diduck 2004, Meredith 2004). As Ludwig suggests “[t]here are no experts on these problems, nor can there be. Instead we should establish and maintain a dialogue among the various interested parties. In principle, that includes all of us” (2001: 763).

### ***2.1.1 Aboriginal Participation in Environmental Assessment***

The need for public participation is relatively well established as a means of ensuring greater legitimacy and accountability in EA. However, it is generally agreed that Aboriginal representation should play a larger role in the decision-making process. Some have argued that the lack of Aboriginal participation stems from deficiencies within the process itself. Barriers to participation are generally premised on divergent epistemologies or worldviews about the environment (Shapcott 1989, Sallenave 1994, Stevenson 1996, Paci et al. 2002, Armitage 2005, Ellis 2005), and culturally incompatible processes specifically noted for EA that limit the integration of diverse publics and opinions (Usher 2000, Mulvihill and Baker 2001, Baker and McLelland 2003, Armitage 2005). Recent decisions by the Supreme Court of Canada (SCC) have established a duty upon the Crown to enter into meaningful consultations with Aboriginal communities affected by resource developments (Natcher 2001, Isaac and Knox 2003, Isaac and Knox 2004, Isaac et al. 2005). Although this duty is rights-based, its intent is aimed at reconciliation of our shared colonial history and the need to accommodate Aboriginal interests as defined under s. 35 of the *Constitution Act, 1982* (Constitution) (Isaac and Knox 2003, Elliot 2005, Isaac et al. 2005).

Despite these new obligations, what is becoming increasingly clear is the inability of governments and developers alike to enter into appropriate dialogue with Aboriginal communities. This has led to heightened levels of intercultural conflict and litigation over environmental projects (Mulvihill and Baker 2001, Natcher 2001, Paci et al. 2002, Baker and McLelland 2003). For example, in *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, the courts found that the government did not provide adequate and timely information about the proposed Huckleberry Mine development and impacts to the land. As a result of deficient consultations the project was halted until additional studies could assess the impacts to the community's lands and rights. In a similar case, *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, 2005 SCC 69, the decision to go ahead with the construction of a winter road was quashed due to the lack of any real efforts by the Crown to consult with the affected community. Although they had been invited to open houses, a common strategy employed to engage the public in an EA, the community did not feel that these measures were adequate. Rather, they should have been involved in the project formally at an early stage in the planning process.

The judicial system has become the primary means of resolving conflicts related to resource development and infringements on Aboriginal rights. As Natcher (2001) observes, in some cases the courts will favor the First Nation, and in others they will support the position of the Crown<sup>1</sup>. Despite rendering a final decision by which both parties must abide, this avenue is costly and adversarial, rather than

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<sup>1</sup> See *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74 respectively for an example, of each.

supportive of reconciliation and accommodation of Aboriginal rights (See for example, *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73, Isaac and Knox 2004, Isaac et al. 2005). Given the difficulties associated with Aboriginal participation it would seem reasonable to suggest the need for an improved approach for engaging interested and potentially affected Aboriginal people in public deliberations.

Recent amendments to the *Canadian Environmental Assessment Act 1992, c. 37* (CEAA) following its five-year review have shown some progress in this area. For example, enhanced communication, cooperation and the need to consult with Aboriginal groups regarding policy and other issues have been established<sup>2</sup>. Similarly, provisions for incorporating traditional knowledge into the assessment process have been created, but they are largely permissive and depend on those reviewing the development to determine its admissibility (Sinclair and Fitzpatrick 2002). Furthermore, it is unclear as to how well these provisions have been implemented or used to foster greater Aboriginal participation in EA.

Generally speaking, Crown-Aboriginal consultations occur as a separate or adjunct process to an EA. However, they are necessarily linked to the broader assessment through the proposed development itself and the participatory mechanisms used to engage affected publics (either members of Aboriginal communities, or the general Canadian population). This suggests that the general provisions for public involvement contained within EA legislation may also be

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<sup>2</sup> Under CEAA, s. 4(1)(b.3), s. 16(1), s. 62(h) set out the federal government's legislative commitments to Aboriginal involvement in EA. Broadly speaking this includes a need for enhanced communication, cooperation and consideration of traditional knowledge. In addition, the administering agency must also enter into consultations with affected Aboriginal communities relating to policy issues associated with the Act.

applicable for the inclusion of Aboriginal publics, although in an adjusted manner. Included are provisions that give the public adequate notice, access to information, funding (currently only available Provincially in Manitoba and Federally under CEAA), opportunities for public comment such as written input or community meetings, and public hearings (Sinclair and Diduck 2009). Baker and McLelland (2003), and Mulvihill and Baker (2001) agree that, based on their findings, many of the legislated provisions supporting public engagement need to be adapted in order to meet the needs of Aboriginal publics. A failure to do so will ultimately result in a lack of Aboriginal participation in EA.

### ***2.1.2 Legal Foundations for Aboriginal Consultation***

The federal Crown's consultative duty to Aboriginal peoples has emerged through the courts alongside the clarification of Aboriginal rights. Specifically, it first appeared in *R. v. Sparrow*, [1990] 1 S.C.R. 1075, 1990, which had begun to broadly define Aboriginal rights and established the need to enter into consultation regarding any infringements upon them. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 1997, a landmark case that set out the test for Aboriginal Title, reaffirmed the centrality of consultative processes associated with potential impacts to a community's rights. In both cases, however, infringements could be justified through human settlement, economic development or conservation related issues. Most recently in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73, the courts expanded on the need for meaningful consultation when a community's lands and rights have not been established in title. Isaac echoes the

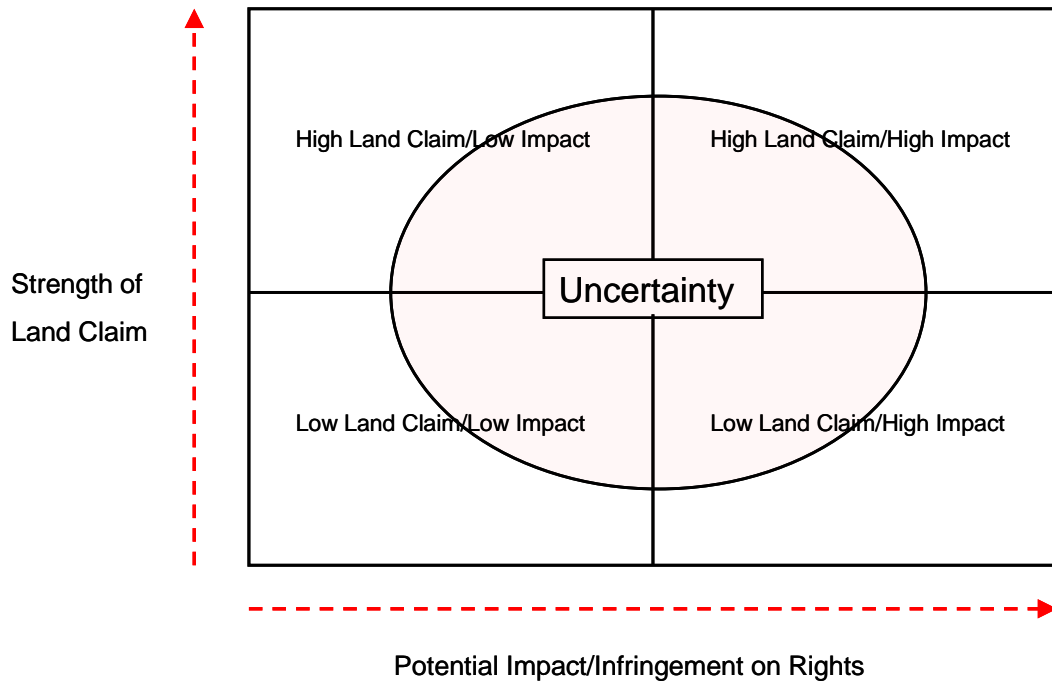
court's conclusions indicating that "...a potential right may need to be protected by the Crown until such a right is in fact proven" (2005: 689).

Rights and land claims are seen in many cases as being synonymous with one another. Title establishes an area of land under Aboriginal jurisdiction where a community can exercise their rights exclusively. Title is then viewed as representing the strongest component of Aboriginal rights as all subsequent rights (i.e. specific and exclusive etc.) are contained within it. Actions infringing upon Title would then require the greatest degree of consultation and likely result in the Crown accommodating the community in question with regard to the potential infringement.

Aboriginal rights are contained under *s. 35 of Constitution Act, 1982* (Constitution). They can be grouped into generic, specific, exclusive and non-exclusive categories. Specific rights are those held by a particular community and derive from unique traditions and historical practices (Slattery 2000). Generic rights are broadly held by all Aboriginal peoples identified under the Constitution and can include Aboriginal Title, or self-government. Exclusive and non-exclusive categories identify areas of relative indigenous autonomy and where they converge with those held by the rest of Canadian society. Exclusive rights are those that are directly linked to Aboriginal Title or Treaty and provide clear jurisdiction to manage their lands and resources as they see fit. Non-exclusive rights on the other hand refer to those that overlap with the rest Canadian society. Placed within an environmental context, these can refer to historical use areas that are not central to the maintenance of Aboriginal culture. Generally, these will fall into the realm of public ownership (Slattery 2000).



**Figure 2 Haida Framework for Crown Consultation (Adapted from Isaac et al. 2005)**



As figure 2 illustrates, the SCC began to define the extent of the Crown’s Duty to Consult with Aboriginal people based on the strength of the right in question and the degree to which it is potentially impacted. Essentially the Haida framework indicates that the closer the right approaches Title, the greater the need to enter into more meaningful consultation with the affected community. Thus the combination of a strong land claim and high level of impact creates an obligation upon the Crown to involve First Nations in progressively higher levels of decision making if not outright accommodation for potential infringements. As stated by Chief Justice McLachlin, when the potential for infringement is relatively weak, consultation may only entail notice, provision of information, and discussion of any issues of concern to the community. However, when the potential for infringement is high, consultation may require “...the opportunity to make submissions for consideration, formal participation in the decision-making process, and provision of written reasons to show

that Aboriginal concerns were considered and to reveal the impact they had on the decision. This list is neither exhaustive, nor mandatory for every case” (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73: para. 44).

Figure 2 also shows that the Haida framework is imbued with a great deal of uncertainty as undefined Aboriginal rights converge with those of the general public. Here the rights of the general populace and its various jurisdictions can also assert themselves. Proposed developments whose potential impacts bridge various political and ecological domains would likely be characterized by high levels of conflict and uncertainty requiring the Crown and its representatives to be able to mediate the values and concerns of multiple publics (Isaac et al. 2005). Therefore, in these types of situations efforts should be focused on establishing mechanisms that meaningfully engage all concerned parties in the planning process. EA then becomes the primary mechanism to assess the sustainability of a development and mitigate potential adverse impacts whether they are social, economic or environmental, including those affecting Aboriginal rights. Given the general problems associated with resource developments and in many cases an absence of clear jurisdiction, the need to implement more inclusive participatory approaches where all concerned parties can equally influence land use decisions is paramount.

### ***2.1.3 Barriers to Aboriginal Participation in Environmental Assessment***

Despite the growing body of literature on public involvement in natural resource management, there is relatively little empirical evidence regarding Aboriginal participation in EA, or other state-led environmental planning processes

(Duerden et al. 1996, Mulvihill and Baker 2001, Baker and McLelland 2003). However, based on what is available, it seems that current processes used for engaging the public in EA are ill suited to Aboriginal needs (Shapcott 1989, Sallenave 1994, Stevenson 1996, Wismer 1996, Paci et al. 2002, Baker and McLelland 2003, Ellis 2005). As observed by Shapcott (1989), this may be a function of cultural incompatibility with EA processes and procedures, which are the product of the dominant western culture and their modes of inquiry.

Inappropriate use of traditional knowledge (TK) is one of the most commonly cited problems associated with Aboriginal participation in EA (Sallenave 1994, Stevenson 1996, Usher 2000, Paci et al. 2002, Ellis 2005). EA places a premium on technical information as a means of rationalizing a project's implementation, monitoring and mitigation plans. TK on the other hand is often viewed as subjective or anecdotal evidence presented in the form of stories, myths and legends. As a result, proponents and decision makers tend to dismiss it out of hand (Stevenson 1996, Usher 2000, Paci et al. 2002, Ellis 2005, CEAA 1999). Interestingly, Duerden et al. (1996) note that the effectiveness of Aboriginal participation, or rather the degree to which different groups were able to influence the planning process, could be assessed based on the incorporation of TK. Five stages of power sharing were identified that are broadly consistent with Arnstein's (1969) ladder of citizen participation. At the lowest levels were public meetings, consultations and opportunities for comment. Increasing opportunities for participation included technical support through the provision and analysis of data, formal roles on steering committees guiding aspects of

the development, and collaborative ventures where the terms of reference (TOR) for a project were jointly decided.

A related problem associated with the use of TK occurs when it is taken out of context. As Berkes indicates, TK is "...a cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through the generations by cultural transmission, about the relationship of living beings (including humans) with one another and their environment" (Berkes 1999: 8). It is the product of an indigenous group's socio-cultural history and cumulative experience with a given geographic local. Therefore, the knowledge held by these separate and distinct groups is unique and specific to the area in which it has developed. Many planning committees and review boards believe that having an Aboriginal representative among their ranks acts as a surrogate for TK. However, given the diversity of communities and the localized nature of their knowledge systems making generalizations about a region by excluding other groups creates tensions and limits the legitimacy of the proceedings (Duerden et al. 1996, Ellis 2005). TK not only contains specific facts about the environment, but also represents the values and concerns of a particular community. Usher (2000) indicates that efforts to include Aboriginal representation in EA are actually counterproductive when they do not give TK fair and equal consideration. In effect these people and groups are being asked to participate in decision-making process without actually being heard.

Geographic barriers such as physical distance and isolation can be an important impediment to participation in northern regions. Limited infrastructure (i.e. winter roads) coupled with the high costs of transportation can limit stakeholder

access to decision makers, inhibit communication, and create difficulties obtaining information (Armitage 2005). If affected publics are unable to meet with proponents or decision makers the likelihood is high that their concerns will not be adequately addressed or incorporated into the planning stages of the project, or the EA itself. This can be compounded with a cultural preference for face to face communication (Armitage 2005). Furthermore, depending on the degree to which a community is isolated, geographic barriers may also be linked with poor public representation. Affected Aboriginal stakeholders should have the opportunity to physically represent themselves in the proceedings beyond written input. Furthermore, limiting consultations to specific Aboriginal groups or community/regional management boards that are more accessible or have greater resources, does not necessarily reflect public opinion or ensure adequate representation in the EA process (Baker and McLelland 2003, Armitage 2005).

Resources are a critical component to public participation. They help to correct power imbalances between proponents and participants by increasing a community's capacity to participate and thereby allow for enhanced scrutiny of development proposals (Sinclair and Diduck 2001, Fitzpatrick and Sinclair 2003, Sinclair and Diduck 2009). As Sinclair and Diduck note, the benefits of providing additional resources can:

...create more substantive dialogue by allowing participants to gather independent technical expertise related to scientific issues... prepare and participate in scoping meetings, review draft assessment guidelines, review the proponent's EIS [*Environmental Impact Statement*], and prepare and participate in public hearings (Sinclair and Diduck 2009: 58 italics mine).

Baker and McLelland (2003), and Armitage (2005) both acknowledge the limited availability of human and financial resources in northern Aboriginal communities.

This becomes a restrictive factor when considering fixed timelines which do not accommodate participant needs (Baker and McLelland 2003). Furthermore, there is often a high level of staff turnover on boards and committees in northern regions restricting their ability to learn and develop the necessary capacity of participate effectively. Levine et al. (2005) concur that having a proficient support staff is an important condition for ensuring successful participation in public deliberations.

Access to information is a key consideration for civic engagement serving as the basis for all subsequent deliberations. Provisions for access to information, usually through a public registry are contained under EA legislation. These will generally contain project documents, and the written submissions detailing the concerns of other stakeholders (Sinclair and Diduck 2009). Other issues related to the adequacy of information concern the format in which project and EA related information is made available to Aboriginal communities and their membership. Some authors have noted difficulties associated with complex technical jargon and proficiency with the English language itself (Wisner 1996, Mulvihill and Baker 2001, Baker and McLelland 2003). Although the complexity and technical jargon associated with project information has been a general concern raised by others (Sinclair et al. 2002, Sinclair and Diduck 2009), the difficulties may become more pronounced when placed within in an intercultural context.

...[P]rior to the commencement of an EA process, the government and/or proponent should determine what form (written or oral, the language to be used and the amount of explanation to include) is most suitable to the First Nations community involved (Baker and McLelland 2003: 600).

Similarly, providing executive summaries of the EA proceedings is also considered inappropriate. The difficulty with these types of summaries is that they provide

limited information, lack discussion of key considerations for the final decisions, and tend to support the position of the proponent (Baker and McLelland 2003).

Furthermore, the need to provide information in a culturally appropriate manner would require the decision makers and proponents to learn more about the specific needs of the communities involved in order to better accommodate them.

Scoping is a critical component of the EA process as it establishes the terms of reference for public consultations and sets the stage for the issues that will be addressed (Mulvihill and Baker 2001). In many cases scoping for northern development projects has been relatively narrow. This is important for an intercultural EA, which needs to make provisions for a broad spectrum of different knowledge systems, modes of expression (oral, local, indigenous etc.), and accommodation of local customs. Duerden et al. (1996) concur that indigenous peoples need to be more involved in the early stages of a development process, but observes that it is an opportunity that many do not take advantage of. Although unclear as to why this may be, Baker and McLelland indicate that Aboriginal participation in EA is improved by "...providing, conveying and clarifying how the results of First Nations participation will affect decision-making, and how they can become involved to exert their authority in the process" (2003: 601). This agrees with the observations of Levine et al. (2005) and Sinclair and Diduck (2009) who maintain that participatory processes work better when the public has a clear understanding of their role in the decision-making process and the limits of their authority. Ambiguity or misconceptions relating to the extent of public authority can leave participants dissatisfied with the process leading to a lack of participation in subsequent EAs.

Timing is of the essence. Provision of adequate notice is a key component of public participation. It allows concerned citizens the opportunity to review project documents and identify any concerns they may have (Mulvihill and Baker 2001, Sinclair and Diduck 2001, Baker and McLelland 2003). This is of particular importance for Aboriginal communities that may require extra time to collect and analyze their own TK and reconcile potential impacts to their lands and livelihoods. Often the process is lengthy and can be compounded by difficulties associated with the information about the project provided by the proponent. Additional considerations should also recognize the influence of seasonal cycles that govern Aboriginal community's activities. Many are based on mixed economies where members will spend part of the year earning a wage-based income, and other parts pursuing a more traditional lifestyle out on the land (Wisner 1996). This may be particularly important when attempting to provide notice and establish culturally appropriate timeframes that ensure broader representation from a community and enhance the legitimacy of the EA proceedings themselves (Mulvihill and Baker 2001, Baker and McLelland 2003).

The need for greater community or public representation presents a fundamental problem for Aboriginal involvement in EA. As a number of authors indicate, it is important to engage a broad spectrum of affected publics in order to ensure that all voices are heard and have their concerns addressed (Abelson et al. 2003, Diduck 2004, Mascarenhas and Scarce 2004, Sinclair and Diduck 2005). For example, Baker and McLelland (2003) indicate that when dealing with Aboriginal groups three different kinds of representation need to be considered including Tribal



Councils representing the greater region in which a number of communities are situated, Band Councils linked to specific communities, and the individual community members or landholders specifically be affected by a particular development. This is similar to observations made by others regarding the need to go beyond interest group representation and take steps to engage both active and inactive publics (Diduck 2004, Armitage 2005).

There is a general lack of information about Aboriginal participation in EA processes. Barriers to participation may be attributed to the items noted above, or possibly other deterrents which have not yet been identified. Although not linked to Aboriginal involvement, inferences may be drawn from problems associated with general public involvement in EA. One promising avenue of inquiry is that of Diduck and Sinclair (2002), who employed two broad categories in their study of non-participation in EA, spanning both individual and structural constraints. At the individual level this may include items such as character traits, attitudes and values. Structural barriers on the other hand encompass situational factors associated with people's life world (i.e. work and lack of time), process deficiencies (access to information, funding etc.), alienating discourse (technical focus, power dynamics), and a lack of institutional capacity (Diduck and Sinclair 2002).

A key issue emerging from the work of Diduck and Sinclair (2002) has been areas of convergence between individual and structural aspects of the EA process and their influence on non-participation. For example, foregone conclusions about the project and the EA process may be dissuaded by involving the public earlier at the normative and strategic levels of the planning process. Also, employing more

innovative participatory techniques and providing participant resources (i.e. intervener funding) may be important considerations for facilitate greater participation (Konisky and Beierle 2001, Sinclair and Diduck 2001, Diduck and Sinclair 2002, Sinclair and Diduck 2009). Other evidence also suggests that orienting a public involvement program to the needs of its intended audience, whether it is for broad public representation, or focusing on specific Aboriginal communities may be a key consideration for enhancing Aboriginal participation in EA (Baker and McLelland 2003). Table 1 provides a summary list of barriers to Aboriginal participation as noted throughout the literature.

**Table 1 Summary of Potential Barriers to Aboriginal Participation**

<b>Barriers to Participation</b>	<b>Characteristics and Implications</b>	<b>Source</b>
<b>Lack of Opportunity</b>	<ul style="list-style-type: none"> <li>▪ Need to include representation from active/inactive publics: Tribal Council, Band Councils, and general public</li> <li>▪ Reliance on community groups/boards may not reflect public opinion</li> <li>▪ Use of traditional knowledge</li> <li>▪ Community isolation (physical barrier to representation)</li> <li>▪ Aboriginal preference for interpersonal communication (i.e. physical barrier to communication)</li> </ul>	(Wismer 1996, Usher 2000, Baker and McLelland 2003, Armitage 2005, Ellis 2005)
<b>Lack of Resources</b>	<ul style="list-style-type: none"> <li>▪ Lack of human and financial resources to adequately participate in consultations, workshops and hearings</li> <li>▪ Power imbalances between communities</li> </ul>	(Duerden et al. 1996, Wismer 1996, Baker and McLelland 2003, Armitage 2005)
<b>Accessibility and Adequacy of Information</b>	<ul style="list-style-type: none"> <li>▪ Executive summaries are inadequate source of information</li> <li>▪ Problems associated with obtaining information from proponent</li> <li>▪ Technical language/jargon in reports and planning documents</li> <li>▪ Proficiency with English language</li> </ul>	(Wismer 1996, Baker and McLelland 2003, Armitage 2005, Fisheries and Oceans Canada 2005)

<b>Inadequate Notice/Timeframe</b>	<ul style="list-style-type: none"> <li>▪ Seasonal considerations and mixed economy may result in poor representation of community during consultations</li> <li>▪ Consultation fatigue stemming from hearings and consultations</li> <li>▪ Adequate notice in order to prepare submissions and understand technical documents</li> <li>▪ Time to collect and analyze traditional knowledge</li> </ul>	(Wismer 1996, Mulvihill and Baker 2001, Baker and McLelland 2003)
<b>Narrow Scope</b>	<ul style="list-style-type: none"> <li>▪ Unwilling to address issues of concern (i.e. cultural importance)</li> <li>▪ Unresolved issues relating to impacts of prior resource developments (i.e. history)</li> <li>▪ Unable to adapt scope and processes to diverse knowledge systems and modes of expression</li> </ul>	(Wismer 1996, Mulvihill and Baker 2001, Fisheries and Oceans Canada 2005)
<b>Ability to Influence Process</b>	<ul style="list-style-type: none"> <li>▪ Incorporation of traditional knowledge into planning documents</li> <li>▪ Inability to influence outcomes</li> <li>▪ Proponents preferential treatment of other communities</li> </ul>	(Duerden et al. 1996, Wismer 1996, Mulvihill and Baker 2001, Baker and McLelland 2003, Armitage 2005)
<b>Participation Techniques</b>	<ul style="list-style-type: none"> <li>▪ Inadequate methods of consultation</li> <li>▪ Using traditional knowledge out of context</li> <li>▪ Consideration of local/cultural context</li> <li>▪ Seasonal variation in access to community membership</li> </ul>	(Duerden et al. 1996, Wismer 1996, Mulvihill and Baker 2001, Ellis 2005, Fisheries and Oceans Canada 2005)

## 2.2 Public Participation

It is generally accepted that there is a need for public involvement in resource and environmental decision making (Webler et al. 1995, Sinclair and Diduck 2001, Sinclair and Fitzpatrick 2002, Sinclair and Diduck 2009 and others). The more complex and contentious environmental issues become, the greater the need for legitimacy and public acceptance of the final decisions (Irland 1975, Webler 1995, McCool and Guthrie 2001, Abelson et al. 2003, Mascarenhas and Scarce 2004).

A number of authors have suggested (Webler 1995, Webler and Renn 1995, McCool and Guthrie 2001, Abelson et al. 2003, Mascarenhas and Scarce 2004, Sinclair and Diduck 2009) that participatory processes serve as the foundation of a democratic society. Support for public involvement activities is generally premised on ethical/normative and functionalist arguments based on standards of fairness and

the development of competence in discursive interactions (Webler 1995, Abelson et al. 2003). Fairness refers to processes or procedures used to engage the public. Fairness is based on ethical-normative arguments which understand democracy to be the "...outcome of an agreement among people who establish a sovereignty based upon their popular and mutual consent. All power within the sovereignty is allocated through this agreement" (Webler et al. 1995: 21). Establishing processes and procedures for more inclusive citizen engagement allow concerned publics equal opportunities to influence and legitimize the implementation of difficult decisions (Webler 1995, Dorcey and McDaniels 2001, Mascarenhas and Scarce 2004, Levine et al. 2005).

Competence, the second dimension of public involvement, is rooted in a functionalist tradition. Here public participation plays a vital role in the maintenance of democratic society creating conditions for the moral and intellectual development of individuals engaged in decision-making processes (Webler 1995, Petts 1999). This is an emergent property of public deliberations where participants are better able to understand the problem at hand in relation to the perspectives of others. Many researchers agree that any indication of learning is generally seen as a positive outcome (Webler et al. 1995, McCool and Guthrie 2001, Abelson et al. 2003, Mascarenhas and Scarce 2004). Others have taken this a step further suggesting that learning should be viewed as a central concept when structuring participatory processes, both in terms of outcomes and procedures used to engage the public (Diduck 1999, Sinclair and Diduck 2001, Fitzpatrick and Sinclair 2003, Diduck 2004, Sinclair and Diduck 2005). Whatever the case may be, it is clear that public

participation plays an important role in the maintenance of a democratic society<sup>3</sup>. It enables organizational change, redistributes political power and provides a mechanism through which real or perceived conflicts can be resolved (Webler 1995, Konisky and Beierle 2001, McCool and Guthrie 2001, Sinclair and Diduck 2005).

Although Webler's (1995) fairness and competence framework has become a standard in assessing participatory processes, some researchers argue that its focus is too narrow and ignores the power dynamics at play within the process itself and their influence on the outcomes (Abelson et al. 2003). This agrees with the assertions of others who advocate for the need to plan for consensus, or at the very least mutual agreement as an outcome to public deliberations (McCool and Guthrie 2001, Mascarenhas and Scarce 2004, Doelle and Sinclair 2006). As Webler notes, the difficulty of this approach revolves around the researcher's ability to reconcile the divergent views, opinions and objectives of the stakeholders involved. Thus a "...[*preferred outcome*] depends on the interests of each group involved in the event" (1995: 36 brackets mine). However, as others have shown, the relative success of participatory processes largely depends on the ability of active publics to recognize their contribution to "change", which manifests itself in the final decisions (Konisky and Beierle 2001, McCool and Guthrie 2001, Abelson et al. 2003, Mascarenhas and Scarce 2004). Ideally outcomes should then reflect what participants have understood, or at least what they have learned as a result of their involvement. As Mascarenhas and Scarce (2004) observe, success is linked to the perceived legitimacy of proceedings themselves. This is both a function of the processes used to engage the

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<sup>3</sup> Here maintenance is taken to mean the purpose, or processes which support the fundamental principles of a democratic society as opposed to "maintaining" its dominant ideology, or the status quo.

public as well as their outcomes. Therefore, outcomes (legitimate or otherwise) become a key component of meaningful public participation. Not only do they establish the limits of participant expectations (i.e. assumptions about what the procedures or outcomes should be), but also allow them to judge the effectiveness of the EA process, their ability to influence the final decisions, and assess the acceptability or sustainability of the proposed development itself.

### ***2.2.1 Procedural Dimensions of Participatory Processes***

Procedural dimensions of public involvement uphold the principles of fairness and equity by establishing structures which facilitate deliberations among the various stakeholders involved. Essentially the processes “in use” are reflective of the role the public has been given in a public forum. Konisky and Beierle (2001: 817) explain that “[t]he end result of participatory processes is largely contingent on the type of process in use, which defines the role of the participants themselves”. The dimensions of participatory processes vary throughout the literature depending on the focus of the research. For example, Mascarenhas and Scarce (2004) concern themselves with the legitimacy of the process which includes participant representation, government mandate and influence, and consensus-based decision making. Abelson et al. (2003) on the other hand focus on representation, structures and procedures, information, and outcomes. Although there is significant cross-over throughout the literature, Diduck (2004) identifies the breadth of representation, degrees of participation, timing and participatory techniques as broad categories amenable to the evaluation of public involvement in EA processes.

Broad public representation is an important component of public deliberations. This requires that efforts be oriented to engaging both active and inactive publics, including various stakeholder perspectives and reducing barriers to participation (Diduck 2004). Considerations for the breadth of involvement should also focus on striking a balance between local and outside interests. This ensures that local community values are incorporated into the planning process. Similarly, appropriate roles need to be identified for the application of expert knowledge. This may include considerations regarding which stage of the process publics should be included to ensure that involvement is the most effective and applicable (Mascarenhas and Scarce 2004). For example, Webler et al. (1995) successfully applied an innovative *Delphi* technique to integrate learning and public deliberations. Here experts were used primarily as a form of support staff to enhance public knowledge and understanding of the technical issues under consideration. Levine et al. (2005) also found that participants are readily able to absorb background information and technical facts in order to better understand the problem they are presented. However, this is contingent on processes providing them with the opportunity to do so.

The degree to which participants can influence processes and outcomes is another important procedural consideration. This involves various degrees of power sharing, which can include techniques used to convince or sell the public on the benefits of a particular idea or project; consultative mechanisms that inform or receive information from the public; and variations on citizen power which can range from partnerships to citizen control of the process itself (Arnstein 1969, Diduck

2004). Abelson et al. (2003) indicate that this could include opportunities to set the agenda, establishing rules for engagement, selection of experts and the type of information to be used throughout the deliberations.

Participatory processes should also make efforts to equalize power imbalances among the participants. This can be seen as a function of the amount of influence the individual stakeholders have and resources available at their disposal. Many have advocated for the provision of intervener funding as a way of creating a more equal playing field (Sinclair et al. 2002, Diduck 2004, Mascarenhas and Scarce 2004). Mascarenhas and Scarce (2004) also consider experience associated with technical expertise and negotiating skills as a power related issue. Although technical skills may be something an individual or group already possess, they may also be acquired by retaining experts through funding mechanisms. Negotiating experience on the other hand is linked to individual participant capacities which may develop over time as they continue to involve themselves in public dialogue.

The timing of public engagement relates to the different points in time where participants are brought into the decision-making process. Many have argued that the earlier public engagement occurs the better the opportunity to influence both the process and its outcomes. As noted by Diduck (2004), Sinclair and Diduck (2005) and others, involvement can occur at either the normative (what should be done), strategic (what can be done) and operational levels (what will be done). Often public participation occurs at the later stages of the planning process where legislation warrants it through the provision of notice. Although adequate notice is mandated under all EA jurisdictions in Canada, there is no consistency in its application.



Generally it involves some form of advertising in print or broadcast media which are used to inform the public of a proposed development (Sinclair and Diduck 2005).

Early involvement often occurs at the discretion of the proponent (Diduck 2004, Sinclair and Diduck 2005). However, interested publics do have opportunities to establish their case during the scoping stages of the review process, either through the submission of written comments or public meetings etc. which assist in defining the Terms-of-Reference for a proposed development. Scoping is a very important aspect of EA processes and sets the stage for further deliberations. However, as indicated by Mulvihill (2003) and Mulvihill and Jacobs (1998) a consistent problem has been a tendency towards a narrow project scope that does not adequately address the issues and concerns brought forward. This is attributable to an inherent bias associated with the EA process itself which tends to reduce, or compartmentalize complex social and ecological problems into “manageable” impacts. Therefore, then need for greater public participation during the early stages of the EA process becomes imperative in order to ensure that their concerns are considered.

Participatory techniques refer to the specific types of process used to exchange information. These can be classified by four primary methods which increase in their levels of necessary interaction and communication. Information-out techniques are comprised of one way flows of information to the public. These can include provision of notice, reports and public meetings. Information-in methods give the public an opportunity to comment on issues of concern. These are generally associated with hearings, workshops and interviews. Continuous exchange mechanisms are those focused on maintaining dialogue with participants and can be

found in association with advisory committees, task forces and community boards. Participatory techniques that require the most dialogue and interaction are often oriented towards achieving consensus. These are not short term endeavors and work best through mediation or non-adversarial negotiation (Diduck 2004).

### ***2.2.2 Dialogue, Deliberation and Discourse***

Discourse is at the heart of public participation. It is a communicative act through which stakeholders and other concerned parties negotiate their concerns within a community of others. It is an inherently rational process that requires the inclusion of multiple perspectives and diverse publics in order to make informed decisions about the best course of action (Webler 1995, Sinclair and Diduck 2001, Brookfield 2005). Barriers inhibiting Aboriginal participation in EA may result in sub-optimal decisions about proposed development when their concerns are go unheard or unheeded. For example, Shapcott (1989) indicates that a fundamental difference between western and Aboriginal cultures is found in their basic values or attitudes toward the environment. In Canada, the dominant western culture is oriented towards the promotion of resource development, while Aboriginal peoples gravitate to notions of sustainability. Therefore if the purpose of public participation in EA is to determine the sustainability of a proposed project, it stands to reason that it is better achieved by adopting a more inclusive approach that better accommodates Aboriginal perspectives.

Discourse is composed of two primary communicative dimensions including dialogue and deliberation. Deliberation is viewed as a kind of practical discussion that focuses on the instrumental dimensions of problem solving and decision-making.

Among others this may include the evaluation of issues, establishing priorities, and weighing of alternatives (Levine et al. 2005). Dialogue on the other hand focuses more on emotive qualities of communicative interactions where participants come to understand others point of view. “Whereas deliberation focuses upon more concrete choices, dialogue seeks accommodation, reconciliation, mutual understanding, or at the very least, informed tolerance” (Levine et al. 2005: 9).

At best, discourse can lead to consensus or mutual understanding which serves as the mechanism through which collective action is pursued. “Without agreement the intersubjective energy that propels collective action in the pursuit of common goals cannot develop” (Brookfield 2005: 1158). Consensus then is the ideal outcome of a discursive endeavor and lends greater legitimacy to outcomes or decisions if all parties involved can agree. Therefore, employing methods of public involvement that focus more on facilitating dialogic interaction may prove useful in better integrating Aboriginal perspectives in EA.

## **2.4 Summary**

It is generally agreed that there ought to be greater Aboriginal representation in environmental decision-making forums such as those associated with EA. This issue has become increasingly important with regard to the potential impacts resource development projects have on Aboriginal rights, lands and ability to sustain their livelihoods. A lack of participation suggests the presence of barriers, or possibly incompatible processes and procedures used to engage affected publics in decisions about the environment. The literature concerning Aboriginal involvement in participatory endeavors is limited, but seems to suggest that the difficulties facing

Aboriginal people are broadly consistent with those of the general public. Public involvement in decision-making supports the tenets on which a democratic society is founded. From a procedural standpoint, this allows concerned members of the public to have a fair and equal opportunity to influence decisions in which they have a stake. Furthermore, active participation also leads to the development of a more competent citizenry that is better able to contribute to the maintenance of democratic society.

## **CHAPTER 3: METHODS**

### **3.1 Introduction**

The primary focus of this research was to identify and discuss barriers to participation faced by Aboriginal publics in EA processes. A case study approach was selected as the most appropriate means of conducting the research on the EA for the proposed Wuskwatim Generating Station and Transmission Lines Projects. The research was exploratory and conducted in an unobtrusive manner relying exclusively on existing information/documentation generated in association with the Wuskwatim EA process.

### **3.2 Research Methods and Design**

The research employed a qualitative approach in an exploratory case study design. As Yin (1984: 2) notes, "...the distinctive need for a case study arises out of the desire to understand complex social phenomena". Given the degree of complexity and uncertainty surrounding resource developments and Aboriginal participation in such developments, a case study design was considered to be an appropriate mode of inquiry. As well, case studies are well suited for providing in-depth knowledge surrounding specific events (Yin 2003). Given the limited research concerning participation by Aboriginal publics in EA processes, an in-depth study of a case in which a significant degree of participation occurred was deemed appropriate. Case studies are also well suited to answering explanatory "how" and "why" questions (Yin 1984; 2003). Because the research looked at an EA process which had been completed, the analysis enabled the researcher to examine events in hindsight and

integrate context to better identify and evaluate participatory constraints faced by Aboriginal publics.

### **3.3.1 Case Selection**

Initially, a multiple case study design was proposed in order to pursue this research. As Yin suggests, "...convergent evidence is sought regarding the facts and conclusions for the case; each case's conclusions are then considered to be information needing replication by other individual cases" (1984: 50). Multiple case studies are considered more compelling and robust, while single cases are better suited to the study of events and phenomenon that are unique, or of critical importance (Yin 1984; 2003). As the case selection process evolved and potential cases were considered, it became apparent that Aboriginal participation in EA is a truly limited phenomenon. This finding supported the need for a more specific focus suggesting that a single case study would be the better approach for meeting the research objectives.

A number of specific objectives were established in order to refine the case selection process. The broader regional area from which potential cases were reviewed focused on the Manitoba and Saskatchewan, two of Canada's Prairie Provinces. This was considered appropriate given the region's large Aboriginal population and number of projects occurring on or near traditional lands. Specific criteria were developed to identify appropriate EA cases for the research:

- Cases assessed under CEAA which also allows the research to address the needs of the Federal act which sets out stipulations for engaging Aboriginal peoples in EA (see Chapter 2)
- Case selection was limited to Comprehensive Study Reports (CSR), larger screenings and panel reviews.

- Case selection was based on EA's occurring post 1997 (i.e. 1998 to the present). *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 1997 a landmark case for establishing Aboriginal rights and title, served as the temporal boundary for research case selection. This legal decision began to reinforce the Crown's duty to consult as first set out in *R. v. Sparrow*, [1990] 1 S.C.R. 1075, 1990. It is believed that despite a general lack of Aboriginal representation in EA, the results of this case may have motivated the government to obtain greater Aboriginal involvement in these types of public forums.
- Significant Aboriginal participation
- Completed EA with a decision rendered by the responsible Minister
- Readily accessible EA and related project information on which to base the case study.

Two methods were employed to identify EA cases amenable to the research.

The first consisted of an attempt to review potential projects posted on Canadian Environmental Assessment Registry (CEAR) and its precursor the Federal Environmental Assessment Index (FEAI). Based on the number of files contained within each registry (CEAR and FEAI), and in some cases the limited amount of publicly available information to further refine searches, this method of case selection proved to be largely ineffective<sup>4</sup>. The second, more successful approach involved contacting experts in the field of resource and environmental management to identify potential cases for further review. The bulk of the cases under consideration having some form of Aboriginal participation were identified by representatives of the Canadian Environmental Assessment Agency (CEA Agency). A total of 22 projects were considered for the case study research. A complete listing of the cases reviewed can be found in Appendix A.

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<sup>4</sup> Note that the FEAI contains a listing of EA cases prior to 2003, while the CEAR maintains information on projects from 2003 to the present. The FEAI and CEAR can be found respectively at [http://www.ceaa-acee.gc.ca/051/registry\\_e.htm](http://www.ceaa-acee.gc.ca/051/registry_e.htm) and [http://www.ceaa-acee.gc.ca/050/index\\_e.cfm](http://www.ceaa-acee.gc.ca/050/index_e.cfm)

Initially, it was not readily apparent as to the extent to which Aboriginal peoples were represented in each of the EAs considered. Efforts were made to follow up on each case and identify those most suitable to the research. Included were 11 screenings, 10 comprehensive studies, and one joint panel review. Of these, eight were immediately dismissed as having been cancelled or incomplete at the time of this writing. For example, the Shellmouth Dam Upgrade project which began in 2003 is currently on hold having only completed the scoping stage of the assessment process. Cancelled EA's such as the Goldfields Property Box Mine Deposit Small Scale Open Pit Operations in Saskatchewan may have had opportunities for public participation, or comment. However, it was felt that a completed EA where a final decision had been rendered would be better simply because the process itself was complete. The North-Central Project (joint-panel review) was also considered for a potential past-present comparison in order to identify enduring barriers to Aboriginal participation in EA. Although the project had significant Aboriginal involvement it failed to meet the temporal and jurisdictional criteria for case selection<sup>5</sup>. The North-Central Project EA was completed in 1992 prior to the *Delgamuukw* decision which had been identified as an important legal milestone which recognized the Crown's consultative duties. By default it was expected that this would serve to encourage government in obtaining greater Aboriginal participation in EA. However, as CEAA had only come into force in 1995, the participatory requirements set out under the Act were largely absent from this projects review. As such, the North-Central Project was ultimately rejected as a case study candidate for the research.

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<sup>5</sup> The North Central Project EA was assessed under the Environmental Assessment Review Process Guidelines Order (EARPGO) which preceded CEAA.



The 11 remaining screenings and comprehensive studies were each evaluated in as much detail as possible in order to determine whether or not there had been any significant degree of Aboriginal participation. A variety of methods were used to obtain this type of information which included a review of government and project related websites, public documentation contained within various public registries, and informal conversations with key government and expert personnel involved in, or knowledgeable about a case under consideration. Table 2 below highlights the 11 most promising cases emerging from the initial cut of the case selection process.

**Table 2 Case Selection and Rationale**

<b>Project</b>	<b>EA Type</b>	<b>Description</b>
Manitoba Hydro Wuskwatim Generating Station	Comprehensive Study	<ul style="list-style-type: none"> <li>• EA Complete</li> <li>• November 28, 2001 – December 2004</li> <li>• Assessed under Province of Manitoba (CEC) and CEAA (CSR)</li> <li>• Significant Aboriginal participation including First nations and Métis communities. Input received through established avenues for public participation</li> </ul>
Red River Floodway Control Structure	Screening	<ul style="list-style-type: none"> <li>• EA Complete</li> <li>• September 5, 2003 – July 8, 2003</li> <li>• Larger Screening was assessed by the Province of Manitoba (CEC) and CEAA</li> <li>• Minimal Aboriginal participation occurred. Although Input received from Peguis First Nation, project documentation notes ongoing involvement from the Manitoba Métis Federation (MMF)</li> </ul>
COGEMA Cluff Lake Decommissioning	Comprehensive Study	<ul style="list-style-type: none"> <li>• EA complete</li> <li>• April 15, 1999 – April 15, 2004</li> <li>• Public hearings conducted by the Canadian Nuclear Safety Commission (CNSC) and CSR produced by CEAA</li> <li>• Conversations with experts suggest that Aboriginal participation occurred. Specifically, Athabasca Chipiwayan First Nation were noted as having outstanding concerns associated with the project</li> </ul>
St. Theresa Point/Wasagamach Island Lake Road and Airport (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>• EA complete</li> <li>• September 25, 1997 – December 20, 2001</li> <li>• Assessed by the Province of Manitoba (CEC) and CEAA (CSR)</li> <li>• No Aboriginal participation was noted at either the provincial or federal level</li> </ul>

Transfer of the Sherridon Rail Line and its Existing Operations (MB)	Screening	<ul style="list-style-type: none"> <li>EA complete</li> <li>July 26, 2004 – June 6, 2005</li> <li>Consultations primarily focused on government to government negotiations (federal/provincial and Chief and Council). Opportunities were provided for local residents to provide input, but the matter was internal to the community.</li> <li>No public involvement occurred under CEAA and no opportunities for Aboriginal participation occurred</li> </ul>
Canadian Museum for Human Rights (MB)	Screening	<ul style="list-style-type: none"> <li>EA complete</li> <li>August 18, 2004 – June 8, 2006</li> <li>Comment from regional Aboriginal political bodies was sought in the early stages of the EA</li> <li>No significant Aboriginal participation occurred throughout the public comment period</li> </ul>
Long Plain First Nation - Irrigation Project (MB)	Screening	<ul style="list-style-type: none"> <li>EA complete</li> <li>March 3, 2004 – June 2, 2006</li> <li>Internal process to the First Nation Community</li> <li>No Aboriginal participation noted</li> </ul>
City of Saskatoon Regional Waste Management Centre Upgrade (SK)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>November 14, 2003 – May 4, 2004</li> <li>Assessed by the Province of Saskatchewan and under CEAA</li> <li>Review of documentation suggests that no Aboriginal participation occurred</li> </ul>
Waskesiu River Weir Installation (SK)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>March 9, 2004 – October 14, 2005</li> <li>Assessed under CEAA</li> <li>Unable to determine the degree of public participation due to difficulties associated with acquiring public documentation</li> <li>Research into the project area indicates that it is a recreational area situated in a federal park. Further consideration suggests that this EA is not suitable for the research at hand</li> </ul>
Winter Road Norway House to Island Lake (MB)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>January 10, 2006 – March 3, 2006</li> <li>Conversations with the EA officer at INAC and review of the Screening report indicated that there was no significant Aboriginal participation associated with this EA. Two submission from trappers in the region submitted concerns in writing through legislated mechanisms for public comment. However, these concerns were later rescinded after being dealt with internally to the community in question</li> </ul>
Decommissioning of Atomic Energy of Canada Limited (AECL) Whiteshell Laboratories (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>EA complete</li> <li>June 2, 1999 – April 2, 2002</li> <li>Review of documents and discussion with experts indicates no significant Aboriginal participation</li> </ul>

Further review of each of these cases indicated that decisions rendered under CEAA occurred in conjunction with alternate assessment processes at either the

federal or provincial levels. For example, the COGEMA Cluff Lake Decommissioning project was linked with a parallel public review process set out by the Federal Canadian Nuclear Safety Commission. Alternatively, the Red River Floodway and Wuskwatim projects had both been assessed jointly by the Province of Manitoba's Clean Environment Commission (CEC) and under CEAA. This coordination of effort occurs pursuant to the *Canada-Manitoba Agreement on Environmental Cooperation* (the Agreement) where both jurisdictions require a review of a proposed environmental development. The purpose of the Agreement is to minimize duplication and overlap by coordinating EAs in order to meet the needs of both Federal and Provincial Acts. With respect to both EAs occurring in Manitoba, decisions at the Federal level were informed by broader public processes occurring at the Provincial level. The benefits of reviewing these types of cases are the greater depth and breadth of available information.

A key factor in the EA case selection process was evidence of significant Aboriginal participation. Review of available documentation indicates that there was minimal Aboriginal participation in the both the Cluff Lake and Red River Floodway projects, and that concerns were raised by one First Nation in each case<sup>6</sup>. When addressing the issue of significance regarding Aboriginal participation in EA it is important to remember that s. 35 of the Constitution defines Aboriginal people as including First Nations, Métis, and Inuit. Therefore the degree of inter and intra-cultural diversity present within a given EA became a key consideration for the case selection process. Based on a review of the remaining potential EA cases, it appeared

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<sup>6</sup> A member of Peguis First Nation raised concerns about the Red River Floodway project and as part of the Cluff Lake decommissioning project members from Athabasca Chipiwayan First Nation.

that the only EA with a good level of Aboriginal representation was the Wuskwatim Generating Station and Transmission Lines Projects. The Wuskwatim EA process also occurred in Manitoba and was well documented. Case materials were readily available electronically and in public registries located in the City of Winnipeg, the researcher's home town. Readily available and accessible information also allowed the researcher to better accommodate time delays and a dwindling project budget. Other benefits associated with follow-up on this particular case included the extensive level of consultation which occurred, the degree of cultural diversity, and currency (i.e. at the time the research was initiated the final decision for the Wuskwatim EA was rendered in 2005).

### **3.4 Data Collection and Sources**

The research relied exclusively on the review and evaluation of documents concerning the EA process for the proposed Wuskwatim Generating Station and Transmission Lines Projects (Projects). Document reviews have been identified as an acceptable method for conducting case studies particularly when the research focuses on events which have already occurred (Yin 2003). Initially, the research had proposed a staged approach which would employ the document review to assist in establishing context and generate questions surrounding key issues and constraints to participation facing Aboriginal publics involved in the Wuskwatim EA process. However, due to the overwhelming amount of information generated involving literally thousands of pages a more detailed approach was taken to the review of the documentation in relation to this EA process. A significant portion of the Wuskwatim EA process included events administered by the Manitoba Clean Environment

Commission (CEC). Therefore, verbatim transcripts of public meetings and hearings sessions (motion hearings and regular hearing sessions) were maintained and served to preserve a detailed record of the issues and concerns raised by Aboriginal participants at key junctures of the review process, providing sufficiently strong data on which to base the study. Additionally, the availability of verbatim transcripts in conjunction with other project related documentation, participant submissions, and media coverage of the review process allowed the researcher to analyze events as they occurred.

All data sources relied upon for the research were located within the public domain and included public registries, websites maintained by the project proponents and regulatory authorities, as well as media coverage of the Wuskwatim EA process. As the data collection progressed it became readily apparent that different data sources maintained different types of information in relation to the proposed Wuskwatim developments. This generally supports the need to rely on diverse sources of data which serve to triangulate the findings. Key data sources which were relied upon in order to conduct the research were as follows:

*1. Public Registries:*

Public registries proved to be a significant source of information about the Wuskwatim EA process containing various reports, correspondence and other project related documentation. Three public registries were visited in order to obtain and compile information for the Wuskwatim case study research. Registries visited during the course of the research included those maintained by the Province of Manitoba, Fisheries and Oceans Canada, and the Manitoba Clean Environment Commission.

The following briefly describes the content and utility of the public registries from which data were obtained.

- Environment Library: located at 123 Main St. Winnipeg Manitoba. The public registry at this location is managed by Manitoba Conservation and included a considerable amount of information related to the Wuskwatim projects associated with the provincial component of the review process. Among others the public registry maintained various reports, such as EIS documentation and associated filings, correspondence, submissions and presentations submitted by various Aboriginal participants involved in the CEC hearings and copies of the verbatim transcripts from the public hearings and related processes administered by the CEC. The registry maintained by the Province of Manitoba proved to be the most useful to for the purposes of the research because of the wide variety of information it contained.
- Freshwater Institute: located at 501 University Crescent in Winnipeg Manitoba. The Freshwater Institute is operated by Fisheries and Oceans Canada, the Responsible Authority for conducting the federal review under CEAA for the proposed Wuskwatim Generating Station. The public registry maintained by Fisheries and Oceans Canada contained information relating to the federal components of the review process. The federal registry was considerably smaller in relation to the one maintained by the provincial government. As well, there appeared to be limited information available with respect to the Wuskwatim review process as a whole. Information contained in the federal registry was the least useful for the research, possibly due to difficulties in accessing the registry (described below), as well as what appeared to be a narrow focus on issues of interest to the responsible authority. Key items obtained from the federal registry included public comments submitted by Aboriginal participants under CEAA, a video record of Trapline 18's submission to the CEC for the public hearings (i.e. aerial over-flight and narrative) , and a compiled version of meeting notes from all rounds of the proponents public involvement program. Although some information was obtained from the federal registry established by FOC, it proved

to be the least useful. Written input from Aboriginal publics added little to the analysis, as well, the video record submitted by representatives of Trapline 18 was interesting with respect to context, but contributed little to the analysis. The compiled version of meeting notes was useful simply for the fact that the notes were all located in a single document. However, the focus of the notes was on communities affected by the Wuskwatim Generating Station and not necessarily those also affected by the proposed transmission lines component of the project. In any case, the same information could be gleaned from the proponent's EIS and supplementary filings which also included documentation regarding those communities also potentially affected by the proposed transmission lines segment of the project. All in all, the federal registry proved to be of limited use or value with respect to the research.

- Manitoba Clean Environment Commission: located at 305-155 Carlton St. Winnipeg, Manitoba. The Manitoba Clean Environment Commission maintains an accurate record including submissions, exhibits, reports, and transcripts of the review process under its administration. Key documents associated with the Wuskwatim EA process employed in this research included records of the participant assistance program, public meetings to gather input on the Wuskwatim Generating Station and Transmission Line Project EIS guidelines, pre-hearing conference, motion hearings, and the formal public hearing sessions themselves. The registry maintained by the Manitoba Clean Environment Commission proved to be useful for the purposes of the research. It contained an exemplary record of transcripts, reports, correspondence, submission and other filings linked to the components of the review process under its purview (i.e. public meetings on the EIS guidelines, public hearings etc.). Although an appointment had to be made in order to view the files, staff allowed the researcher sufficient time to sift through the files without constraint.

The CEC and Provincial registry were re-visited on a number of occasions to collect additional data as the research progressed. The Federal registry maintained by

FOC, who was identified as the responsible authority charged with conducting the Federal review of the Wuskwatim Generating Station under CEAA was only visited once. Although some useful information was obtained, there were difficulties in accessing the registry which required submitting a request with a representative of Fisheries and Oceans Canada, and then waiting (in one instance) two weeks for a response and opportunity to make an appointment to review the information. The bulk of the Wuskwatim EA process occurred at the Provincial level, and the data most useful to this research focused on the events and activities surrounding the Wuskwatim public hearings administered by the CEC. The Provincial public registry was maintained in a public place which only required the researcher to show up at the location during hours of operation in order to review and obtain the necessary documentation.

## *2. Media*

Media coverage of the Wuskwatim EA process focused on print or electronic publications. Media coverage generally focused on high level contextual issues such as political or economic dimensions surrounding the proposed development of the Wuskwatim Projects. However, coverage of events associated with the CEC public hearings was particularly good, with commentary often filling information gaps not readily apparent from the review of other EA related data (i.e. EIS documentation, verbatim transcripts etc.). It was necessary to establish a timeframe in order to conduct archival searches for media publications. As such, the period spanning 2002 – 2005 was selected which generally coincided with that of the review process. As a starting point, the year 2002 was selected as it coincided with the public meeting held



by the CEC to gather public input on the EIS guidelines for the Wuskwatim Generating Station and Transmission Lines Projects. The public meetings on the EIS guidelines in 2002 were viewed as signaling the initiation of the EA process. As well, the 2005 date was selected as the completion point – the point at which the licenses and approvals for the proposed Wuskwatim Projects were issued by the Federal and Provincial governments. Media coverage of the Wuskwatim EA proceedings reviewed for the research included:

- CBC: electronic, or web based media provided some high level commentary on the Wuskwatim EA process. Coverage of the Wuskwatim EA was somewhat limited focusing primarily on the Generating Station, history of hydro development, as well as labour/economic dimensions of the project. Some commentary provided additional information on the participatory components of the review process from an Aboriginal perspective, but these proved to be limited. CBC coverage of the Wuskwatim EA process provided some contextual information, but was of limited value to the research.
- Grass Roots News: The Grass Roots News is an Aboriginal focused publication with a province wide distribution and a monthly publication. Issues of the Grass Roots News under review did have some coverage of the Wuskwatim EA process, primarily from a political standpoint of the Manitoba Métis Federation concerning their exclusion from the development of the Wuskwatim Environmental Impact Statement and their position presented during the public hearings. The Grass Roots News media coverage also included some perspectives/commentary from other First Nation leaders. However, these commentaries appeared to be relatively limited and added little to the analysis. Although there appeared to be a considerable amount of coverage of Métis, or MMF related issues during the CEC public hearings, the news coverage relating to the Wuskwatim EA process generally reiterated what had already been stated in the verbatim transcripts.

- Winnipeg Free Press: media coverage from the Winnipeg Free Press was obtained by querying searchable media databases made available to the researcher through the University of Manitoba Libraries. Two databases used for the purposes of identifying and obtaining media stories including:
  - Canadian Newsstand:  
<http://proquest.umi.com.proxy2.lib.umanitoba.ca/pqdweb?RQT=302&COPT=REJTPUcyMWQrMmZmMiZTTUQ9MSZJTIQ9MCZWRVI9Mg==&clientId=12305&cfc=1>
  - Virtual News Library:  
<http://www.biblio.eureka.cc.proxy2.lib.umanitoba.ca/WebPages/Search/Result.aspx>

Media coverage of the Wuskwatim EA process by the Winnipeg Free Press proved to be the most useful. This particular publication included long-term coverage not only of the EA process, but also detailed commentaries about the public hearings and associated components administered by the CEC and others involved in the review process. Coverage of the Wuskwatim EA process also touched on a number of contextual issues, including the history of hydro development, economic issues and drivers, and the partnership arrangement between Nisichawayasihk Cree Nation and Manitoba Hydro for the proposed Generating Station. All in all, the Winnipeg Free Press was the most useful to the research because of the breadth of its coverage and its treatment of diverse issues related to the review of the proposed Wuskwatim Generating Station and Transmission Line Projects.

- Winnipeg Sun: coverage of the Wuskwatim EA process by the Winnipeg Sun was also obtained from searchable media databases noted above. Although there was some coverage noted with respect to the Wuskwatim Project it was limited, inconsequential and did not add to the analysis.

### 3. *Proponent's Project Website*

The proponent's project website was also relied upon as a key source of information in order to conduct the research. The website was a useful source for

obtaining the project EIS, appendices, supplementary filings, and other types of documentation associated with the Wuskwatim EA process. For example, the website contained correspondence and records of meetings held between the proponent and Aboriginal participants, as well as various presentations, and responses to questions posed as part of the Wuskwatim interrogatory process. All in all, the proponent's project website did prove useful for supplying the researcher with additional information about Aboriginal participation. Most useful was the Wuskwatim EIS documentation and associated appendices, which appeared to maintain a relatively comprehensive record of the proponent's activities for involving Aboriginal publics in early stages of the EA process leading up to the CEC public hearings.

#### *4. Crown Consultations and Access to Information*

An additional source of data pursued for the purposes of this research was documentation surrounding the Crown S.35 consultation process (Crown Consultations). The Crown consultations occurred as a separate process which took place concurrent to the Wuskwatim EA process proper. The purpose of the Crown Consultations was to ascertain project related effects on Aboriginal and Treaty Rights. Information concerning the Crown Consultations was protected and not made publically available. Although some information pertaining to this "separate" and "concurrent" process was found in the CEC public registry and commentary contained within the public hearing transcripts, it was generally limited and unavailable for the research. In order to ensure data sourcing activities were thorough and complete two requests for access to information under the Access to Information

and Privacy Act (ATIP) were filed with Indian and Northern Affairs Canada (INAC) and Fisheries and Oceans Canada (FOC). To date the ATIP process filed with INAC has been completed, resulting in the provision of a series of edited (blacked out or blurred out) documents (emails, correspondence or reports) concerning the Crown Consultation process as well as a draft copy of the Wuskwatim Comprehensive Study Report. In this case the ATIP process did not provide the researcher with any additional information concerning Aboriginal participation in the Wuskwatim EA process. The ATIP filed via FOC is still in progress. Although there is a legislated turnaround period to receive responses for information requests, two extensions have been noted since the date of the initial filing. Informal conversations with ATIP information officers at FOC concerning the Wuskwatim file have suggested that although the request was still in progress it is unlikely that any of the information would be made available. It appears that the Province of Manitoba's Department of Justice considers this information protected and is unwilling to make it available. ATIP information officers with FOC also appear unwilling to share the information without the agreement of the Province of Manitoba in this matter. This is likely due to the joint Federal-Provincial Consultation process which took place in order for the Crown to meet its fiduciary obligations. As such ownership or responsibility for the information itself is likely shared and would require the agreement of both parties in order to release it. Regardless, data on the Crown Consultation process would have been useful in order to ensure completeness of information concerning the engagement of Aboriginal publics in decisions about the Wuskwatim Projects.

However, it is unlikely that this information will be made available prior to the completion of the thesis research.

### **3.5 Data Analysis**

Analysis of the data occurred in an iterative fashion and involved the compilation and review of information associated with the Wuskwatim EA process. A considerable amount of information about the Wuskwatim EA process had been compiled and reviewed in order to conduct the case study research. The sheer volume of data proved to be problematic, requiring a significant amount of time to review and analyze. It became necessary to establish parameters limiting the type of data under review. The initial review of materials which had been collected suggested that some information was of greater value than others. The bulk of the data in this thesis came from the following sources: the verbatim transcripts produced for events administered by the CEC proved to be most useful as they preserved the words, thoughts, comments and concerns of Aboriginal participants involved in the Wuskwatim EA process; the EIS documentation for the proposed Wuskwatim Projects was relied on as the central source of data about events and activities conducted by the project proponent leading up to the public hearings; Media coverage of the Wuskwatim EA process was another important source of information. Although a number of media sources were reviewed, only coverage of the CEC public hearings and associated activities in The Winnipeg Free Press proved to be of any value since it provided commentary on the process and its administration. Written input and other filings when available were also reviewed.

A database was constructed using QSR NVivo 2.0 which contained various documents including verbatim transcripts of the EA proceedings, transcribed summary notes stemming from the review of EA, project, and media related documentation. As well, key data excerpts or supporting quotations were also identified, transcribed and incorporated into the case study research database.

The verbatim transcripts from the CEC public meetings and hearing sessions formed a central component of the text analysis. Because the components of the EA process administered by the CEC included Aboriginal and non-Aboriginal participants, it was necessary to extract those components of verbatim transcripts attributable to Aboriginal publics. Aboriginal publics were identified based on their association with a particular Aboriginal community or organization (political, community, interest, or resource based etc.), as well as self-identification of Aboriginal cultural background (i.e. Métis, First Nation, and Bill C-31 etc.). Transcript excerpts were generally classified according to group or community and specific case files developed in order to break the text analysis down into manageable components. Typically, individuals or group/community representatives are required to introduce themselves prior to asking questions or addressing the CEC panel. This often entailed an individual stating their name, cultural background, or association with a particular community making it relatively easy to classify Aboriginal publics for the purposes of the research.

The analysis proceeded with the identification and classification of barriers as they emerged from the individual participant input to the EA review process. Initially I employed the barrier framework and associated attributes described in Table 1 to

identify potential barriers to participation of Aboriginal publics in the Wuskwatim EA process, however the Table and its attributes provided only a very general guide and sometimes were not useful at all. In some cases broad barrier categories such as “participatory techniques” were applicable while others such as “lack of resources and inadequate timeframes” lacked precision highlighting the need to go beyond the limited literature on barriers to participation faced by Aboriginal publics in EA and related planning process. A revised tactic was employed in order to organize the extracted data, which utilized more exploratory approach with limited reliance on a framework to guide the inquiry. Exploratory approaches are better suited to promoting understanding in situations where the problems are less clearly defined. However, Crano and Brewer (2002) caution against this type of design suggesting that it is costly and cumbersome to implement. In the end, I agree that the approach I employed was in fact tedious and extremely cumbersome to implement. However, the barrier categories which were developed as a result of applying a more open approach provided more robust data. Barrier categories were established based in part on the initial barrier framework derived from the literature. The analysis involved coding the data within a broader revised barrier framework. Key concepts were identified based on grouping codes from the analysis of the data that had similar content. Finally, revised barrier categories were established by grouping broadly similar concepts. Additional barrier categories were added, or existing categories refined the analysis of the database evolved through its various iterations.

Once the initial rough barrier categories were established, additional data from the media and EIS documentation were fed into the analysis. Refinement of barrier

categories followed an iterative-inductive/deductive approach based on the triangulation of data from the data sources outlined above and a constant comparison of data. For example, specific barriers identified in the verbatim transcripts were compared with media coverage of the Wuskwatim EA process and the Project EIS documents when warranted (e.g. in reference to problems associated with proponent's public involvement program). The research database itself was reconstructed on three occasions including two electronic versions (i.e. QSR NVivo) and one developed in hardcopy/paper format (i.e. typed summaries, research notes, key supporting quotes and summary analysis tables etc.). Refinement of barrier categories occurred in conjunction with the reconstruction of the research data base. This process itself proved to be extremely time consuming, but did allow the researcher to become very familiar with the data under review. In addition to the identification of barrier categories, inferential measures were also employed to confirm, correlate or further identify barriers to participation faced by Aboriginal publics involved in the Wuskwatim EA process. Barriers to participation were described in terms of primary, secondary and tertiary categories. Although not always discussed in detail it was felt that displaying the range of categories was necessary in order to:

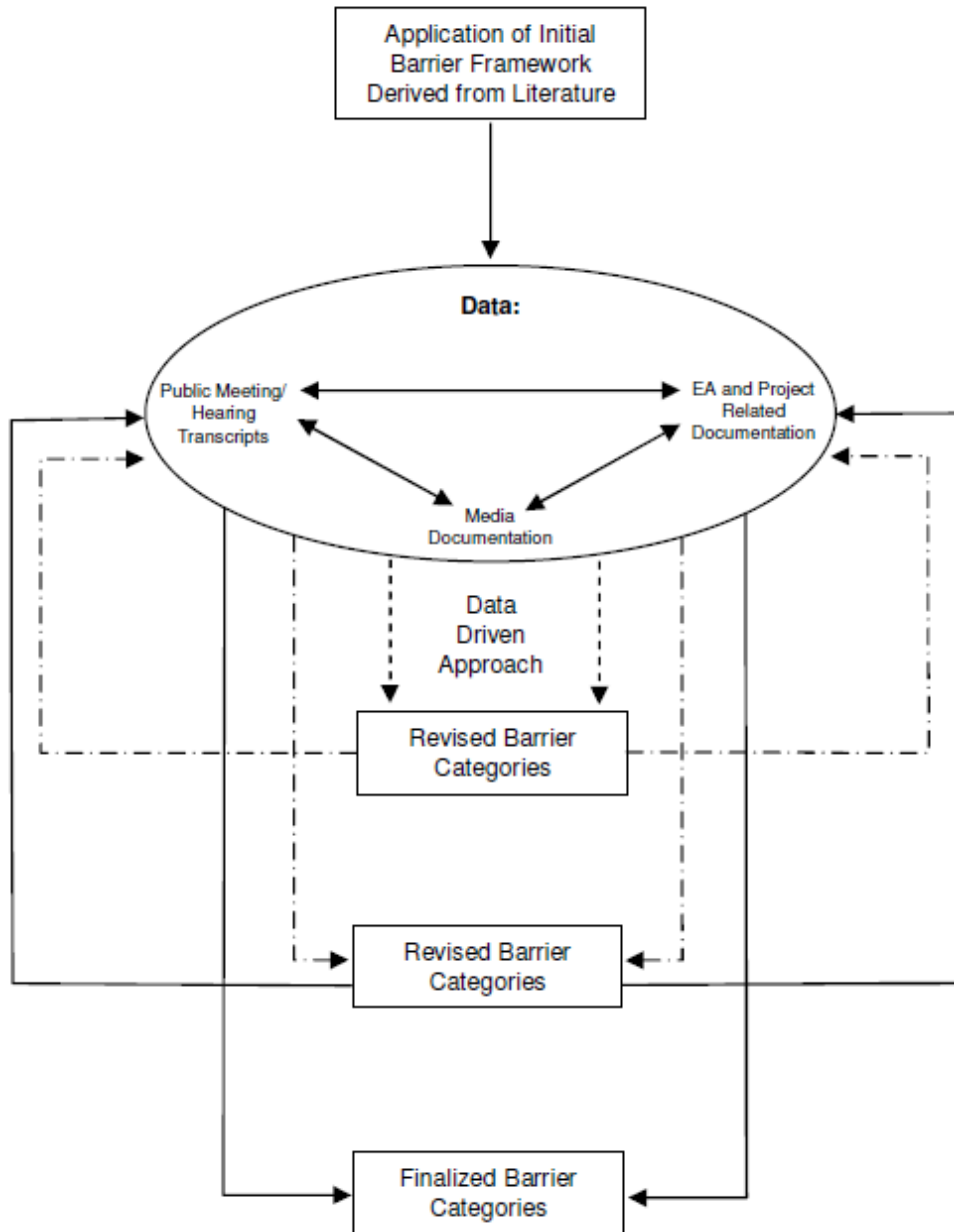
- Provide transparency in the manner which generalization of research categories occurred;
- Provide greater specificity regarding key barrier types impeding participation (i.e. beyond vague meta categories); and
- Highlight points of overlap in order to ascertain potential relationships among barrier categories.

Figure 3 generally illustrates the process undertaken to conduct the data analysis and finalize the research barrier categories. Quotes from the data sources are used in the



text to highlight the finalized barrier categories. On the whole these quotes were chosen as ones that best represented the views expressed by participants as outlined in the data sources used.

**Figure 3 Data Analysis and Refinement of Barrier Categories**



### **3.5 Validity and Reliability**

Validity and reliability are important means of ensuring the credibility and stability of the research findings. Validity is an important part of any research project and reflects efforts taken by the researcher to ensure accuracy and sufficient justification for theme development (Creswell 2003). Two approaches were employed to ensure the validity of the research findings including triangulation of data sources and clarification of researcher bias. Triangulation was inherent to the design of the research. The case study relied exclusively on existing documentation in order to conduct the analysis and identify barriers to participation faced by Aboriginal publics. Information relating to the Wuskwatim EA process was obtained from diverse sources including media coverage of the review process, verbatim transcripts made available by the CEC, and the Wuskwatim Generating Station and Transmission Line EISs among others in order to develop barrier categories. Triangulation of the data proved to be a valuable approach to enhance the accuracy of the findings, particularly in situations where the use of multiple information sources enabled the researcher to correct erroneously identified barrier themes based on the data's manifest content (i.e. face validity).

Clarification of researcher bias was also employed in order to better ensure the credibility of the findings. Although the intent was to ensure an objective analysis of the data, it was important for me to recognize that my own beliefs and desires and expectations could have an influence on the findings. As the research focused primarily on the identification and evaluation of barriers to participation it was important for me to be aware that I may inadvertently identify barriers which did not

exists or fail to see some that do. Researcher bias was checked through a constant comparison of the findings with the literature as well as through communication with others about barriers emerging from the data. The research also included a cultural component which looked only at Aboriginal participants involved in the Wuskwatim EA process. Although the research was based on existing information, suggesting a greater degree of objectivity, the notion of cultural difference may also play an important role in the manner in which factors effecting Aboriginal participation in the Wuskwatim EA were identified. In other words the significance I assign to a particular barrier, or process strength/weakness may not necessarily be interpreted in the same fashion by members of the Aboriginal public. In recognizing my own bias I felt that I was in a better position to be more critical in interpreting the data with respect to the development of barrier categories.

Efforts to ensure the reliability of the results were also employed to strengthen the research findings. Reliability generally refers to consistency, dependability or reproducibility of the results (Singleton Jr. and Straits 2005). Stability was used as a measure by which reliability was achieved. Crano and Brewer (2002) identify two ways of improving the stability of the research findings including the use of a single coder and employing a test-retest approach to ensure consistency in which the data were analyzed and classified. As the primary researcher I was the only coder responsible for analyzing, classifying and ordering the data. As such, the rules and conditions for assigning meaning to data were applied in a consistent fashion. The second mechanism for ensuring stability was the test-retest approach. Although not initially considered as a mechanism for achieving stability, the research database was

reconstructed three times and the findings themselves were reviewed on a number of occasions. In this case stability was achieved by default through constant review of the data as key themes solidified and became firmly established.

### **3.6 Research Limitations**

A number of limitations have been identified for the Wuskwatim case study research. Limitations of the study stem primarily from the approach used to conduct the research and include the following:

- Data analysis focused primarily on manifest content. Consideration of latent content may have allowed for a deeper and richer discussion of the issues associated barriers to Aboriginal participation in the Wuskwatim EA process. However, as the researcher was not present during events leading up to or surrounding the Wuskwatim EA process, it proved difficult weigh or assess the or contextual issues or the validity of statements made by Aboriginal participants contained within the documentation under review. Unless corroboratory evidence was furnished through the triangulation of data, latent content was considered to be too interpretive. As well, statements or key issues emerging from the data were assumed to be true and taken at face value unless contradictory evidence was noted.
- The research is also limited to the case materials under review which include public hearing transcripts, media stories, as well as other EA and related project documentation. A more focused and interactive approach utilizing key person interviews may have contextualized the data and elucidated other key barriers inhibiting participation by various Aboriginal publics involved in the Wuskwatim EA process. Other barriers types may exist in relation to this particular case, but were not included as part of the analysis which was limited by the information under review.

- Barriers to participation are limited to those identified/interpreted by the researcher. Conducting one on one interviews with Aboriginal participants involved in the Wuskwatim EA process may have identified others or served to confirm or refute those emerging from the research. A more community-based/interactive approach would have provided a further corrective measure to the work lending a greater degree of rigor certainty to the findings.
- A community-based approach, involving interviews with Aboriginal participants, community or interest group members may have yielded better information regarding the identification of barriers to participation as well as reflections on the strengths and weaknesses of the Wuskwatim EA process than reliance on existing documentation has. A more interactive or community based approach would also have allowed the researcher to better weigh or assess the accuracy and validity of statements/and or concerns made by participants regarding barriers to participation experienced as part o the Wuskwatim EA process. A related consideration is that a community-based research design would also have been more in line with the general principles on which participation and participatory processes are based. Exclusive reliance on the review of existing documentation did not provide any Aboriginal publics the opportunity to have input into the research process, its findings, assumptions, or outcomes/recommendations.
- The results of the research are limited to the data under review. As well, the findings are not generalizable beyond the case study itself. Further replication would be required to confirm the presence/absence of barrier types and ways to mitigate their effects for Aboriginal participation in other EA processes.

## CHAPTER 4: BARRIERS TO ABORIGINAL PARTICIPATION

### 4.1 Introduction: The Wuskwatim EA Process

The case study research focused on identifying barriers to participation faced by Aboriginal publics in the Wuskwatim EA process. The Wuskwatim EA is of particular interest to the field of resource and environmental management due to significant levels of Aboriginal participation, and the contextual factors framing the decision-making process. Key components under review included the development of a 200 megawatt run of the river generating station, a construction access road, as well as a 230kV transmission line.

The intent of the Wuskwatim projects is to utilize existing system capacity to produce power for both export and domestic consumption. Existing system capacity is regulated by previous hydro developments, including the Churchill River Diversion (CRD), Augmented Flow Program (AFP) and Lake Winnipeg Regulation (LWR). The proposed Wuskwatim Generating Station would be a modified run of the river dam which is considered to be more environmentally benign in comparison to previous hydro-electric developments in northern Manitoba<sup>7</sup>. A low head design would serve to limit the extent of flooding in the dam's fore bay, while a modified run or the river operating regime minimizes erosion by restricting water fluctuations in the areas located upstream and downstream of the structure itself (Manitoba Clean Environment Commission 2004a). Four 230 kV transmission line segments totaling a combined length of 247 km were also proposed in order to carry the additional power

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<sup>7</sup> Less than .5 km (37 hectares) would be flooded by utilizing a low head dam design, while a modified run of the river operating regime would limit water fluctuations to an average of 0.6 meters.

produced by the dam to the existing transmission network. A 60 km access road was also included as a part of the generating station project and necessary in order to facilitate construction activities at the proposed dam site (Manitoba Clean Environment Commission 2004a)<sup>8</sup>.

In addition to design considerations, the Wuskwatim Generating Station represents the ushering in of a new era of hydro-electric development in the Province of Manitoba. Of interest is the partnership between Manitoba Hydro, the Province's utility and Nisichawayasihk Cree Nation (NCN). The limited partnership agreement as detailed in the 2001 agreement in principle (AIP) and Summary of Understanding (SOU) between the two parties would allow for NCN and its membership to become a one-third (33.3%) shareholder in the generating station, entitled to a proportionate share of operating profits. Because of the partnership agreement, NCN and Manitoba Hydro were recognized as co-proponents in the Wuskwatim EA process.

The Wuskwatim Projects were assessed under both federal and provincial EA legislation including the CEAA and The Environment Act *C.C.S.M. c. E125* (Environment Act). Provincially, public hearings were mandated by government and administered by the Manitoba Clean Environment Commission (CEC). The terms of reference (TOR) given to the CEC for the review of the proposed Wuskwatim Projects included consideration of:

1. The justification, need for, and alternatives to (NFAAT) the proposed Wuskwatim Generating and Transmission Projects; and
2. The potential environmental, socio-economic, and cultural effects of the construction and operation of the Wuskwatim Projects.

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<sup>8</sup> The Wuskwatim transmission line segments included one 230 kV transmission line from Wuskwatim to the Birchtree Station near Thompson, two 230-kV transmission lines from Wuskwatim to the existing Herblet Lake Station near Snow Lake, and one 230 kV transmission line from Herblet Lake to the existing Rall's Island Station at The Pas

The NFAAT component of the review process focused on economic dimensions including the viability of the proposed Wuskwatim projects, effects on customer rates, development of alternative resources (i.e. coal, wind, natural gas), and Manitoba Hydro's corporate financial stability. The partnership arrangement between Manitoba Hydro and NCN was also reviewed insofar as it served to inform the financial analysis of the proposed Wuskwatim developments.

The second component of the CEC's TOR were more traditionally focused and included the examination of potential environmental, socio-economic, and cultural effects associated with the construction and operation of the proposed Wuskwatim Projects. Key areas of interest included potential effects to the physical (climate, air quality, ice conditions etc.), aquatic (water quality, fish habitat and fish populations, aquatic invertebrates etc.), and terrestrial (vegetation, wildlife and wildlife habitat) components of the environment. The socio-economic aspects of the EA centered on resource use, economy, infrastructure and services, as well as personal, family and community life. The cultural component of the review process looked at the potential for effects on heritage resources. A separate environmental impact statement was submitted for each of the Wuskwatim Generating Station and Transmission Line components of the project<sup>9</sup>.

The Federal EA process under CEAA focused only on potential effects associated with the Wuskwatim Generating Station largely due to EA triggers (i.e. law list) related associated with permitting obligations for the dam under the Fisheries

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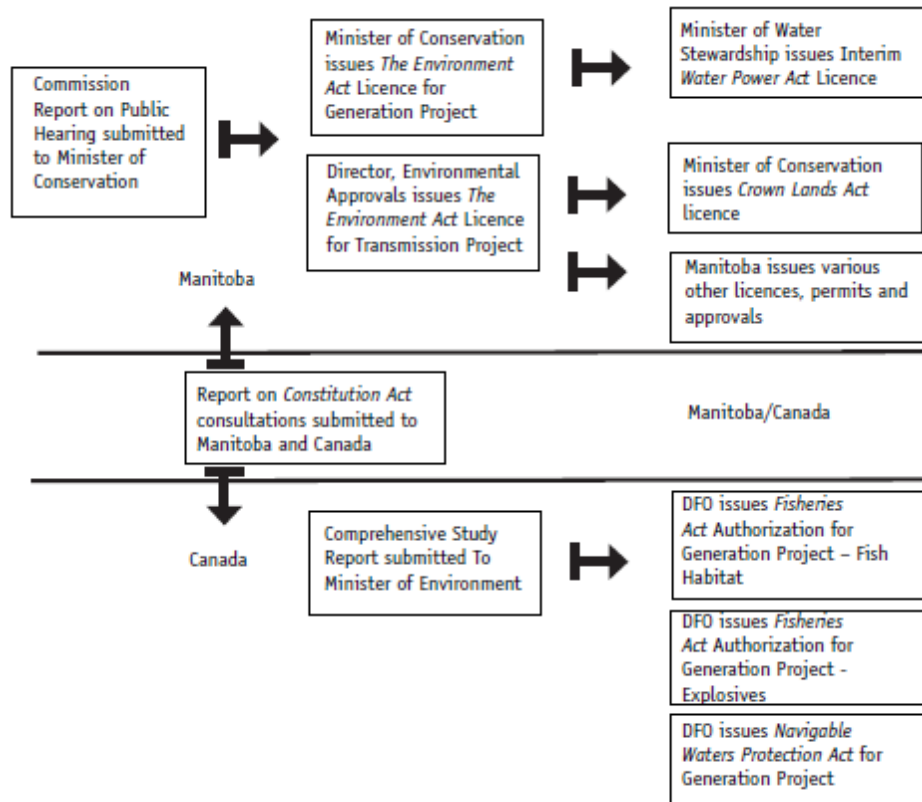
<sup>9</sup> Note that the construction access road was included as part of the Wuskwatim Generating Station EIS.



Act. R.S., c. F-14, s. 1. and Navigable Waters Protection Act R.S., c. N-19, s. 1. A Comprehensive Study was commissioned under CEAA on the Wuskwatim Generating Station. The scope of the Federal component of the review process focused primarily on potential effects on fish and fish habitat, navigation, avian fauna, and species at risk. Other factors such as effects on human health, socio-economic conditions, natural and cultural heritage, and land use Aboriginal peoples for traditional purposes were also considered when warranted (Fisheries and Oceans Canada 2005).

In addition to the EA requirements, both the Federal and Provincial governments were involved in S.35 Consultations with various Aboriginal communities regarding potential infringements to Aboriginal and Treaty Rights stemming from the Wuskwatim projects. The S.35 Crown Consultations occurred as a supplementary process and a common element to both Federal and Provincial components of the review process which served to inform decisions about the Wuskwatim projects. Potential effects of the Wuskwatim Projects on Aboriginal and Treaty Rights were not specifically included within the scope of either the Federal or Provincial components of the Wuskwatim EA process. Figure 4 below illustrates the manner in which outputs of the S.35 Crown Consultations contributed to decisions about the Wuskwatim projects at the Federal and Provincial levels.

**Figure 4 Contributions of EA and Crown Consultations on Federal and Provincial Decisions on the Wuskwatim Projects.**



(Manitoba Clean Environment Commission 2004a)

In addition to regulatory issues, input from Aboriginal and other publics were considered in decisions about the proposed Wuskwatim Projects. Key mechanisms for involving Aboriginal and other publics in the Wuskwatim EA process included the proponent's public involvement program (PIP), as well as the public hearings and associated process components administered by the Manitoba Clean Environment Commission (CEC) at the provincial level. The proponent's PIP appeared to have been relatively extensive consisting of a series of community meetings, open houses, as well as workshops to review the project environmental impact statements (EISs) in detail with select participants. Public involvement activities undertaken at the provincial level by the CEC in which Aboriginal publics were involved included:

- Four public meetings held in Winnipeg, Thompson, Nisichawayasihk Cree Nation (Nelson House), and The Pas to gather input on the guidelines for the development of the environmental impact statements;
- One Pre-hearing Conference for registered participants to discuss the upcoming public hearings process and review the initial schedule for the proceedings put forward by the project proponent;
- Two motion hearings were also held by the CEC in response to concerns regarding the need to expand the scope of the review process to address system, or cumulative effects associated with the operation of the integrated hydro electric system along the Nelson and Burntwood Rivers with the addition of the Wuskwatim Generating Station. A motion hearing was also held to address non-disclosure issues related to responses acquired by participants from the Wuskwatim EA Project Administration Team (i.e. government officials) and the Project Proponents. The motion hearings to address expanding the scope of the review process and non-disclosure issues occurred on September 30<sup>th</sup>, 2003 and January 23<sup>rd</sup>, 2004 respectively;
- An interrogatory process (IR) consisting of four rounds of written questions coordinated by the CEC among participants, proponents, and the EA Project Administration Team (PAT). The goal of the IR process was to enhance information provision, and streamline the review process by reducing duplication and addressing initial concerns prior to the start of the public hearings. The CEC coordinated two rounds of written questions to the proponents (Manitoba Hydro and NCN), one round of written questions to participants, and one round of written questions to the PAT. As noted, a motion hearing was held on January 23<sup>rd</sup>, 2004 in order to address non-disclosure related concerns regarding the adequacy of responses received from the proponents and the PAT; and
- 32 days of public hearings taking place between March 1<sup>st</sup>, 2004 and June 9<sup>th</sup>, 2004 administered by the CEC.

Opportunities for public input at the Federal level under CEAA were limited to the submission of written comments on the comprehensive study report (CSR).

Data supporting barriers to Aboriginal participation in the Wuskwatim EA were primarily derived from the verbatim transcripts generated in association with the process components administered by the CEC. Although additional data was also collected from the EISs submitted for review by the project proponents and various media documentation, selection of “participants” for the research focused primarily on those involved in the CEC public hearings and associated process components administered by the CEC. Table 3 generally identifies participants from various Aboriginal communities and interest groups involved in the components of the review process administered by the CEC.

**Table 3 Aboriginal Participants involved in the Wuskwatim Public Hearings**

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• Community Association of South Indian Lake (CASIL) and Center for Indigenous Environmental Resources (CIER)	• Displaced Residents of South Indian Lake (DRISL)
• Manitoba Métis Federation (MMF)	• O-Pinon-Na-Piwin-Cree Nation (OPCN)
• Pimicikamak Cree Nation (PCN)	• Tataskweyak Cree Nation (TCN)
• Pukatawagan Fishermen’s Association (PFA)	• Assembly of Manitoba Chiefs (AMC)
• Trap Line No. 18	• Chemawawin First Nation
• Mosakahiken Cree Nation (MCN)	• Fox Lake Cree Nation
• Opaskwayak Cree Nation (OCN)	• Community of Granville Lake
• York Factory First Nation (YFFN)	• Manitoba Keewatinook Ininew Okimowin (MKO)
• Northern Association of Community Councils	• Nisichawayasihk Cree Nation (NCN)
• South Indian Lake Fisherman’s Association	• Justice Seekers of Nelson House
• Wabowden Trappers Association	• Sagkeeng First Nation
• Mathias Colomb Cree Nation (MCCN)	• Swampy Cree Tribal Council
• Southern Chiefs Organization	

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Review of the data identified nine general barrier categories impeding participation among Aboriginal publics involved in the Wuskwatim EA process.

Barriers categories discussed in this chapter are as follows:

- Resource deficiencies
- Accessibility
- Information deficiencies
- Communication barriers
- Inadequate consultation
- Timing and scheduling constraints
- Lack of trust
- Lack of understanding
- Coercion and control of dissent

#### 4.2 Resource Deficiencies

Resource deficiencies were noted as a barrier to participation among some Aboriginal participants involved in the Wuskwatim EA process. Resource deficiencies focused on participant concerns surrounding insufficient funds to participate and a lack of capacity. Secondary and tertiary barrier categories were also noted which add depth to resource related barriers faced by various Aboriginal publics involved in the Wuskwatim EA process. Table 4 provides a summary of barrier categories identified in association with resource deficiencies.

**Table 4 Resource Deficiencies**

Primary	Secondary	Tertiary
Insufficient Funds to Participate	Prepare for EA Process	Review, Research, and Consult Membership Timely Allocation of Funds
	Procedural Inefficiencies	Interrogatory Process
	Administrative Costs	Exchange of Information/Filings Travel Costs
Lack of Capacity	Technical and Legal Expertise	Review/Evaluate Information and Preparation of Responses
	Administrative Capacity	

A significant amount of intervenor funding was made available to the public for participation in the Wuskwatim EA process. Media documentation published at the time indicates that due to widespread public interest the Province of Manitoba initially allocated \$150,000 for the review of the Wuskwatim Projects (Lett April 23, 2003). In Manitoba, \$100,000 in intervenor funding is typically made available for environmental review process with a public hearing component. This amount was further augmented to more than \$870,000 making it one of the largest amount of intervenor funding awarded for an EA in Canada (Lett July 15, 2003).

Increases in the amount of participant funding could be attributed to the expansion of the scope of the review process to include both environmental and economic aspects of the proposed Wuskwatim developments (Lett April 23, 2003; July 15, 2003). Originally the Wuskwatim Projects were intended to undergo a two track process with the CEC assessing environmental impacts and the Manitoba Public Utilities Board (PUB) addressing economic concerns. During the Spring/Summer of 2003, Manitoba's NDP Government expanded the mandate of the CEC to include economic concerns in order to streamline the regulatory processes the projects would have to undergo (Lett April 11, 2003; April 23, 2003).

Table 5 below shows the distribution of participant funding among registered intervenors in the CEC Public Hearings process. A cursory review of available information suggests that participant funding was spilt relatively evenly between Aboriginal intervenors (\$426,388 or 48.7%) and other registered public interest groups participating in the process (\$450,000 or 51.3%). The data also suggests that a concerted effort was made by government officials to include Aboriginal perspectives

in the Wuskwatim EA process via the award and allocation of intervener funds as noted in the following:

“The largest awards went to groups who are either most directly affected by the project – including several first nations -- or who have the strongest track records in providing expert testimony at other regulatory hearings...Some of the awards recognize the intangible contribution that will come from people who have lived on the land for generations... When we looked at all the groups who applied, we thought there were some who should be at the table, even though they may not be directly impacted by the project, said Duguid. A very important component of this review will be the knowledge that first nation people have of their traditional lands.” (Falding, Winnipeg Free Press, July 15, 2003: a1)

Further review of the research documentation indicates that at least two participating Aboriginal groups acquired additional monies to assist their participation beyond what was made available as part of the CEC intervenor funding program. For example, the Community Association of South Indian Lake (CASIL) was in receipt of additional funds from Manitoba Hydro to hire its own consultants to conduct a cursory review of the Project EIS (Manitoba Clean Environment Commission 2004b: 6363-6365). As well, there is indication that the Displaced Residents of South Indian Lake (DRISL), a non-funded Aboriginal participant group, received some monies under the Northern Flood Agreement (NFA) for legal representation during the CEC public hearings (Manitoba Clean Environment Commission 2003b: 55). Supplementary sources of funding available to some participants which appeared to be used to bolster their ability to engage in the Wuskwatim EA process.

**Table 5 Allocation of Intervenor Funding for the Wuskwatim EA Process**

<b>Funded Aboriginal Participants</b>	<b>Funding Allocation</b>
Pimicikamak Cree Nation (PCN)	\$160,000
Manitoba Métis Federation (MMF)	\$80,000
Opaskwayak Cree Nation (OCN)	\$60,000
Community Association of South Indian Lack (CASIL)	\$60,000
Mosakahiken Cree Nation (MCN)	\$20,450
Puckatawagan Fisherman's Association (PFA)	\$20,450
Trapline #18	\$20,000
York Factory First Nation	\$5,488
<b><i>Sub Total</i></b>	<b><i>\$426,388</i></b>
<b>Funded Public Interest Groups</b>	<b>Funding Allocation</b>
Consumers Association of Canada/Manitoba Society of Seniors	\$190,000
Time to Respect Earth's Ecosystems/Resource Conservation Manitoba	\$145,000
Canadian Nature Federation	\$115,000
<b><i>Sub Total</i></b>	<b><i>\$450,000</i></b>
<b>Total Funding Awarded</b>	<b>\$876,388</b>

(Source: Manitoba Clean Environment Commission 2004a, Sinclair and Diduck 2005)

#### ***4.2.1 Insufficient Funds to Participate***

Despite provisions for participant assistance the research identified insufficient funds as a barrier for some Aboriginal participants involved in the Wuskwatim EA process. The data indicates that funding concerns centered on problems preparing for the EA process in terms of reviewing project documentation and conducting further research into issues of concern. The following quotes are considered representative of concerns raised representatives from Trapline 18, NCN, the MMF, and CASIL.



“MR. BENOIT: ...But we are talking the difference between a full-blown assessment that should have been done by Hydro and NCN versus what we are able to do on the paltry funds that we received to go and physically go out and talk to our people, which much of that was spent just on that”.(CEC Hearings June 07, 2004: 7293).

“MS. KOBLISKI: ...Our NCN members who are concerned and want to raise questions to have our voices heard are provided no resources to properly voice our opinions and concerns. The fact is, it seems that Manitoba Hydro and the Manitoba Government are spending unlimited public funds to sell this project” (CEC Hearings March 17, 2004: 2285).

A related issue is the timing, or point in the review process where participant funding is allocated. At least one participating Aboriginal group identified the late notification regarding the award of intervenor funding as being problematic (Manitoba Clean Environment Commission 2003a). Supporting evidence derived from media coverage of the Wuskwatim EA process generally confirms difficulties associated with the timing of the intervenor funding award and its impact on the ability of participants to prepare for the public hearings process.

“The decision to bypass the PUB wiped out months of work by the CEC and intervenors who were preparing for environmental hearings. The CEC was forced to issue new terms of reference and asked intervenors to re-file applications for financial assistance” (Lett, Winnipeg Free Press, August 7, 2003: b1).

Procedural inefficiencies associated with the Wuskwatim interrogatory (IR) process were also noted as contributing to a resource deficit among participants. For example, evidence derived from media documentation and hearing transcripts suggest that despite Pimicikamak Cree Nation’s (PCN) efforts to work through the IR process, difficulties in acquiring information from the proponent (i.e. due to a lack of disclosure) created a drain on the resources available to them limiting their ability to participate in the public hearings.

“MS. KEMPTON: ...The interrogatory process was largely a significant waste of time and money since core relevant information was not disclosed through it. And this is despite great attempts by participants to get at this information” (CEC Hearings March 17, 2004: 2199).

“MS. KEMPTON: ...When we applied for funds, Mr. Moore, at the beginning, we didn't project how big this job was going to be. The massive amount of work required in the interrogatory process which was, in our opinion, didn't go anywhere and other things that developed but we still applied for 30 per cent more than we got which was insufficient to begin with therefore. We estimated what we felt was a bare necessity. We didn't get that. We ran out of those funds” (CEC Hearings March 17, 2004: 2224-2225).

The timeframe under which the public hearings for the EA process occurred was troublesome for some participants with regards to the sufficiency of funds to participate. Initially the review process was supposed to extend between the months of July and November 2003. However, due to a re-evaluation of the proponent's schedule for the proceedings, difficulties in implementing the IR process, and holding two motion hearings to address the scope of the review process and disclosure related concerns, the start date for the public hearings was pushed back to early March 2004 (Lett August 8, 2003, Falding November 5, 2003). Evidence derived from the hearing transcripts confirms that the funding allocated to Trapline 18, a participating Aboriginal group, was insufficient to accommodate the extension of EA timelines.

“MR. MCIVOR: ...Well, I think the things that we can provide you are available, but, you know, we just spent probably 25,000 dollars participating so far in a process that was supposed to last from July until the end of November. They have extended this process” (CEC Further Disclosure Motion Hearing January 23, 2004: 83).

Administrative costs were identified as an important secondary barrier category associated with insufficient funds to participate. Administrative costs were viewed as those which reflect the operational costs of participation and serve to sustain involvement beyond the acquisition of legal and technical expertise. For example, Lynn and Waterhen (1991) indicate that administrative costs can include items such as travel, postage, and telephone. The data provides some evidence that insufficient funds to participate could be tied to difficulties in covering the costs of administrative support (Manitoba Clean Environment Commission 2004b: 6506-

6507), as well as problems with the exchange and distribution of information throughout the EA process (Manitoba Clean Environment Commission 2003a: 113, 2004b: 2302, 3133-3134). A representative from York Factory Cree Nation noted the following regarding insufficient funds to cover administrative costs to sustain their participation in the public hearings component of the Wuskwatim EA process.

“MR.HULE: Just a response to Mr. Grewar’s explanation a moment ago about sharing of filings. Certainly, there is no capacity in York Factory’s participant funding, neither in terms of the budget that was proposed, explicitly within the elements that were contained, or your response that would allow York Factory to share its filings in this process. Although the discussion here has been very helpful today, and I think that there is a lot of will among intervenors to share, there is no capacity on the part of our client to do that in terms of the budget that has been made available” (CEC Pre-Hearing Conference July 28, 2003: 113).

Travel costs emerged as a barrier linked to the sufficiency of funds to cover administrative costs. Travel costs have been identified as being prohibitive to participation for remote and isolated communities who typically have limited resources at their disposal (Lynn and Waterhen 1991, Armitage 2005). Prohibitive travel costs were noted as impeding access to the Wuskwatim EA process as noted by a representative of an unfunded Aboriginal organization noted the following:

“MR. TRONIAK: Our president and other members of the executive are up north and it costs money to come down here and without funding, it is very difficult to battle and deal with this situation” (CEC Motion Hearing September 30, 2003: 55).

#### **4.2.2 *Lack of Capacity***

Lack of capacity was identified as another barrier category associated with resource deficiencies. Two sub-categories were identified in association with lack of capacity including a lack of legal and technical expertise and lack of administrative capacity. In both cases capacity issues noted for Aboriginal participants the Wuskwatim EA process could be traced to funding and financial constraints. Evidence pointing to a lack of legal and technical capacity highlights general resource

disparities between Aboriginal participants and proponents in the Wuskwatim EA process. As well, a lack of expertise was noted as limiting the ability of participants to interpret, evaluate and respond to technical questions. The following data excerpts highlight barriers associated with a lack of technical and legal expertise as noted by representatives of Trapline 18 and the MMF.

“MR. MCIVOR: ...But keeping in mind that, you know, you guys provided Trapline 18 with \$20,000. I mean Look at the kind of resources that they have. How am I supposed to go and do all of this stuff? I don't have a crew of researchers and lawyers and experts that I can call on to say, well, you know, Mr. Adams, you are right, there are 13 different definitions of adverse effects, or no you are not right, there is only two. I mean, we don't have the resources to do all of that kind of stuff...” (CEC Hearings March 15, 2004: 1807-1808).

“MR. CHARTRAND: Are you talking about the minute, small component where we were allotted \$80,000 to consult the Métis people? Is that to you satisfactory consultations? A lot of people were talking about, is there cancer that comes from these transmission lines, are we going to get diseases from Hydro being so close to us? We don't have answers to those, so we don't know, we don't have people with those type of expertise around the table to guide them on issues...” (CEC Hearings May 14, 2004: 6027).

Barriers associated with administrative capacity of participants generally relates to human resource and staffing constraints. Armitage (2005) indicates that limited human resources coupled with high rates of staff turnover inhibit the ability of Aboriginal organizations to participate in environmental review processes. For example, the Manitoba Métis Federation (MMF) stated that the receipt of insufficient intervenor funding created a strain on existing internal resources limiting their ability to prepare for the public hearings component of the Wuskwatim EA process.

“MR. BENOIT: ...I'm not complaining. We got only one-fifth of the funding that we requested. That funding was requested in order to properly address the hearings. Unfortunately, we will be stretching out own internal resources over the next coming months” (CEC Pre-Hearings Conference, July 28, 2003: 67-68).

### 4.3 Accessibility

Accessibility emerged as an important barrier focusing on conditions impeding the ability of Aboriginal publics to attend and otherwise participate in activities associated with the Wuskwatim EA process. The location of public meetings and related opportunities to participate in the Wuskwatim EA process emerged as a key issue linked to accessibility. Problems accessing transportation and prohibitive travel costs were noted as secondary barrier categories associated with the location of public meetings. Table 6 shows the primary and secondary barrier categories associated with accessibility.

**Table 6 Access to the Wuskwatim EA Process**

<b>Primary</b>	<b>Secondary</b>
Location of Public Meetings	Access to Transportation
	Travel Costs

#### 4.3.1 Location of Public Meetings

The location of public meetings was identified as being problematic for some Aboriginal participants with respect to their ability to attend and otherwise participate in the Wuskwatim public hearings and associated activities. Review of the data indicates that the CEC held approximately 39 public meetings for the Wuskwatim EA process over the 2002 – 2004 timeframe<sup>10</sup>. Key components of the Wuskwatim EA process which made use of public meetings administered by the CEC are as follows:

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<sup>10</sup> Note that for the purposes of the research unless otherwise noted the term meetings generally includes the pre-hearings conference, motion hearings, and public hearing components of the review process administered by the CEC.

- Four Public meetings held in Thompson, Nisichawayasihk Cree Nation (Nelson House), Winnipeg, and The Pas (Opaskwayak Cree Nation) to obtain public comment on the draft EIS guidelines for the Wuskwatim Generating Station and Transmission Line projects The public meetings on the EIS guidelines were held respectively on February 11, 12, 18 and 19<sup>th</sup>, 2002.
- A Pre-hearing conference was held in Winnipeg, on July 28<sup>th</sup>, 2003 in order to address scheduling issues associated with the public hearings component of the EA process.
- A Motion Hearing was held in Winnipeg on September 30<sup>th</sup>, 2003 to address a motion put before the CEC by Pimicikamak Cree Nation (PCN) to expand the scope of the review process to include the existing hydro-electric system in place in northern Manitoba. .
- A motion hearing was held in Winnipeg on January 23, 2004 in order to address issues raised by participants regarding the further disclosure of information associated with the interrogatory (IR) process.
- 32 days of public hearings were conducted by the CEC held primarily in Winnipeg, with the exception of two sessions each held in The Pas and Thompson.

**Table 7 Public Meetings held by the CEC for the Wuskwatim EA Process**

Location of Public Meetings	Number of Public Meetings						% of Total Number of Public Meetings
	Public Meetings on Draft EIS Guidelines	CEC Pre-Hearings Conference	Pimicikamak Cree Nation Motion Hearing	Further disclosure Motion Hearing	CEC Public Hearings	Total Number of Public Meetings	
Nisichawayasihk Cree Nation (Nelson House)	1					1	2.6
The Pas (Opaskwayak Cree Nation)	1				2	3	7.7
Thompson	1				2	3	7.7
Winnipeg	1	1	1	1	28	32	82
Total	4	1	1	1	32	39	100

Table 7 above identifies the number and location of public meetings held by the CEC as part of the broader EA process. The data show that the bulk of public meetings (32 or 82%) were located in the City of Winnipeg in the southern part of the Province of Manitoba. Seven of the meetings administered by the CEC took place in the one of three northern communities including Thompson, The Pas (Opaskwayak Cree Nation) and Nisichawayasihk Cree Nation (NCN or Nelson House). In comparison the Wuskwatim EIS documentation identified 19 interested and/or potentially affected First Nation and Northern Affairs Communities located within the vicinity of the project region. Only one public meeting was held in Nelson House to gather comments on the draft EIS guidelines for the Wuskwatim Projects. As well, three meetings were also held in Thompson and The Pas/OCN as part of both the draft guidelines and public hearings processes<sup>11</sup>. The CEC did not hold public meetings for comment on the EIS guidelines or as part of the hearings process in any of the remaining sixteen Northern Affairs or First Nation communities who may have had an interest in the Wuskwatim Projects<sup>12</sup>. The following data excerpt provides some indication that public hearing sessions should have been held in Nelson House and South Indian Lake in order to hear from those with an interest in the project and who have been affected by previous rounds of hydro development in the north.

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<sup>11</sup> Note that The Pas and Opaskwayak Cree Nation (OCN) are two separate communities that are essentially located adjacent to one another. The EA documentation indicates that the public meetings located in The Pas as part of the CEC public hearings were held at the Kikiwak Inn which is owned and operated by OCN. For the purposes of the research references to the location of public meetings in either the Pas or OCN are considered to be same due to their close proximity to one another.

<sup>12</sup> Note that interested and potentially affected Aboriginal communities located within the general project were consulted as part of the proponent's public involvement plan to some degree or another. The focus here however, is on the government process conducted under the auspices of the CEC.

“MR. DYSART: ...However, our association is not happy that those hearings are spending only two days in Thompson for these hearings. More time should be spent in Northern Manitoba to allow the people who are affected by hydro development and have suffered at the hands of Manitoba Hydro to be part of the process. Why are not hearings being held in Nelson House, South Indian Lake, so NCN members there can be heard and see what is going on here? This would also have given this Commission the opportunity to see how past promises of prosperity for us from hydro development have been fulfilled and honoured. Why is so little time and respect been given to those who are paying the price for Manitoba Hydro to make hundreds of millions of dollars?...” (CEC Hearings March 23, 2004: 3135-3136).

MS. KOBLSKI: The other thing that I would like to mention to the CEC board of directors or committee is why are they not having these meetings in Nelson House and in South Indian when we are the people that are being affected by this project? It is only a 45 minute drive for you people to come down that way and meet with our people, so that all of our band members can hear what is going on, not just here in Thompson” (CEC Hearings March 27, 2004: 3104).

Access to transportation and travel costs were identified as secondary barrier categories associated with the location of public meetings. Access to transportation focuses on having the means to attend and participate in EA process activities. Travel costs had previously been identified as a barrier associated with insufficient funds to participate (see section 4.2.1). The following data excerpts highlight barriers associated with a lack of technical and legal expertise as noted by representatives of Trapline 18 and the MMF.

“MR. L. BAKER: ...I have concerns of the Wuskwatim process and its communication with the inhabitants of Granville Lake. Like many people in Northern Manitoba, my family members do not have the money or the means to go places where consultation was done. Granville Lake is remote and there is no communication with us in regards to consultation of Wuskwatim, even though we are connected to the CRD...” (CEC Hearings March 23, 2004: 3296-3297).

#### **4.4 Information Deficiencies**

The research identified a series of concerns related to the development, provision, and presentation of information for the public review of the proposed Wuskwatim Projects. Three primary barrier categories were derived from the data including inaccessible information, the format in which information was made available, and the timely exchange of information among participants involved in the



Wuskwatim EA process. Secondary and tertiary barrier categories are were also identified and are discussed in relation to primary barrier categories when warranted.

Table 8 shows the barrier categories related to information deficiencies.

**Table 8 Information Deficiencies Associated with the Wuskwatim EA Process**

<b>Primary</b>	<b>Secondary</b>	<b>Tertiary</b>
Inaccessible Information	Scope of Review	Financial and other Economic Information Aboriginal and Treaty Rights
	Interrogatory Process	
Format of Information	Lack of Understanding	
	Misinformation	Reliance on Secondary Sources
Timely exchange of Information	Insufficient Time to Prepare	Lack of Administrative Capacity Influence on Process
	Procedural Inefficiencies	IR Process

#### **4.4.1 Inaccessible Information**

Inaccessible information focuses on problems reported by participants in acquiring information relevant to the review of the Wuskwatim Projects. Concerns regarding inaccessible information could often be traced to items or issues falling outside the scope of the EA process. For example, representatives from both Pimicikamak Cree Nation (PCN) and the Displaced Residents of South Indian Lake (DRISL) cited difficulties in obtaining financial or economic information from the proponents relating to consultant expenditures and energy sales forecasts.

“MR. ANDERSON: ...Recently, I filed a Freedom of Information and Personal Privacy Act, FIPPA, requesting the amount of money Manitoba Hydro has provided to NCN and NCN Chief and Council for legal consulting fees related to the Wuskwatim in the past five years. I was denied any information on my request on the grounds that the information requested was provided on a confidential basis and is treated consistently as confidential information. As a citizen of Manitoba and Nelson House band member, I wonder why this information was denied to me as no personal confidential information was being requested? Why is Manitoba Hydro hiding behind Section 18(1) of the FIPPA to deny this information? This is taxpayer and ratepayer money being paid out with little or with no public accountability” (CEC Hearings June 08, 2004: 7475).

“MS. KEMPTON: ...Pimicikamak kept asking for evidence and disclosure about such system impacts and the economics of Wuskwatim in the system because economics drive Hydro operations and operations, in turn, determine impacts. We were repeatedly refused such information” (CEC Hearings March 17, 2004: 2190).

Unless previously made public, financial and economic information is often considered proprietary and protected under privacy legislation such as *s. 18(1)* of Manitoba’s *Freedom of Information Protection Act C.C.S.M. c. F175* and *s. 20(1)* of the *Federal Access to Information Act, R.S.C. 1985, c. A-1*<sup>13</sup>. Third party or proprietary information would generally be unavailable to the public regardless of the type of process through which the information was requested.

Further review of the data indicates that the CEC did allow further examination of the more contentious issues that they felt were within their mandate. For example, despite objections by the proponent’s legal council the CEC permitted questioning (cross-examination) which enabled the Justice Seekers of Nelson House and DRSIL to acquire additional information regarding the partnership arrangement between NCN and Manitoba Hydro which touched on some of their financial and economic concerns.

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<sup>13</sup> Note that both the Freedom of Information Protection Act and Access to Information Act have among others provisions for the protection of information that may interfere with competition, contractual negotiations or other wise resulting in a significant loss or gain to a third party.

“MS. KOBLISKI: ...Our people are not ready to fully assess and understand the environmental, social, and economic issues and changes that we will face and have to deal with. We have not been provided with financial information, and thank the CEC for making more of that information available. We also thank the CEC for asking and allowing tough questions to be asked at these hearings on the business deals being made between our Chief and Council and Manitoba Hydro. These are of interest to all Manitobans, not just NCN members” (CEC Hearings March 17, 2004: 2280)

“Representatives of the Displaced Residents of South Indian Lake were impressed with the commission's questions because they have been trying to get more details on the partnership deal. South Indian Lake residents are technically members of the Nisichawayasihk Cree Nation, but many have not supported the Wuskwatim plan” (Falding, Winnipeg Free Press, March 3, 2004: b10).

Without the intervention of the CEC some of this information may not have been made available to participants. This data suggests that public hearings can be an important mechanism through which otherwise inaccessible information can be disclosed to the public, provided the information is relevant to the issues under review, its provision is within the mandate of those administering the EA process, and its disclosure is not precluded by proprietary issues. In this case questioning by the Justice Seekers of Nelson House and DRSIL focused on seeking clarification on some of the information that already been made public by the proponents<sup>14</sup>.

To a lesser extent the data suggests some confusion regarding the overlap between the Wuskwatim EA and the S.35 Crown Consultations and the type of information that would be made available from that process. As noted previously, the Crown S.35 process occurred as a supplementary process to the Wuskwatim EA to consider potential project-related effects on Aboriginal and Treaty Rights. The Crown .35 Consultations took place within the same general timeframe as the Wuskwatim EA process proper, however, consideration of potential effects on

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<sup>14</sup> Questions by the Justice Seekers of Nelson House and DRISL were based on the Summary of Understanding document which provided a framework for NCN and Manitoba Hydro to negotiate the Project Development Agreement for the Wuskwatim Generating Station. The Summary of Understanding was submitted by the proponents to the CEC as a public document for the purposes of the review process.

Aboriginal and Treaty Rights was beyond the scope of the review process. Concerns about accessing information related to effects on Aboriginal and Treaty Rights were noted primarily by representatives of the (MMF).

“MR. CHARTRAND: ...I have heard this Commission talking about the process of not having the mandate to deal with section 35, or confusion of where does section 35 fit into the process of what the Commission has before them? We know that the mandate of the Commission is to review the socioeconomic, environmental, and cultural effects of this project. But you ask yourself, and I ask the Commission to ask themselves this, maybe in their own private meeting, if they are not to look at the rights of the people, whether it is First Nation or Métis, how can they properly, truly, give a full recommendation on the impact of how it will affect those three categories?” (CEC Hearings May 14, 2004: 5986).

Questions raised by Nelson House/NCN band members about potential project related effects on Aboriginal and Treaty Rights suggests that the information generated as part of the S.35 Consultation process was not being made readily available. The following data excerpt generally highlights a lack of understanding among participants regarding potential project impacts on Aboriginal and Treaty Rights, as well as the unwillingness of government and EA administrator to address participant concerns and provide access to this type of information.

“MR. FRANCOIS: Okay. I'd like to ask, these resources, there's going to be a lot of stuff coming through these resources, right. You've been -- anyway, we're gonna sign anything, right? We didn't sign nothing but if we do, are we going to lose our treaty rights or our land resource? Are we going to have anything to do with it?” (CEC Hearings March 22, 2004: 3068).

“THE CHAIRMAN: ...You've had an opportunity to try and put forth your questions dealing with the section 35 consultation process. And as has been stated clearly at the very beginning, our process is a separate one. And I can appreciate that, and I am not referring to the validity of your points of view or at all, I'm just saying that it is not part of our process” (CEC Hearings May 11, 2004: 5271-5272).

Participant concerns regarding inaccessible information were also noted in relation to what appears to have been perceived as an ineffectual interrogatory (IR) process.

“MR. MCIVOR: ...And I think instead of dealing with the issues head on they choose to, CEC choose to create a process that, you know, would not result in full disclosure of what is relevant. It is called an interrogatory process, but, I mean, these guys reserve the right to refuse to answer questions. They made that pretty clear to everybody” (CEC Further Disclosure Motion Hearing January 23, 2004: 77).

The Wuskwatim IR process consisted of four rounds of written questions coordinated by the CEC among participants, proponents and project administration team (PAT).

The intent of the IR process was to enhance information and streamline the review process by reducing duplication and addressing initial concerns prior to the start of the public hearings (Falding November 25, 2003). The CEC coordinated two rounds of written questions to the Manitoba Hydro/NCN as well as one round each to participants and the PAT.

Review of the data suggests that the IR process itself was cumbersome and may have left participants less than satisfied with its outcome. Inefficiencies associated with the Wuskwatim IR process can in part be traced to the volume of questions submitted to the proponents, which in conjunction with restrictive timelines appear to have had an impact on the sufficiency of the responses received by participants (Falding December 30, 2003)<sup>15</sup>.

“If you're having trouble getting your homework done on time, try working at Manitoba Hydro, where about 60 staff and consultants were scrambling to rerun computer models and provide written answers in about three weeks. "It's a lot of work," said Manitoba Hydro's Ed Wojczynski. This week the utility...waved the white flag and admitted it would need a two-week extension” (Falding, Winnipeg Free Press, November 5, 2003: a5).

A related issue appears to be the PATs involvement in the IR process. The media documentation indicates that less than satisfactory answers to questions posed by the public may have set the standard for the quality of subsequent responses provided to the public by the proponent.

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<sup>15</sup> For example, the media documentation published at the time indicates that approximately 2,200 questions were submitted to the proponents as part of the IR process.

“Some insiders say groups filing repetitive or unnecessary questions have handed governments an excuse to refuse to address legitimate issues related to Manitoba's largest capital project. Manitoba Hydro officials, flabbergasted by the number of questions they received, have already realized the government's refusal could give the utility a rationale or refusing to answer some questions itself” (Falding, Winnipeg Free Press December 30, 2003: b8).

Although a considerable number of questions were submitted as part of the IR process, those which remained unanswered by the proponent concerned items which were outside the scope of the EA process. Whether or not the responses received by participants were sufficient is another matter. The adequacy of responses to questions posed through the IR process may have been affected by their sheer number and limited time available to proponents in addition to a poor standard set by the PAT. The adequacy of responses received by participants through the IR process could have contributed to perceptions surrounding inaccessible information.

#### ***4.4.2 Format of Information***

The format of EA and project related documentation emerged as another information related barrier among Aboriginal participants involved the Wuskwatim EA process. Participant concerns regarding the format of information centered on the project EISs and documentation related to the partnership agreement between NCN and Manitoba Hydro. The data suggests that the format in which information was made available contributed to a lack of understanding about project impacts and implications among Aboriginal publics.

Evidence linking the format of information to a lack of understanding was premised on its readability. Concerns were noted with respect to the content (technical) and physical structure (size and organization) of EA and project related documentation. As well, the data indicates that the format in which information is

provided should account for people's familiarity with the English language, literacy, and level of education.

"The proposal is two volumes long, each the size of a Winnipeg phone book. "I couldn't even figure out how to read the damn thing ... it was really hard," band member Ramona Neckoway told CBC News" (CBC March 30, 2004).

"MS. NECKOWAY: ...I possess a university degree and I'm having a hell of a time understanding what is contained in this information. Can you please tell me how my grandmother, who doesn't speak or read English, is to understand what is going on? How can my aunts, uncles and cousins begin to comprehend what is written or even spoken? You need degrees of all sorts to understand what is written down, presuming you can read it in the first place. (CEC Hearings March 23, 2004: 3256-3257).

Misinformation emerged as another barrier category related to the format of information. Sullivan et al. (1997) indicate that difficulties reading and/or understanding the information contained in a project EIS can lead to a reliance on secondary sources such as the media, consultants, or interest groups, which in turn can result in the inaccurate portrayal of the project and its anticipated effects. The data provides some evidence which suggests that political opposition to the Wuskwatim projects may have been a source of misinformation resulting in non-participation by some Aboriginal publics and their willingness to accept information about the Wuskwatim projects.

"MS. AVERY KINEW: ...Those in our community that close their eyes, ears, and hearts to this project are hard to reach. Some have simply refused to come to meetings that we have held and turned our information away at their doors, and then claimed they have not received any information or consultation. But we continue to try to reach out and offset the misinformation that active political opponents have spread about the project. Some of it you have seen and heard at this hearing." (CEC Hearings Mach 25, 2004: 3403-3404).

The data clarifies some of the problems linking misinformation and the format in which information is made available. In this case some evidence points to a lack of written translation of EA and project related documentation as being problematic. For example, the data revealed some confusion within the community of Nelson House

regarding project impacts to cultural and heritage sites in the vicinity of Wuskwatim Lake.

“But misinformation about the project is rampant in Nelson House despite the efforts of a team of Wuskwatim project workers to visit each home answering questions. More than one band member told the Free Press the new dam will require graves to be moved from the edge of Wuskwatim Lake, even though that problem is related to the existing Churchill River Diversion” (Falding, Winnipeg Free Press, March 28, 2004: a1).

Further review of the CEC public hearing transcripts indicates that that the heritage component of the Wuskwatim Generating Station EIS was not translated. Although there is reference to an oral power point translation of the EIS integrated executive summary, it appears that some NCN members wanted the information provided in written form and translated into Cree Syllabics. Interestingly, a representative from NCN’s Future Development Team indicated that written translation of project documentation has not proven a useful format in conveying information.

“MR. HART: ...Has the traditional culture, historical, and archeological knowledge in the EIS been translated in Cree for the elders of Nelson House to review? If it has been translated, is it available at the Nelson House band office for anyone to access? That is the first one. Then this one --

THE CHAIRMAN: Give him a chance to answer before you go on.

MR. HART: That is my first question.

THE CHAIRMAN: The answer was yes.

MR. THOMAS: If you recall, Reverend, in some Thompson there was a request from members of Cross Lake to do presentations in Cree, and we did honour that request, and there was a CD on the EIS stuff and it was done, it was all translated all in Cree, and that information will also be available to our people.

MR. HART: So if it is translated into Cree, will that be syllabics or Roman orthography?

MR. THOMAS: It has been done orally, but there is some people who are happy with that in that it does reflect the way we transmit knowledge or information, which is usually orally. The use of the Roman orthography is somewhat limited, even as well educated people, we have difficulty understanding or following that way of writing. And the syllabic writing system, which is derived from a non-Aboriginal person, has been introduced to our people and many of our elders were taught that language?

MR. MAYER: I thought the question was has it been translated into syllabics I thought was what the question was?

MR. THOMAS: It hasn't proven useful for us to do that.  
(CEC Hearings May 25, 2004: 6403-6405)



#### **4.4.3 *Timely Exchange of Information***

Acquiring information in a timely manner is important in order to allow participants to prepare their positions to contribute to the EA process. The research indicates that the late receipt of information by DRISL precluded their ability to submit questions to the proponent as part of the IR process. As well, representative of the MMF indicated that they had also experienced difficulties in preparing for the CEC's further disclosure motion hearing due to the late receipt of information.

“MR. BENOIT: ...First of all, I would like to start off by saying that I will be talking a little bit about procedural fairness today. And just to give a flavour of what I am trying to say here, is that this morning – two days ago we had to hand in our motion to the CEC so they could distribute it, and it wasn't until 8:00 o'clock or 8:30 this morning that I received Hydro's response in this booklet here. If I had more time I would be able to address their issues a little bit better. So in that sense, it wasn't very fair that we only got that, like I said, about two hours ago, three hours ago”  
(CEC Further Disclosure Motion Hearing January 23, 2004: 91-92).

The data indicates that a lack of administrative capacity on behalf of the CEC and at least one Aboriginal intervener (Manitoba Clean Environment Commission 2003a: 113) was in part responsible for problems associated with the timely exchange of information.

“MR. GREWAR: ...The commission has a staff of two, and so we just simply do not have the capability of managing the distribution of documents. As of today, that's, that's it. I don't think we've done all that well so far, but we are not going to carry it on, so we will see if you can all do it a little better” (CEC Pre-Hearings Conference July 28, 2003: 110).

“MR. MAYER: ...I think, though, we should clarify. And we are all -- we are all in the same boat as you are. I've never done a CEC hearing. The thing that struck me immediately upon walking into the CEC office is realizing that they are smaller than my law office is, as compared to at the Public Utilities Board where it's not a cast of thousands, but it's significantly more endowed with staff and space and those abilities” (CEC Pre-Hearings Conference July 28, 2003: 114-115).

#### **4.5 *Communication Barriers***

Communication is the act or process of exchanging information which involves encoding and decoding verbal and nonverbal messages (Neuliep 2006b). Although written information is central to the notion of communication, the focus

here is on the oral or speech components of the review process. Three categories of communication barriers were identified as part of the research, including language barriers, technical discourse, and procedural formality. Communication barriers could often be correlated with other barriers such as a lack of understanding as well as broader contextual issues including efforts to accommodate cultural difference. Table 9 identifies the key communication barriers identified in association with the Wuskwatim EA process.

**Table 9 Communication Barriers**

<b>Primary</b>	<b>Secondary</b>	<b>Tertiary</b>
Language Barriers	Lack of Oral Translation	Translation Accuracy Adequately Equipped Translators
	Lack of Understanding	
	Cultural Accommodation	
Technical Discourse	Lack of Understanding	
Procedural Formality	Rules and Restrictions	Registration Time Limits on Speaking
	Adversarial Process	Lawyers
	Intimidating Environment	Public Speaking Language Technical Focus

#### **4.5.1 Language Barriers**

Language emerged as a central barrier theme in association with the communicative components of the Wuskwatim EA process. Language can be viewed as a set of symbols used to communicate meaning and experience (Renn 1992, Jandt 2004). Three barrier sub-categories were noted in association with language barriers including a lack of oral translation, lack of understanding, and cultural accommodation.

Lack of oral translation was identified as an important communication barrier inhibiting participation. Translation is a process through which meaning is conveyed from one language to the next (Asad 1995, Esposito 2001). Problems translating between languages can often be an important source of miscommunication and result in misunderstanding (De Jongh 1991, Neuliep 2006c). Further review of the research revealed two additional concerns linked to the issue of translation including the accuracy of oral translations and the need to ensure that translators are adequately equipped.

The research indicates that the CEC was alerted to the need for providing translation services for elders during one of the public meetings held to gather input on the draft Wuskwatim EIS guidelines. Review of the data concerning pre-hearing activities did not provide any evidence that translation services were made available prior to the CEC public hearings<sup>16</sup>.

“MR. CAMPBELL: ...And also to try and set up a better communication system, I guess, and I'm not saying, like, this is – this is bad. What he is saying is to have a Cree interpreter and also I guess -- yeah, Cree interpretation, he says, for the elders” (CEC Public Meetings February 19, 2002: 163).

Furthermore, the public record for the hearings themselves indicates that more formal translation services (i.e. use of qualified translators) were not employed for the first eleven sessions. The data indicates that in response to concerns raised by Aboriginal participants during the early stages of the public hearings, two NCN community consultants who were in attendance volunteered to interpret for those wishing to

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<sup>16</sup> Note that pre-hearing activities include public meetings held by the CEC to gather comments on the draft EIS guidelines for the Wuskwatim Generating Station and Transmission Lines Projects, the Wuskwatim pre-hearing conference, and the Motion Hearings.

speak in Cree<sup>17</sup>. Translation between Cree and English during the earlier stages of the EA process (pre-hearing activities and initial hearing sessions) was conducted either by individuals themselves who were commenting on the proceedings, or by those assisting an elder. The data also indicates that at times the NCN representatives who were also proponents for the Wuskwatim Generating Station responded to questions in Cree and on occasion provided an English translation of the exchanges. In some cases where the exchanges were relatively lengthy and no English translation was provided as noted in the following:

“MR. THOMAS: (SPEAKING CREE) I apologize, I can't translate all of that for you, Commissioner.  
THE CHAIRMAN: I realize that it was probably a very lengthy question”.  
(CEC Hearings March 22, 2004: 3024).

The problem here is that in absence of translation services the information being exchanged or imparted is lost on those who do not familiar with or competent in the language in use. The following data excerpts provide some general indication that language barriers and the absence of translation can inhibit dialogue and contribute to a lack of understanding among the parties involved in the Wuskwatim CEC public hearings (in this case the evidence focuses on elders present at the hearings).

“MR. HART: ...(SPEAKING IN CREE) I have come here to listen to your presentation on the invitation of this hearing. And I have spoken to you in my own language and you are giving me this look that you didn't have a clue what I was saying”  
(CEC Hearings March 22, 2004: 3021).

“MR. HART: ...(SPEAKING CREE). I didn't intend to come up and speak, but one of my brothers stated that he wanted to hear something in his own language. Thank you” (CEC Hearings March 22, 2004: 3023).

Two additional barrier categories were identified in association with a lack of translation including the accuracy of translation and the need to ensure translators are

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<sup>17</sup> The Wuskwatim public hearings began on March 1<sup>st</sup>, 2004 and the NCN community consultants volunteered to provide translation services on March 22<sup>nd</sup>, 2004. Over that time period eleven public hearing sessions had taken place.

properly equipped. Translation accuracy refers to degree to which meaning is accurately conveyed between a source language (SL) and target language (TL).

Translation is often viewed as a best case approximation when communicating across cultures (Gallagher 1992, Neuliep 2006c). Problems related to accurate translation are often attributed to linguistic differences such as vocabulary, syntax, and connotative meaning (Whorf 1956b, Phillips 1959, De Jongh 1991). Although based on limited data the public hearing transcripts do indicate that at times the translation between Cree and English was less than accurate:

MR. THOMAS: I just want to point out for the record, Mr. Chairman, that the comments spoken by the Elder have been interpreted as best as the gentlemen can, and it is still not complete. And at the same time, the comments made by the Elder are not reflective of what he proposes to have spoken on behalf of the Elder for.

THE CHAIRMAN: Mr. Thomas, until we know what the record states, let the record stand for the time being” (CEC Hearings March 17, 2004: 2320-2321).

“MR. HART: ...We came here to try and listen to those of us that have a small understanding of your language. But you know, in your God given language you are borrowing words that they make up from other languages, that is why the English language is so complicated. Nobody can really understand what they are saying. Especially now with modern technology, nobody can translate for you word for word what you are saying. And yet you came here with the intention that we can come and listen to whatever presentation that has been presented so far” (CEC Hearings March 22, 2004: 3021-3022).

Ensuring that translators are adequately equipped to do their job was also noted as important for the delivery of translation services during the Wuskwatim public hearings. Although the documentation does indicate that technology (simultaneous translation equipment) was used during the latter half of the hearing sessions, initially it did not appear to be readily available. Employing poorly equipped interpreters may result in miscommunication when participants speak faster than interpreters can write and translate their words. The following data excerpt highlights the importance of ensuring that interpreters are adequately equipped to translate in cross-cultural contexts.

“MR. SPENCE: ...Good afternoon everyone, my name is Jimmy D. Spence, one of the translators for the Government. And just to mention that, Mr. Chairman, you mentioned about simultaneous interpretation. If the equipment was here, I think it would be a lot easier for Charlie and I to interpret as people speak. Because sometimes when you are writing down things like that, they seem to talk a little faster than you can write, so it makes it difficult to interpret. (SPEAKING CREE). Maybe just to make another comment with respect to interpretation, those of you that are making presentations and those of you replying, could you make it short, and we can signal you to stop so we can interpret and then continue. Because like I said, it is very difficult when you don't have the simultaneous interpretation equipment” (CEC Hearings March 22, 2004: 3035-3036).

Cultural accommodation emerged as another important barrier category premised on the relationship between language and culture. The research provides some evidence which supports the centrality of language to Aboriginal culture.

“MR. OSBORNE: ...Thank you, Mr. Spence. Mr. Chairman, thank you very much for allowing me to ask a few questions. But I will tell you again, please respect our language. It is the very essence of our way of life. Thank you” (CEC Hearings March 23, 2004: 3216).

The data also highlights the importance of allowing of Aboriginal participants to speak in their own language. For example, despite being able to speak English one participant's desire to convey his message in Cree suggests that it allowed him to be grounded in his own cultural perspective.

“MR. DYSART: ...(Through the interpreter) Ladies and gentlemen, welcome here to this meeting, the hearings on the Wuskwatim project. I want to be speaking in the Cree language to be able to convey my message. It is the way I was brought up and that's the way I talk” (CEC Hearings June 08, 2004: 7459).

In considering the data presented it seems that efforts to mitigate language barriers, possibly through the use of translators or interpreters would begin to address the accommodation of cultural difference in public hearings or other similar types of communicative forums.

#### **4.5.2 *Technical Discourse***

Technical discourse refers to the content and terminology used to discuss various issues associated with the review of the Wuskwatim Projects within the

public hearing forum. Concerns which could be attributed to the technical nature of discussions taking place at the public hearings could generally be linked to a lack of understanding among participants. The research also provides some evidence which suggests that in absence of oral translation services, language barriers in combination with an overt technical focus of the hearings can further compound difficulties associated with a lack of understanding among participants as suggested by the following:

“MS. BRUYERE: ...There were terminologies that were used here the past six days that would fly over most people's heads. And even more so to our elders. And since you have been able to acquire such terminology, I hope that you haven't forgotten your laymen terms or your laymen English, and can bring it down to the level of understanding for laymen people like myself.” (CEC Public Hearings March 10, 2004: 1551).

“MR. OSBORNE: ...Thank you for reminding me. I have a question but I also have a very, very deep concern about this overall hearing process. English is not my language. My language is in Cree. I'm very concerned that the panel and the Commissioners did not provide for me a translator. Mainly because there is a lot of legal and technical language that only technicians and legal people understand. However, there are translators that can translate the English language to my language so that I understand the issues, the concerns, that have been expressed today. Will the Commissioners and the panel respect and honour my language before we proceed any further? I ask you that today. Thank you” (CEC Hearings March 22, 2004: 3019-3020).

#### **4.5.3 *Procedural Formality***

The formal structure of the public hearings was noted as being problematic for some Aboriginal participants involved in the Wuskwatim EA process. Procedural formality considers the structure of the proceedings and the manner in which it shapes the debate surrounding a proposed development. Key barriers arising from the formal nature of the public hearings include procedural rules and restrictions, adversarial process, and intimidating environment.

The structure of the public involvement activities administered by the CEC for the Wuskwatim EA process could largely be divided into formal and informal components. The more informal portions of the review process were the public

meetings held to obtain public input on the Wuskwatim EIS guidelines (EIS guideline meetings), while the formal aspects of the EA included both the motion and public hearings. The Chair of the CEC differentiated between the informal public meetings and hearings components as follows:

“THE CHAIRMAN: ...These are guideline meetings, we’re not in a public hearing. There’s a difference between a public hearing and a public meeting. The public meetings are much more informal as -- as you can see, Public hearings, as you know, there’s often more lawyers around than you can shake a stick at...” (CEC Public Meeting February 18, 2002: 153-154).

The key issue here is reference to the presence of lawyers which point to the judicial underpinnings of the formal review process. The data provide some evidence which generally supports the adversarial nature of the public hearings as being problematic. Review of the research documentation suggests that a more formal approach to the structure and administration of the CEC hearings served to aggravate existing tensions over the proposed Wuskwatim Projects. Some evidence was noted linking the adversarial nature of the public hearings to its formal structure based on reference to the use of lawyers. A member of the CEC panel made the following observation concerning the proponent’s use of lawyers and adversarial questioning.

“MS. AVERY KINEW: I don't know exactly how to word this, but I find it really difficult. Chief Primrose in his opening remarks talked about the pent up hurt, anger, and mistrust of particularly Hydro because of the CRD that we have heard about particularly in the north, but also in the south. And you can feel the collective grief from what happened 30 or 40 years ago, and it was brought up again tonight. I find it difficult that the only way that Hydro has found to address what they have done in the past years, to address this is by adversarial questioning by lawyers. It doesn't help the people who are hurt, angry, and mistrustful to have questions brought out that way in cross-examination” (CEC Hearings March 25, 2004: 3528-3529).

A related barrier emerging from the research concerns the intimidating nature of the public hearing environment. The intimidating nature of the hearing environment is a product of the formal structure of the proceedings and may dissuade participants from asking questions and voicing their concerns. For example,



Checkoway (1981) indicates that the use of microphones, walking to the front of the room, and addressing an audience can hinder communicative exchanges. The research provides some general indication that the speech conditions within the public hearing environment were intimidating for at least one NCN band member.

“ MS. NECKOWAY: ...I commend my peers on their presentation. It takes courage and strength to appear in this forum. It is very intimidating” (CEC Hearings May 28, 2004: 7054).

As well, participant comfort levels and difficulties speaking in public were also attributed to the intimidating nature of the hearing environment. Review of the hearing transcripts suggests that at least one participant indicated that speaking in his own language made him feel more comfortable in presenting his position to the CEC panel. It appears that the accommodation of language barriers is an important consideration not only for improving communication and facilitating greater understanding, but also to enhance comfort levels among participants when speaking out in public.

“ MR. CAMPBELL: ...(CREE SPOKEN) I'm just trying to be myself here as I'm up here. I'm not very good at making speeches, hey. So once in a while, I'm going to be talking in my own language, as you know, just to make myself comfortable. (CREE SPOKEN)” (CEC Hearings May 27, 2004: 6675).

Statements made by a representative of the MMF provide further clarification on the linkages between the formal structure and intimidating nature of the public hearings and the manner in which they discourage participation. In particular, the following data excerpt provides insight on the manner in which technical discourse, language barriers, and a lack of understanding can affect participant comfort levels.

“MR. CHARTRAND: ...A lot of our people feel uneasy speaking even to a Commission of your structure. They don't feel qualified that they can understand, or use the proper language, or proper terminology necessary to advocate what they really want to say, and they are shy and they feel intimidated sometimes. That is why you need a proper structure and fair process, so we can put the right people in place to actually advocate the real issues

that people want to say, or be brought forward, so everybody can understand where they are coming from. When we did our consultation, it was quite easy, people were showing up in large numbers. When I go across the Province for hunting and fishing, I have people, sometimes 200 to 300 in a room. They feel comfortable in our environment that they can share and speak openly, and even if they have an accent or speak a different language, we will speak in other languages that we speak” (CEC Hearings May 14, 2004: 6006-6007).

Restrictive rules and procedures emerged as another barrier category

associated with the Wuskwatim public hearings. Public hearings are governed by formal rules and procedures that structure the deliberations over a proposed resource development project. The *Manitoba Clean Environment Commission Participants Handbook* (n.d.) (participants handbook) generally describes the hearings process and manner in which members of the public can participate in hearings. The participant handbook differentiates between formal and informal participants, sets timelines for the length of presentations, and establishes rules regarding the receipt and distribution of information among those involved in the review process. Barriers attributed to restrictive rules and procedures include short time limits for speaking, and the need to register prior to making a presentation.

“GRAND CHIEF SWAN: ... What I'm saying here is you talk about a process that you are following. My understanding is that you keep changing things as you go to suit your needs or whoever's needs, and I take offence when you say I did not register. Caroline Bruyere is an elder within our organization, and just because I didn't specifically put my name in does not mean that I was not going to be here today. I just had not decided exactly how we would try and follow your process. As I stated earlier, I was in fact informed by members who are in this room that today would be the day to ask questions and that I could register to present at a later date... The other thing that I take offence to is that there is such a short time frame to hear people like myself, leaders and ordinary citizens, First Nations citizens from our communities, and you proceed to move things so fast” (CEC Hearings March 10, 2004: 1542-1543).

#### **4.6 Inadequate Consultation**

Inadequate consultation addresses stated and inferred barriers associated with the Proponent's public involvement program (PIP). Five key barrier categories were identified including a lack of opportunity to define consultation, exclusion based on

identity and locality, buying project support, participatory techniques, and a lack of opportunity to contribute to the development of the Wuskwatim EIS. Table 10 shows the barriers relating to inadequate consultation.

**Table 10 Inadequate Consultation**

Primary	Secondary	Tertiary
Lack of Opportunity to Define Consultation		
Exclusion Based on Identity and Locality		
Buying Project Support		
Participatory Techniques	Open House/Community Meetings Poorly Equipped Community Consultants	Training Work Space
Lack of Opportunity to Contribute to the Development of the EIS	Evaluation of Environmental Effects  Lack of Opportunity to Define Traditional Knowledge	Cumulative Effects  Contribute to Determinations of Significance

**4.6.1 Proponent Public Involvement Program (PIP)**

The proponent’s PIP for the Wuskwatim Generating Station and Transmission Lines Projects employed a two tiered approach that focused on NCN members as well as other communities and individuals located within the project region or with an interest in the proposed developments. Communities within the project region were further differentiated as being an Aboriginal or non-Aboriginal community. Aboriginal communities included either First Nations of Northern Affairs (NA) communities, while non-Aboriginal communities considered other rural or urban centers such as Thompson, The Pas and the Local Government District of Mystery

Lake (L.G.D. of Mystery Lake) (Manitoba Hydro & Nisichawayasihk Cree Nation 2003c;2003a;2003b)<sup>18</sup>.

The Wuskwatim project region was established based on spatial and temporal boundaries related to potential impacts or effects stemming from the construction and operation of the Wuskwatim Generating Station and Transmission Lines Projects. Potentially interested and affected Aboriginal communities were identified based on geographic proximity to the proposed projects, perceived/potential biophysical impacts, as well as a stated interest in meeting or obtaining further information (Manitoba Hydro & Nisichawayasihk Cree Nation 2003c;2003a). Figure 3 shows the Wuskwatim project region as defined by the proponents in the public involvement plan submitted to the EA Technical Advisory Committee (TAC) in August 2002 (Manitoba Hydro & Nisichawayasihk Cree Nation 2003c).

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<sup>18</sup> Northern affairs communities are those communities designated under the Northern Affairs Act, C.C.S.M. c. N100 which are viewed as having a predominant Aboriginal (First Nation or Métis) population.

**Figure 5 First Nation and Northern Affairs Communities Located within the Wuskwatim Project Region**



(Source: Manitoba Hydro & Nisichawayasihk Cree Nation 2003c)

The public involvement plan initially submitted by the proponents describes what appears to be an iterative process designed to introduce and deliver information on various aspects of the Wuskwatim projects as the studies and development of the EISs progressed. A five stage approach was proposed including introductory meetings with elected officials, review of project alternatives, presentation of initial EIS findings and results, review of the completed EIS documentation, and communication of any supplementary information filed with the regulators prior to the start of the CEC public hearings (Manitoba Hydro & Nisichawayasihk Cree Nation 2003c).

Subsequent review of the EA documentation indicates that the PIP which was actually implemented for the Wuskwatim projects consisted of four rounds of consultation. Rounds one through three took place between September 2001 – March 2003 prior to the filing of the Wuskwatim Generating Station and Transmission Lines EISs in April 2003. Consistent with the proponent’s plan the initial rounds of the PIP focused on meeting with elected officials and community members in order to introduce the project, providing information on alternatives, as well as reviewing the initial EIS findings and study results. Round four of the PIP occurred early in July 2003 and consisted of two technical workshops oriented to reviewing the content and format of the EISs as well as the Need for and Alternatives to (NFAAT) the proposed projects. The documentation indicates that participation in the technical workshops that were held as round four of the PIP included what were termed “in-depth” participants - those who had expressed an interest in the projects, or acquired participant funding for the CEC public hearings. The data indicates that the PIP deviated from the original plan during rounds four and five, which appear to have been combined and reformatted as technical workshops for a more focused group of participants rather than broader community meetings.

#### ***4.6.2 Lack of Opportunity to Define Consultation***

A lack of opportunity to define consultation was identified as a barrier to participation for some Aboriginal participants in the Wuskwatim EA process. For the purposes of the research defining consultation concerns itself with the ability of interested and affected Aboriginal publics to influence the manner in which they are involved in the EA process. As a barrier this generally focused on planning

considerations associated with the design and implementation of public involvement activities as noted in the following:

“MR. ANDERSON: ...I have concerns on the Wuskwatim process, its communication with the community -- and its communication with the community of Granville Lake. For instance, the way the consultation was done, we would have liked to have had some say into what were the parameters and basically, possibly influence some of the baseline thinking on the scope of consultation” (CEC Hearings March 23, 2004: 3231).

“MR. DYSART: ...Again, directing the questions to Darryl, are you aware say for CASIL, the Community Association of South Indian Lake that they were not directly either approached or corresponded to in the development of the consultation process...” (CEC Hearings May 14, 2004: 6047).

The data also suggests that defining consultation may allow Aboriginal communities some measure of control over the basic conditions under which their involvement occurs.

“MR. DYSART: ...First of all, in regards to consultation, the definition of consultation, prior to it taking place, would you agree that the definition should be determined between the two parties, where this consultation should take place, or when and how it should take place?” (CEC Public Hearings May 14, 2004: 6043).

The Wuskwatim EIS documentation indicates that the PIP was directly influenced by input from community elected leadership regarding the manner in which they wished to be consulted and what type of information would be most useful (Nisichawayashik Cree Nation & Manitoba Hydro 2003, Nisichawayasihk Cree Nation & Manitoba Hydro 2003a)<sup>19</sup>. Initial meetings with elected leaders took place during the first round of the PIP, which suggests that opportunities to provide input into the design of the consultative process would have occurred early during the fall of 2001. Subsequent review of the meeting records and presentation materials maintained for the initial round of meetings do not provide any clear evidence

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<sup>19</sup> Note that initial meetings with the elected leadership would have taken place during the first round of the PIP which suggests that opportunities to provide input into the design of the consultative process would have occurred early during the fall of 2001.

regarding the manner in which the input from elected officials was used to develop the PIP. For example, the power point presentation used during round one generally describes the PIP process and asks for input. While the meeting minutes do indicate discussion of the PIP in reference to subsequent rounds of consultation, it is however, not readily apparent how input from elected leaders or the general public was used to influence the design of public involvement activities. If discussions did occur among elected community leaders regarding the design and implementation of the PIP for communities beyond NCN they were either not recorded or not included as part of the EIS documentation.

Evidence pointing to notable changes to the proponents PIP was used as an indicator to gauge the relative influence of Aboriginal publics on the manner in which they would be consulted. Rutherford and Campbell (2004) employed a similar approach in their study of public participation in EA processes conducted under CEAA where the apparent influence of the public on the decision process was judged based on changes made by the proponent or review panel in response to public comment or concerns.

The documentation does provide some indirect evidence pointing to changes in the Wuskwatim PIP. For example, in reviewing the newsletters produced as part of the PIP, an alteration is noted from what was originally conceived as a three round process intended to transition into the public involvement activities administered by the CEC. A shift is noted in the PIP during round three, in which it was extended to the five round process submitted to provincial regulators for the Wuskwatim EA process. On the surface this appears to be a positive indicator of change that may be



attributable to input from elected community leaders. Unfortunately the changes appear to have been short lived, faltering during the implementation stage. At the end of the day the PIP consisted of the original three rounds of community meetings. The fourth round of the PIP was supplanted by a technical workshop held prior to the public hearings for select participants, while the supposed fifth round disappeared entirely. The documentation under review did not provide any reasons for the changes to the implementation of the PIP plan that was submitted to the regulators.

#### ***4.6.3 Exclusion based on Identity and Locality***

Exclusion based on identity and locality was noted as a barrier category pointing to the need for broader representation of Aboriginal interests affected by a proposed development. Exclusion based on identity and locality can be traced to the manner in which the public is defined for the purposes of public involvement activities. Locality refers to place based or geographic parameters, while representation of identity or community of interest focuses on broader socio-cultural, political, and/or issue based associations. Barnes et al. (2003) indicate that locality is the most common means by which publics are constituted within deliberative forums.

Evidence which supports exclusion based on identity and locality is primarily derived by concerns raised by representatives from OPCN/SIL and the MMF during the CEC public hearings. The data suggests that concerns raised by these participants can be traced to the inability of the proponents to accommodate the diversity of Aboriginal interests (e.g. cultural and political) within the project region and instead chose to deal with them in a homogeneous manner. For example, representatives from

OPCN noted the following with respect to the generalization of project related effects<sup>20</sup>.

“MR. BAKER: ...These cumulative effects are obviously different for the Nisichawayasihk Cree at Nelson House and the O-Pipon-Na-Piwin Cree at South Indian Lake. NCN as used in the EIS, is understood to be one band, but it is two distinct Cree Nation communities, and that is the first principle error that takes the analysis off the rails. The two Cree Nation communities have a different history, different economy, different impacts, different people, different culture, different settlement agreements, different legislations and laws and different governments” (CEC hearings Transcripts, May 27, 2004: 6873).

“MR. BAKER: ...I won't focus on leisure or law and order, but certainly the specific sacred areas, traditional areas of great importance, experiences that affect culture could vary differently between communities. So when we are trying to assess some aspects of cultural knowledge as to what is important to different people, you have to talk to the people of the community, you can't just talk to some sample of Cree people from Northern Manitoba” (CEC Hearings April 14, 2004: 4822).

Representatives from the MMF raised a similar set of concerns regarding the exclusion of Métis people from the proponent led project consultations. The data revealed two key points of interest. First, the Métis people, while similar are culturally distinct from the First Nations located within the Wuskwatim Project region.

“MR. BENOIT: ...with respect to the close relationship between the Métis and the Indians, there is a considerable overlap on the edges of these groups. This overlap cannot be used to deny the existence of the core group of Métis, or the proponents' responsibilities with respect to consultation with the core group of Métis” (CEC Public Hearings June 07, 2004: 7290).

Secondly, evidence suggests that an express focus on the project region tends to exclude those interests not easily confined within a given locality. For example, the Métis people are viewed as being part of a broader cultural community not easily bounded by geographic parameters. It is this broader notion of identity (in this case

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<sup>20</sup> During the Wuskwatim EA process, the community of SIL became its own First Nation called O-Pipon-Na-Piwin Cree Nation (OPCN). Up until the Wuskwatim EA process the community of SIL had been a part of NCN but had been in negotiations to separate from NCN since the 1990's. The creation of a new First Nation was premised on their cultural and historical distinctiveness from that of NCN.

cultural) which transcends geographic boundaries that becomes problematic. With respect to the Wuskwatim PIP the proponents focused their efforts on involving NA communities in the project region as surrogates for the Métis people. Although NA communities may have a predominantly Métis or Aboriginal population, they are administered by Mayor and Council under The Northern Affairs Act *C.C.S.M. c. N100*. It is the contention of the MMF that mayor and council do not represent the Métis as a people. Focusing public involvement programs on geographic locations can result in the exclusion of a broader set of interests and/or concerns relating to a proposed resource development project.

“MR. MONTGOMERY: ...The MMF represents the Métis people. Community councils, community association, individuals or other groups do not have the jurisdiction to speak on our behalf regarding our Métis collective right” (CEC Hearing March 22, 2004: 3051).

“MS. TEILLET: ...So you decided to go, or not again you meaning, actually the government decided to go by choosing physically based communities. And I think someone asked you already about the fact that obviously a physical community isn't necessarily the same thing as sort of a cultural community. They can be different things. And I think you agreed with that” (CEC Hearings April 15, 2004: 5028).

#### ***4.6.4 Buying Project Support***

Buying project support refers to the use of coercive tactics in order to garner support for a proposed resource development project. The use of coercive tactics involves using the PIP as a mechanism to deliver and gain acceptance of a skewed or decidedly one sided perspective of the proposed development. As a barrier to participation, buying project support is attributed to proponent control over public involvement activities (Sinclair and Diduck 2001, Sinclair and Fitzpatrick 2002, Sinclair and Diduck 2009). Evidence supporting buying project support as a barrier category is derived from statements made by the Justice Seekers of Nelson House and other NCN members participating in the Wuskwatim CEC Hearings:

“MR. DYSART: ...And Manitoba Hydro, like when you want to buy something, it seems like that is the approach that Manitoba Hydro (inaudible) is like buying this project and if it goes through with respect to the partnership, I guess, with NCN” (CEC Hearings June 8, 2004: 7461-7462).

“MS. KOBLISKI: ...The consultation process followed to date on Wuskwatim with NCN members has been seriously deficient. Any true debate and questioning of the Wuskwatim agreement and deals between our Chief and Council and Manitoba Hydro has been stifled. Resources provided to consult with our people only go to those who appear to support the project or who are paid to support their position and try to sell it to other NCN members...No forum exists for NCN members to have their voices and concerns heard. There has not been a general band meeting in Nelson House since July of 2003. Small meetings with isolated groups and the wining and dining of individuals to give them the hard sell without being allowed to ask questions to me does not constitute an adequate consultation. This clearly is not a democratic process and was not intended to be one” (CEC Public Hearings March 17, 2004: 2281-2283).

#### **4.6.5 Participatory Techniques**

Participatory techniques refer to the tools and/or activities used to engage Aboriginal publics in the public involvement components of the Wuskwatim EA process. Based on available information, participatory techniques used for the delivery of the Wuskwatim PIP were generally grouped as passive or active (Diduck 2004, Sinclair and Diduck 2005, International Association for Public Participation 2006). Specific concerns emerging from the data associated with participatory techniques included the use of community consultants and the adequacy of open house formats for engaging Aboriginal publics in the Wuskwatim EA process.

Review of the EIS documentation indicates the use of a number of passive and active techniques to engage Aboriginal publics and exchange information about the Wuskwatim Projects. Passive information techniques included the use of newsletters, websites, information letters, and advertisements. More active techniques included the use of open houses/community meetings, information hotlines, and response sheets. In addition to the more general approaches for the provision of information, the proponents also conducted opinion surveys, site visits and field trips (i.e.

helicopter over flights), and presentations at career fairs in at least two communities. This last group of active information techniques was applied to communities on a selective basis. For example, visits to the Wuskwatim Dam site and helicopter over flights along the transmission line routes were not made available to all communities within the project region. Similarly, opinion surveys regarding the proposed projects were generally limited to NCN members. Alternatively a review of the EIS appendices associated with the public involvement materials indicates that response sheets were standard fare for the delivery of open houses and community meetings.

Open house formats employed for the delivery of the proponents PIP were noted as being problematic. The data indicates that representatives of the MMF felt that the open houses were primarily suited for the dissemination of information and not entering into dialogue.

“MR. DESJARLAIS: ...Invitations to open houses for the purpose of distributing information which is attended by all citizens is not an invitation to proper and meaningful consultation required to be undertaken with Aboriginal peoples” (CEC Hearings March 25, 2004: 3541-3542).

“MS. TEILLET: ...as we said earlier in our submissions, simple invitations to public open houses is not in our view and never was an indication of a meaningful fulfillment of any kind of obligation to consult, and nor does it constitute even a meaningful invitation to sit down and dialogue” (CEC Hearings May 14, 2004: 6095).

Further review of the data indicates that the MMF and its representatives were only invited to attend the public open houses held as part of the Wuskwatim PIP. More focused or interactive opportunities for participation such as community meetings appear to have been reserved for First Nations and NA communities located within the project region.

Poorly equipped community consultants also emerged as another barrier category related to participatory techniques. The research indicates that community

consultants or liaisons were employed in the communities of Nelson House, South Indian Lake, Cormorant and Opaskwayak Cree Nation (OCN). The Wuskwatim EIS documentation indicates that possibly with the exception of Nelson House, community consultants were generally used to assist in preparing for open houses, distributing notices (door to door in some cases) and making translation services available for those who needed them (Nisichawayasihk Cree Nation & Manitoba Hydro 2003c: 5-43, 61). In Nelson House, community consultants were employed in a similar fashion, but appear to have been involved more extensively in preparing, distributing, and translating information, as well as organizing meetings and discussing the proposed projects with NCN members. Some evidence indicates that the use of community consultants in OCN occurred as a result of poor attendance at a previous open house despite advertising it in the local newspaper (Opaskwayak Times) (Nisichawayasihk Cree Nation & Manitoba Hydro 2003c). Unfortunately, the EIS documentation offers no comment on the success of community consultants in other locales. However, as a base participatory technique community consultants may be useful in disseminating information and raising awareness (i.e. providing notification) within a community about upcoming projects or other opportunities for participation.

Despite their potential utility, poorly equipped community consultants were identified as a shortcoming of the proponents PIP by representatives of CASIL. Although based on limited data, the findings suggest that if used, community consultants need to be outfitted with the necessary tools (training and workspace) in order to do their jobs.

“MR. L. DYSART: Yeah, I'm glad you put it that way as just -- we do receive -- I actually, myself speaking as a representative for CASIL, probably I think it's safe to say I'm about the only person that talks to the future development team in regards to the Wuskwatim project. They do give me information. I do try to exchange information. But they often don't have the answers to my questions. And I can understand their position. I mean they haven't been trained. They've been just given documentation here to consult. It's not consultation. That's just giving predetermined information” (CEC Hearings May 25, 2005: 6210).

“MR. L. DYSART: Yes, they have been employed and I guess paid. But, I do recall one time for a period of five months, they had no office or any access to any office, other than by the grace of the Community Council allowing them some room. The trailer that was supposed to be the future development office had no power for five months and this was during the fall time. So, yes, they were employed; to have a place to work out of, no”(CEC Hearings May 25, 2004: 6310).

#### ***4.6.6 Lack of Opportunity to Contribute to the Development of Project EIS***

For the purposes of the research, the development of an EIS is viewed as a process of inquiry conducted by a proponent in order to assess the potential environmental effects of a proposed development<sup>21</sup>. Two key barrier sub-categories were noted in association with a lack of opportunity to contribute to the development of the Wuskwatim EIS, including a lack of opportunity to define traditional knowledge and a lack of opportunity to contribute to the evaluation of environmental effects. Subsequent review of the data also suggests that the adequacy of consultative efforts depends in part on the ability of proponents to reconcile participatory activities with the development of the project EIS, particularly when it involves the use of value based judgments in the assessment of environmental effects.

The evaluation of the potential effects stemming from a proposed action or undertaking is a central goal for the development of a project EIS. Evidence supporting a lack of opportunity to participate in the evaluation of environmental effects is premised on expressed concerns surrounding the assessment of cumulative

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<sup>21</sup> Note the focus here is not so much on the EIS itself, but rather on the process of developing it. The development of the EIS necessarily entails the collection and analysis of baseline and other information in order to identify potential effects and determine their significance.

effects and determination of their significance. Cumulative effects assessment (CEA) refers to evaluation of incremental environmental changes stemming from sustained or multiple development activities occurring over time and space (Contant and Wiggins 1991, Spaling and Smit 1993, Smit and Spaling 1995, MacDonald 2000). Determination of significance serves to make judgments about the importance and/or acceptability of the predicted effects on the environment (Lawrence 2007).

The guidelines issued by the Province of Manitoba for the development of the Wuskwatim EISs required the proponents to consider cumulative effects as part of the environmental and socio-economic assessment of the projects. Review of the Wuskwatim EIS documentation indicates that scoping workshops were held with NCN members in Nelson House to guide the assessment of cumulative effects (Nisichawayasihk Cree Nation & Manitoba Hydro 2003a;2003c). Three scoping workshops were held on February 1<sup>st</sup>-2<sup>nd</sup>, 15<sup>th</sup>-16<sup>th</sup>, and on February 29<sup>th</sup>-March 1<sup>st</sup>, 2000 which were attended by representatives from both NCN and MB Hydro (Nisichawayasihk Cree Nation & Manitoba Hydro 2003b). Subsequent review of the data revealed that similar opportunities were not made available to other participants who felt that they had an equally valid stake in the project. In particular, representatives from CASIL indicated that the Community of South Indian Lake should have been afforded greater opportunity to contribute to the assessment of cumulative effects and development of the Wuskwatim EIS in general.

“MR. DYSART: ...Manitoba Hydro must fulfill its obligations to CASIL and its members for meaningful public participation in the EIS, including the cumulative effects assessment study. We need Manitoba Hydro and its consultants to have community workshops to explain the project to CASIL members. Manitoba Hydro must document our concerns, utilize our traditional knowledge, and demonstrate how Manitoba Hydro will mitigate any residual social, cultural, economic, environmental, and spiritual effects on us, our lands and resources” (CEC Hearings June 08, 2004: 7430).



“MS. AVERY KINEW: So two of the issues that you brought up was that you didn't have any input into the definition of cumulative effects or significance?  
MR. L. DYSART: Yes, we had no participation in those definitions”  
(CEC Hearings May 25, 2004: 6364-6365).

A related consideration includes a lack of opportunity to contribute to the determination of the significance of adverse effects. Review of the EIS documentation indicates that the assessment of significance was focused on the evaluation of residual effects which considers the application of mitigation measures as part of the review (Nisichawayashik Cree Nation & Manitoba Hydro 2003, Nisichawayasihk Cree Nation & Manitoba Hydro 2003a). The data indicates that some Aboriginal participants felt that there should have been a greater level of public or community involvement in making determinations about the significance of project related effects. Moreover, the results provide some evidence which suggest that public involvement activities and those oriented towards the development of a project EIS are viewed as being distinct from one another. For example, representatives from CASIL attributed their lack of opportunity to contribute to determinations of the significance of environmental effects as a failing of the proponents PIP.

“MR. DYSART: ...Further, we want the CEC to recommend that the evaluation of significance be totally revisited. For one thing, all communities and people that should have been involved in the EIS must contribute to the judgments of significance. We were not included and we are the people who have to live with the effects of the project, whether they are significant or not. Our lands are within the study area of this project and we should have been involved in a definition and determination of significance. Given that the entire EIS process occurs to be able to make the determinations of significant or not significant residual impacts, the fact that Manitoba Hydro excluded our community from the definition of significance, the analysis and evaluation, the creation of mitigation measures, and the final determination of significance demonstrates that the most fundamental part of the EIS is flawed” (CEC Hearings June 08, 2004: 7430-7431).

Lack of opportunity to define traditional knowledge emerged as a contentious issue for participants from the community of South Indian Lake (SIL/OPCN).

Concerns regarding a lack of opportunity to define traditional knowledge generally points to the exclusion of SIL/OPCN from the development of the Wuskwatim EIS. Defining traditional knowledge is similar to defining consultation. Whereas defining consultation was concerned with establishing conditions associated with the design and implementation of public involvement activities (i.e. planning considerations such as timing, location, information provisions, selection of participatory techniques etc.), defining traditional knowledge is a more focused activity, concerned with study design (how information is obtained and its purpose) and the manner in which it (TK) is integrated into the development of the EIS. The data indicates that SIL/OPCN and the MMF did not have the opportunity to define traditional knowledge pointing to their exclusion from contributing to the development of the Wuskwatim EIS.

“MR. DYSART: Now, I think the panel is aware that we have a number of various groups and we respect them as entities within our community, even the MMF local. Same question in relation to the MMF local and the South Indian Lake, the South Indian Lake Trappers Association, the South Indian Lake Housing Association, OPCN, are you aware that they were not contacted or even corresponded to in the definition of consultation, the definition on use of traditional knowledge, and the development of the environmental impact statement?” (CEC Hearings May 14, 2004: 6048-6049).

“MR. DYSART: ...My next question is, in respect to traditional knowledge, the same question; do you think the definition of traditional knowledge should be defined between the two parties prior to it being used or, in effect, consulted on?  
MR. MONTGOMERY: For sure -- I mean, our cultures are similar, yet there is differences. For example, our family, the Dysarts, 17 children my grandfather had, and of those probably 80 percent now are -- or 12 of them have gone, 15 of them, I'm just counting in my head, have gone and gotten their Bill C31. Yet still there is a couple, Uncle Murdo, who hasn't gotten, they haven't gotten their status under Bill C31. And he has specific traditional ways that he has carried on, and still to this day, and he has fished and hunted for over 30 years, not on South Indian Lake because -- we won't discuss that -- but he has fished a few inland lakes. And to this day, you go to those lakes and they are still the same lakes that they were when he first started, and they are very abundant, huge amounts of fish, moose, and opportunity, and we need to learn from those” (CEC Hearings May 14, 2004: 6045-6046).

## 4.7 Timing and Scheduling Constraints

Timing and scheduling are essential considerations for the design and implementation of EA processes. Timing and scheduling constraints refer to general ordering, sequencing, and/or coordination of EA activities. Barrier sub-categories related to timing and scheduling constraints include insufficient time to prepare and accessibility. The research also provides evidence that timing and scheduling was an area where participants were able to exert some measure of influence over the manner in which the public hearings were conducted. Table 12 identifies the key barriers identified in association with timing and scheduling constraints.

**Table 11 Timing and Scheduling Constraints**

Primary	Secondary	Tertiary
Insufficient Time to Prepare	Timely Award of Intervener Funding	
	Timely Exchange of Information	
Accessibility	Procedural Overlap	s.35 Crown Consultations
	Proponent Schedule	
	Timing of Public Meetings and Hearing Sessions	Time off Work
		Lost Wages
	Procedural Overlap	s.35 Crown Consultations

### 4.7.1 *Insufficient Time to Prepare*

Insufficient time to prepare emerged as a central barrier related to timing and scheduling constraints. Stewart and Sinclair (2007) note that establishing fair timelines which allow interested publics sufficient time to prepare (e.g. collect, review and distribute information) is an important aspect of meaningful participation in EA processes. The data indicates that various Aboriginal participants experienced

difficulties in preparing for the formal aspects of the Wuskwatim EA process<sup>22</sup>.

Concerns raised by representatives of the MMF, CASIL, YFFN, and OCN generally point to the need for additional time to review and distribute project related documentation, identify community and/or member concerns, gather information (e.g. local and traditional knowledge), obtain expert or consultant services, and prepare reports. The following data excerpts demonstrate participant concerns related to insufficient time to prepare.

“MR. WASTICOOT: My name is Gordon Wasticoot. I am with York Factory First Nation. I only have one comment to make, and that’s with regards to the time frame. We feel that we need more time to review the documents and any concerns that our people have” (CEC Pre-Hearing Conference July 28, 2003: 67).

“MR. DYSART: Okay. In regards to our application, due to limited or no information provided by the commission and Conservation as far as the procedures of the hearing, our timeline was based on an internal process, the bulk of it being the gathering of local knowledge and traditional knowledge. So the 100 days I had mentioned previously was focused on an internal process, retaining individuals, gathering information and preparing our report to the Commission” (CEC Pre-Hearing Conference July 28, 2003: 27).

“MR. MCGILLVARY: ...I think for my part here, this is the first time I’ve ever been a participant at hearings such as this. But for a time frame, I think it’s going to be crucial for OCN, to enable them to move forward on this, because they are going to have their election. Their nomination will be August 9<sup>th</sup>. Therefore, I think I will be the one that will be gathering all that information for them. And after – I think the elections are going to be in September. After September, when the desk clears, I should be able to disburse whatever information I get from the Commission. So, I guess that’s where we stand right now” (CEC Pre-Hearing Conference July 28, 2003: 73).

The research also indicates that approximately three months lead time may be required in order to allow participants to sufficient time to prepare themselves for public hearings. During the CEC’s Pre-hearing Conference representatives from the MMF and CASIL respectively advocated for 90 to 100 days to prepare for the public hearings.

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<sup>22</sup> Note that for the purposes of the case study research the formal aspects of the Wuskwatim EA process include those administered by the CEC which focuses on the pre-hearing and public hearing components of the review process.

“MR. BENOIT: ...August, being, to us, a non-starter. I mean, we are focusing on community consultations and August is usually a very difficult time to meet people. We feel we need a minimum of 90 days, so that would include August, to complete our work. So, we would be targeting for probably the end of November. Of course, that would rely upon whatever schedule is put together, based on PCN’s motion and the requirements that everyone else has here” (CEC Pre-Hearings Conference July 28, 2003: 68).

“MR. DYSART: ...Our application, which was approved, we received funding under the Clean Environment Commission, had, had a timeline of a minimum of 100 days to prepare for the hearings. It was specific in our application. And the proposed timeline submitted by Manitoba Hydro, they will not work together. At a minimum, we will be ready for the hearings in mid-November, at a minimum” (CEC Pre-Hearing Conference July 28, 2003: 27).

The timely award of participant funding was identified as another barrier related to insufficient time to prepare. As noted previously, late changes to broaden the scope of the EA process required participants to resubmit their applications for intervenor funding (see section 4.2). For representatives of Trapline 18 and PCN delays in the allocation and award of funds were inhibited their ability to prepare for the public hearings.

“MS. KEMPTON: ...I raised the question a while ago that if participants weren’t funded until or after June 30<sup>th</sup>, how could they be expected to get comments about and about the – do all that work and get the comments in about the adequacy of the filings for Manitoba Hydro and a date prior to when they even knew that they were funded, which is what, in fact happened here” (CEC Pre-Hearing Conference July 28<sup>th</sup>, 2003: 74).

“MR. MCIVOR: Sure. Greg McIvor with Trap Line number 18. We made application for the participation assistance program. And like many others, we were notified that the funding was approved after the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> workshop situation” (CEC Pre-Hearing Conference, July 28, 2003: 81).

Supplementary evidence furnished by the Director of the Environmental Licencing and Approvals Branch suggests that delays in the award of intervenor funding created some uncertainty among participants regarding the types of issues or components of the Wuskwatim EISs they were to address. Intervener funding is typically awarded to participants in order to address specific issues and/or items falling within the scope of the review. For example, once the issue of funding was

sorted, \$60,000 was awarded to OPCN to gather traditional knowledge and address the potential impacts associated with the development of transmission lines on hunting, trapping and forestry within their traditional territory. Alternatively \$80,050 was allocated to the MMF in order to gather information through community consultation and report on the potential environmental, social, and economic impacts of the Wuskwatim projects on Métis people living in the project area (Lecuyer July 3, 2003). Although participants may have applied for funding to address a number of different issues, the award of intervener funds creates certainty among interveners allowing them to focus their efforts on critiquing specific aspects of the project EISs. Delays in awarding intervener funds meant that participants ran the risk of wasted effort reviewing issues for which they would not be compensated. Statements made by the Director of Manitoba Conservation's Environmental Licensing and Approvals Branch confirm that despite the continued advancement of the EA process, participants were hesitant to begin reviewing Wuskwatim EIS documentation in absence of the award of intervener funds.

“MR. STRACHAN...The June 30<sup>th</sup> date was set to provide a 60 day review of the filings of the EIS and the need and alternatives documents, and we did indicate that in response to requests from some of the participants and the uncertainty of funding, that it would be typical process for us and for the Commission to receive further filings on the EIS documentation right up and during the hearing...We did recognize that some of the funded participants, because they didn't know what they were getting funding for, were hesitant to put any time into reviewing the EIS” (CEC Pre- Hearing Conference July 28, 2003: 74 - 75).

The timely exchange of information was previously noted as impeding the ability of Aboriginal participants to prepare for the Wuskwatim EA process (see section 4.4.3). Problems associated with preparation and the timely exchange of information could be traced to a lack of capacity on behalf of some participants and the CEC. Although based on limited evidence, the data does suggest that the receipt

of information in a timely manner (i.e. early) is important to prepare for and participate in the review process.

Procedural overlap was identified as another barrier affecting the ability of some Aboriginal publics to prepare for and participate in the public hearing components of the Wuskwatim EA process. Procedural overlap refers to the s.35 Crown Consultations which took place within the same general timeframe as activities associated with the Wuskwatim public hearings (i.e. pre-hearing activities, public hearings etc.). The following data excerpt indicates that scheduling the s.35 Crown Consultations to occur in conjunction with the Wuskwatim public hearings impeded ability of SIL/OPCN to prepare for and participate in the EA process.

“MS. PHARE: ...And it is critical to note that when the communities, at least CASIL, submitted their presentation request to you, their funding request, the governments have yet to announce that they are going to do this consultation so they were unable to build into their time frames, this double whammy of having to participate through an entire Section 35 consultation. I think the fact of having to do both of them greatly extends the burden on the community and their level of preparedness for your process” (CEC Pre-Hearing Conference July 28, 2003: 70).

The proponents control over the public hearing schedule was identified as yet another barrier related to the timing and scheduling of the Wuskwatim public hearings. Concerns regarding the proponents schedule could be linked to tight pre-hearing timelines that did not allow participants sufficient time to prepare for the review process.

“Participants in the Wuskwatim hydro dam review are struggling to meet tight pre-hearing deadlines, potentially causing further delays in the \$900-million project's construction” (Falding, Winnipeg Free Press January 7, 2004, p. b2).

“Half a dozen environmental and aboriginal groups are demanding more time to prepare for a March hearing on Manitoba Hydro's proposed Wuskwatim dam. "I think it's the responsibility of the Clean Environment Commission to ensure that people like (us) aren't just brushed under the carpet as you go by," said Greg McIvor, whose family traps near the site of the proposed dam near Thompson. He joined public interest groups yesterday in accusing the CEC of letting Manitoba Hydro control the review, which they say is being rushed to meet the utility's timelines and the priorities of the Doer government” (Falding, Winnipeg Free Press January 24, 2004, p. a5).

The data indicates that based on the proponents initial schedule, public hearings were anticipated to occur between September and October 2003 with the receipt of all Licences and regulatory approvals by mid-December of that year (Nisichawayashik Cree Nation & Manitoba Hydro 2003, Nisichawayasihk Cree Nation & Manitoba Hydro 2003a). Further consideration of the media documentation suggests that the primary driver behind the proponent's accelerated hearing schedule was the urgency of meeting an early construction start date and avoiding project delays. This sentiment was echoed by a representative of PCN during the CEC Pre-hearing Conference which generally confirms difficulties preparing for the review process in light of a schedule that is being driven by the proponent's construction timetable.

“Hydro officials had said that even holding a hearing in November could put them a year behind schedule because they need to work on frozen ground” (Falding, Winnipeg Free Press August 29, 2003: a3).

“The whole point of putting the hearings in October appears to be because of this fundamental need to start construction January 1<sup>st</sup> (CEC Pre-Hearing Conference July 28, 2003: 71).

Consistent with the provisions set out in the Participants Handbook (Manitoba Clean Environment Commission n.d.), registered participants for the Wuskwatim CEC Hearings were provided an opportunity to comment on the proponents schedule for upcoming review process. A Pre-hearing Conference was held by the CEC on July 28<sup>th</sup>, 2003 to address the issues pertaining to the process, schedule and format for the upcoming hearings. The data suggests that the opportunity to participate in the CEC



Pre-hearing Conference allowed interveners to voice their concerns and affect changes to the timelines for the upcoming public hearings as noted in the following<sup>23</sup>:

“In a letter released yesterday to Manitoba Hydro and commission intervenors, CEC chairman “Terry Duguid said Manitoba Hydro's proposed schedule does not provide sufficient time to prepare for public hearings. "They put forward a schedule that was not acceptable," Duguid said yesterday. A firm schedule for hearings and a licence recommendation will not be released until after the commission considers a motion by the Pimicikamak Cree Nation to expand the scope of the hearings” (Lett, Winnipeg Free Press August 08, 2003: a6).

“Manitoba Hydro had already been put on notice by the CEC that its proposed schedule to have a licence issued by December was unrealistic, but some participants had expected the hearings to start in November... In a schedule released yesterday, the CEC proposed starting the hearings in Winnipeg Feb. 17 and wrapping up March 26 after sessions in Thompson and The Pas. The commission has acknowledged that it might have to revise the schedule depending on whether it agrees to expand the scope of the hearings to include all Hydro's northern operations, as demanded by the Pimicikamak Cree Nation” (Falding, Winnipeg Free Press August 29, 2003: a3).

#### **4.7.2 Accessibility**

Problems related to participant’s ability to access the Wuskwatim EA process was also noted as being problematic with respect to timing and scheduling. As a barrier category accessibility was previously discussed under section 4.2 and focused on physical, financial and situational constraints such as the location of public meetings, prohibitive travel costs, and access to transportation. However, the findings also show that the time at which public meetings were held and broader scheduling issues associated with the s.35 Crown Consultations could also account for problems accessing the Wuskwatim EA process.

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<sup>23</sup> As a result the CEC amended the hearing schedule and pushed it back into February 2004. Subsequent review of the media documentation also revealed that due to problems associated with the Wuskwatim IR process (see section 4.3.1), the public hearings were again rescheduled to begin in March 2004 providing participants with additional time to submit their filings to the CEC Falding, H. January 31, 2004. Groups given more time to ready dam arguments: Hearings set for Winnipeg, Thompson and The Pas. Pages a6 *in* Winnipeg Free Press. Winnipeg, \_\_\_\_\_. November 5, 2003. Wuskwatim questions swamp Hydro Public review delayed until March 1. Pages A5 *in* The Winnipeg Free Press. Winnipeg..

The literature notes that public hearings are typically scheduled to take place on weekdays and during typical business hours which are inconvenient for those who want to participate but have competing demands for their time (Checkoway 1981, Fitzpatrick and Sinclair 2003, Rutherford and Campbell 2004). Review of the EA documentation revealed that the public meetings and hearing sessions for the Wuskwatim EA process generally took place during the regular work week (Monday to Friday) and during business hours. A few exceptions were noted for the public meetings held to gather public comment on the draft EIS guidelines for the Wuskwatim Projects as well as for the public hearings themselves. The draft EIS guideline meetings consisted of afternoon sessions lasting anywhere from 1.5 to 7.5 hours<sup>24</sup>. One public meeting held in Winnipeg was noted as having a limited evening component. As well, exceptions were also noted for five of the public hearing sessions which included an afternoon/evening component which typically began at 1:00 pm and ending anywhere between 8:30 and 10:30 pm. Three of the afternoon/evening sessions were held in the City of Winnipeg, while the remaining two occurred in Thompson and The Pas/OCN.

Evidence furnished by the media documentation published at the time provides some indication that the afternoon/evening session held in Thompson on March 22<sup>nd</sup>, 2004 was well attended by members of the Aboriginal public. Although not conclusive the following may suggest that scheduling public meetings at more convenient times (i.e. holding an evening session to accommodate working hours)

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<sup>24</sup> Note that the public meeting on the draft EIS guidelines for the Wuskwatim Projects held in Winnipeg on February 18, 2002 lasted 7.5 hours beginning at 1 pm and closing at 7:30. Conversely the shortest guideline meeting lasting 1.5 hrs occurred in The Pas/Opaskwayak Cree Nation beginning at 11:00 am and finishing at 12:30 pm.

can enhance general attendance at deliberative forums such as those associated CEC public hearings.

“In response to a request from one of about 125 mainly-aboriginal people who packed St. Lawrence Hall, Con. Elvis Thomas gave a 15-minute Cree summary of the Wuskwatim proposal” (Helen Falding Winnipeg Free Press March 23, 2004: a4).

Scheduling public meetings during typical business hours can exclude members of the concerned public and limit the number of individuals willing to participate. For example, a representative of the Displaced Residents of South Indian Lake (DRISL) noted that members of their southern executive were unable to take time off of work in order to attend a motion hearing initiated by PCN to expand the scope of the review process (Manitoba Clean Environment Commission 2003b: 55). The data also provides insight into the type of economic choices individuals face, such as lost wages when deciding to participate in EA activities scheduled during working hours.

“MR. MOORE: ...For the last couple of days I have been here, of this hearing, and I lost wages. I can assure you when the time comes, if it is ever going to come, I will include those wages in my compensation” (CEC Hearings March 10, 2004: 1514).

The research revealed that for some Aboriginal publics the timing of the s.35 Crown Consultations limited their ability to attend and participate in Wuskwatim EA process. The data indicates that at least one Aboriginal participant group found it difficult to attend and participate in both the CEC public hearings and Crown Consultations. Further evidence also suggests that the problem may have been avoided through improved scheduling and coordination of the s.35 Crown Consultations and EA process components.

“MR. L. DYSART: ...We have had one meeting, and I would have to check again, I know we have meetings again planned, but these hearings are kind of -- you can't be at two places at the same time” (CEC Hearings May 25, 2004: 6366-6367).

“MR. SPENCE: I can only speak on our experience to date. We are talking to the Province and Canada and dealing with section 35 regarding any future development. I believe TCN believes that these talks will happen in advance...”  
 (CEC Hearings May 26, 2004: 6546).

## 4.8 Lack of Trust

Lack of trust was identified as a potentially important barrier associated with Aboriginal participation in the Wuskwatim EA process. Trust has been defined as a psychological state where people are willing to accept the intentions or actions of others based on positive expectations. A lack of trust can be problematic for participatory process resulting in fear and opposition (Davenport et al. 2007), and can affect the public’s perception of fairness and/or willingness to accept and evaluate information in an objective manner (Petts 1999, Walls et al. 2004). Often times a lack of trust stems from conflicting values, unclear communication, limited community engagement, lack of power, and/or historical resentment linked to prior experiences (Davenport et al. 2007). Key trust-related barrier categories include proponent credibility and inadequate consultation. Table 13 below identifies the primary and secondary barrier categories associated with a lack of trust.

**Table 12 Lack of Trust**

Primary	Secondary
Proponent Credibility	Previous Experience/Unresolved Concerns
	Accuracy of Predictions
Inadequate Consultation	Lack of Opportunity to Contribute to the EIS
	Lack of Understanding

### 4.8.1 Proponent Credibility

The credibility of MB Hydro emerged as an important trust related issue for some Aboriginal participants involved in the Wuskwatim EA process. Credibility refers to the degree of confidence attributed to people or institutions based on their

performance and reputation for trustworthiness (Renn and Levine 1991). Two subcarrier sub-categories were identified in association with proponent credibility including previous experience and the accuracy of predictions in the EIS.

Previous experience emerged as a strong contextually based barrier reflecting the history of hydro development in northern Manitoba and its effects on Aboriginal people and their communities. For example, during the CEC public hearings many Aboriginal people discussed the social and environmental impacts to their communities stemming from previous rounds of hydro development. Among others the effects of past hydro development included the loss of culture, identity and livelihood due to the flooding of land, as well as impacts to water quality, fisheries, trapping, debris loading, erosion and sedimentation due to the continued fluctuation of water levels. Most often participant concerns focused on the impacts associated with the Churchill River Diversion (CRD), Lake Winnipeg Regulation (LWR), and Augmented Flow Program (AFP) which route additional flows into the Nelson-Burntwood River system to enhance the existing capacity for power generation<sup>25</sup>.

Concerns surrounding the accuracy of the proponent's predictions were based on evidence of participant criticality regarding anticipated effects associated with the Wuskwatim projects as presented in the EIS documentation. Whereas a lack of trust is grounded in history, participant concerns regarding the accuracy of the proponent's

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<sup>25</sup> See for example:

Waldram, J. B. 1988. As long as the river runs: Hydroelectric development and native communities in Western Canada. The University of Manitoba Press, Winnipeg. and Rosenberg et al. Rosenberg, D. M., R. A. Bodaly, and P. J. Usher. 1995. Environmental and social impacts of large scale hydro-electric development: who is listening? *Global Environmental Change* 5:127-148, Rosenberg, D. M., F. Berkes, R. A. Bodaly, R. E. Hecky, C. A. Kelly, and J. W. M. Rudd. 1997. Large-scale impacts of hydroelectric development. *Environmental Review* 5:27-54. for discussion on the impacts of hydro development to Aboriginal communities in northern Manitoba – in particular those associated with the development of the CRD.

predictions represent the formalization of that distrust in the present tense. In other words, given the effects of previous rounds of hydro development at least some Aboriginal people participating in the CEC hearings were less than willing to trust or accept the assertions made by the proponent regarding limited or minimal impacts associated with the Wuskwatim projects. The following data excerpts are considered to be representative of general concerns raised by various Aboriginal participants involved in the Wuskwatim EA process and provide support for the linkages between a lack of trust, proponent credibility (i.e. in this case perceptions about the credibility of the source of information), and the manner in which they precondition or color people's opinions regarding the accuracy of predictions/information contained in the project EISs.

“MR. TRONIAK: ...Given Manitoba Hydro's track record with the Churchill River Diversion and other hydro development, they find it hard to believe that anyone objectively could believe or trust what they have been -- what they have to say. Sadly, and we say this with deep disappointment, it seemed that little has changed with Wuskwatim” (CEC Hearings June 8, 2004: 7477).

“MR. MCIVOR: ...While we understand that this environmental review has helped tremendously in predicting future impacts, it is our position that the opinions expressed 25 years ago in the Tritschler Report are still very applicable today. Hydro has been wrong in the past so it is not inconceivable that they are wrong about certain matters today” (CEC Hearings June 9, 2004: 7525).

“MR. L. DYSART: ...While you may think that his presentation is beyond your scope of terms of reference, it is not. It is a crystal clear example of Manitoba Hydro's approach in making promises or predictions and either not following through or being just plain wrong. I hope you seriously consider the information that my father, Mr. Dysart, has given you. It represents the reality, not the predictions. It shows that Manitoba Hydro's credibility is of issue here, both in the past and today” (CEC Hearings May 25, 2004: 6178-6179).

#### **4.8.2 *Inadequate Consultation***

Participant concerns regarding a lack of trust were also identified in association with inadequate consultation. Inadequate consultation was previously noted as a participatory constraint for the Wuskwatim EA process linked to

deficiencies in the proponents PIP (see section 4.5 for discussion). The proponent's PIP is viewed as the primary vehicle by which members of the public are integrated into the project planning process. Although the research does support a tentative relationship between a lack of trust and inadequate consultation, evidence is limited and confined to statements made by CASIL during the CEC public hearings. Based on available data it appears that deficiencies in the proponents PIP served to reaffirm existing trust-related concerns within the community of SIL. As well, the data also uncovered specific shortcomings in the proponents PIP which could be indirectly linked to a lack of trust. Included are a lack of opportunity to contribute to the development of the EIS and a lack of understanding, both of which are discussed in sections 4.6.6 and 4.9 respectively.

“MR. DYSART: ...Manitoba Hydro tells us that there will be no effects from the Wuskwatim Generation Station on our people. So why are many residents of our lake still worried? Because they were not involved in the EIS, and as a result, they either do not understand or do not believe that another hydro development will take place without any harm to their land or families. This fault in the EIS public consultation process has continued the fear and distrust that began with the construction of the CRD and continues to exist in our community. The Wuskwatim project has made our relationship with NCN worse” (CEC Hearings June 8, 2004: 7415-7416).

#### **4.9 Lack of Understanding**

Lack of understanding was identified as an integrative category which could often be linked to other barriers types. Three key barrier sub-categories were noted in association with a lack of understanding among Aboriginal publics including; project impacts and implications; how to participate in CEC public hearings; and participant characteristics, such as proficiency with the English language, lack of formal education, and literacy levels. The research also suggests that barriers which inhibit understanding could more generally be attributed to information deficiencies, communication barriers, and the adequacy of consultative activities being undertaken

by the proponent (see sections 4.4, 4.5, and 4.6. respectively). Table 14 below identifies key barrier themes emerging from the research which were associated with a lack of understanding.

**Table 13 Lack of Understanding**

Primary	Secondary
Project Impacts and Implications	Relationship between scope and available information. Lack of Opportunity to contribute to the Development of EIS
How to Participate in CEC Public Hearings	Procedural Formality Lack of Experience
Participant Characteristics	Proficiency with English Language Lack of Formal Education Literacy Levels

#### ***4.9.1 Project Impacts and Implications***

Review of the CEC public hearing transcripts provides some evidence of a lack of understanding uncertainty among Aboriginal participants regarding potential impacts and implications of the Wuskwatim projects. As a barrier category, lack of understanding about project impacts and implications can in part be traced to difficulties in accessing relevant information, and a lack of opportunity to contribute to the development of the Wuskwatim EIS (inadequate consultation). As well, some evidence also suggests that a lack of understanding about project impacts and implications (how individuals or groups are personally affected) can result in non-participation.

Lack of understanding about project impacts and implications was previously noted in association with inaccessible information (see section 4.4.1). For example, questions raised by the Justice Seekers of Nelson House and other NCN members



regarding the Project Development Agreement (PDA), jobs, and concerns about the loss of Aboriginal and Treaty Rights indirectly demonstrate a lack of understanding about the impacts and implications of the Wuskwatim Projects.

“MR. FRANCOIS: Raymond Francois, Nelson House. Yeah, I was going to ask the resources we have around us, hey, are we going to lose all of it? Like I'm a Treaty Indian, right. Do I lose my rights on anything once things are signed? Because I wanted to know what I'm going to sign for before I sign it. I want to know the meaning of it. Sometimes you can sign something that doesn't really mean what it is. But if you go down deeper into the work, you can tell exactly what it really means and what you're signing for. You know, that's what I'd like to know” (CEC Hearings March 22, 2004: 3074).

“MS. NECKOWAY: ...Okay. Can we really -- this is for Hydro. Can we really walk away whenever we want? Will we owe you monies incurred if we choose to back out? Where is this money going to come from for the pre-project business? And will we be responsible for paying back costs incurred with the pre-project phase? I hope that that will not be figured into the millions and millions of dollars we will owe you if this project goes through” (CEC Hearings March 23, 2004: 3255).

The Wuskwatim PDA/SOU was kept confidential as proprietary or third party information, while Aboriginal and Treaty Rights were dealt under the Crown's s.35 Consultations as a separate process. In either case, issues associated with both the Wuskwatim PDA/SOU and Aboriginal and Treaty Rights fell outside the scope of the EA process resulting in limited information on these issues being made publicly available.

Participant concerns regarding the adequacy of the proponent's consultative activities were also attributed to a lack of understanding about project impacts and implications. Data which provides explicit linkages between lack of understanding and the adequacy of the proponent's public involvement activities were confined to statements made by a representative from CASIL and an NCN band member. Based on the following data excerpts it appears that NCN members living at both Nelson House and the community of SIL did not fully understand the implications or effects the Wuskwatim projects would have on their community. Furthermore, the data

suggests that the link between lack of understanding about project impacts and the adequacy of proponent led consultations centers on the need for sustained involvement throughout the development of the project EIS. Lack of opportunity to contribute to the development of the EIS was previously noted as a barrier to participation in section 4.5.6 which reflects on the adequacy of the proponents PIP.

“MR. DYSART: ...Based on the research that we conducted in the communities, where we asked people if they have any concerns about Wuskwatim, it is clear that the answers we received demonstrated that the people who participated do not understand the implications of Wuskwatim on them and are very concerned. It is also clear that it is essential to involve the NCN members at South Indian Lake in the EIS at all stages. They need to be involved and to understand what will or will not happen in their community” (CEC Hearings June 08, 2004: 7415).

“MS. NECKOWAY: ...I also wonder how any pertinent concepts can be effectively translated so that their full implications are relayed and understood? How can I trust those involved here when they assert that we are being consulted, yet, this is only contradicted by what is in the literature. Something is not right here. We are dealing with a very serious issue and I'm not sure that I can trust what I am being given to read or what I am hearing. What I read says our community is suffering from rampantly or low education, yet what I am hearing is that we had been informed. How can one be informed if one cannot fully understand the implications and significance of what is going on?” (CEC Hearings March 23, 2004: 3255).

Lack of understanding about project impacts and implications was also identified as a potential reason for non-participation among Aboriginal publics who may have been affected by the Wuskwatim projects. Evidence supporting linkages between non-participation and a lack of understanding is limited and premised on an exchange between a representative from Trapline 18 and an individual from the Government of Manitoba's Department of Justice about their approach for the Crown's S.35 Consultation process. The important component of the exchange is an inference made by the representative from Trapline 18 regarding the likelihood or willingness of individuals or families to participate given limited awareness of the manner in which they are personally affected by a particular development. Interestingly the data excerpt below appears to focus on the notion of resource use by

individuals or family groupings rather than the collective of the community itself (i.e. trappers, fisherman, or hunters versus collective communal interest). Regardless, it appears that if people are unaware of how they may be affected (i.e. lack of understanding about project impacts and implications) they are not likely to attend meetings or otherwise avail themselves of opportunities to participate.

“MR. MCIVOR: ... You know, I grew up in a small community and, you know, oftentimes, like you said, there was some discussion or dialogue with governments, whether they be Federal, Provincial, or maybe a corporation such as Hydro, Repap, Tolko type stuff. And I often found that unless you were a logger, or a fisherman, or a trapper, you know, you didn't attend those types of discussions, even though everybody was aware of it. You know, because my family was a trapping family in the community of Wabowden, we wouldn't necessarily attend a fishing meeting, because there is no direct correlation to trapping. And I am sure it is the reverse for fishermen when there is a trapper's meeting. So I guess my point is that even though it is assumed that everybody is aware, and feel that it is a good thing or a bad thing, I am not going to argue with that, but at the same time -- and I am sure Mr. Nepinak would agree -- that unless it directly affects an individual or a family specific to whatever resource or issue it is, people will not normally participate”  
(CEC Hearings April 15, 2004: 5068-5069).

#### ***4.9.2 How to Participate in CEC Public Hearings***

As a barrier, lack of understanding about how to participate in the Wuskwatim public hearings is based on evidence pointing to a lack of experience and problems with formal structure of the proceedings. Lack of understanding about how to participate in public hearings concerns itself with the ability of Aboriginal participants to ask questions, raise concerns, and otherwise contribute to decisions being made about the proposed Wuskwatim projects. Problems associated with the formal structure of the CEC public hearings were previously discussed in section 4.5.2. Evidence concerning a lack of understanding about how to participate in the CEC public hearings could be linked to the rules and procedures in place governing communication. The data provides some support which suggests a lack of clarity

regarding the appropriate times to ask questions or express opinions on the project as being problematic.

“THE CHAIRMAN: Just listen to what I am telling you, and if I am wrong you can tell me after, but it won't matter because those will be the rules. Those are the rules that we have established initially as part of these hearings. There is a time when members of the public can come and make a presentation. There is a time when members of the public can question the proponents. There is a time when members of the public have an opportunity to come and question the presenters. What we have just had is a presenter, and you can come and question him on what he has presented. So, that's the only thing that is going on right now. So, when we get into another portion of the program, when Hydro is answering questions on the Environmental Impact Statements, you can come and ask questions. If you want to make your presentation, you can make your presentation, but not now” (CEC Hearings April 7, 2004: 4187-4188).

“MR. DYSART: ...Also like the rules of procedure. Again, you probably have some on your web site and we will be accessing that information. But the rules of procedure and I think questioning ...I have no – myself, personally, I have no experience in regard to the Clean Environment Commission, other than the informal hearings I attended previous to this one. But as far as the formal hearings, I'm not too familiar with those processes”(CEC Pre-Hearing Conference July 28, 2003: 117).

Evidence also indicates that there may have been some benefit to holding information sessions about how to participate for elders and other community members involved in the review process.

“MR. BKER: ...There has not been an information session given to any First Nation community on how the CEC hearings will proceed or what the process is for participation for elders or members” (CEC Hearings June 09, 2004: 7550).

#### **4.9.3 *Personal Characteristics***

Personal characteristics refer to attributes or qualities which may impede understanding among those Aboriginal people involved in the Wuskwatim EA process. As barriers, personal characteristics are based on statements and/or generalizations made by Aboriginal participants about themselves or others which formed part of the public record (verbatim transcripts) for the CEC proceedings. Personal characteristics noted as affecting understanding include proficiency with the English language, literacy levels, and a lack of formal education.

Proficiency with the English language refers to difficulties associated with participant's command of English in both written and oral formats. As a barrier, evidence concerning proficiency with the English language appears center on the format in which information provided and the need to ensure translation services are available. For the Wuskwatim EA process, the need for oral and written translation focused on the use of Cree and Cree syllabics. Ensuring provisions are made for oral and written translation was previously identified as an important consideration under sections 4.4.2 and 4.5.1 respectively.

Lack of formal education was also noted as being problematic by some of the Aboriginal participants in attendance at the CEC public hearings. Although based on limited data, concerns regarding a lack of understanding could in some respects be attributed to the type and level of education. Participant concerns could often be associated with the use of technical jargon during the public hearings and the technical nature of the information contained within the Wuskwatim EIS documentation. Both the technical nature of the content in the Wuskwatim EIS and the discourse taking place during the public hearings has previously been identified as barriers in sections 4.4.2 and 4.5.2. For example, after a technical exchange regarding the utility of Habitat suitability Indexes (HSI) for assessing project related effects on wildlife, an elder from Sagkeeng First Nation noted the following:

“MS. BRUYERE: I am Caroline Bruyere, I am an elder from Sagkeeng First Nation. I find it very difficult to sit there and watch an elder attempt to come and voice his mind. I too have great difficulty, because I too lack the type of education that is needed to be able to be a participant in this arena” (CEC Hearings April 7, 2004: 4202).

Similarly, an individual from Nelson House also offered some general commentary on the relationship between education levels among elders in attendance at the CEC

public hearings, lack of understanding, and the technical nature of the discourse taking place.

“MR. HART: ...But people intend to forget that not all of us graduated from grade 12. Some of us are Plasticine dropouts. Some of us never went to school. I'm speaking for the elders there. They didn't go to school. They don't know what is going on” (CEC Hearings March 22, 2004: 3023).

Literacy levels were identified as a personal characteristic which served as a barrier to participation. Evidence derived from the public hearing transcripts does confirm a relationship between literacy levels and the ability of Aboriginal publics to understand information contained in the Project documentation under review (Manitoba Clean Environment Commission 2004b: 3256-3257, 6077, 6091-6092).

#### **4.10 Coercion and Control of Dissent**

The use of coercive tactics to maintain control over the debate surrounding a proposed resource development was specifically noted as a potential barrier to participation for NCN members at the community of Nelson House. Key barrier categories emerging from the research included buying project support, intimidation, and fear of reprisal.

Buying project support was previously noted as a shortcoming associated with the delivery of the proponent's PIP (see section 4.5.4). Buying project support refers to the proponents efforts to sell the benefits and promote the acceptability of the proposed Wuskwatim Generating Station to NCN members at Nelson House. In addition to marketing based approaches associated with delivering the PIP, more assertive tactics were used to limit opposition to the project. For example, a representative from the Justice Seekers of Nelson House indicated that Chief and Council were intimidating some Nelson House band members into supporting the

project. Of particular interest is a statement suggesting that people refrained from voicing their concerns due to fear of reprisals from their leadership. In at least one instance, evidence suggests that opposition to the project and participation in the CEC public hearings resulted in an attempt to have an individual removed from the community itself. The following data excerpt provides support for the use of coercive tactics as a means of controlling opposition to the Wuskwatim Projects within the community of Nelson House.

“MS. KOBLSKI: ...As I stated in my presentation to the Commission on March 17th, 2004, many in our community want to speak out, but keep silent in fear of personal reprisals from our Chief and Council. For example, our Chief and Council are taking vindictive action against Reverend Nelson Hart for participating in these hearings. They have taken formal action to try and have him removed as a Reverend in our community. Where is our freedom of speech? This is an example of what will happen leading up to the Wuskwatim project development agreement vote. The misinformation had already started as our Chief and Council tried to intimidate Nelson House band members to support Wuskwatim”(CEC Hearings June 08, 2004: 7495-7496).

#### **4.11 Summary**

The case study research identified nine general barrier categories inhibiting the ability of Aboriginal publics to participate in the Wuskwatim EA process. Barrier categories revealed by the research included:

1. Resource deficiencies: could generally be attributed to funding/financial and capacity constraints on behalf of participants and those charged with the administration of the CEC public hearings. Resource deficiencies were also linked to problems preparing for and participating in the Wuskwatim EA process.
2. Accessibility: centered on the ability of people to attend and physically represent themselves during the Wuskwatim EA process activities. Prohibitive travel costs and the location of public meetings, hearing sessions and other opportunities to participate were noted as being impeding access to the Wuskwatim EA process.

3. Information deficiencies: included problems associated with the ability of Aboriginal publics to access/acquire what they felt was relevant EA and project-related information, the format in which information was made available to Aboriginal publics, and difficulties obtaining information in a timely manner.
4. Communication barriers: focused primarily on difficulties experienced during the Wuskwatim public hearings and public meetings. Language barriers, prevalence of technical discourse, and problems with the formal structure of the Wuskwatim public hearings were noted as impeding participation among some Aboriginal publics.
5. Inadequate consultation: primarily associated with the manner in which the proponents engaged Aboriginal publics throughout the development of the project EIS and early stages of the EA process. Key barrier categories emerging from the data included a lack of opportunity to define consultation, exclusion based on identity and locality, buying project support, participatory techniques, and a lack of opportunity to contribute to the development of the project EIS.
6. Timing and scheduling constraints: focused on problems attributed to the general ordering, sequencing, and/or coordination of EA and related activities. Barrier categories association with timing and scheduling constraints included insufficient time prepare and accessibility.
7. Lack of trust: was grounded in history and could be associated with the legacy of effects stemming from previous rounds of hydro development in northern Manitoba. As a barrier to participation, lack of trust generally concerned itself with people's willingness to accept EA or other project related information in an objective manner. Key barrier sub-categories linked to a lack of trust included concerns surrounding the credibility of the project proponent and the adequacy of consultative efforts.
8. Lack of understanding: was identified as an integrative barrier category which often emerged in association with others. Barrier sub-categories



identified as part of the research included a lack of understanding about potential project impacts and implications, how to participate in public hearings, and personal characteristics.

9. Coercion and control of dissent: was based on evidence pointing to the use of coercive tactics by the project proponents. Evidence supporting coercion and control of dissent as a barrier category was specific to NCN members living in the community of Nelson House. Barrier sub-categories include buying project support (suggesting linkages to the adequacy of the proponent's consultative efforts), intimidation, and fear of reprisal.

## **CHAPTER 5 – DISCUSSION OF STRENGTHS AND WEAKNESSES FOR THE WUSKWATIM EA PUBLIC PARTICIPATION PROCESS**

### **5.1 Introduction**

The case study research focused on identifying barriers to participation faced by Aboriginal publics involved in the Wuskwatim EA process. Nine general barrier categories were noted including:

- Resource Deficiencies
- Accessibility
- Information Deficiencies
- Communication Barriers
- Inadequate Consultation
- Timing and Scheduling Constraints
- Lack of Trust
- Lack of Understanding
- Coercion and Control of Dissent

Consideration of previous studies, existing literature on public participation, and the context in which these barriers occurred, allowed for the identification of the strengths and weaknesses associated with Aboriginal participation in the Wuskwatim EA process. The analysis also revealed a number of relationships among various barrier categories.

The identification of strengths and weaknesses are limited to the data collected and were analyzed in relation to the literature on public participation. The findings below are therefore specific to the Wuskwatim case study. However, the results do highlight some important planning considerations to improve future EAs, since few studies exist that focusing on Aboriginal involvement in EA processes.

### **5.3 Strengths of the Wuskwatim EA Public Participation Process**

The research revealed a number of strengths, which could be attributed to the efforts taken as part of the Wuskwatim EA process to engage Aboriginal publics.

Strengths of the Wuskwatim EA public participation process included the award and allocation of intervener funds and the opportunity to participate in pre-hearing activities and public hearings. Key elements of the proponent's PIP, including the use of multiple techniques, staged delivery, and broad implementation, are also viewed as positive outcomes for Aboriginal publics in the Wuskwatim EA process.

### ***5.3.1 Award and Allocation of Intervener Funds***

Intervenor funding has been identified by a number of authors as being important to participation in EA processes (Aaron 1979, Jeffery and Estrin 1986, Lynn and Waterhen 1991, Gibson 1993, Palerm 2000, Rutherford and Campbell 2004). The findings indicate that a significant amount (more than \$876,000) in intervener funds were made available for the public to participate in the review of the Wuskwatim projects (Sinclair and Diduck 2005). The distribution of intervener funds was split relatively evenly between Aboriginal and non-Aboriginal participants (48.7% and 51.3% respectively). The data also indicates that a concerted effort was made by EA administrators to ensure that intervener funds were made available to Aboriginal participants in order to include their knowledge systems and perspectives in the Wuskwatim public hearings.

These findings suggest that provisions for intervener funds can serve as one mechanism to ensure the inclusion of a cross-cultural dimension in EA processes. The utility of intervener funding as a means of improving the representation of Aboriginal publics in EA processes is contingent on participant awareness of assistance programs and their ability to access and appropriately use said funds. For example, sufficient notice and lead time would be required to alert publics of the availability of

participant assistance programs (Aaron 1979, Rutherford and Campbell 2004). Technical guidance provided by funding bodies may also be helpful in further clarifying and facilitating the development of intervener funding proposals by interested and potentially affected publics (Aaron 1979). Nonetheless, funding provisions for the Wuskwatim EA process appear to have been extensive and due consideration was given to the inclusion of Aboriginal perspectives. Efforts by EA administrators to include Aboriginal perspectives into the Wuskwatim public hearings via the award and allocation of intervener funds were viewed favorably by the researcher and considered a strength of this review process.

### ***5.3.2 Pre-hearing Activities***

Opportunity to participate in pre-hearing activities was identified as another positive element of the government-led component of public involvement activities associated with the Wuskwatim EA process. The findings suggest that the pre-hearing activities leading up to the Wuskwatim public hearings created opportunities for participants to influence the manner in which the review process would be implemented. Inadequate pre-hearing activities have been viewed by some as a shortcoming of EA processes (Sinclair et al. 2002). Pre-hearing activities included public meetings to gather public input for the development of the Wuskwatim EIS guidelines and a pre-hearing conference to discuss the upcoming public hearings and review the proponent's schedule. Previous work on the Wuskwatim EA process viewed the pre-hearing activities positively creating since they created an opportunity for face to face interaction between the public and EA administrators (Fitzpatrick 2005).

The findings of this research suggest that providing opportunities for public input and comment at key junctures of the process leading up to the public hearings can aid participants in having an influence on its design and implementation. The role of public influence in EA processes has previously been noted by other researchers, but tends to focus on decision outcomes (i.e. final decisions as foregone conclusions) (Diduck and Sinclair 2002, Rutherford and Campbell 2004, Stewart and Sinclair 2007), rather than on process design and implementation. With respect to influence on process implementation, the CEC Pre-hearings Conference created an entry point for participants to voice their concerns about the proponents schedule and their ability to prepare for the upcoming public hearings. Fitzpatrick (2005), whose research also focused on the Wuskwatim EA process, indicates that insufficient opportunity for participants to review and provide input on the proposed schedule for the Wuskwatim Public Hearings led to dissatisfaction surrounding process time management. Although it is true that timing and scheduling for the Wuskwatim public hearings may have been improved with additional opportunity for participant review and comment, my research suggests that participant concerns regarding the hearing schedule were heard by the CEC. In this case the Pre-hearing Conference served as a forum through which participants could influence on the manner in which the review process was implemented resulting in actions such as pushing back the start date for the Wuskwatim public hearings to allow participants additional time to prepare.

### **5.3.3 *Public Hearings***

Public hearings were identified as another important strength associated with the Wuskwatim EA process. In Manitoba, public hearings are administered by the

CEC, an arm's length provincial government agency who, at the request of the Minister of Conservation, will review development proposals and provide recommendations to government (Manitoba Clean Environment Commission 2011). Public hearings administered by the CEC for the Wuskwatim EA process were structured in a quasi-judicial format. The literature indicates that some of the benefits associated with holding public hearings include impartiality (Cramton 1972, Sinclair and Diduck 2001) and adding legitimacy (Heberlein 1976, Adams 2004) to the review process. In particular, the advantages of quasi-judicial proceedings include guaranteed opportunities to participate via various procedural devices such as entitlement to notice, opportunity to present evidence, and cross-examination (Cramton 1972). The findings showed, for example, that as a result of the opportunity to cross-examine the proponent, additional information about the project development agreement between NCN and Manitoba Hydro for the Wuskwatim Generating Station was made available to the Justice Seekers of Nelson House. As well, administration of hearing activities by the CEC (i.e. an impartial third party) also takes the control of public involvement activities out of the hands of the proponent, allowing for diverse and minority perspectives to be heard as part of the decision process. Because public hearings are administered at arm's length from government, they offer participants a degree of freedom (at least within the confines of the hearing forum and its attendant process) from the use of coercive tactics that may be employed by project proponents within the context of participation in an EA process. The findings showed that within the community of Nelson House coercive tactics such as intimidation and efforts to buy project support were employed in order to minimize or control minority

perspectives in opposition to the dam (Hultin 2005). In this case the findings appear to underscore the importance of public hearings as a corrective measure to mitigate problems associated with coercive tactics used which may be employed by project proponents.

#### ***5.3.4 Proponent PIP: Geographic Representation, Multiple Techniques, and Staged Delivery***

Consultative activities conducted by a project proponent are often the initial means by which stakeholders and other interest parties are involved in an EA process. Review of the EA documentation identified a number of strengths attributed to the proponent's efforts to engage Aboriginal publics. Key strengths of the Wuskwatim PIP include relatively broad geographic representation of communities located within the project region, the use of multiple techniques to engage Aboriginal publics, and the staged delivery of Wuskwatim PIP itself.

Review of the project documentation indicates that the Wuskwatim PIP was relatively broad in scope. Although the primary focus appeared to be on NCN members and the community of Nelson House, meetings were also held with 18 other First Nation and Northern Affairs communities located either within or in close proximity to the project region. The findings suggest that from a geographic standpoint, the scope and delivery of the Wuskwatim PIP appeared to account for both First Nations and Northern Affairs communities in addition to larger urban centers such as Thompson and Winnipeg.

Integration of public involvement activities with the development of the project EIS was viewed as another positive aspect of the Wuskwatim PIP. The

Wuskwatim PIP was implemented in a staged fashion, which included three rounds of community meetings and a set of technical workshops with select participants held prior to the start of the CEC public hearings. Generally speaking, the rounds of community meetings were structured to introduce the project, review alternatives, and present the EIS findings. The findings appear to agree with Stewart and Sinclair (2007) who suggest that a staged process which employs multiple techniques results in a more integrative process better suited for entering into discussions with various publics. In this case the iterative approach applied to the delivery of the Wuskwatim PIP appeared to create multiple opportunities to receive information, ask questions, and comment on the proposed Wuskwatim Projects as the development of the EIS proceeded.

The use of a wide range of participatory techniques was noted as another positive element of the Wuskwatim PIP. Multiple techniques are employed to provide interested publics with a range of activities better suited to their involvement (Stewart and Sinclair 2007). No single approach will provide all interested parties with an adequate range or level of participation (United Nations Development Programme 1997, Canadian Environmental Assessment Agency 2008). The findings indicate that the proponents employed a range of active and passive participatory techniques. While the use of more active techniques tended to focus on NCN members living at Nelson House, the general diversity of techniques employed for the purposes of the Wuskwatim EISs were viewed positively by the researcher. For example, although community meetings were better attended by Aboriginal publics, Aboriginal attendance was also noted at open houses held in other locations. The benefit of



employing a combination of different approaches (i.e. open houses and community meetings) is that they provide a greater number of opportunities in different locales for interested Aboriginal publics to ask questions and obtain information about a proposed development project.

## **5.4 Weaknesses Associated with the Wuskwatim EA Public Participation Process**

### ***5.4.1 Provision of Translation Services***

Poor provision of translation services was identified by participants as a critical weakness associated with the Wuskwatim EA process. The data showed that although translation services were available for much of the public hearings, during the early stages it was only provided by volunteers from the audience. Given the cross-cultural nature of the EA, provisions for translation between English, Cree and (in one case) Ojibwe should have been established at the outset of the proceedings. Both the data and the literature suggest that the delivery of translation programs should include the use of qualified and appropriately equipped translators (Gallagher 1999). Qualified translators should be familiar with the issues under discussion and able to convey meaning accurately. Ensuring translators are adequately equipped is necessary for the timely and efficient delivery of translation services thereby avoiding delays or extensions to the process.

Provision of translation services is premised on mitigating the language barriers which are likely to occur in cross-cultural communicative contexts. The findings indicate that language barriers themselves could be linked to a number of other personal and procedural shortcomings leading to the relative exclusion of Aboriginal publics in attendance at the Wuskwatim public hearings. Language

barriers in absence of adequate translation services impeded dialogue and understanding among various actors and publics participating in the review process. Duncan (1999) indicates that language barriers present a formidable barrier to communication among all parties involved in public hearings. In particular, the findings showed that a lack of proficiency with the English language could often be linked to a lack of understanding among Aboriginal participants.

Language is also a critical component to culture (see for example, Whorf 1956a, Phillips 1959, see for example, Gallagher 1992). Addressing barriers that would permit Aboriginal publics to speak in their own language would allow them to be grounded in their own cultural perspective. Mitigating language barriers possibly through the use of translators would begin to accommodate cultural difference and establish a foundation on which cross-cultural dialogue can occur.

Language barriers were also noted as contributing to an intimidating hearing environment. Heberlein (1976) indicates that although people may attend public hearings, they are often reluctant to participate due to the intimidating nature of the setting. The intimidating nature of the hearing environment was identified as a procedural barrier attributed to its formal (quasi-judicial) structure. Hampton (1999) indicates that hearings can exclude some groups of people based on lower levels of education or inability to speak in their first language. The research findings indicate that participant's level of comfort speaking out in public is in part affected by their ability to speak in one's own language. Conversely the ability to speak in one's own language can in turn have an influence on perceptions about the intimidating nature of the hearing environment. In cross-cultural hearing contexts, efforts to accommodate

language barriers may serve to encourage those in attendance to participate and contribute to the deliberations taking place.

Although provision of translation services would serve to reduce or mitigate the effects of language related barriers on the ability of Aboriginal publics to participate in deliberative forums, they should be coupled with the use of qualified and adequately equipped personnel. The literature suggests that qualified translators sufficiently knowledgeable about the issues under review would aid in promoting understanding and mitigate the potential for miscommunication (Gallagher 1992). The research also suggests that interpreters should be adequately equipped with the appropriate tools (i.e. simultaneous translation equipment) in order to avoid delays and ensure that the process continues in a timely manner.

#### ***5.4.2 Timing and Location of Public Hearings and Meetings***

Timing and scheduling of public meetings and hearing sessions were noted as impeding the ability of some Aboriginal publics to attend and participate in the Wuskwatim EA process. These findings generally concur with those of other authors, who indicate that attendance at public hearings is directly related to the convenience of the times and locations at which they are held (see for example, Checkoway 1981, Duncan 1999, Rowe and Frewer 2000). The research showed that most of the hearings were scheduled to take place Monday to Friday during working hours. Additionally, the bulk (82%) of public meetings and hearing sessions for the Wuskwatim EA were held in the City of Winnipeg, which is geographically distant from communities located in the project region. Barriers linked to the location of public meetings and hearing sessions included prohibitive travel costs and difficulties

accessing transportation. Prohibitive travel costs were attributed to resource deficiencies specifically linked to the coverage of administrative costs, or costs associated with the operational dimensions of participating in EA processes. The findings also showed that personal barriers, such as work and the potential for lost wages, could be attributed to problems related to the timing of public meetings and hearing sessions.

A number of strategies could be employed to offset barriers to participation associated with the timing and location of public meetings. Given the remote and isolated location of many northern Aboriginal communities, holding opportunities to participate within a given community should serve to enhance the accessibility of EA processes. Holding public meetings and hearing sessions within a given community should also serve mitigate barriers associated with prohibitive travel costs and difficulties accessing transportation. The findings were inconclusive as to the best time at which public meetings and hearing sessions should be held, however, some evidence does indicate that opportunities to participate held later during the day were well attended. This is further supported by the fact that work was identified as a reason for non-participation.

Some evidence also indicates that for those who miss work and in order to attend face economic burdens in the form of lost wages as a result of their participation. Improving the times at which public meetings and hearing sessions are held to better accommodate the needs of Aboriginal publics should enhance the accessibility of EA processes. For example, scheduling opportunities to participate in the late afternoon/evening or on weekends might be one way of offsetting barriers

associated with work, lost wages, or other scheduling conflicts which occupy peoples time during the work week.

Creating opportunities for Aboriginal publics to define the nature of the consultation process is another mechanism that could offset barriers associated with the timing and location of public meeting and hearing sessions. Lack of opportunity to define consultation was previously identified as a barrier attributed to the proponent's PIP, which focused on planning considerations associated with the design and implementation of public involvement activities. Stewart and Sinclair (2007) suggest that creating opportunities to contribute to the design of consultative activities should result in a process that better meets the needs of the public. Creating opportunities to contribute to the design of consultative processes could highlight appropriate or acceptable times and locations for opportunities to participate. Ultimately a process which better meets the needs of Aboriginal publics in terms of timing and location should enhance accessibility and create the conditions upon which to improve attendance.

Expanding the scope of participant assistance programs to cover the administrative costs of non-registered interveners would help mitigate barriers attributed to prohibitive travel costs and create the conditions to improve participation in EA processes. Reimbursement of administrative costs in EA processes is typically reserved for registered interveners and generally not applicable to members of the public in attendance or registered participants not in receipt of intervener funds. In the event that public meetings or hearing sessions cannot be hold locally, or are costly to attend because to distance or other transportation related difficulties, reimbursement

of travel expenditures would not be unreasonable as a means of creating the conditions to improve access, attendance and by default improve the degree of representation among Aboriginal publics participating in a given EA process.

Yet another approach for mitigating barriers associated with the timing and location of opportunities to participate could be to split the public end of the review process into technical and community driven streams as was done during as part of the initial Mackenzie Valley Pipeline Inquiry during the 1970's (Gamble 1978). In this case technical and community hearings were held in order to collect information on the proposed development. The technical hearings were held in larger urban centers in the south while the community driven process consisted of meetings in local northern communities. The two concurrent activities were linked through media coverage by the CBC, which kept people informed of what was taking place in either process.

Holding concurrent processes may not be ideal for an administrating body such as the CEC that lacks the administrative capacity to manage such a process. The findings indicate that the CEC who was charged with implementing the Wuskwatim public hearings experienced difficulties administering some aspects of the review process due to staffing constraints. Streaming the EA process into two parallel processes is likely not a viable option unless sufficient resources (staff, money, expertise etc.) were allocated to the administrating agency. However, from a functional standpoint, one of the benefits of splitting the hearing component of the EA into two concurrent processes would be the opportunity to hear from and spend more time among various communities located within the project region. Situating

opportunities to participate in local communities would aid in offsetting resource and access related barriers associated with travel. By default, alleviating these types of constraints should create conditions that allow for improved attendance and increased representation of Aboriginal publics involved in a given EA process.

### ***5.4.3 Balancing Timing and Funding Provisions Funds***

Ensuring an appropriate balance between timing and funding provisions is important if participants are to adequately prepare for and sustain their involvement in EA processes. The research indicates that delays in the award of intervener funds created problems upfront in preparing for the upcoming Wuskwatim public hearings. Delays in the award of intervener funds were attributed to late changes expanding the scope of the review process, and therefore requiring participants to resubmit their funding applications. At the time, the start date for the public hearing had not been adjusted in order to accommodate the delays in the award of intervener funds. Stewart and Sinclair (2007) identify the need for establishing fair and equitable timelines that allow participants to adequately prepare themselves to participate in EA processes. Similarly, Aaron (1979) highlights the importance of making funding available early in order to allow participants sufficient time to prepare and participate effectively. The research findings generally agree that sufficient time to prepare is necessary, however, it is the provision of intervener funds and the conditions attached that allow participants to focus their efforts. As such, the late award of intervener funds not only limits the amount of time available to prepare, but also creates uncertainty among participants regarding the types of issues they are to address.

The extension of EA timelines was also noted as negatively affecting the ability of some Aboriginal publics to sustain their participation for the duration of the Wuskwatim EA process. EA timelines were extended in order to accommodate motion hearings held on two occasions, to allow for the completion of the Wuskwatim interrogatory process, and to provide participants additional time to submit filings and other documentation prior to the start of the review process. On the one hand, the extension of EA timelines was viewed as a positive element of the review process allowing participants additional time to prepare themselves for the public hearings. However, the findings showed that extending EA timelines also placed additional pressure on the limited funds available to some Aboriginal interveners, affecting their ability to sustain their participation for the duration of the review process. Similar observations were noted by Fitzpatrick (2005) in her review of the Wuskwatim EA process.

Strategies to improve process constraints associated with timing and funding provisions include establishing defined preparatory periods prior to the initiation of the formal EA activities (i.e. public hearings), and improving coverage of administrative costs to facilitate sustained participation for duration of the review process. Minimum timeframes should be established which allow interveners sufficient time to prepare. The research provides some evidence that approximately 3 months (90-100 days) lead time is necessary in order to get ready to participate in public hearings. Furthermore, given the importance that funding provisions and its attendant conditions have on focusing participant efforts on preparing to participate, the initiation of preparatory timeframes should be linked to the point at which



intervener funds are awarded and dispersed. In the event that unforeseen circumstances arise which delay the start of public hearings or related types of EA activities, minimum preparatory timeframes should be maintained. Ensuring minimum timeframes would likely assist in creating a measure of certainty among interveners about their ability to prepare for and participate in EA processes. An added benefit of establishing preparatory periods would be taking some control over the schedule of the proceedings out of the hands of the project proponents. The data showed that the initial schedule put forward by MB Hydro appeared to be driven by construction timelines. Although activities such as Pre-hearing Conferences were beneficial in developing a more amenable schedule, ensuring that defined preparatory periods are in place would also allow project proponents to be more proactive in their own planning activities in order to better accommodate public needs.

Improving funding provisions to better account for administrative costs and expenditures may be one mechanism through which to better facilitate sustained participation in situations where EA timelines have been extended. Administrative costs are those which focus on the operational dimensions of participation (photocopying, travel etc.). Although the initial acquisition of expertise to assist participants in the review of EA documentation and conducting studies is critical, administrative costs serve as the means by which participation is sustained. For example, photocopying charges and travel costs were noted as being problematic for some Aboriginal participants. Review of the CEC's Participant Handbook (n.d.) suggests that items which could be categorized as administrative costs are generally reimbursable under the participant assistance program. However, eligibility for

reimbursement is limited to registered interveners and not available to presenters or other members of the general public who choose to attend or participate.

A separate fund to account for and cover administrative costs incurred by any and all participants and publics with an interest in a given EA process should be established prior to the start of public hearings and be maintained on a continuous basis for the duration of the review process. Here an administrative fund would be used to cover incidental, or operational costs incurred by participants and include items such as the production and distribution of filings, as well as travel costs such as mileage, food and lodging etc. Reimbursement of administrative costs should be ongoing throughout the process so as not to detract from the existing participant funds and discourage participation (either attendance or other means of contributing to various aspects of the review process). Eligibility for reimbursement of administrative costs should also be broadened to include non-registered participants in order to encourage broader participation among Aboriginal and other publics who wish to be involved but do not have the means or cannot commit to the entirety of the review process. Maintaining a separate fund to cover the operational costs of participation should also serve to mitigate problems associated with financial constraints stemming from the extension of EA timelines. Because the administrative fund would be maintained separately and be reimbursed on a continuous basis, it would offer sufficient financial flexibility to EA administrators to better facilitate sustained participation in the face of changing schedules and timelines.

#### **5.4.4 *Technical Discourse***

Technical discourse refers to the prevalence of scientific and jargon-laden nature of discussions occurring within the EA public hearing forum. The prevalence of technical discourse in public hearings is problematic because the discourse frequently misses public concerns (Cvetkovich and Earle 1992), is often beyond the understanding of lay publics, and hampers their ability to participate in the decision process (Fiorino 1990, Beierle 1999). The findings showed that technical discourse could be linked to a lack of understanding of the technical aspects of the project among some Aboriginal publics in attendance at the Wuskwatim public hearings (Checkoway 1981, Duncan 1999, Manawong and Ogunlana 2006). More specifically the data indicated that problems associated with a lack of understanding and the technical nature of discussions can be aggravated by a lack of formal education, and language barriers, which further limit the ability of some Aboriginal publics to contribute to the EA decision process, as was evident in this case.

Strategies to mitigate barriers associated with the prevalence of technical discourse in EA could include streaming public hearings, establishing communicative rules for public hearings, and ensuring provision of translation services. Splitting public hearings into community and technical streams as was done in the Mackenzie Valley Pipeline Inquiry could be an effective means of minimizing problems related to a lack of understanding and technical discourse. Gamble (1978) indicates that one of the benefits of holding community based hearings was that it allowed people to speak about issues which were important to them such as traditional/current land and resource use as well as other complex socio-economic issues. By default, community

based hearings would likely shift the technical focus of the EA to one that is more grounded in the immediate concerns of a given community, and create a more inclusive environment where people are better able to understand and contribute to the decision process.

Provision of translation services could act as yet another mitigation measure for barriers associated with technical discourse. As noted previously, the provision of translation services needs to be coupled with the use of qualified translators who are familiar with the terms and concepts under discussion (Gallagher 1992). In many cases words and concepts are not readily transferable between languages (Gallagher 1992, Neuliep 2006a). The use of qualified translators would aid in explaining and promote understanding of the more technical concepts under discussion in situations where language barriers exist.

#### ***5.4.5 Formal Structure of Public Hearings***

A subsequent weakness of the Wuskwatim EA process was the formal or quasi-judicial structure of the CEC hearings. The formal structure of public hearings has been noted as a deterrent to participation and well suited for fostering deliberation (Adams 2004). Barriers revealed by the research associated with the formal structure of the Wuskwatim public hearings included the adversarial nature of the process (Cramton 1972, Wismer 1996, Fitzpatrick and Sinclair 2003, Lando 2003, Rutherford and Campbell 2004, Fitzpatrick and Sinclair 2005), intimidating hearing environment (Heberlein 1976, Checkoway 1981), and a lack of understanding among Aboriginal publics about how to participate. Shortcomings attributed to the formality of public

hearing can limit the willingness of people to participate in, and contribute to deliberations surrounding a proposed resource development.

The adversarial nature of the Wuskwatim public hearings can be linked to the presence and use of lawyers and cross-examination (Cramton 1972, McGarity 1990). Cramton (1972) indicates that formal hearing processes tend to be dominated by lawyers despite the non-legal nature of issues under review. In her review of the Wuskwatim EA process, Fitzpatrick (2005) also made note of the adversarial nature of the CEC public hearings. Despite the benefits of cross-examination for testing the validity of evidence presented (Fitzpatrick and Sinclair 2005), the findings indicate that adversarial questioning by the proponents served to aggravate existing tensions among Aboriginal publics present at the Wuskwatim hearings. The adversarial nature of the process is viewed as an impediment to dialogue and deliberation because it tends to support positioning and making statements leading to a polarized debate. More informal approaches to the administration of public hearings which discourage the use of lawyers and adversarial questioning (i.e. cross-examination) may be better suited to fostering dialogue among those in attendance who may hold opposing views about proposed development project.

The intimidating nature of the hearing environment can affect the willingness of those in attendance to contribute to discussions surrounding a proposed development. Problems with the intimidating nature of the hearing environment was based on participant comfort levels speaking in front of others (Checkoway 1981, Adams 2004) as well as the ability of some Aboriginal publics to speak in one's own language. For example, Heberlein (1976) indicates that standing up at a hearing and

giving and oral monologue is not an everyday occurrence for most people. Given the cross-cultural component of the Wuskwatim EA process and evidence pointing to the presence of language barriers, ensuring that translation services are in place should help provide people with a measure of comfort when speaking in front of others. Other strategies which might assist in improving participant comfort levels could include situating microphones at strategic locations throughout the room so that those who want to ask questions or make a statement do not have to do so in full view of others. Another approach could be to make provisions for submission of comments and/or questions in written format, which could then be read into the public record on by a hearing officer.

Lack of understanding emerged as a related barrier, which could also be attributed to the formal structure of the Wuskwatim public hearings. The findings suggest that a lack of experience in formal hearings processes coupled with a lack of understanding about how to participate frustrated efforts to contribute to the proceedings. Therefore, knowing how to participate is important to the ability of Aboriginal publics to contribute effectively to deliberations taking place. In their discussion of the Joint Public Review of the Sable Gas Project, Fitzpatrick and Sinclair (2005) note that efforts by the joint panel to offset barriers associated with the formal nature of the process included presenting on how to be an intervenor as well as providing leeway to first time presenters in the process. Interestingly, the findings echo the need for holding an information session in order to clarify the rules and procedures for participation. Holding information sessions about how to participate (i.e. clarify what the process, rules and procedures are for participating in

public hearings) would serve as one mechanism by which to improve the effectiveness of participation in hearings. As well, efforts to provide first time presenters/participants additional leeway during the proceedings could also aid in mitigating problems participating in formal hearing process. An alternate approach could be to simplify the process itself. More informal approaches to the administration of public hearings such as those based on question and answer activities may make participation easier and more intuitive for members of the public<sup>26</sup>. Other specific measures which could be employed to simplify hearing process could include eliminating the need to register in advance of making statements or asking questions. Opportunities for questions and comments should be made available at regular intervals after presentations or as an addition to any questions being asked by the CEC. A free for all question/comment period could also be implemented on a daily basis to accommodate those who may not be able to attend other hearing sessions. Administrative tasks such as registration should not serve as a deterrent or impediment for those wishing to contribute to the deliberations taking place.

#### ***5.4.6 Proponent PIP: Design, Integration and Monitoring of Proponent Led Consultation Process***

Three key weaknesses were identified in association with the proponent led consultations for the Wuskwatim EA process. Weaknesses generally included the need for greater involvement of Aboriginal publics in the design of consultative processes, better integration of public involvement activities with the development of

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<sup>26</sup> See for example, Fitzpatrick and Sinclair (2005) who differentiate between formal (quasi-judicial) and informal proceedings.

the project EIS, and the need for EA administrators to monitor the implementation of proponent-led consultations for the development of a project EIS.

The research indicates that limited opportunity was made available to Aboriginal publics to contribute to the design of the Wuskwatim PIP. Lack of opportunity to define consultation emerged as an important barrier associated with the adequacy of consultative activities and the ability of Aboriginal publics to exert influence the conditions under which they were involved in the Wuskwatim EA process. Proponent control over public involvement activities such as the manner in which the public is consulted and the manner in which their information obtained from them is used in the assessment process has been identified as a concern by other researchers (Sinclair and Diduck 2001, Diduck and Sinclair 2002). An important benefit of including publics in the design stages of consultative activities is the development of a more inclusive process and acceptable approach (Hampton 1999). This may for example, extend to the manner in which publics (Aboriginal or otherwise) are defined and serve as a mechanism through which to move beyond a focus on geographic representation and identify other individuals or interest groups who should be involved. A related benefit of involving interested public in the design of consultative activities would be to focus the efforts of proponents and practitioners and employ tools and techniques better suited the needs of participants and their situation (Stewart and Sinclair 2007).

Poor integration of consultative activities with the development of the project EISs was identified as the second weakness attributed to the Wuskwatim PIP. Creighton et al. (1980) indicate that public involvement can provide the integrative



framework through which planning and assessment processes can interact. The research indicates that some Aboriginal participants who had previously been impacted by hydro development would have liked a greater opportunity to contribute to the development of the Wuskwatim EIS particularly with regards to the evaluation of environmental effects and determinations of significance. Lack of opportunity to contribute to the development of the project EIS was identified as an important barrier for some Aboriginal publics associated with the Wuskwatim PIP. The findings indicate that lack of opportunity to contribute to the development of the project EIS could often be linked to other barriers such as a lack of understanding about potential project impacts and trust-related concerns associated with the credibility of the project proponent and the accuracy of the EIS findings. Improved integration of Aboriginal publics with the development of a project EIS, possibly through defining and contributing traditional knowledge, evaluation of environmental effects, and determination of significance among others, may serve as a mediating factor which better promotes understanding about a proposed development, as well as enhance the willingness of Aboriginal publics to accept the validity or accuracy of predictions concerning potential environmental effects stemming from a proposed development.

The third weakness concerns a lack of oversight by EA administrators during the implementation of the Wuskwatim PIP. The research revealed that the proponent deviated from the proposed plan but was not subject to any requirement to justify or track these changes. As discussed previously in Section 4.4.2, it appears that a hands-off approach by regulatory authorities regarding the implementation of public involvement activities may serve to reaffirm barriers attributed to proponent control

over public involvement activities. Greater attention also needs to be paid to the implementation of proponent-led consultations to ensure that any changes or deviations are accounted for. One approach might be for representatives of the CEC or other EA administrators to attend and monitor public involvement activities conducted for the development of a project EIS (Sinclair et al. 2002). Having an impartial party in attendance during proponent-led consultations would allow decision makers to better ascertain their adequacy and possibly assist in dissuading the use of coercive tactics by “hearing” minority concerns. A related benefit of having regulators and EA administrators attend proponent-led consultations is that it would provide opportunity to disseminate information on the upcoming EA process and promote awareness of other avenues for participation (Sinclair et al. 2002).

#### ***5.4.7 Format of Information***

Another weakness associated with the Wuskwatim EA process concerns the format in which the EIS and related project information was made available. Concerns regarding the format of information included the need for translation of written texts into Cree Syllabics, and the size (volume), organization, and technical content of the EIS documentation. The data linked problems associated with the format of documentation and a lack of understanding about potential project impacts with personal characteristics, such as proficiency with the English language, literacy, and a lack of formal education. The findings generally agree with the literature which indicates that EISs and related planning documents are typically written by experts and are beyond the comprehension of the average reader (Gallagher and Patrick-Riley 1989, Gallagher and Jacobson 1993, Sullivan et al. 1996).

Making information available in a format that better accommodates the local context would go a long way to improve understanding about a proposed development and its implications among interested and potentially affected Aboriginal publics. Additionally, this could assist in managing complications and stresses associated with rumor and conjecture that stem from a reliance on secondary sources. The translation of written texts using Syllabics may be a particularly useful area of focus, not only to address the primary issue of language barriers, but may also to improve understanding of the technical components of the EIS documentation. Others reviewing the Wuskwatim EA process have made similar observations regarding the need for written translation of EA and related documentation (Fitzpatrick 2005). The findings do provide some contradictory evidence regarding utility of the written translation of EA documentation using Cree Syllabics. Conflicting evidence regarding the translation of written texts was by some NCN members who wanted the project documentation translated in order to promote better understanding about potential project impacts and their implications, while others felt that it would not be useful because of the oral tradition among Aboriginal people for the transmission of knowledge. That being said, translation of written texts may be useful for elders or other community members who do not read English but are familiar with Syllabics to better inform themselves about a proposed development and its anticipated effects. Further research is required to better ascertain the need for and utility of translation of written texts for Aboriginal publics.

#### ***5.4.8 Scheduling of Supplementary Processes***

Scheduling of supplementary processes generally refers to the overlap noted between the Wuskwatim EA and Crown s.35 Consultation processes. The s. 35 Crown Consultations for the proposed Wuskwatim Projects were conducted jointly by Fisheries and Oceans Canada and the Province of Manitoba within the same general timeframe as activities associated with the Wuskwatim Public Hearings. Not surprisingly, the findings indicate that there was some confusion regarding the Crown Consultations and their relationship to the EA process. Barriers which could be linked to the overlap between these two processes included evidence pointing to a lack of understanding about project impacts and implications, difficulties acquiring information, as well as problems associated with preparing for and attending the Wuskwatim public hearings.

Difficulties accessing information on the Crown Consultations and project related effects on Aboriginal and Treaty Rights could largely be attributed to the scope of the review process. In this case the Crown Consultations were deemed to be outside the scope of the EA process. As such information concerning project related effects on Aboriginal and Treaty Rights would be treated as confidential and not be made available to the public as part of the review process. The separation of these two processes also appears to be linked to a lack of understanding about project related impacts and implications. This may simply be because effects on Aboriginal and Treaty Rights were not explicitly considered as part of the review process. However, some evidence indicates that the issues being reviewed by the CEC were the same as those being considered in the assessment of Aboriginal and Treaty Rights. Because

information on the Crown Consultation is sparse and was generally unavailable to the researcher despite FOI requests, it is difficult to be definitive with respect to barriers associated with the overlap between EA and Crown Consultative processes. It is clear that disassociating the processes from one another creates confusion, limits access to information, and can result in a lack of understanding about project related effects.

Scheduling the Wuskwatim EA and Crown Consultations within the same general timeframe also appears to have created a number of functional problems for some Aboriginal participants. Although based on limited information, the findings do indicate that scheduling related processes within the same general timeframe can impede access to public hearings and possibly other components of the review process. Although not specifically noted in the data, concurrent scheduling of related processes likely places competing demands placed on the limited amounts of time and resources available to Aboriginal publics. Further clarification is required in order to better determine the situation of the S.35 Crown Consultations within the broader scope of the EA processes. Some limited evidence suggests that the Crown Consultations should occur in advance of the EA process. Improved scheduling of the S.35 consultations to avoid instances of overlap should also serve to improve the accessibility of EA processes for Aboriginal publics.

Efforts to minimize overlap may involve clearer temporal separation between the two related processes. For example, some evidence indicates that the Crown Consultations should occur in advance of the hearings and related components of the EA process. However, this approach may result in further complications if decisions regarding effects on Aboriginal and Treaty Rights are contingent on the evaluation

project related effects, which occur at the EA stage. In this case the separation of process would result in an incomplete or inaccurate evaluation of effects on Aboriginal and Treaty Rights without consideration of environmental impacts. An alternate approach may simply be to integrate the two related processes. Integrating the Crown Consultations into the EA process would work to reduce complexity and minimize overlap. A single combined approach to implementation of EA and Crown Consultations would also address concerns related to the accessibility of the review process, as well as offset difficulties preparing for two separate processes. Although participation in EA and Crown Consultation processes may each be a formidable undertaking in their own right, a combined process would also serve to reduce duplication and alleviate some of the pressures that participating in competing processes place on limited time and resources available to Aboriginal publics. Other benefits may also include a broader scope for the review process that more accurately addresses concerns raised by Aboriginal publics and clarifying potential impacts to Aboriginal and Treaty Rights. The research identified a lack of understanding about potential project impacts on Aboriginal and Treaty Rights as a barrier to participation in the Wuskwatim EA process. However, integrating the S.35 and EA processes would likely require that the necessary standards be in place in order to meet the Crown's fiduciary obligations. This may require additional rigor from the process regarding studies to conduct the effects analysis, provision of information, and among others, assurances that the standard for meaningful participation is met.

## 5.5 Summary

The strengths and weaknesses of Wuskwatim EA process for Aboriginal participants were discussed based on the review of the data presented in Chapter Four, while considering previous studies on the Wuskwatim EA process and the literature on public participation. Four key strengths of the Wuskwatim EA public participation process included:

- A concerted effort by regulators and government administrators to ensure that intervenor funds were allocated to Aboriginal publics in order to ensure their participation and include a diversity of perspectives in the review process.
- Conducting pre-hearing activities which included opportunities for face to face communication with regulators and other stakeholders to review the manner in which the Wuskwatim public hearings would be implemented.
- Holding public hearings for the review of the proposed Wuskwatim projects to enhance the transparency and legitimacy of the proceedings. As well, public hearings created guaranteed opportunities for participation which included the opportunity to cross-examine the proponents.
- Key elements of the proponents PIP, including geographic extent, use of multiple techniques, and staged delivery, reflected positively on the Wuskwatim EA public participation process.

In addition to these strengths, a number of important weaknesses were also noted for Aboriginal participants involved in the Wuskwatim EA process.

Weaknesses associated with the Wuskwatim EA process included:

- Limiting access to formal components of the review process by holding public meetings and hearings sessions at times and locations inconvenient to the needs of Aboriginal publics.

- Imbalances between timing and funding provisions which created difficulties among some Aboriginal participants when preparing for and maintaining their level of involvement in the Wuskwatim EA process.
- The creation of an exclusive environment through the prevalence of technical discourse, impeding participant understanding and limiting opportunities to contribute deliberations surrounding the Wuskwatim projects.
- The formal structure of Wuskwatim public hearings created an environment ill suited to promoting dialogue and deliberation. A lack of understanding among some Aboriginal participants about how to participate formal review processes limited their ability to effectively contribute to the decision-making process.
- Proponents control over public involvement activities limited the ability of Aboriginal publics to contribute to the design of participatory process. Problems were also noted for the integration of proponent led consultations with the development of the Wuskwatim EISs. A related weakness included a lack of monitoring or oversight by regulatory authorities regarding the delivery of the proponents PIP.
- Difficulties were noted among Aboriginal publics regarding the format in which information was made available. Evidence indicates that a lack of understanding can be attributed to a mismatch between the format of EA and related project documentation and participant characteristics. As well, problems associated size/volume, organization and technical content of the EIS were noted as affecting its readability.
- Scheduling the Crown S.35 Consultations within the same general timeframe as the Wuskwatim EA process appeared to create confusion regarding some of the issues to be addressed. Overlap between the Wuskwatim EA process and Crown Consultations also placed competing demands on time and limited resources among some Aboriginal participants. Participating in competing processes appears to have impeded the ability of some Aboriginal publics to access and prepare for the EA process.



In addition to my own work, the Wuskwatim Project and EA process has been studied by others. Four studies, including three Master's theses and one PhD Dissertation were reviewed in order to compare their findings to my own. Only aspects of these studies relating to the Wuskwatim Projects were considered. While these studies all looked at the Wuskwatim Projects, they differ from my own in the specific aspects of the development process under consideration. For example, Neckoway's (2007) research centered on the process by which the Wuskwatim PDA was developed while Hultin (2005) explored the motivation behind the partnership arrangement between NCN and MB Hydro. Both Neckoway (2007) and Hultin's (2005) research tended to focus on what I have regarded as processes supplementary to the EA proper. Cruikshank's (2006) research concerned itself with assessing public participation in hydro development more generally and in relation to best management practices. His work was primarily concerned with NCN and the Wuskwatim Generating Station among the other cases he considered. Fitzpatrick's (2005) research explored the relationships between learning, sustainable development, Environmental Assessment, and public participation. Her characterization of the EA process also considered both the generating station and transmission line components of the Wuskwatim Projects, bringing it more in line with my own work than the other studies under review. However, Fitzpatrick's (2005) dissertation focuses on the regulatory components of the EA and excludes consideration of supplementary processes such as the Wuskwatim PDA and Crown Consultations.

For discussion purposes and ease of comparison key findings from these studies are organized into broad categories similar to those employed for the identification of barriers to participation in Chapter 4. The discussion below is not inclusive of all research findings, but rather focuses on key points of interest between my work and that of other researchers. Categories employed in order to frame the discussion generally include resources, information provisions, accessibility, adversarial and intimidating process, hearing rules and procedures, timing and scheduling, coercion and control of dissent, and lack of understanding.

*Resources:*

Discussions of resource deficiencies focused primarily on evidence pointing to the funding and capacity related barriers that were noted as impeding participation in the Wuskwatim EA process. Both Cruikshank (2006) and Fitzpatrick's (2005) research provide some reference to resource provisions and the role of intervener funds. Cruikshank indicates that MB Hydro's provision of funds to NCN in order to hire community consultants was important to his assessment of fairness of process. Conversely, his research noted that some First Nation and other participants felt that MB Hydro had too great an influence on the selection of interveners who participated in the CEC public hearings, affecting the perception of fairness for some First Nation participants. Fitzpatrick's (2005) research also identified a number of resource related considerations. She suggests that although funding is important to facilitate participation among disenfranchised groups, greater attention needs to be paid to non-funded participants in order to assist them in accessing the process. Her findings also note problems with the Wuskwatim IR process, which for some created a drain on

their limited funding. Fitzpatrick (2005) also notes that the extension of EA timelines places pressure on the amount of resources available to some participants.

In considering Cruikshank's (2006) and Fitzpatrick's (2005) work, a number of similarities and differences were noted. Fitzpatrick's (2005) findings are somewhat consistent with my own regarding the need to better assist non-funded participants in accessing the EA process, the costs associated with participating in the Wuskwatim IR process, and to some degree the extension of EA timelines and its effect on the availability of participant funds. Where my work differs from Fitzpatrick's (2005) is in terms of the latter's express focus on resource related constraints, centering on problems regarding insufficient funds to participate and a lack of capacity among Aboriginal participants. In contrast to Cruikshank's (2006) findings regarding fairness, my research indicates that a concerted effort was in fact made by government via the award and allocation of intervener funds to facilitate Aboriginal participation and include their perspectives in the Wuskwatim EA process. I felt that these measures reflected positively on the process, given the general lack of Aboriginal participation in the EA. In considering Cruikshank's (2006) findings, it is very likely that the project proponent would be involved in the discussions with EA administrators regarding the selection of interveners to be awarded funds to participate. However, ultimately it is the responsibility of EA administrators (in this case the CEC and possibly other government representatives on the PAT) to select registered participants and justify the award intervener funds. It is interesting that Cruikshank (2006) places the blame solely on the project proponent with respect to his evaluation of procedural fairness.

The second item of interest emerging from Cruikshank's (2006) research includes the provision of funds by MB Hydro to NCN in order to hire community consultants to engage their own membership. Funds were provided to NCN's Future Development Team in order to hire the community consultants that were generally used to bolster participation. However, given the difficulties and tensions noted within the community of Nelson House by Hultin (2005), Neckoway (2007), and in my own work, it is not clear that assessing opportunities for meaningful input could be based solely on the provision of funds and technique selection. Although these measures may be indicative of a good process, what's meaningful varies and likely depends on the particular process, context, and the interests of the individuals involved.

*Information Provisions:*

Similarities and differences between my work and the research of others were also noted with respect to information provisions. A common element appears to be discussion surrounding the format in which information was made available. Fitzpatrick (2005) indicates that there was a need to better structure documentation so it is more understandable, and to ensure provisions are in place to provide oral and written translations. She makes a specific point about the need for simultaneous translation equipment in order to better facilitate dialogue with the public hearings, similar to the findings above. Cruikshank's (2006) findings discuss the provision of information to NCN in summary format which was viewed positively in his assessment regarding the quality of technical information. Neckoway's (2007) comments on the format in which information was made available to NCN focuses on

the Wuskwatim PDA. She indicates that the PDA was primarily a legal document containing technical information which was not readily understandable by NCN's membership. My own work agrees with the findings of these other researchers. However, one difference should be noted regarding the need for oral and written translation of information. My findings suggest that there was a difference of opinion regarding the utility of translating written texts into Syllabics and that further research is necessary in order to clarify the appropriate format in which information should be made available to Aboriginal publics. Other items relating to the format in which information was provided include the need to develop 3<sup>rd</sup> party summaries of hearing sessions so participants are better able to keep abreast of the proceedings (Fitzpatrick 2005).

Accessibility of information emerged as yet another common theme shared by my case study and other research. Fitzpatrick (2005) centers her discussion of the accessibility of information on the availability of EA and project related documentation through the electronic registry set up by the Province of Manitoba, and notes that only a small subset of information was made available through it to the public. Furthermore, she advocates greater information sharing among non-registered participants, and that non-registered participants were not privy to the same information and filings that registered participants in the process were. Cruikshank (2006) makes a similar observation with respect to the availability of information. His research indicates that information provisions for NCN were excellent and well aligned with best practices, but inconsistent among other publics involved in the review process. Neckoway's (2007) research indicates that NCN community

members had a difficult time obtaining information about the Wuskwatim Projects from their leadership. The results of my own case study research regarding inaccessible information differ somewhat from these findings. My research focused on the ability of Aboriginal publics to access information concerning supplementary processes, or other items related to the Wuskwatim projects, but outside the purview of the EA. To some degree my results coincide with Neckoway's regarding the inaccessibility of project related information to NCN members. However, my findings suggest that with respect to EA processes, concerns associated with inaccessible information tended to center on items falling outside the scope of the review. I attribute this to a lack of understanding among Aboriginal participants about the relationship between the scope of the Wuskwatim EA and the type of information which would be disclosed or made publically available for the purposes of the review process.

A related point of convergence between my work and Fitzpatrick's (2005) concerns the efficacy of the Wuskwatim IR process. Fitzpatrick (2005) provides evidence indicating the Wuskwatim IR process had some positive attributes, including the fact that it made more information available to participants. Deficiencies she associated with the Wuskwatim IR process included: enhancing the formality of the review process, duplication of effort, scattered trails of information, wasted resources on behalf of participants, and the manner in which the IR process itself served as a mechanism through which to delay assessment activities. In general it appears that Fitzpatrick (2005) is suggesting that the Wuskwatim IR process was

poorly implemented. My own findings also show that participation in the IR process resulted in wasted resources on behalf of some Aboriginal participants.

*Accessibility:*

Accessibility emerged as another area of commonality between my research and Fitzpatrick's (2005). Fitzpatrick's (2005) findings indicate the need for the CEC to spend a greater amount of time in northern Manitoba and more specifically in the community of Nelson House. This is consistent with my own findings, with the exception of a focus on the community of Nelson House. My research acknowledges the role of funds and timing to better facilitate access or attendance at EA process components. For example, travel costs were noted as being prohibitive to participation. Similarly, some evidence was noted that late afternoon/evening sessions were better attended than those held earlier in the day.

*Adversarial and Intimidating Process:*

The adversarial nature of the public hearings was noted as yet another point of convergence between my work and that of Fitzpatrick (2005). While Neckoway's (2007) research did not specifically focus on the Wuskwatim public hearings, a review of her work indicates that the structure of the consultation meetings held by NCN for the development of the Wuskwatim PDA were intimidating to trappers, elders and other band members. She attributed problems associated with the intimidating nature of these meetings to their "western" format which included the presence of lawyers. Fitzpatrick's (2005) research findings indicate that because the hearings were adversarial in nature some people were intimidated to the extent that they did not come forward and contribute to the deliberations taking place.

My findings also acknowledge both the adversarial and intimidating nature of the CEC public hearings. Although I do feel that an adversarial process may be intimidating and limit “audience” participation, my analysis differs with respect to treatment of the two concepts. My findings suggest that the adversarial nature of the Wuskwatim public hearings is linked to the formality of the process itself as signaled by the use of lawyers. It appears that my findings regarding the formality of the process and presence of lawyers are in line with those of Neckoway (2007). The exception here is that I focus on the public hearings and her concern is the format or structure of community meetings. I also suggest that less formal approaches to the administration of public involvement activities which place greater emphasis on dialogue and deliberation, may serve to reduce the adversarial nature of the review process. Evidence surrounding the intimidating environment suggested a relationship to participant comfort levels with respect to public speaking and ability to speak in one’s own language. Efforts to structure public meetings to better accommodate language barriers and concerns about public speaking may well serve to enhance participant comfort levels. It is worth asking whether problems associated with the adversarial and intimidating nature of public forums are due to the “western” format as Neckoway (2007) contends, or if perhaps these problems are merely attributable to poor process planning and design which does not adequately meet the needs of those in attendance.

*Hearing Rules and Procedures:*

Fitzpatrick (2005) indicates that not all participants involved in the Wuskwatim public hearings were treated equally by the CEC and advocates for a



more stringent application of rules governing the proceedings. A related item raised by Fitzpatrick (2005) concerns difficulties participating in the Wuskwatim public hearings. She attributes this to a lack of experience among some interveners, but also to the need for greater direction by the CEC about its expectations for participants. Fitzpatrick (2005) suggests that a short course on how to be an effective intervener and better guidance on managing the use of intervener funds may serve to improve participation among interested parties with little previous experience.

My own findings are supportive of this but differ slightly in that they focus on restrictive rules and procedures. My findings indicate that flexibility was offered by the CEC to those who did not understand the process for participating. The data that I collected showed that the rules and procedures governing the hearing process were restrictive and suggested that less formal approaches would be more conducive to dialogue and deliberation, particularly among those with little experience in formal review processes. One common outcome between my work and Fitzpatrick's (2005) is the need for a course or information session about how to participate in the public hearings.

*Timing and Scheduling:*

Cruikshank (2006) refers to the need for early involvement of potentially affected publics in planning processes. His analysis focuses on NCN's involvement in the development of the Wuskwatim projects which extended back to 1999. As result of their early involvement Cruikshank (2006) views the consultation process between MB Hydro and NCN positively and in-line with best practices. Neckoway's (2007) research also touches on the role of timing albeit briefly. Her analysis centers on the

process associated with the development and ratification of the Wuskwatim PDA. She indicates that NCN band members did not have sufficient time to review the Wuskwatim PDA prior to its ratification. Hultin (2005) also briefly notes timing constraints and suggests that meetings to discuss the Wuskwatim PDA among NCN's membership were in some cases held at inopportune times which limited opportunities for dialogue and input. My own findings, although not necessarily focused on the development of the Wuskwatim PDA and partnership arrangement between NCN and MB Hydro, also noted potential problems associated with the timing of public meetings.

Fitzpatrick's (2005) research is similar to my own in that it tended to focus on the regulatory process for the proposed Wuskwatim developments. Her findings revealed a number of timing related issues associated with the review process including the time lag between issuance of EIS guidelines and initiation of public hearings, the time consuming IR process, the extension of EA timelines and subsequent effects on participant resources, the overall pace and duration of the public hearings, the dissatisfaction among participants over process time management, and uncertainty among participants regarding scheduling. My research findings generally included issues associated with preparation for and access to the review process. Points of convergence between my work and Fitzpatrick's (2005) include the effect of timing on available participant resources, as well as inefficiencies associated with the Wuskwatim IR process. However, a number of differences are also noted, including problems linked to the timely exchange of information, which appears to be primarily an administrative shortcoming on the part

of the CEC. There is also evidence which indicates that participants had insufficient time to prepare for the Wuskwatim public hearings. My research also identified scheduling constraints which were attributed to the overlap between the Crown S.35 Consultations and the Wuskwatim EA process. Generally speaking problems were noted in terms of confusion regarding the availability of information and increased difficulties preparing for and accessing the review process.

*Coercion and Control of Dissent:*

Neckoway's (2007) research notes that coercive tactics were employed within the community of NCN. In particular, information about the Wuskwatim PDA was not forthcoming to band members from their leadership, and in the end was only made available to a select group of NCN community members. She also states that band meetings were held at times when key opponents to the Wuskwatim PDA were out of the community. Hultin's (2005) commentary on difficulties conducting his research indicates that NCN band members were hesitant to talk to him for fear of being ostracized from their community, potential job loss, and facing band council resolutions forcing individuals to leave the community. In short it appears that strategies were employed by the community leadership to minimize minority voices in opposition to or critical of the proposed partnership arrangement between NCN and MB Hydro. My own research findings regarding buying project support and fear of reprisal are in general agreement with those of Neckoway (2007) and Hultin (2005).

*Lack of Understanding:*

Hultin (2005) notes a general lack of understanding among NCN members about the impact of the Wuskwatim Generating Station on their land, and uncertainty

regarding whether the partnership would actually benefit the community. Hultin (2005) surmises that the lack of understanding among NCN members may in part be due to literacy issues within the community or possibly because the information about the partnership was not made available in the Cree language. My own research revealed literacy, lack of formal education, and familiarity with the English language as personal characteristics that impede understanding among some Aboriginal publics about potential project impacts and implications. Fitzpatrick (2005) makes similar observations to this regarding the need to ensure provisions for written and oral translation as well as improving the structure of EA documentation to better facilitate participant understanding. My work identifies a number of other issues linked to a lack of understanding among Aboriginal publics involved in the Wuskwatim EA, including a limited experience and understanding about how to participate in public hearings, and the need for greater involvement in the development of the project EIS.

## **CHAPTER 6 – CONCLUSIONS, RECOMMENDATIONS AND FUTURE RESEARCH DIRECTIONS**

### **6.1 Introduction**

Public participation in EA processes has been identified as an important mechanism through which members of the public can influence decisions being made about proposed resource development projects. Despite the importance of public participation in EA processes, Aboriginal publics have frequently been identified as non-participants. The objectives of the research were to identify barriers to participation faced by Aboriginal publics involved in the Wuskwatim EA process, discuss process related strengths and weaknesses for participation, and make recommendations in order to improve EA processes for Aboriginal publics based on the research findings. The following sections draw conclusions from the data and discussion presented in the thesis. Recommendations are offered to improve the implementation of EA processes for Aboriginal participation, and future research directions are identified.

### **6.2 Conclusions**

The case study research identified nine general barrier types faced by Aboriginal participants involved in the Wuskwatim EA process. Barrier categories included resource deficiencies, accessibility, information deficiencies, communication barriers, inadequate consultation, timing and schedule constraints, lack of trust, lack of understanding, and coercion and control of dissent. In addition to barriers, the strengths and weaknesses of the Wuskwatim EA participation process

have also been considered. Strengths of the Wuskwatim EA process included the award and allocation of intervener funds, pre-hearing activities, holding public hearings, key elements of the proponent PIP such as geographic representation, use of multiple techniques and staged delivery. Weaknesses of the Wuskwatim EA process were more numerous and focused on the inadequate provision of translation services, timing and location of public meetings, balancing timing and funding provisions, technical discourse, the formality of public hearings, format in which information was provided, scheduling of supplementary processes, and the design, integration and need for monitoring of proponent led consultations.

Chapters 4 and 5 have discussed barriers to participation as revealed by the research, and the outcome of the EA public participation process in terms of its strengths and weaknesses for Aboriginal participation. Taken together these represent a formidable set of challenges for aboriginal and non-aboriginal governments, publics, proponents and other parties interested in EA. The findings suggest that barriers to participation can frequently be attributed to procedural shortcomings. Furthermore, the study findings are often supported by those of other researchers in the public participation literature. The following provides a brief summary of the nine key barrier categories identified as part of the case study research.

- Resource deficiencies, attributed to funding/financial and capacity constraints on behalf of Aboriginal participants and those charged with the administration of the CEC public hearings. Resource deficiencies could also be linked to problems related to preparing for and participating in the Wuskwatim EA process. Procedural inefficiencies such as the extension of EA timelines and poorly implemented process components (i.e. Wuskwatim IR process) can

detract from the availability of resources among Aboriginal participants, negatively affecting their sustained involvement in the review process.

- Accessibility or the ability of Aboriginal publics to attend and physically represent themselves at events and activities associated with the Wuskwatim EA process. The location of public meetings was identified as a key barrier impeding access to the Wuskwatim EA process. Problems associated with the location of public meetings could often be attributed to difficulties accessing transportation and prohibitive travel costs.
- Information deficiencies included a range of barrier types relating to inaccessible information, problems with the format in which information was made available, and difficulties receiving information in a timely manner. Concerns surrounding inaccessible information generally focused on issues falling outside the scope of the EA process. Problems associated with the format of information focused on its content (technical), structure (size, organization, and volume), and need for written translation using Syllabics. Concerns surrounding the timely exchange of information were linked to missed opportunities to comment and contribute to the review process.
- Communication barriers focused primarily on complexities that impeded dialogue and deliberation during the Wuskwatim public hearings. Communication barriers faced by Aboriginal publics included language barriers, the prevalence of technical discourse, and problems associated with the formal structure of the proceedings. Language barriers and technical discourse could often be linked to a lack of understanding among Aboriginal participants involved in the Wuskwatim EA process. Problems associated with the formal structure of the Wuskwatim EA included its contributions to the development of an adversarial and intimidating hearing environment.
- Inadequate consultation included a broad range of barrier categories primarily associated with the manner in which the proponents engaged Aboriginal publics throughout the development of the project EIS and early stages of the EA process. Key barriers linked to the adequacy of the proponent's public

involvement program included; a lack of opportunity for Aboriginal publics to define the process by which they were consulted, reliance on geographic based communities for the delivery of the Wuskwatim PIP to the exclusion of identity and interest-based associations, use of coercive tactics by the project proponents to gain support for the development of the Wuskwatim Generating Station among NCN members living in the community of Nelson House, lack of opportunity to contribute to the development of the project EIS, and the selection of use of participatory techniques which did not necessarily meet the needs of some participants.

- Timing and scheduling constraints were attributed to problems associated with the general ordering, sequencing, and/or coordination of EA and related activities. Problems associated with timing and scheduling in some cases impeded access to the Wuskwatim EA process and/or created difficulties among some Aboriginal participants preparing for the upcoming public hearings.
- Lack of trust was noted as a barrier category grounded in the history of hydro development in northern Manitoba. As a barrier to participation, lack of trust was generally associated with the willingness of Aboriginal publics to accept EA or other project related information in an objective manner. Lack of trust generally included concerns surrounding the credibility of the project proponent which appears to be tied to the adequacy of consultative efforts and opportunities to contribute to the development of the Wuskwatim EISs.
- Lack of understanding emerged as an integrative barrier category which often appeared in association with others faced by Aboriginal publics. Lack of understanding was noted in conjunction with issues such as uncertainty surrounding project impacts and implications, how to participate in public hearings, and personal characteristics such as familiarity with the English language, literacy, and lack of formal education.
- Coercion and control of dissent was recognized as a barrier type based on evidence pointing to the use of coercive tactics by the project proponents in order to control the debate surrounding the development of the Wuskwatim



Generating Station. It is important to note that NCN was identified a co-proponent for the Wuskwatim Generating Station EA that not everyone in the community was supportive of the project and it's agreed upon conditions. Evidence supporting coercion and control of dissent as a barrier category was specific to NCN members living in the community of Nelson House. Key barriers attributed to coercion and control of dissent included buying project support, intimidation, and fear of reprisal. Coercion and control of dissent could be linked in part to the adequacy of proponent led consultations.

The research findings regarding barriers are supported by researchers in the field of public participation who have reported similar issues. For example, intervenor funding has been identified as important to balancing out resource disparities which limit the ability of participants to present their views and arguments (Jeffery and Estrin 1986, Gibson 1993, Sinclair and Diduck 2001, Diduck and Sinclair 2002, Rutherford and Campbell 2004, Sinclair and Diduck 2005, Stewart and Sinclair 2007) and covering the costs associated with their participation (Lynn and Waterhen 1991). Similarly, the findings of this case study are generally consistent with those of other authors who suggest that all too often opportunities to participate are held at times and places that are inconvenient to the public (Checkoway 1981, Halvorsen 2001, Fitzpatrick and Sinclair 2003, Baker et al. 2005, Fitzpatrick 2005, McComas et al. 2006). The format in which information is made available to the public has also been noted as problematic by some who suggest that project EISs and related planning documents are typically written by experts and are beyond the comprehension of the average reader (Gallagher and Patrick-Riley 1989, Gallagher and Jacobson 1993, Sullivan et al. 1996) resulting in misinformation due to a reliance on secondary sources (Sullivan et al. 1997). As well, difficulties associated with the format of

information could often be linked to a lack of understanding, lending credence to what Sinclair and Diduck (Sinclair and Diduck 2005) refer to as the cognitive accessibility of information.

Problems related to the more communicative aspects of the EA process revealed by this case study also find agreement in the work of others. Communication barriers associated with language (Gallagher 1992, Duncan 1999), technical discourse (Checkoway 1981, Duncan 1999, Sinclair and Diduck 2001, Manawong and Ogunlana 2006), as well as the formal structure of the review process itself (Checkoway 1981, Baker et al. 2005) including its adversarial nature (Lando 2003, Fitzpatrick and Sinclair 2005) have been noted by others. Shortcomings attributed to the adequacy of proponent led consultations were generally viewed as being linked to proponent control over the proceedings (Sinclair and Diduck 2001, Diduck and Sinclair 2002, Sinclair and Diduck 2005) and the need for greater involvement of interested publics in the design of participatory processes (Hampton 1999, Stewart and Sinclair 2007). Lack of understanding in relation to the technical dimensions of EA processes and linkages to participant characteristics have previously been identified by Diduck and Sinclair (2002). The current findings also provide general support for the findings of various researchers who have noted the relationship between prior experience and lack of trust (Harris 1997, Petts 1999, Poortinga and Pidgeon 2003, Hartley and Wood 2004, Parkins and Mitchell 2005).

The discussion of strengths and weaknesses took a broader view of the Wuskwatim EA process and considered the context in which the barriers occurred. Strengths of the Wuskwatim EA participation process for Aboriginal publics included

the award and allocation of intervener funds, prehearing activities, public hearings, as well as the geographic extent, use of multiple techniques and staged delivery of the Wuskwatim public involvement program. The conclusions surrounding the strengths of the Wuskwatim EA public participation process find support in the literature as outlined in Chapter 5.

General support for the provision of intervener funds and its importance to participation and the inclusion of diverse perspectives has previously been noted by others (Aaron 1979, Lynn and Waterhen 1991, Cohen 1995). Sinclair et al. (2002) have identified the lack of pre-hearing activities as a shortcoming associated with the public hearing components of EA processes. Similarly, Fitzpatrick (2005) notes that pre-hearing activities associated with the Wuskwatim EA process created an opportunity for face to face communication among participants and other parties. The benefits of public hearings have generally been associated with impartiality (Sinclair and Diduck 2001), legitimacy (Heberlein 1976, Adams 2004), guaranteed opportunities to participate such as notice, and the opportunity to present and cross-examine evidence (Cramton 1972). Key elements of the proponent's public involvement plan noted as reflecting positively on the Wuskwatim EA process have also identified in the literature. For example, various authors underscore the need to ensure adequate breadth of representation of interested publics in the regulatory proceedings (Gormley 1981, Diduck 2004, Parkins and Mitchell 2005). Specific to the design of public involvement activities, Stewart and Sinclair (2007) suggest that the use of multiple techniques and staged delivery would improve public involvement programs.

The case study research also revealed a number of weaknesses attributable to the Wuskwatim EA public participation program. Weaknesses associated with the Wuskwatim EA processes included provision of inadequate translation services, timing and location of public meetings, technical discourse, formal structure of public hearings, format in which information was made available, scheduling of supplementary processes, and problems associated with the design, integration and monitoring of the proponent led consultations.

The need for translation services in EA and related types of regulatory processes has previously been identified as an important consideration to facilitate communication in cross-cultural forums (Gallagher 1992, Duncan 1999). Others have commented that translation services would be improved through the use of qualified (Gallagher 1992) and adequately equipped translators (Fitzpatrick 2005). Review of the literature and discussion of barriers indicates that holding hearings and related opportunities to participate at times and locations inconvenient to the public can deter participation (Checkoway 1981, Halvorsen 2001, Sinclair et al. 2002, Fitzpatrick and Sinclair 2003, Baker et al. 2005, Fitzpatrick 2005, McComas et al. 2006). The need to balance timing and funding provisions has to some degree been identified by others. Some researchers have advocated for the early provisions of funds in order to assist participants in their preparations (see for example Aaron 1979, Rutherford and Campbell 2004), while Fitzpatrick (2005) notes that the extension of EA timelines can detract from the availability of participant resources. Problems associated with the prevalence of technical discourse have also been identified by others as a weakness of public hearings. Discussions focusing on technical issues tend

to miss public concerns (Cvetkovich and Earle 1992), are often beyond the understanding of lay publics, and hamper the ability of participants to engage in the decision process (Fiorino 1990, Beierle 1999). The research findings also support the conclusions of various authors noting the influence the formal structure that public hearings can have on the adversarial nature of the process (Cramton 1972, Wismer 1996, Fitzpatrick and Sinclair 2003, Lando 2003, Rutherford and Campbell 2004, Fitzpatrick and Sinclair 2005) and development of intimidating hearing environment (Heberlein 1976, Checkoway 1981). The format in which EA and related project information was made available has long been identified as shortcoming of EA processes in general (Gallagher and Patrick-Riley 1989, Gallagher and Jacobson 1993, Sullivan et al. 1996). Finally, linkages could be drawn between the literature and procedural weaknesses associated with minimal public involvement in the design of participatory processes (Hampton 1999, Stewart and Sinclair 2007).

In addition to the identification of barriers to participation and the discussion of process strengths and weaknesses, some of the research findings support the work of others specifically studying the development of the Wuskwatim Projects. The findings support the conclusions of Fitzpatrick (2005) and to a lesser degree Neckoway (2007) and Hultin (2005). Support for Fitzpatrick's findings include increased costs of participation associated with a poorly implemented IR process, extension of EA timelines and the pressures it places participant resources, the need for oral and written translation, issues related to an adversarial and intimidating hearing environment, accessibility of the CEC public hearings and the benefit of spending a greater amount of time in northern Manitoba, the lack of experience

among Aboriginal participants as interveners in public hearings, and the need to better inform interested individuals about how to participate in EA processes. The research findings support Neckoway's work (2007) in its examination of the relationship between a lack of understanding among NCN members about potential project impacts and implications, difficulties associated with the format in which information was made available, and personal characteristics such as proficiency with the English language, literacy, and a lack of formal education. The research findings provide some support for Neckoway's assertions regarding the format of community meetings and its subsequent impacts on participation. The use of coercive tactics by NCN's leadership to minimize or control opposition to the Wuskwatim Projects was also identified by Hultin (2005).

### **6.3 Recommendations**

The following provides a series of recommendations derived from the research which may serve to improve participatory processes for Aboriginal publics involved in EAs. The recommendations presented below are generalized and based on the results of the study regarding barriers to participation and the perceived strengths and weaknesses of the Wuskwatim EA participation process for Aboriginal publics. The significance or relative importance of barriers, strengths and weaknesses may have varied among and between Aboriginal publics, however, the intent here is to provide a comprehensive list that could guide and inform the implementation of future EA processes.

### ***6.3.1 Award and Allocation of Intervener Funds***

Regulators and proponents should ensure sufficient levels of intervener funding is made available to interested and affected Aboriginal publics to facilitate participation in the EA process. Funding awards should be made in a timely manner allowing Aboriginal participants sufficient time to prepare to participate in public hearings or related EA process components. The award of intervener funding should be commensurate with the start of preparatory timeframes. A minimum of 90-100 days should be allocated for participants to prepare for upcoming public hearings. In the event that unforeseen circumstances (i.e., late changes to the scope of the review process occur) delay the start of public hearings, minimum timeframes allowing participants to prepare for the review process should be maintained. The award and allocation of intervener funds should also consider diversity of perspective as it relates to a proposed development and may warrant the inclusion of Aboriginal publics as interveners in the formal government-led components associated with EA processes.

### ***6.3.2 Coverage of Administrative Costs***

Provision should also be put in place to cover administrative costs of participation in hearing processes for Aboriginal publics. A separate fund (separate from intervener funding) should be established prior to the start of the hearings and maintained on a continuous basis for the duration of the review process. Funds would be used to cover incidental costs incurred by Aboriginal participants such as the production and distribution of filings, and travel costs such as mileage, food and lodging as required. Reimbursement of administrative costs should be ongoing

throughout the process so as not to detract from the existing intervener funds and discourage participation (either attendance or other means of contributing to various aspects of the review process). In the event that EA process timelines are extended, additional funds should be made available to Aboriginal participants to cover administrative costs and facilitate sustained involvement for the duration of the review process.

### **6.3.2 *Accessibility***

Public meetings (hearing sessions, community meetings etc.) and other opportunities to participate in EA process components should be held in close geographic proximity to Aboriginal communities with an interest in or who may be affected by a proposed resource development. Ideally, opportunities to participate would be located in Aboriginal communities and places which minimize transportation constraints (costs and availability) on attendance. In the event that transportation costs are prohibitive to participation, provisions should be in place that allow for the reimbursement of travel costs (transportation, food, and lodging). Reimbursement of travel and other administrative costs should be ongoing, and not detract from existing intervener funds or discourage sustained levels of participation. Making alternative travel arrangements such as ride sharing or chartering other types of public transportation (vans busses etc.) might also be viable in the event that opportunities to participate cannot be held locally, or if local interests are geographically diffuse over a larger area. Furthermore, public meetings, hearing sessions or other interactive opportunities for participation should be scheduled at times and locations that are convenient to the needs of Aboriginal people. The timing



and scheduling of opportunities to participate should accommodate working hours and other seasonal, family and community activities/commitments whenever possible. The timing and scheduling of public involvement activities for Aboriginal communities may be improved by establishing adequate opportunity to contribute to the design of participatory processes.

### **6.3.3 Information Provisions**

EA administrators should be sure that participants are clear on the linkages between the scope of the review process and the type of information which will be made available to Aboriginal publics as part of the project EA. In the event that Crown Consultations and EA processes are slated to occur within the same general timeframe, government administrators should ensure that Aboriginal stakeholders are made aware of the appropriate forum through which they can obtain additional information and have their concerns addressed. Information sessions held for Aboriginal participants or other members of the public on how to participate in the project EA may be an appropriate forum through which to discuss the type of information that would be made available as part of the review process (i.e. confidential or third part information). EA and other project related documentation should be readily accessible, available and in a suitable format. If necessary this should include translation of documents and other written texts pertaining to the project and EA process as well as efforts to minimize the technical content of reports. Information provisions should be coupled with submission deadlines that allow participants sufficient time to review the relevant EA documentation and respond to questions or comments.

#### **6.3.4 *Provision of Translation Services***

EA administrators should ensure that provisions for oral translation services are in place during public/community meetings and related interactive opportunities for participation associated with EA processes. Language barriers were noted as exacerbating a lack of understanding among Aboriginal publics and other participants, and acted as an impediment to dialogue and deliberation. The notion of language also includes cultural dimensions. Addressing language barriers can potentially assist in accommodating cultural difference.

When Aboriginal publics are involved in a given EA process, provision of oral translation services should serve as a default position in the event that there is any uncertainty regarding their need. Translation services should employ the use of qualified and adequately equipped translators. This requires that translators are proficient in source and target languages and be sufficiently familiar with any technical concepts and terminology being used in order to convey accurate meaning. Similarly, translators should be adequately equipped in order to do their job. This entails ensuring the availability of simultaneous translation equipment or other technology in order to facilitate the timely delivery of oral translation (Fitzpatrick 2005).

#### **6.3.5 *Addressing Technical Discourse***

Efforts should be made to reduce the extent to which technical discussions and terminology can dominate public hearings. This will create a more inclusive process that better promotes dialogue and understanding among Aboriginal participants and publics in attendance. Strategies to address problems associated with technical

discourse could include requiring presenters to briefly define and discuss technical concepts, terminology, and any acronyms used as part of their presentation before they begin. Furthermore, members of the CEC or other EA administrators present during public hearings should monitor discussions and exchanges and when necessary request clarification about concepts, terminology and acronyms not commonly known or understood. Information sessions may be held prior to the start of public hearings to review and discuss key concepts and terminologies being used as part of the public hearings. Holding technical information sessions would help provide a common base upon which further understanding among Aboriginal publics could be built upon. Another approach may simply involve making handouts available at public hearing sessions which briefly summarize and define key technical terms, concepts and acronyms expected to be used in association with the review process. The glossary section of the project specific EIA would serve as a starting point for the development of a terminology brief that could be made available during public hearings.

Provision of translation services may also serve as a means by which to minimize the effects of technical discourse on participation among Aboriginal publics. As noted earlier, translation services should include the use of qualified translators familiar with the types of issues under review. Given that words and phrases do not necessarily have corresponding meanings in other languages, translation would require some degree of explanation. This may be important with respect to clarifying technical concepts in cross-cultural contexts. However, it places

a premium on ensuring that translators are sufficiently familiar with the technical issues under review.

### **6.3.5 *Process Administration***

Government officials should ensure that the administrators of EA processes are adequately staffed in order to facilitate the exchange and distribution of information among all parties in a timely manner. In particular, remote Aboriginal communities must have adequate access to information.

Less formal approaches should be employed for the administration of public hearings and related activities associated with EA processes. Informal approaches for the implementation of public hearings should assist in offsetting the adversarial nature of the review process and diffuse conflict. To allow for more effective Aboriginal participation, alternative approaches should focus on things that would increase the comfort of Aboriginal people in formalized settings. Efforts should focus on those activities or conditions which better promote dialogue and discussion among those in attendance and be less regimented (i.e. less emphasis on process).

Public hearings and other formal opportunities to participate should give consideration to participant comfort levels in order to encourage contributions from those in attendance. Strategies may include situating microphones at key locations throughout a venue so that those speaking do not need to walk to the front of the room in order to speak in front of others, or accepting written comments/questions to be read into the public record by a hearing/EA official. Furthermore, the ability of Aboriginal publics to speak in their own language was also noted as having an influence on their perceptions of comfort when speaking in front of others.

Therefore, provision of translation service which would allow Aboriginal publics to speak in their own language is another important consideration to enhancing participant comfort levels in public forums.

Sufficient time should be made available to presenters and other members of the public in attendance at public hearings who want to make statements and/or ask questions during the review process. A reasonable degree of flexibility should be shown in the event that the standard 15 minutes is not enough time for participants to convey their views and/or concerns. Efforts to improve the administration of public hearings should also eliminate the need for members of the public to register with the CEC in advance of making statements or asking questions during the hearing proceedings. Although registration is important in order to properly attribute comments and questions from those in attendance, this is an administrative task which should not serve as a deterrent or impediment for those wishing to contribute to the deliberations taking place. Furthermore, opportunities for questions and comments should be made available at regular intervals during the daily proceedings. Question and comment periods could be scheduled to occur after presentations, or in conjunction with those being asked by the CEC. Alternatively, a free-for-all question/comment period could also be implemented at a set time on a daily basis in order to accommodate those who may not be able to attend other hearing sessions.

EA administrators should make use of pre-hearing activities that provide Aboriginal participants with adequate opportunity to have an influence on the manner in which public hearings and other aspects of the EA process will be implemented. For example, pre-hearing conferences would be one avenue though

which to review and discuss the acceptability of schedules and process timelines as well as any other stumbling blocks which may arise (i.e., need for translation services, location of hearing venues etc.).

Information sessions should also be held to inform interested Aboriginal publics how to participate in public hearings and other aspects of the EA processes. Information sessions should be used to review the rules by which the EA processes is governed (time limits on speaking, when questions, registration, provisions surrounding the award of intervener funds etc.) as well as clarify the linkages between the scope of the review and the type of information about the project and its potential impacts that would be made publically available.

Efforts should also ensure that information concerning the rules and procedures for participating in public hearings are readily available and easily accessible to Aboriginal publics. Information about how to participate in public hearings should be posted on the website of the administering agency as well as made available in hard copy format at hearing sessions or other events leading up to the hearing process. An alternative approach could involve presenting or distributing information about the review process to Aboriginal publics through the proponent's public involvement program. Information regarding how to participate in the review process could be distributed by representatives of the CEC or others responsible for the administration of the EA process as part of efforts to monitor the proponent's public involvement program.

### ***6.3.5 Proponent Public Involvement Programs***

The research findings suggest a number of ways proponent public involvement programs can be improved. Project proponents should ensure adequate opportunities are in place for Aboriginal publics to determine the manner in which they will be consulted for the development of a project EIS. Defining the consultation process would determine the appropriate conditions under which a community's involvement would take place, identifying such things as appropriate times and locations to meet with people, the appropriate format in which information should be made available, the level of interest, and appropriate types of opportunities for participation.

For the purposes of developing a public involvement plan, Aboriginal publics should be defined in a sufficiently broad manner so as to account for the diversity of Aboriginal interests associated with a particular resource development project. The manner in which Aboriginal publics are defined for the purpose of developing a project EIS should not only strive to achieve geographic representation of interested and potentially affected communities, but also account for identity or interest based associations such as local community or resource user groups (housing, education, trapping, and fishing etc.), or other socio-cultural and political organizations not readily confined to a given locale.

Participatory activities involving Aboriginal publics should be structured in such a fashion so that sufficient and appropriate opportunities for input are made available at all stages for the development of a project EIS. At a minimum, the integration of public involvement activities and the development of the project EIS

should include opportunities to contribute local and traditional knowledge, the selection of valued ecosystem components (VEC's), as well as contributions to the evaluation of the significance of potential project related effects. Added benefits of better integration between public involvement activities and the development of a project EIS include improved understanding about potential project impacts as well as enhancing the credibility of the assessment findings.

Proponent public involvement programs should ensure that appropriate techniques are employed to effectively engage Aboriginal publics in EA processes. This would include the use of progressive participatory techniques ranging from the use of open houses as a means of providing information to more focused dialogic approaches such as community meetings or workshops etc., centered on specific aspects of the project EIS. Community consultants should also be used to the greatest extent possible to enhance the successful implementation of consultative activities. The use of community consultants should be coupled with training programs (capacity building) to better enhance the ability of individuals to engage their community and promote their involvement in EA and other project planning processes. A related consideration is the provision of work space which would better allow individuals to carry out their duties. The work space could also double as an information repository where EA and other project related documentation would be maintained for community members to access for the duration of the review process.

#### ***6.3.6 Scheduling of Supplementary Processes***

Scheduling and coordination between Crown Consultation and EA processes should be improved in order to minimize the potential for procedural overlap. One



strategy to improve coordination between the two processes could include better separation of Crown Consultation and EA processes. In this case the Crown Consultations would need to be held prior to, or upon completion of the formal EA process. An alternative could be an integrated approach which ensures that the EA process meets the Crown's fiduciary obligations surrounding meaningful consultation. Some of the benefits of an integrated approach would be reducing duplication, confusion, and alleviating some of the pressures that participating in competing processes place on the limited time and resources available to Aboriginal publics. Furthermore, an integrated process would also serve minimize any disconnect between the EA process and subsequent stages of the project's development. An integrated process would be in a better position to facilitate, or realize the benefits associated with early and ongoing participation (Sinclair and Diduck 2005) for the involvement of Aboriginal publics. However, in the event that EA and Crown Consultation processes are scheduled to occur within the same general timeframe, EA administrators should ensure that participants are made aware of how they can participate in each process and obtain the information necessary to gain a better understanding about potential project impacts and implications.

### ***6.3.7 Enhancing Credibility***

Perceptions surrounding the credibility of the project proponents depend on the willingness of participants to accept as true the accuracy of predictions contained within a project EIS. People's perceptions of the credibility of EIS findings appear to be linked to the adequacy of consultative activities conducted by project proponents and the ability of these activities to promote understanding about anticipated project

impacts. Specifically, the development of participant understanding (and therefore proponent credibility) appears to be linked to the integration of public involvement activities and the development of the project EIS. In order to enhance credibility, consultative activities should be structured to include at minimum, the following: the selection of valued ecosystem components (VEC's), determination of the manner in which traditional knowledge and other information is obtained and integrated into the project EIS (which information to be shared/excluded, identification and selection individuals to provide that information etc.), as well as the evaluation and determination of the significance of potential project related effects.

Although the development of improved understanding among Aboriginal publics may emerge as a result of better integration of public involvement activities with the development of a project EIS, this should not preclude the use of other tools and techniques which may also assist in promoting understanding. These efforts should include making information available in an appropriate format (e.g. written translation, structure and treatment of technical concepts), employing community consultants, and the use of translation services as needed etc. to promote understanding about potential impacts and implications. Planning should include provisions for the sustained involvement of Aboriginal publics throughout all stages of the development of a project EIS.

### ***6.3.8 Understanding of Project Impacts and Implications***

Improving understanding about potential project impacts and their implications is primarily linked to the adequacy of consultative activities and information provisions. Ensuring that EA and related project documentation is

readily accessible and available in an appropriate format is a key consideration for improving the design and implementation of consultative activities that promote understanding. Accessibility in this case entails the inclusion of document texts and a substantial effort to minimize technical content and use of jargon. Consultative efforts should also make provisions for sustained involvement and opportunities to contribute to the development of the project EIS including the contribution of traditional knowledge, the evaluation of environmental effects, and the determination of the significance of potential project related effects.

### ***6.3.9 Enhancing Transparency, Accountability and Legitimacy***

Efforts to enhance the transparency, accountability and legitimacy in EA process depends on the ability of EA administrators to ensure the necessary provisions are in place to offset the use of coercive tactics employed by the project proponents. Strategies to overcome the use of coercive tactics should at a minimum include: access to relevant project information, the provision of resources to acquire legal and technical expertise, promoting better understanding about project impacts and implications, and providing a forum where participants are able to voice their concerns. The principles outlined above are generally consistent with regulatory provisions set out as part of Federal and Provincial review processes. Making greater use of public hearings administered by a third party such as the CEC would be one mechanism through which to combat the use of coercive tactics while enhancing the transparency, accountability and legitimacy of EA processes. Public hearings can leverage the use of intervener funds, and provide guaranteed opportunities for

participation through such mechanisms as notice, access to information, and the opportunity to cross examine.

Similarly, EA administrators should monitor the implementation of the proponent's PIP. Monitoring of the proponent's PIP may be best conducted through attendance at public meetings and other participatory activities conducted for the development of the project EIS by a representative from the CEC or other regulatory body charged with carrying out the project review. An added benefit of regulatory representation during the delivery of the proponents public involvement program would be an opportunity raise awareness of and discuss the process for participation in upcoming public hearings or related EA process components (Sinclair et al. 2002).

#### **6.4 Future Research Directions**

The Wuskwatim case study carried out for this research centered on identifying barriers to participation, as well as discussing perceived strengths and weaknesses of the EA process for Aboriginal publics. As the research and writing progressed it became apparent that there are a number of areas that require further study, such as the following:

- The role of the geographic location of meetings and hearings and the impact of transportation on participation.
- The importance of the provision of administrative costs within the broader scheme of resource provisions and the consequent influence on participation in EA processes.
- Confirmation and clarification of the relationship between trust, credibility and the design and implementation of participatory processes. Associated with this is

the need to identify ways in which trust and credibility may be enhanced through improved design of participatory processes.

- Investigation of the appropriate format for EA and related project documentation made available to Aboriginal publics. The focus of such work should be on ways to improve and the presentation and delivery of complex technical information as well the utility of written translation of EA and related project documentation into Syllabics.
- Explore of the role of the Crown's S.35 duty to consult with Aboriginal publics in relation to the broader scope of EA processes.

## **6.5 Concluding Thoughts**

EA serves as an important means of involving interested and potentially affected publics in decisions concerning proposed resource developments. However, the relative success of the public aspect of these processes depends on the degree to which constraints inhibiting participation can be minimized or overcome. Based on the research findings, the barriers faced by Aboriginal participants involved in the Wuskwatim EA process do not appear to be substantially different than those faced by non-Aboriginal publics. In some respects however, the types of constraints faced by Aboriginal publics may be more exaggerated, particularly with respect to language barriers, comprehension of technical discourse, and accessibility, to name a few. That being said, none of the barriers appear to be insurmountable. In many cases the barriers identified in the research are linked to the structure of the review process itself, suggesting that simply improving the delivery of EA processes may go a long way towards enhancing Aboriginal participation. A central planning consideration however, is the need to implement EA processes in a more responsive manner which would require EA administrators to better inform themselves about interested

Aboriginal publics to ensure efforts are being made to better adapt the process to meet their needs.

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**APPENDIX A: CASE REVIEW AND SELECTION**

<b>ID No.</b>	<b>Project Name</b>	<b>EA Type</b>	<b>Case Selection Rational</b>	<b>Decision</b>
1	Manitoba Hydro Wuskwatim Generating Station Takisingup Falls, Burntwood River (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>• EA Complete</li> <li>• November 28, 2001 – December 2004</li> <li>• Assessed under Province of Manitoba (CEC) and CEAA (CSR)</li> <li>• Significant Aboriginal participation including First nations and Métis communities. Input received through established avenues for public participation</li> </ul>	<ul style="list-style-type: none"> <li>• Accept</li> </ul>
2	Red River Floodway Control Structure (MB)	Screening	<ul style="list-style-type: none"> <li>• EA Complete</li> <li>• September 5, 2003 – July 8, 2003</li> <li>• Larger Screening was assessed by the Province of Manitoba (CEC) and CEAA (CSR)</li> <li>• Minimal Aboriginal participation occurred. Input received from Peguis First Nation</li> </ul>	<ul style="list-style-type: none"> <li>• Accept</li> </ul>
3	Shellmouth Dam Upgrade Project (MB)	Screening	<ul style="list-style-type: none"> <li>• EA incomplete</li> <li>• October 17, 2003 – in progress</li> <li>• Conversation with CEAA officials indicates that this project has only progressed to the scoping phase</li> <li>• No significant Aboriginal participation has occurred at this point in time</li> </ul>	<ul style="list-style-type: none"> <li>• Reject</li> </ul>
4	St. Theresa Point/Wasagamach Island Lake Road and Airport (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>• EA complete</li> <li>• September 25, 1997 – December 20, 2001</li> <li>• Assessed by the Province of Manitoba (CEC) and CEAA (CSR)</li> <li>• No Aboriginal participation was noted at either the provincial or federal level</li> </ul>	<ul style="list-style-type: none"> <li>• Reject</li> </ul>
5	Transfer of the Sherridon Rail Line and its Existing Operations (MB)	Screening	<ul style="list-style-type: none"> <li>• EA complete</li> <li>• Date</li> <li>• Consultations primarily focused on government to government negotiations (federal/provincial and Chief ad Council). Opportunities were provided for local residents to provide input, but the matter was internal to the community.</li> <li>• No public involvement occurred under CEAA and no opportunities for Aboriginal participation occurred</li> </ul>	<ul style="list-style-type: none"> <li>• Reject</li> </ul>

6	Canadian Museum for Human Rights (MB)	Screening	<ul style="list-style-type: none"> <li>EA complete</li> <li>August 18, 2004 – June 8, 2006</li> <li>Comment from regional Aboriginal political bodies was sought in the early stages of the EA</li> <li>No significant Aboriginal participation occurred throughout the public comment period</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
7	Long Plain First Nation - Irrigation Project (MB)	Screening	<ul style="list-style-type: none"> <li>EA complete</li> <li>Unknown – June 2, 2006</li> <li>Internal process to the First Nation Community</li> <li>No Aboriginal participation noted</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
8	Swan Valley Gasification Project (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>Canceled</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
9	Decommissioning of Atomic Energy of Canada Limited's (AECL) Whiteshell Laboratories (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>EA complete</li> <li>June 2, 1999 – April 2, 2002</li> <li>Review of documents and discussion with experts indicates no significant Aboriginal participation</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
10	Yellowhead West Water Supply System (MB)	Comprehensive Study	<ul style="list-style-type: none"> <li>Canceled</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
11	Goldfields Property Box Mine Deposit Small Scale Open Pit Operations (SK)	Comprehensive Study	<ul style="list-style-type: none"> <li>Canceled</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
12	COGEMA Cluff Lake Decommissioning (SK)	Comprehensive Study	<ul style="list-style-type: none"> <li>EA complete</li> <li>April 15, 1999 – April 15, 2004</li> <li>Public hearings conducted by the Canadian Nuclear Safety Commission (CNSC) and CSR produced by CEAA</li> <li>Conversations with experts suggest that Aboriginal participation occurred. Specifically, Athabasca Chipiwayan First Nation were noted as having outstanding concerns associated with the project</li> </ul>	<ul style="list-style-type: none"> <li>Accept</li> </ul>
13	Processing Cigar Lake Phase I Ore at Rabbit Lake (SK)	Comprehensive Study	<ul style="list-style-type: none"> <li>Canceled</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
14	Wascana Lake Enhancement Project City of Regina (SK)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>August 12, 2003 – October 1, 2003</li> <li>The public input deadline (Sept. 29, 2006) and decision date (October 1, 2006) were two days apart. It was assumed that no significant public participation from either Canadian or Aboriginal publics were submitted</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>

15	City of Saskatoon Regional Waste Management Centre Upgrade (SK)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>November 14, 2003 – May 4, 2004</li> <li>Assessed by the Province of Saskatchewan and under CEAA</li> <li>Review of documentation suggests that no Aboriginal participation occurred</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
16	Waskesiu River Weir Installation (SK)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>March 9, 2004 – October 14, 2005</li> <li>Assessed under CEAA</li> <li>Unable to determine the degree of public participation due to difficulties associated with acquiring public documentation</li> <li>Research into the project area indicates that it is a recreational area situated in a federal park. Further consideration suggests that this EA is not suitable for the research at hand</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
17	All Season Road to Wollaston Lake (SK)	Comprehensive Study	<ul style="list-style-type: none"> <li>EA incomplete</li> <li>January 10, 2005 – in progress</li> <li>Being Assessed by the Province of Saskatchewan and CEAA</li> <li>Conversations with CEAA indicate that there has been Aboriginal participation through the consultative process and written submissions</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
18	Elizabeth Falls Hydroelectric project (SK)	Comprehensive Study	<ul style="list-style-type: none"> <li>EA incomplete</li> <li>March 6, 2006 – in progress</li> <li>Although opportunities for public input exist, the EA is in its early stages</li> <li>The case is rejected based on the need for a completed EA</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
19	Winter Road Norway House to Island Lake (MB)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>January 10, 2006 -</li> <li>Conversations with the EA officer at INAC and review of the Screening report indicated that there was no significant Aboriginal participation associated with this EA. Two trappers in the region submitted concerns in writing through legislated mechanisms for public comment. However, these concerns were later rescinded after being dealt with internally to the community in question</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
20	Construction of Netnak Bridge-Cross Lake (MB)	Screening	<ul style="list-style-type: none"> <li>Canceled</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>
21	Bridge Crossing of the Nelson River near Cross Lake Manitoba (MB)	Screening	<ul style="list-style-type: none"> <li>EA completed</li> <li>Date?</li> <li>Difficulty acquiring information from DFO</li> <li>Likely the project is of no real use to the research</li> </ul>	<ul style="list-style-type: none"> <li>Reject</li> </ul>

22	North Central Transmission Line (MB)	Joint Panel Review	<ul style="list-style-type: none"> <li>• Joint-Review panel EA complete</li> <li>• 1992</li> <li>• Assessed by Province of Manitoba and Federal Government under the Environmental Assessment Review Process Guidelines Order (EARPGO)</li> <li>• Significant Aboriginal participation</li> <li>• Cases rejected based on temporal criteria (too old) and jurisdictional requirements (not under CEAA)</li> </ul>	<ul style="list-style-type: none"> <li>• Reject</li> </ul>
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