PRODUCTION OF THE PUBLIC VOICE: PUBLIC PARTICIPATION
IN THE HEARING PROCESS AS CONTEMPORARY DEMOCRACY

By

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Abstract

The dissertation examines public participation in the hearing process from the perspective of democratic theory. Although "democracy" is popularly invoked as both rationale and evaluative standard for public participation, political theorists have neglected to examine the practice of hearing intervention from this perspective. The dissertation challenges the pluralist model of the hearing using a participatory critique of the hearing process.

The dissertation argues that contemporary discussion of public participation is formulated from the perspective of pluralist democratic theory. Pluralist theory perceives the hearing as a forum through which public access to the administrative and policy-making processes can be secured. Central characteristics of the hearing process, from this perspective, include a heterogeneity of participating interests (which includes the public), a fairness of procedures, and a neutrality of decision-making. In contrast, a participatory critique of pluralist theory points to a restricted public participation, a systematic imbalance in resources available to tribunal participants, and an advantage to and alliance among state and entrepreneurial interests as features of the tribunal.

The dissertation studies public hearings in two tribunals: the Pesticide Control Appeal Board, and the Royal Commission of Inquiry into Uranium Mining. The first is an administrative tribunal which hears appeals concerning the approval of pesticide applications. In the second, a consultative tribunal,
hearings are held for the purposes of receiving information and making recommendations about uranium mining in British Columbia. The methodology includes observation, ethnography, interviewing, and documentary analysis of the public hearing process.

The dissertation finds that the practice of the public hearing is generated from and generally consistent with a pluralist democratic perspective: multiple interests participate; quasi-judicial procedures are followed by all participants, and decisions are made by heterogeneous, government-appointed Boards.

A participatory critique however shows the dominance of the pluralist model of hearings to be predicated on a social and economic organization in which social inequality and state hegemony are primary features. Accordingly, systematic social inequalities such as differential access to hearing resources disadvantage public interest groups and preclude a balance among competing forces within the tribunal. Structural and professional alliances among administrative and entrepreneurial forces further detract from the impartiality of the hearing. Countering the pluralist notion of the tribunal as an independent forum, this analysis points to the hearing as a vehicle of social control and state legitimation. The dissertation concludes with recommendations for the democratization of the public hearing.
TABLE OF CONTENTS

LIST OF TABLES ................................................................. vii
LIST OF ILLUSTRATIONS .................................................. viii
ACKNOWLEDGMENTS ................................................................. ix

Chapter
1. INTRODUCTION ................................................................. 1
   1.1 Public Participation in the Hearing—The Debate ... 1
   1.2 The Theory of Public Participation ......................... 11
   1.3 Argument and Organization of the Dissertation .......... 13
   1.4 Review of the Literature ......................................... 17
   1.5 Contributions of the Dissertation ............................ 22

2. DEMOCRATIC THEORY AND THE CONCEPT OF PUBLIC PARTICIPATION ........................................ 25
   2.1 Introduction ............................................................ 25
   2.2 Historical Precedents for Participation ...................... 26
   2.3 The Emergence of Pluralism ........................................ 32
   2.4 Critiques of Pluralist Democracy ............................... 37
   2.5 Contemporary Canadian Pluralism ............................. 42
   2.6 A Pluralist Model of Participation in the Public Hearing ........ 46
      Heterogeneity of Participation: Representation of the Public ........ 46
      Fairness of Procedures ............................................ 48
      Neutrality of the Decision-Making Process .................. 50

3. RESEARCH METHODOLOGY AND INTRODUCTION TO THE CASE STUDIES .................................... 53
   3.1 Research Methodology ............................................... 53
   3.2 Types of Public Hearings ......................................... 60
   3.3 Introduction to the Case Study Tribunals:
      The Pesticide Control Appeal Board Hearings ............. 63
      The Legal Context and the Initiation of the Hearings .... 64
<table>
<thead>
<tr>
<th>TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 APPELLANTS, OKANAGAN 2,4-D PCAB HEARINGS..............</td>
</tr>
<tr>
<td>2 NUMBER OF PARTICIPANTS-RCUM COMMUNITY HEARINGS........</td>
</tr>
<tr>
<td>3 REPRESENTATION OF INTERESTS BY ORGANIZATIONS</td>
</tr>
<tr>
<td>KELOWNA COMMUNITY HEARINGS, RCUM........................</td>
</tr>
<tr>
<td>4 MAJOR PARTICIPANTS, RCUM TECHNICAL HEARINGS..........</td>
</tr>
<tr>
<td>5 USE OF HEARING TIME, 1978 PCAB HEARINGS...............</td>
</tr>
<tr>
<td>6 RCUM - LEGAL REPRESENTATION OF MAJOR PARTICIPANTS...</td>
</tr>
<tr>
<td>7 RCUM - LEGAL REPRESENTATION BY INTEREST................</td>
</tr>
<tr>
<td>8 RCUM - APPEARANCE OF WITNESSES</td>
</tr>
<tr>
<td>ACCORDING TO INTEREST.....................................</td>
</tr>
<tr>
<td>9 PCAB APPEAL PROCEDURE...................................</td>
</tr>
</tbody>
</table>
LIST OF ILLUSTRATIONS

Number
1  PCAB - 1978 HEARING SETTING........................160
2  PCAB - 1979 HEARING SETTING........................161
3  PCAB - 1981 HEARING SETTING........................162
4  RCUM - KELOWNA HEARING..............................164
5  RCUM -- TECHNICAL HEARINGS........................167
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ix
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CHAPTER 1

INTRODUCTION

1.1 Public Participation in the Hearing—
The Popular Debate

The public hearing has emerged as a dominant feature of tribunals in Canada in recent years. The experience of the Mackenzie Valley Pipeline Inquiry, Alaska Highway Pipeline Inquiry, and West Coast Oil Ports Inquiry attests to social and political recognition of the force of public involvement in environmental issues. Extensive media coverage, as well as the nature, scope, and environmental implications of the issues under discussion, contribute to the considerable interest in public hearings. The involvement of public interest groups has generated controversy regarding the effectiveness and fairness of citizen participation in the forum. This dissertation addresses the process and the problems of public participation in the hearing.

Members of the public enter the hearing process as intervenors or appellants representing public interest organizations. Spokespersons typically present submissions before the Board, are cross-examined, summarize their arguments, and may query other participants, thus contributing to the Board's
evaluation of an issue, and its subsequent decisions or recommenda-
tions. The hearing process is thus one stage of a tribunal which serves in an advisory, regulatory, or judicial capacity to government by eliciting and evaluating information on relevant issues.

The popular controversy concerning public participation in the hearing has been directed to a number of related issues. The purpose of the tribunal, its relation to the political process, and the procedures by which hearings are conducted have been major points of discussion. The tribunal is popularly viewed as a policy-generating or regulatory mechanism, structurally independent from and supplementary to government, accessible to the public, and governed by a fair hearing process.

The public hearing is viewed as supplementing the electoral process and providing additional, more direct citizen access to the decision-making process.

Environmental issues are rarely election issues, and the parliamentary system provides virtually no control over the important decisions of non-elected officers. Participation...gives the public direct access to an ever-expanding...regulatory bureaucracy. Thus, public participation may be seen as democratizing the legislative and bureaucratic decision-making process (Emond 1975:786).

The hearing, from this perspective, provides the public with an opportunity to address those in power concerning a specific development or issue. It provides information to those making decisions/recommendations which may not be available, or may not be recognized as valuable by administrators (Elder 1973; Salter 1978).

The hearing and its tribunal are portrayed as separate
from parliamentary government, and this independence is statu­torily guaranteed (Doern 1978; Lucas and Bell 1977; Salter 2 1978). Board or Commission members, appointed by government, are assumed to have general knowledge of related issues or procedures. This knowledge is the product of past work expe­rience and professional membership in industry or government, and is generally regarded as necessary for the understanding and evaluation of complex scientific and technological issues (Andrew and Pelletier 1978; Lucas and Bell 1977; Lowrance 1976). Commissioners' general experience is viewed as an asset to their performance, while their disinterestedness in the issues at hand enhances the objectivity of the tribunal.

Hearings are viewed as providing a forum in which there is an exchange and balance among multiple, competing interests. Public interest intervention is assumed to counter the influen­ces of industry and government. The Alaska Highway Pipeline Inquiry, in its recommendations for planning and regulatory procedures, noted:

Participation by all interested parties is necessary to ensure that conflicting interests are fully represented before the decision-making body. Only by balanced repre­sentation can truly representative decisions be made (Lysyk 1977:139).

Hearings are publicly accessible, and citizens are assumed to have a right to speak on matters in which they have an interest. As Commissioner Berger noted, with regards to the Mackenzie Valley Pipeline Inquiry:

All those who had something to say--white or na­tive--were given an opportunity to speak...I decided that I should give northerners an opportunity to speak for themselves...I have been concerned that the native people
should have an opportunity to speak to the Inquiry in their own villages, in their languages, and in their own way (Berger 1977:vii-viii).

Public access to the forum provides for this heterogeneity of participation. However, as Lysyk notes, "The mere right to participate is not sufficient to ensure effective participation....participating groups must also receive financial support....and they must have access to the information relevant to the decisions" (1977:141). Organizational or economic imbalance among intervenors is addressed by such measures as funding of interest groups for access to both legal and substantive advocacy. This is illustrated by the following statement about the organization of the Berger Inquiry by Queen's Counsel Ian Scott:

We decided that it was very important for the organizations in this country that were interested in this project...that they could tangle with Arctic Gas and Foothills on equal terms. How do you do that? Well, the first thing you do is you allow time so they can absorb the nature of the process. The second thing you do is you see that they get funded so that they can hire biologists and anthropologists and sociologists and lawyers. And the result hopefully is in the end that the environmentalists on one hand, the Chamber of Commerce, the Native Brotherhood and the gas company are all fighting on more or less equal terms. And if you do that and if you're successful in assuring that kind of equality, you've got at least an even shot that you're going to hear the true story in the end (National Film Board: 1978).

The quasi-judicial form of hearing procedures is perceived as ensuring a neutral and objective process, and of therefore producing an impartial decision. Moreover, the joint membership of interested parties in the hearing process is seen to produce a spirit of cooperation, minimizing the inequalities in knowledge and power which may exist. As Fraser notes regarding
public involvement in Forestry decisions, "The process of working together, in itself, creates a degree of equality and produces expectations that the well-intended layman's view is as valid as that of the trained resource professional and that of the industrial forester (1980:8)".

The social and psychological benefits of participating in the political process through hearing intervention are also emphasized. Social cohesion, personal growth, education and community awareness are some of the developmental products associated with participation (McCoy and Playford 1967; Pateman 1970; Gibson 1975). Increased political and social awareness associated with political participation constitutes a "civic culture" (Almond and Verba 1963).

Such descriptions of the hearing process reflect a normative perspective of public hearings, one which is produced by and congruent with the dominant liberal ideology. The commitment of the Trudeau Liberal government to "participatory democracy" has confirmed the larger political context for and appropriateness of the public hearing process. In conjunction with this participatory ideology, hearing proponents cite the productive nature of the forum (e.g., time and cost effectiveness, direct examination of conflicting interests), and the independence and supplementary nature of the tribunal vis-a-vis electoral political institutions.

However, controversy over the public hearing has accompanied its emergence as a participatory institution. Political theorists, legal advocates and public interest intervenors question the purposes and effectiveness of public participa-
tion within the larger political context. The alliance of tribunal staff and interests with other institutions and the unequal resources available to competing interests are raised as problems for the objectivity of the forum. Thus, while the hearing is characterized from the perspective of the dominant liberal ideology as accessible, independent and fair, its detractors would characterize it as structurally allied with state and corporate interests, and procedurally imbalanced in favour of these interests. From this critical view, public intervention in the hearing process is limited and ineffective.

Political and legal observers take issue with the larger participatory context of the public hearing, bringing into question the role and extent of participation. The general lack of a participatory climate in Canada is lamented by Lucas, for instance, who says, "Citizens' rights to participate in decisions by resource and environmental agencies are not extensive" (1976). In a similar vein, Howard states that "the system in Canada, with few exceptions, is designed to exclude citizens from meaningful participation" (1980:131-2). The discretionary nature of public participation is noted by legal critics, who refer to the ad hoc nature of the Berger Inquiry and its descendants and who question the emergence of a "tradition" of citizen involvement in environmental matters (Lucas 1978:51).

In contrast to the popular view of tribunals as information-generating and policy-making instruments, alternative functions of the forum have been noted:

If public hearings are not used by agencies to influence decisions, then how are they used? One use of
public hearings is to satisfy minimum legal requirements for citizen participation. Hearings are held to document compliance with federal requirements to 'prove' that citizens have participated....Another use is to provide good public relations for the agency. Hearings are held to build support for agency plans....Another use is to diffuse antagonism. Hearings are held to display concern, quiet the critics, or take the heat off....Another use of public hearings is to legitimate a decision that has already been made....In all this, public hearings are used to achieve agency ends rather than to make effective use of citizen participation (Checkoway 1981:570-572).

Public participation in the hearing is viewed as contributing to the legitimation of the hearing and the larger political system. As legal advocate Andrew Roman of the Public Interest Advocacy Centre notes:

Many citizen groups have a deep-seated suspicion that the reason their participation is desired is to add to the perceived legitimacy of the hearing process by making it appear to be adversarial, while their lack of resources ensures that their puny intervention cannot possibly have any significant impact on the result. In my experience, this suspicion is not without foundation (1979:30).

The effect of public hearings in the larger decision-making context is addressed by a number of theorists. Hearings are regarded as an exercise which lacks force as a decision-making mechanism. Hearings may be effective as information-generators, but Commissioners lack the power to implement their recommendations (Burton 1979; Checkoway 1981; OECD 1978; Wilson 1973).

Other political theorists and public interest intervenors are critical of the relationship between the tribunal, the state, and industry. The apparent independence of the Royal Commission from political constraints is addressed by Salter:

Inasmuch as the inquiry is technically independent from both departmental and parliamentary process, it functions outside these constraints. This apparent independence
allows the mandating government to separate itself from the activities and recommendations of the inquiry. The government...may then act in the dual role as judge or arbitrator at the same time as participant in the determination of policy options (1978:7).

From the allied perspective of the Canadian political economic literature, some observers adopt a "captured agent" perspective in their criticisms of public participation and the regulatory process, noting the structural and ideological interdependence between tribunal, state and corporate interests (Mahon 1979; Doern 1978; Lucas and Bell 1977).

Other criticisms are directed to the assumption of a balance among competing interests.

The issue is not that agencies are necessarily partisan or captured by the industries they regulate. It is that agency officials often depend upon outside sources of information and support and respond to the most powerful input they receive. And it is those with an economic stake whose interests and resources are great enough to intervene and make a difference (Checkoway 1981:569).

Thus, although there may be a heterogeneity of participation, critics believe that certain interests have disproportionately greater access to resources than others.

Hearing procedures are viewed by public advocacy critics as restricting public access, and contributing to an imbalance of power among participants. Inequalities in funding are seen by legal critics and public intervenors to diminish the ability of many citizens' groups to present an adequate case, while enabling corporate proponents to engage in extensive preparations (Howard 1978; Checkoway 1981). As Estrin notes:

The proponent of a development comes to the hearings having spent years and perhaps hundreds of thousands, if not millions, of dollars hiring experts and obtaining massive reports to convince the tribunal that its project is worthy. On the other side, persons opposed or who
simply wish to participate to ensure that all the facts are before the tribunal usually have neither the resources to examine adequately and respond to such technical preparation nor the resources to appear at the hearing through counsel (Estrin 1979:84).

Ebbin and Kaspar, in their study of the nuclear industry, note that "groups of disparate private citizens must seek to aggregate and accrue from voluntary donations the financial resources necessary to carry their case through the uncharted administrative process..." (1974:14).

Temporal and geographic constraints are cited by public interest intervenors and administrative critics as inhibiting public access and contributing to the advantage of corporate and bureaucratic interests (OECD 1978; Checkoway 1981). Inadequate legislation and lack of access to information are cited as further constraints to public intervenors (Emond 1975; Pape 1978; Franson and Lucas 1975). With regard to information access, Howard argues further that:

...the present complete lack of mechanisms for even seeking information on normal conduct of government affairs, let alone procedures to appeal or review this conduct, is excluding Canadians from the information they need to protect themselves and to assess their governments....There is no established public procedure whereby the citizen can take any action to obtain a report or document... (Howard 1980:132-3).

The formal and professional nature of hearing proceedings, and the technical nature of the issues have also been cited as problems for a balance and heterogeneity of participation. The dependence of citizens on experts for professional guidance inhibits participation by non-professionals (Christiansen-Ruffman 1979; Hadden 1981). Observers from the left say that the technical and scientific orientation of the hearing is used to
obscure relations of power and social class. As Nelkin observes:

From a political perspective, the protests described may be less against science and technology than against the power relationships associated with them; less against specific technological decisions than against the use of scientific rationality to mask political choices (1979:11).

In further challenging the heterogeneity of participation, critics note, "Hearings appear to conform to the general pattern in which participation in government affairs highly correlates with socio-economic status (Checkoway 1981:569). The quasi-judicial nature of procedures is said to promote a middle-class bias (Emond 1975; Salter 1975). Checkoway also notes:

Frequently, those who attend hearings are not representative of their area population...Low-income and minority citizens in particular tend to be inadequately represented and unable to afford what is required to make a significant contribution (1981:569).

A related criticism directed to public access and to the heterogeneity of the forum addresses the problems for unorganized interests:

One major problem of the public hearing is that the views presented are not usually representative of the full range of individuals affected by a proposed project or policy. They often reflect only the views of identifiable interest groups...Individual citizens or non-established groups are often ill-informed about public hearings, and ill-prepared to present their views effectively (OECD 1978:67).

Not all criticism of the hearing is generated from a perspective allied with public interest groups. Corporate critics would further limit the practice and scope of public participation. Industry laments the economic losses associated with the delays associated with the hearing process. Public participa-
tion can "result in undue influence by those who are not accountable for the consequences of decisions; erode property rights; delay decision making and planning; and increase unproductive costs and demands on the time of the public and forest land managers. (Fraser 1980:194)". News reports of the hearing process refer to the redundancy of cross-examination (Farrow 1979). In response to suggestions which would expand public participation, critics cite the possibility "of frivolous and vexatious actions that would inevitably follow more liberal standing rules" (Emond 1975:791). Others question the public's intervention into the complex technical discussions surrounding many environmental issues (Fraser 1980).

Thus, opposing views on the role and effectiveness of public participation in the hearing have been put forward. On the one hand, the hearing is promoted as publicly accessible, objective, and fair. On the other, criticisms of the organization and procedures of hearing participation as elitist, restrictive, and biased cast serious doubts on the hearing's potential to elicit significant and effective public participation.

1.2-The Theory of Public Participation

The concept of public participation is derived from democratic theories of government which incorporate an ideal of participation by the public in their government. I will demonstrate in this work how the controversy about the public hearing is located within and generated by ideological perspectives about the ideals and means of government. These larger
issues are often ignored in the immediate and specific conflict over certain aspects of various hearings. The questions and criticism raised about the hearing can be interpreted as problems of democratic theory, questioning the very nature of public participation in the process of government.

Contemporary Canadian liberal political theory is dominated by a pluralist perspective, as I will discuss more fully in Chapter II. Pluralist theory assumes that public participation is primarily directed to and accommodated by the electoral process, but that extra-parliamentary forums such as the public hearing provide for more direct communication between citizens and government. A heterogeneity of interests is mobilized with respect to any given issue, and the formal separation of and competition among these interests produces a balance or compromise in the decision-making process.

From the perspective of pluralist ideology, the tribunal is characterized as democratic and publicly accessible. Hearings supplement the electoral process, providing more direct citizen access to the decision-making process, and generating a heterogeneity of information regarding controversial issues. A number of competing interests are represented in the forum. Participation by public interest intervenors provides a balance to the input of corporate and bureaucratic interests. The autonomy of the tribunal from the government, and the impartiality of Commission members results in the production of an objective decision. Moreover, the forum is characterized by a fairness of procedures, which ensures an equal basis for participation for all intervenors.
However, a critical literature challenges the participatory principles of pluralist theory. Developmental critics argue that concern for a productive and efficient process has overshadowed the humanist and social concerns of democracy, resulting in limited citizen involvement in peripheral political activity. Elite critics note that the pluralist concept of participation is addressed to a minority of the population, and further, that within the decision-making arena, alliances among elites produce a competitive imbalance. Statist critics develop this argument further by noting that alliances between state and industrial interests preclude an objective decision-making process, restricting the effectiveness of public interest groups and bringing into question the purpose of public participation in the political process. Within the context of the public hearing, the critical participatory literature challenges the concept of a balance among public interest and other competing interests. In recognizing the structural alliance among state and corporate interests, and the indirect extension of state control through staff and procedures of the tribunal, the impartiality of the tribunal is questioned. From this critical perspective of participation, public intervention in the hearing may be viewed as a means of contributing to the legitimacy of the state. I will use this perspective as a means of explaining the controversy over the public hearing process.

1.3 - Argument and Organization of the Dissertation

I argue that the characterization of public participation in the tribunal is a product of contemporary liberal democracy.
From this perspective, the hearing is viewed as supplementary to, yet formally independent from, parliamentary institutions. The forum is characterized by a heterogeneity of, and balance among, competing interests. Public participation is encouraged both as a means of ensuring that affected interests will be represented and as a means of balancing administrative and development interests. Tribunals reflect contemporary pluralist policies of greater redistribution and increased accessibility through measures such as public interest funding and legal advocacy services. The tribunal is then consistent with the liberal political ideology which guarantees public access to the decision-making processes of government.

Controversy over the accessibility, fairness, and impartiality of the tribunal suggests that the pluralist model is not upheld by the experience of public interest intervenors. Nonetheless, I argue that the general experience of public hearings does conform to the intent of pluralist theory. By adopting the perspective of the critical participatory literature, I will demonstrate that the problems of public participation are derived from and obscured by the shortcomings of pluralist theory itself. From this perspective, the tribunal is seen as located within a liberal and capitalist context which has certain consequences for its activities. The problems of public interest participants must be recognized as political and economic issues of competition and power which originate beyond the tribunal, but which affect the competitive abilities of participants. In this analysis, a competitive imbalance among tribunal participants is reflected by systematically greater
accessibility of corporate and bureaucratic interests to hearing-appropriate resources (e.g., funding, advocacy skills, access to information).

I therefore argue that pluralist theory fails to recognize the imbalance of competition and the interdependence within and between state and entrepreneurial interests which exist as features of the tribunal. Although increased accessibility to the forum, and movement to equalization of procedural opportunity have been generally acknowledged, external inequalities of social and economic condition have not been recognized as impediments to a fair and competitive hearing process. In addition, the existence of administrative alliances within which the tribunal is located is not treated as a factor influencing the decision-making process. From a participatory critique, public participation in the hearing is recognized as useful, not only for explicit and immediate regulatory and consultative purposes but for state legitimation and control. The confinement of participation to an information-generating role in the tribunal, and the use of the hearing to direct, absorb and contain potential threats to the related, if diverse, interests of the state, are consistent with this analysis.

I will evaluate the general compatibility of the hearing process with the pluralist model through the analysis of case studies of scientific/technical/environmental issues discussed in two major types of tribunals. The empirical evidence which I have selected is comprised of two case studies of public participation in environmental hearings. The first, a series of
administrative hearings, concerned the use of the herbicide 2,4-D in the Okanagan Lake system of British Columbia as a control for Eurasian water milfoil. The hearings appealing the use of this chemical were held annually before the Pesticide Control Appeal Board from 1978 through 1981. These hearings are prescribed by legislation as a direct means for citizen intervention in the regulatory process.

The second public hearing which I selected was the Royal Commission of Inquiry into Uranium Mining, a Royal Commission of Inquiry which took place in British Columbia from 1979-1980, when its Final Report was released by the provincial government. The government initiated this inquiry in response to public concern over the future of uranium exploration and mining in the province. The tribunal was cancelled prematurely, in conjunction with a seven-year moratorium on uranium exploration.

In my analysis I assess each hearing as an application of the pluralist model of democracy. The organization and procedures of these hearings are assumed to conform to, or differ from, a pluralist model of participation which I articulate in the following chapter. Conformity to the model indicates that the practice of public participation in the hearing is democratic, within the parameters of liberal political theory. The tribunal's failure to conform to the model can be explained as a shortcoming of the tribunal.

This analysis is limited to a certain extent by both methodological and theoretical considerations. The two case studies have been selected and studied as "ideal types" of
administrative and consultative tribunals, yet the diversity of tribunals, the quantity and variety of data, and differential experience of participants precludes definitive generalizations. In addition, it must be noted that the participatory critique has been invoked as a means of explaining the inadequacy of pluralist theory and of exploring alternatives to pluralist theory, rather than as a theoretical model in its own right. Within the parameters of this research, I argue that although tribunal experience generally conforms to the pluralist model, the ideological perspective of liberal democratic theory tends to minimize the problems of public participation and effectively limits the more extensive democratization of the tribunal.

In this first chapter, I have introduced the public hearing within the context of the popular debate, and have interpreted the problem as reflecting a larger political controversy. In Chapter Two, I review and analyze democratic theory with respect to public participation, and generate a pluralist model of hearing participation. In Chapter Three I discuss the data and methodology adopted for the analysis. Following this, I introduce the two case studies by briefly describing each of them, discussing the issues which they address, and providing a brief chronology of the events which were the impetus for and context to the hearings.

In Chapters Four through Seven, I analyze the data, following the criteria proposed by the pluralist model. In Chapter Four, I discuss the heterogeneity of participation and
representation of the public, and assess the heterogeneity of participants in the hearing. Chapters Five and Six examine the procedural neutrality of the hearing process. In Chapter Seven I discuss the impartiality of the decision-making process. Chapter Eight concludes the Dissertation. Here I summarize the findings of the research, and discuss the implications of my analysis for pluralist theory, the practice of hearings, and a democratic political process.

1.4-Review of the Literature

The issue of citizen participation in the public hearing has been addressed by the academic literature in a number of ways, which include both empirical and theoretical studies. There is little integration of the empirical discussion of the public hearing with the theoretical discussion of participation in a political framework. Most of the related work addresses either the participatory process, or the public hearing, but fails to connect the two. This separation contributes to formulations of the activity in restrictive and mutually exclusive terms.

The analysis of participation suffers from a lack of definition and consistency, and systematic attempts to present data often ignore the larger political and social framework (Sadler 1978:2). Participation is consequently treated apart from the theoretical and even substantive contexts in which it takes place. Descriptive literature remains just that, failing to incorporate theoretical perspectives in its analysis. It thus treats specific problems associated with participation as tribunal-specific, rather than recognizing the rationale for and
problems of public participation as originating in a larger social and political context.

The empirical literature is primarily directed to analysis of the organization and procedures of the hearing. Writers in the fields of Administration, Law, and Planning view hearings as instruments of decision- or policy-making (Doern 1979, Elder 1976; Emond 1975). Their emphasis is on the administrative or legal context in which the public hearing is located and the decision is produced by the tribunal. By placing the tribunal within the framework of the larger political process, observers also comment on the inadequacies of the hearing to accomplish certain instrumental goals (Salter 1978; Lucas 1976; Pape 1978; Heberlein 1976). The empirical work fails to locate public participation in the context of democratic theory, thus ignoring the impetus for, and larger political context of, public participation.

The empirical literature also includes studies of specific examples of participation, which range from town meetings to advisory committees. One approach compares the products of the hearings to those of alternative participatory modes (Burton 1978). A similar approach is the evaluation of comparative methods of participation (Sadler 1978). This literature also neglects the larger political and economic framework of participation, and tends to emphasize the instrumental goals (e.g., reports, recommendations) of the participatory process.

Another body of empirical investigation relevant to the thesis is that oriented to the substantive nature of the issues
deliberated by the tribunal, specifically those of an environmental, scientific and technical nature. Issues in these realms are perceived as stimulating participation, as the Organization for Economic Cooperative Development (OECD) noted in its study of public participation:

Increasingly aware of the scale of technological undertakings and of their potential impacts, people are preoccupied about dangers and risks and the ethical dilemma of who should share them. Limited access to technical forums of debate has roused public suspicions and inspired demands for political accountability (1978:11).

The implications for public participation in domains characterized by scientific and technical knowledge have been addressed by some observers (Lowrance 1976; OECD 1978; Salter 1981). However, the consequences of the scientific nature of the issues investigated by tribunals have been ignored by the majority of the literature.

While the literature includes both supportive and critical approaches to citizen participation in the public hearing, certain characteristics pertain to the majority of empirical analyses. First, the literature conveys a reformist approach to its subject matter. It assumes that specific and pragmatic changes in the environmental hearing will facilitate public participation and render the public hearing more effective. Provision of additional funding mechanisms and public advocacy services promise greater equality of participatory opportunity.

Second, the literature tends to suffer from a lack of descriptive work. Although case studies of participation are frequently discussed, these lack an elaboration of the specific activities in which participants are engaged. The literature
assumes that the process of participation is known and understood, and proceeds to gloss the "micro-activities" and preliminary activities of intervention with more abstract terms (such as, indeed, "participation"). The concrete and more mundane aspects of participation remain undocumented, contributing to the characterization of the activity in an idealized, or conjectural fashion.

Third, the literature perpetuates the image of the public hearing as an independent, ad hoc and apolitical forum. The temporary staff and structures, the lack of direct decision-making power, and the absence of adequate legislation governing its procedures contribute to the hearing's image as sporadic and unique. The institutional character of the hearing remains undeveloped.

Fourth, the majority of studies, even those that are adequately descriptive, lack a theoretical context (Sadler, 1978). Since they are primarily accounts of issues and organization, they neglect the placement of present problems within the perspective of general models. The subsequent perspective promotes a narrowness of vision, a lack of overview, as well as a tendency for observers to produce an ahistorical analysis.

Moreover, the lack of theoretical perspective is combined with the lack of a sociological analysis. The literature ignores the social organization of participation, that is, the interaction and social location of participants in the hearing process. It rarely addresses the hearing as an institution which is the product of social and economic forces. Administrative and legal observers tend to view the hearing as a
bureaucratic and technical process, rather than one mediated by a social order, and itself a social activity.

Finally, there is a tendency to attend to the problems of participation in terms of specific and individual hearings (Ab­bott 1980; Wigmore 1980). Problems of specific tribunals are treated as if located in historical circumstance and the personality of Commissioners, rather than in institutional features. Evaluations of specific tribunals promote the individualization of the hearing.

For its part, the theoretical literature tends to ignore the public hearing as a forum of participation. The pluralist perspective assumed by the contemporary democratic literature directs the majority of descriptive and applied work to the electoral forum (Almond and Verba 1963; Dahl 1956, 1970; Rose 1967; Berelson 1954). Critics of this approach have extended the locus of participation to the workplace, (Hunnius 1971; Mansbridge 1979), or small-scale decentralized government (Mansbridge 1979). The majority of the theoretical work examining participation as a feature of democracy thus fails to address the unique problems associated with public participation in the hearing. The existing work which does attend to hearings and participation assumes an unspecified democratic context, without examining the varied traditions of the political system in which it takes place.

Thus, the literature in the area of public involvement in the hearing fails to integrate concepts of participation and the specific arena of the public hearing. Both empirical and
theoretical traditions fail to take the other into account. This bifurcation in the literature makes it not only difficult to evaluate hearings in terms of their democratic aspirations. It is also a problem for the development of an adequate political theory which can reflect the characteristics of extra-electoral forms of participation, such as the public hearing.

1.5- Contributions of the Dissertation

The dissertation has both theoretical and practical significance. I address the theoretical literature through an analysis of applied pluralist democratic theory. As I noted above, both pluralist theory and its critics have neglected empirical documentation of extra-electoral participation. By addressing empirical practice from the perspective of political theory, the dissertation will contribute to the reformulation and the critical assessment of a participatory democratic theory.

I also contribute to the empirical literature by providing a more extensive description of participatory activities, which is excluded from most formal accounts; moreover, I have adopted a theoretical framework which provides a means of assessing other examples of participation with respect to their democratic potential. Thus I have augmented both the theoretical and empirical literature by providing a sociological analysis of participation which takes into account the production of the hearing in a society characterized by differences in class and power. This speaks to the necessity of an approach which encompasses the political and economic contexts of an activity.

The work is also directed to pragmatic concerns. Calls for more effective participation cannot be answered until the na-
ture of existing citizen involvement is better understood. Given demands for additional hearings and for more effective participation, and the prophecy of continuing impending environmental conflict, an assessment of the hearing as an institution is needed (Franson and Lucas 1975; OECD 1978). My analysis provides a means of assessing the organization and implementation of hearings for administrative and planning audiences. Readers in these and other applied disciplines, as well as members of public interest organizations will find in the dissertation a means of evaluating the hearing as a socially organized and democratically derived forum for participation.

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1The Mackenzie Valley Pipeline Inquiry (March 1975 to May 1977) was established to assess the social, environmental, and economic impact of a gas pipeline and energy corridor on the North. The Alaska Highway Pipeline Inquiry (April 1977 to August 1977) was established to report on social and economic implications of the proposed Alaska Highway gas pipeline. The West Coast Oil Ports Inquiry was established in March 1977, but terminated prematurely, and delivered its Report in February, 1978. It was established to assess the impact of proposed oil ports on the West Coast of British Columbia.

2 The legal structure of administrative and consultative tribunals will be discussed in Chapter Three.

3 This position will be explored more fully in Chapter II. It is discussed by such writers as Macpherson (1977); Marchak (1981); and Pateman (1970).

4 A number of observers have documented the formal commitment of the Trudeau Liberal government to participatory democracy (Chapin and Deneau 1978; Draper 1978; Loney 1977).

5 Checkoway (1981) provides numerous examples and sources of these alternative functions of hearings in the United States.

6 One example is Sadler's search for improved performance in participation methods in three areas: the recruitment and involvement of the public; the analysis and utilization of public input; and the lack of evaluation of participation programs (1978: 5-6).
CHAPTER 2

DEMOCRATIC THEORY AND THE CONCEPT OF PUBLIC PARTICIPATION

2.1-Introduction

An examination of democratic theory reveals that popular debate concerning the structure, purpose, and means of public participation in the hearing parallels a theoretical conflict among different versions of democracy. I will locate hearing participation within the political context of democratic theory to explain the hearing controversy as one reflecting issues of social, economic and political consequence. In this chapter, I provide a brief history of the concept of public participation as it originated and evolved in theories of democratic government. I examine the roots and limitations of participatory democracy, and review the emergence and characteristics of contemporary pluralist democratic theory. Criticisms directed to this theory are then reviewed and interpreted with reference to the public hearing controversy. I then discuss the evolution of contemporary Canadian pluralism with reference to the public hearing and the regulatory process. I conclude by formulating a pluralist model of participation in the public hearing. The model presents criteria according to which the case studies
will be examined in later chapters.

2.1-Historical Precedents for Participation

Democracy is the world's new universal religion. When its dogmas of liberty, equality, self-determination and human rights are violated so often and so barbarously; and the faithful tend, as ever, to be fewer than the faithless, then it is not surprising that we have, and ought to have, generations of theologians trying to shape and clarify the democratic canon (Corcoran 1983:15).

Although contemporary liberal democratic theory perceives public participation as largely directed to the electoral process, there are precedents for an extensive and direct public involvement in government. The form, nature, and extent of public involvement have been debated for centuries. Corcoran cites the classical Greek standard of democracy, "the lawful rule of the many in the interest of the community" (1983:13).

Participatory democracy refers to government in which citizens exercise some degree of power and control through their participation.

Early democratic theory is characterized by an emphasis on extensive political participation (Corcoran 1983). Rousseau argued that participation in the democratic process developed personal faculties and furthered the education of the community. Society was responsive to the needs of its citizens; they in turn attended willingly to considerations of the commonweal (Pateman 1970:22-27). Rousseau's Social Contract, written in 1762, introduced a radical concept of popular sovereignty, one which took the ruling force in government to be the people themselves rather than a monarchy or an institution such as Parliament. Representation was an alienation of this sovereignty: "The deputies of the people therefore, are not, and
cannot be its representatives: they are merely its stewards, and can carry through no definitive acts" (Rousseau 1968:141). He encouraged direct participation, which was to be enacted through legislation by periodic assemblies of the people, and through continuing and pervasive discussion of issues. The complex civil association envisioned by Rousseau was "capable of passing laws administering policies and establishing institutions of religion, education and censorship (Corcoran 1983:4).

Rousseau's theory requires political equality, which is reflected by the concept of all citizens' participation in their government. His democracy is predicated on a classless society, where economic equality (through a common basis of property ownership) and independence are the cornerstones: "No citizen shall be rich enough to buy another and none so poor as to be forced to sell himself" (1968:96). Rousseau's failure to recognize inequalities of social class has been attributed to the circumstances of his environment. His theory is directed to the pre-industrial nation-state, and the concept of direct participation is regarded today as inappropriate for large-scale, centralized contemporary government.

In a similar spirit, American democracy was conceived by Thomas Jefferson as a highly participatory government (Aron 1968). Jefferson's agrarian model provided a decentralized basis for electoral participation, by which all citizens could directly participate in the political process. Alexis de Tocqueville, in his observations of the American democratic
experience, emphasized its extensive participatory basis. Tocqueville saw American democracy to be distinctive in its "administrative decentralization and....associational activity" (Krouse 1983:71). Local democracy, e.g., participation in municipal bodies and voluntary association in organizations, permitted American citizens to participate directly in the common affairs of everyday life. Tocqueville follows Rousseau's ideals of direct, populist, decentralized participation with developmental and normative assumptions further characterizing his observations of American democracy:

....truly participatory democracy is first and foremost a process of political education generating the intelligence and public spirit, the "moeurs", necessary to sustain a republican polity--....creating wiser and better human beings (Krouse 1983:74-75).

John Stuart Mill continued to elaborate the participatory and developmental attributes of democratic theory. Mill's concepts are invoked today by those who extol the educational and social virtues of public participation (Pateman 1970; Gutmann 1980). Citing increased public knowledge and community cohesion as by-products of citizen involvement in decision-making, Mill noted the educational and moral benefits of a participatory climate. He argued that:

....the only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate; that any participation, even in the smallest public function, is useful, that the participation should everywhere be as great as the general degree of improvement of the community will allow, and that nothing less can be ultimately desirable than the admission of all (1910:217).

He thus suggested greater participation at the local political level and in the workplace. Industrial participation would
transform hierarchical relations of authority to ones of cooperation or equality (1965:775). Participation was for Mill a moral endeavor, resulting in "the advancement of community...in intellect, in virtue, and in practical activity and efficiency" (Macpherson 1977:47).

The work of Rousseau and J.S. Mill emphasized the extensive involvement of the public in a range of participatory activities, and the developmental functions of this activity. Other theorists attracted to an extension and decentralization of participation, were alarmed about the oligarchical and statist tendencies of government. In an anarchist version of participation appeared in late 19th century France, Proudhon called for a decentralized scheme of collectively run producers' associations, in which all workers would act as co-proprietors (Resnick 1973:72). Like Proudhon, Marx was concerned with the incompatibility of state rule and public participation (Aron 1968:331). Marx refers to the Paris Commune as an example of a direct proletarian democracy. He emphasizes the electoral basis, decentralized and extra-parliamentary character, and working-class composition (and wages) of this government (1940:54-69). Levin observes that a Marxist perspective of participation reflects the character of the social and political system, and that for Marx a revolutionary situation:

....eventually leads to the establishment of a socialist system which both relies on and facilitates the fullest possible popular participation (1983:93).

Participation is central to this evolving tradition of democratic theory. However, the idealistic, or "utopian" (Mac-
quality of this theory has prevented its widespread acceptance by contemporary political theorists. The classical participatory perspective has been generated within the context of pre-industrial, agrarian, or classless societies, which presents obstacles for its contemporary application in large-scale, post-industrial (specialized and bureaucratic) class-differentiated societies.

Nonetheless, participatory democratic theory continues to evolve. Three areas in which theories and applications of participatory democracy have been more recently developed are policy/planning, local government, and industrial or workplace participation. In the United States public participation programs in urban development were developed under the Kennedy and Johnson administrations (Rich and Rosenbaum 1981). A mandate for citizen participation in the formulation and implementation of public policy was expressed in Canadian government programs of the 1960's and early 1970's (Chapin and Deneau 1978). Public participation was expanded in government agencies as well as voluntary organizations through programs such as the Company of Young Canadians (1965), Local Initiative Projects and funding to organizations such as the Federation of Human Rights and the Civil Liberties Association (Loney 1977).

Another focus of contemporary participatory theory is local, small-scale government. Mansbridge, in her study on small-town and workplace democracies notes two forms of democracy (1979). Adversary democracy, from her perspective, is republican--large-scale and centralized, and it assumes a con-
flict of interests. Unitary democracy, on the other hand, is a more highly participatory democracy—small-scale, decentralized, and reflects a commonality of interests. Mansbridge advocates the recognition and adoption of unitary, or participatory democratic practices in addition to those at the state/national level:

"...My argument is that we actually mean two different things when we speak of "democracy."...neither condition is appropriate under all circumstances (1979: 7).

...by fostering decentralized and highly participative units, by maintaining a few crucial remnants of consensus, by instituting primarily cooperative economic relations, and by treating adversary methods not as an... ideal but as a ...resource a nation can maintain some of the conditions for community, comradeship...and idealism....(1979: 297).

Contemporary theorists advocate the extension of participatory democratic practices to the workplace (Mansbridge 1979; Gutmann 1980). In October 1976, the Federal government announced the Quality of Working Life (QWL) programme for reforming industrial relations in Canada. Workers' participation was advocated on two levels: workplace reforms (e.g., job enrichment and semi-autonomous work) and decision-making in management. Although largely critical of its functions, Swartz notes that, "...forms of worker participation mark real advances for working people, extending past accomplishments and.... furthering industrial democracy, even socialism" (1981:55).

Participatory democratic theories continue to emphasize the direct nature and developmental functions of citizen involvement. The public hearing controversy has emerged in part within the context of this continuing discussion about the purpose and benefits of participatory democracy. Certain char-
acteristics of the hearing, such as its provision for public accessibility and concern for humanist benefits (community cohesion, public education) have been derived from this tradition. However, other features of the hearing, such as the competition of interests, neutrality of procedures, and objectivity of decision-making, are features of the hearing which have roots in a pluralist tradition within democratic theory.

2.3-The Emergence of Pluralism

Public participation has served a number of additional purposes, including the preservation of private property and protection against despotism. The "protective" model of democracy which emerged in 19th century England viewed public participation as a means to combat strong centralist government and protect propertied interests (Macpherson 1977). Jeremy Bentham and James Mill in 1820 emphasized the electoral process as the means of participation, but offered only a restricted franchise to certain (mature, propertied, educated) segments of the population. Concern with the development and extension of this franchise, and with the mechanics of the parliamentary process have characterized mainstream democratic theory to this day.

The emphasis in liberal democratic theory during the first half of the 20th century was in its pragmatic attributes and the implementation of the process. The complex nature of industrial and post-industrial society was regarded as problematic for direct participation and decentralization. Instead, hierarchical and oligarchical systems of government were regarded as more suitable for the prevailing large-scale urbanized,
centralized, and bureaucratic modes of organization (Duncan and Lukes 1967; Pateman 1970).

In addition, the threat of totalitarianism, and the emphasis on balance and stability contributed to some apprehension regarding extensive participation:

The collapse of the Weimar Republic, with its high rates of mass participation, into fascism, and the post-war establishment of totalitarian regimes based on mass participation, albeit participation backed by intimidation and coercion, underlay the tendency for 'participation' to become linked to the concept of totalitarianism rather than that of democracy (Pateman 1970: 2).

Intellectual developments within the social sciences contributed as well to the development of contemporary pluralist democracy. The emergence of an American tradition of political science with an ideological tendency favouring social equilibrium, and a methodology emphasizing empirical investigation influenced the evolution of contemporary democratic theory (Bay 1967; Duncan and Lukes 1967; Pateman 1970).

Joseph Schumpeter, whose work is the foundation for contemporary pluralist theory, emphasizes the institutional and electoral basis of democracy:

....the role of the people is to produce a government, or else an intermediate body which in turn will produce a national executive or government...the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote (1943:269).

His theory revolves around the electoral process and the concept and practice of representation. The franchise operates to maintain government; elections are a competitive struggle among leaders for the people's vote. While representation allows for rule by an elite, selection of delegates is competitive and
occurs periodically, thus allowing the ratification or defeat of leaders. Elected representatives are accountable to a constituency through the electoral process. Once elected, governments should be left to rule (Dahl 1943: 291).

Schumpeter's ideas were further developed by a number of writers who also viewed participation as fulfilled by the electoral process. Citizens vote, join political parties, and elect and lobby representatives, thereby controlling their leaders and producing an effective government (Dahl 1956, 1961; Berelson et al. 1954; Lipset 1960; Almond and Verba 1965). The electoral process, although the "most practical weapon in the pluralist armory" (Presthus 1970: 291) is not the only weapon. Other activities such as referenda, task forces, and public hearings supplement the electoral process, demonstrating the responsiveness of government to public pressure, and its effectiveness in dealing with issues.

A generally disinterested public complements the democratic political order. Dahl argues that lower socioeconomic groups are apathetic, and states that "prevailing norms are subtle matters better obtained by negotiation than by the crudities and oversimplification of public debate (1961:321). Apathy gives the system flexibility (Freedman and Smith 1972:72), prevents its collapse beneath the strains of excess input, and justifies the concept of minimal participation (Morris-Jones 1954:25-37). Milbrath notes:

....moderate levels of participation by the mass of citizens....help balance political systems which must be both responsive and powerful enough to act....high participation levels would actually be detrimental to society if
they tended to politicize a large percentage of social relationships....(1965:153-4).

Low expectations of public involvement and concern for the pragmatic aspects of government are compatible with this formu-
lation of participation:

....what we call 'democracy'--that is, a system of decision-making in which the leaders are more or less respon-
sive to the preferences of non-leaders--does seem to operate with a relatively low level of citizen participa-
tion. Hence it is inaccurate to say that one of the necessary conditions for 'democracy' is extensive citizen participation (Duncan and Lukes 1967:168).

Interest groups have replaced the traditional individua-
list focus of pluralist theory (Presthus 1970:286). Organiza-
tions representing heterogeneous and independent interests such as corporations, labour, the state, and the public are a major source of participatory activity. Schattschneider for example refers to a "multiplicity of interests that is somewhat astro-
nomical in character and proportions" as a primary feature of contemporary democratic society (1942:19). Affected interests will mobilize on behalf of their concerns, ensuring a balance in the competitive process:

....competition among big business, big labor, and big government keeps each interest from misusing its power. That the majority of citizens and consumers affected by these giants remains unorganized is not vital, since they too could organize if they had the will (Presthus 1970:284).

The ability to mobilize resources in the competitive struggle is dependent upon a number of variables, including:

....the degree to which the interest group is internally organized, the quality of leadership...., the capacity of the interest group to formulate administratively and present its interests, the number of citizens who are members of a particular interest group, and the needs of the interest group involved (Card 1979:32).
Competition among these interests prevents the domination of a single power and contributes to the maintenance of a balanced government, representative of a broad array of interests (Smith and Freedman 1972:3642). The balance of the competitive process is structurally assured by the separation of powers. Thus, corporate interests are offset in the competitive arena by adversaries such as public interest groups. As Kornhauser notes in his discussion of the role of interest groups:

...intermediate groups help to protect elites by functioning as channels through which popular participation in the larger society...may be directed and restrained...Furthermore, the separation of the various spheres of society...means that access to elites in one sphere does not directly affect elites in other spheres...These same factors protect non-elites from elites, since independent groups guard their members from one another, and since overlapping memberships among groups...restrains each group from seeking total domination over its membership (1959:78).

A separation and balance of power contributes to the pluralist concept of the state. In contrast to the idealized monolith which characterized historical European versions of state power, the American liberal version is that of "power broker", with the state as the broker of competing wills (Presthus 1970:285). The state is recognized as an active, but neutral presence. As Card states, "...there is no definitive power in the state...(which is regarded)...as a brokerage committed to receiving, hearing and giving equal consideration to all of the input from the various interests concerned" (1979:33). This benign character of state intervention in the political process is enhanced by the erosion of the negative concept of the state, and recognition of the civil libertarian and "positive" aspects of state activity (Presthus 1970: 287).
In summary, compromise, balance, and stability in the political process are central to pluralist theory. Checks and balances are provided by divisions of power, competing political parties, and the intermediary role of interest groups:

The heterogeneity and penetrability of the political elites, the open and alternative channels of communication, the dispersion of inequalities in the political resources, and the existence of organizational freedoms, ensure that political competition among the alternative elites and alternative policies (through the medium of free election) will not only give the masses a significant control over their government, but will also enable the political system to fulfill the needs of most groups within the community (Ono 1967:104).

2.4-Critiques of Pluralist Democracy

A critical literature challenges this pluralist perspective of public participation. Developmental, elitist and statist perspectives directed to the larger political process also address the problems of participation in the tribunal reviewed in Chapter 1. Thus, debate concerning the scope of public participation, competitive balance among intervenors, and impartiality of Board members may be interpreted as a disagreement over social, political and economic power in the larger democratic process.

Participatory theorists accuse the pluralist version of democracy of being both static and restrictive in nature (Duncan and Lukes 1967:180-184; Davis 1967). Pluralism's predisposition towards compromise and balance conceals a resistance to change. The orientation is to an empirical discussion of the distribution of power within the political system: "Pluralists thus ask 'who governs?' i.e., who actually has power—rather than define power in a certain way for the purposes of the
explanation of conflict and change" (Balbus 1971:172). Pragmatism and dependence on empirical methodology have neglected consideration of comparative historical and philosophical approaches to government (McCoy and Playford 1967; Bay 1967:12-37). As well, pluralism is said to ignore historic economic inequalities:

All current participants in competition over scarce resources (political, economic, military) appear to be stripped of any built-in advantages afforded by their strategic location in an ongoing society with a particular economic and cultural history (Mankoff 1970:419).

Others criticize the theory's restricted concept of participation. The elaboration of a system that "works", is in practice, and produces "results", has tended to overshadow more abstract notions of human potential and societal benefit, and economic equality (Bay 1967:3038). Critics of pluralists' instrumental goals claim that the humanist ideals of classical democracy have been replaced by a narrow and applied theory geared to the maintenance of electoral machinery (Pateman 1970; Macpherson 1977). Participatory theorists note that the electoral process affords but meagre and infrequent access to government. Therefore, although citizen involvement in the regulatory process through hearing intervention may be formally possible, the supplementary nature of the activity, the minimal number of participants, and the ad hoc and specific nature of the inquiry deprive it of developmental and dynamic potential.

The pluralist concept of public participation in government is regarded by many as elitist (Walker 1967; McCoy and Playford 1967; Pateman 1970). Developmental critics point to
the restricted nature of electoral representation and the limited civic spirit as indications of an elitist orientation to public participation (McCoy and Playford 1967). They suggest that apathy is an artifact of the political and social systems, and that it reflects popular dissatisfaction with the operation of the political system (Walker 1967).

Conflict theorists point to the relations of production as a major source of political power. For Marxists, the capitalist economic system is predicated on and perpetuates inequalities in wealth and power. Conflict theorists note that economic elites control political power, contributing to an imbalance among competing interests. According to C. Wright Mills, this disequilibrium reflects the role of a "power elite" which makes the key decisions for society. These are not separate competing forces but an interlocking and converging elite who are the locus of decision-making for the social, economic, and political systems. Where the pluralist argument assumes differentiation and competition among heterogeneous elites, its critics posit a hierarchy of interlocking elites, who negotiate the disposition of power internally. Domhoff (1967), following Mills, demonstrates the influence of the economic elite on government and policy-making. Those critical of the independence of the hearing process from manipulation by a "power elite" would find support in these arguments.

Statist critiques further explore the relationship between class interests and state power. Panitch challenges the pluralist view of state neutrality: "...the idea that the modern state acts at the behest of the dominant class in our society
has often seemed much more plausible than the pluralist and social democratic view of the state as a neutral arbiter between competing groups of classes" (1977:3). An alliance between state and entrepreneurial forces challenges the pluralist notion of competition among separate and countervailing interests. The pluralist notion of balance "ignores the systematic biases evident in class based societies and the reflection these have on relations between the state and corporate worlds" (Panitch 1977:359). Panitch also notes that this model "fails to acknowledge...the unequal allocations of resources necessary to mobilize and realize concerns" (1977:359).

The state is regarded by some as an instrument of class rule, as Ratner et. al. note with respect to the criminal justice system:

In contrast to the pluralists, a correspondence of class power and state power is said to exist because of the overt similarities in class background, interests, and world-view between those who shape and run the economy and the personnel of the state and criminal justice system. Common class position, close educational ties, family and personal networks, shared ideological perspectives, and close working relationships between the dominant class and intermediary institutions....predispose state criminal justice institutions to favour dominant social and economic interests (Ratner et. al. 1983: 10).

A number of Canadian critics adopt an instrumentalist approach such as Clement who notes, "it is clear that the corporate elite is very active in both the state and political systems" (1975:347). The composition of Canadian regulatory bodies reveals a similar class bias (Andrew and Pelletier 1978).

Further analysis of the relation of state power to economic interests has resulted in the articulation of a number of
positions which oppose the economic reductionism inherent in this instrumentalist model. The state is perceived by a number of writers as occupying a position of "relative autonomy" (Poulantzas 1973; Block 1980; Ratner et. al. 1983). From this perspective, the state has some limited independence from class interests and factions, but this "can never be more than relative and limited since the state's continued existence ultimately depends on the revenues generated by capital" (Ratner 1983:14). It is the structure of state relations which contributes to the domination of interests:

....the very structure of the policy formulation process in capitalist society holds vast biases which facilitate and expedite the accumulation and centralization of wealth in the hands of the economic power elite....In this regard it has been argued that the state predominantly functions as an agent of interest realization for those who own and control the means of production...(Card 1979: 33).

Structural analysis of state activity has produced a number of instructions to explain the dissonance between liberal and critical versions of hearing activity. Functional analysis of state activities (Panitch 1977; Ratner et. al. 1983) is instructive for this study as it expands the purpose of hearing participation from specific policy-making activity to the broader context of the state's ongoing requirements (e.g., capital reproduction and accumulation, and legitimation). Panitch refers to the "statisization of the political sphere", including developments such as state subsidies to political parties' election campaigns, as an indication of the growing power of the state (1977). Loney further identifies the state's subsidization of participation as contributing to its functions of
legitimation, social control, and capital accumulation and reproduction (1977). The "ideological hegemony" of the state reveals its ability to manipulate the belief system. Public participation thus becomes understood as the state's ability to generate and maintain consent.

The implications of these critiques of pluralism for an analysis of hearing participation are several. Characterization of hearing procedures as elitist challenges the concept of accessibility to the tribunal, and questions the assumed balance among intervenors. Alliances among competing interests or between intervenors and Board members disadvantage non-allied participants and question the neutrality of the process. Statist critiques of pluralism are directed to the objectivity and independence characterizing state relations, the multiple functions of state intervention, and the increased role of the state. The formal independence of tribunals from government, the appointment of impartial Board or Commission members, and the neutrality of the decision-making process all assume a separation between economic and political interests which is challenged by this perspective.

2.5-Contemporary Canadian Pluralism

Although the criticisms voiced above are considerable in numbers and force, it is important to recognize the perseverance, adaptability and dominance of pluralist theory. It has evolved in response to material conditions of change and to social and political pressures, and its changes accommodate, to some extent, challenges posed by the critical literature. Although there has been a de facto recognition by government of
the inequality of economic power (welfare, progressive taxation, human resource programs), the pluralist perspective continues to assume the existence of a liberal individualist society based on a viable competitive and mixed capitalist economy. Canadian political life is characterized by a:

...high degree of individual freedom and market activity within a system of democratically elected government ...(and is portrayed by) a benevolent competition among interest groups with the state as independent referee removing the excesses of the marketplace (Doern 1978:3-4).

Contemporary Canadian pluralist theory reflects the expansion of the state as a means of social, political, and economic development. Welfare, progressive taxation, and specific intervention such as the Trudeau government's imposition of income controls in the mid-1970's reflect the redistributive function of the state. The liberal egalitarian tendencies of the contemporary pluralist framework reflect a concern for distributive equality which attempts to:

...derive principles of justice from an understanding of individual interests. The arguments for welfare rights and for economic redistribution....can be understood as outgrowths of a relatively new liberal awareness of the material prerequisites for equalizing opportunity among individuals that appears within contemporary advanced industrial societies (Gutmann 1980:218).

Gutmann extends the concept of liberal egalitarianism beyond the redistribution of economic goods to include expansion and equalization of opportunities to participate in political life (1980). Extension of participatory equality has been reflected by both American and Canadian attempts at extending the participatory climate (Rich and Rosenbaum 1981; Chapin and Deneau 1978). Formal political support for public participa-
tion as a means of expanding public access to government was voiced by the Trudeau Liberal Government of 1968. Promises of increased participation then took three directions: establishment of new consultative bodies, introduction of grant programs to support organized public involvement, and reform of traditional input mechanisms (Chapin and Deneau 1978:14). Natives, ethnic minorities, women's groups and others were formally invited to participate in the decision-making process, to be included on boards and committees of government (Loney 1977).

In addition to political involvement, Canadian labour relations reflect the expansion of participatory equality in the workplace. The Quality of Working Life movement announced by Labour Canada in 1976 endorses direct worker participation in "shop floor" democracy. Pluralist supporters argue that concessions made by industry concerning resource decisions and work environments demonstrate the power of workers in the decision-making process, and reflect a liberal egalitarian philosophy.

In addition to the redistributive functions of state intervention, the state's regulatory capacity has also been more widely recognized, in conjunction with a "relative shift from expenditure politics to regulatory politics" in the Canadian federal state (Doern 1978: 17). Regulation has been traditionally understood as directed to primarily economic concerns, including "monopoly and excessive competition and related licensing and pricing practices" (Doern 1978:9), but has since been expanded to include discussion of technological and social
regulation. Doern notes the federalist, ministerial, and political dependencies of the regulatory process in the Canadian context, in comparison to the more independent character of the American regulatory process (1978:11-13). The thesis that regulatory agencies become "captive agents" of industry, is countered by a Canadian quasi-pluralist perspective which notes the:

...combined form of increasing provincial-government interventions and emerging and increasingly permanent public interest groups, many of which are funded by the state, through other government departments whose mandates themselves partly countervail those of the regulatory agency" (Doern 1978:28).

Many theorists respond to the recognition of increased statism by stressing the social justice role of the state (Presthus 1970). Continuing access of government processes, such as regulation, to public interest groups attests to the potential of the pluralist model. As well, capitalist pluralism is compared with socialist, or non-capitalist systems (Dahl 1982). The lack of individual freedom and the dominance of the State apparatus in non-capitalist states is seen to detract from the pluralist potential of the system. Although public participation in the Soviet Union, for example, is formally available for environmental decision-making purposes, Nelkin observes that oligarchy and state hegemony effectively preclude the ordinary citizen from an effective role in the process (1979).

Citizen involvement in the public hearing thus reflects the expanded participatory egalitarianism and the extension of state regulatory power which are features of a pluralist con-
struction of the contemporary Canadian state. Regulatory and policy-making processes, as state-mediated activities, incorporate the liberal egalitarian tendencies of the contemporary pluralist view. Public access to administrative and consultative tribunals supplement electoral participation, and funding of public interest groups provides greater equality of participatory opportunity. The public hearing displays the major features of contemporary pluralism, as I will demonstrate in the following model.

2.6-A Pluralist Model of Participation in the Public Hearing

I have developed a model of participation in the public hearing in order to describe, compare and analyze participation in the public hearing as a construct of pluralist theory. The model thus forges a connection between political theory and institutional practice. In this model, I have identified three central themes: Heterogeneity of Participation: Representation of the Public Interest; Fairness of Procedures; and Neutrality of the Decision-Making Process.

Heterogeneity of Participation: Representation of the Public Interest

Pluralist theory assumes the existence of a multiplicity of opposing interests which may be affected with regards to any issue. These interests compete for power in forums such as the public hearing. The work of government is to balance the interests of these competing groups (Dahl 1956:144-146). The term "public interest" may be used in a diffuse collective sense:

...the term 'public interest' does not represent a monolithic interest to be taken into account by the government. It is the natural consequence of pluralism that
there be no such thing as a single public interest; rather, in any given context, there may only be a myriad of diverse and sometimes conflicting group and individual interests (Law Reform Commission 1980:98).

However, the term "public interest" is typically invoked within the context of the regulatory framework to indicate the existence of non-producer interests. Representation of the public interest ensures the appearance of competitive balance, bringing with it the notion of opposition and an adversarial stance vis-a-vis any proponent. Public participation is viewed as a means of balancing the opposing forces.

Public involvement will tend to lessen regulator 'capture' by regulatees, and will therefore produce more 'balanced' decisions....Since the administrative agency must take an objective position, it is necessary for the public...to become involved so that some voice apart from the industry's will be heard, and therefore the traditionally 'unrepresented' interests will have an influence on the decision-makers....(Lenny 1976:491).

Observers have noted that non-producer interests have not seriously participated in the regulatory decision-making process, primarily because "....the regulated industry has a highly concentrated stake in the regulatory outcome while consumer interests are widely diffused across the myriad of goods and services typically consumed in a lifetime" (Trebilcock 1978:101). The necessity for countervailing power in the form of public interest groups to oppose producer interests has initiated state subsidization of public participation in the regulatory process.

A heterogeneity of participation not only contributes to a balance of interests, but it adds to the store of substantive knowledge and thereby to the attainment of a better resolution of the problem. Peter Pearse, reporting on the Royal Commission
on Forest Resources, states that the:

"...wide range of participation in the hearings contributed substantially to their success, and provided me with a broad spectrum of information and advice. But apart from their usefulness to me and my staff, the hearings provided a valuable forum for a constructive exchange of views among those with varying and often conflicting interests in the province's forest resources (Pearse 1976: F4).

A heterogeneity of participation, with representation of the public is thus regarded as ensuring a diversity of perspectives, and a balanced consideration of the issues under discussion. The multiplicity of represented interests contributes to the generation and evaluation of a range of information, knowledge, and research.

Fairness of Procedures

Pluralist theory assumes a hearing process which is politically fair to all interests. The forum is accessible to all affected interests, including the public. The process is regarded as a competitive one, which places all participants at a relatively equal advantage with regards to one another. The objectivity of the process is assumed to compensate for, or "neutralize" whatever competitive differences may exist among participants. Pape refers to this competitive stance within a judicial context:

The administration of justice in common law jurisdictions is based on the concept that interested parties to a dispute must meet on an equal footing to make their own case and meet that of their adversaries (1978:35).

The quasi-judicial format of the hearings is assumed to promote both accessibility and impartiality. The routine, standardized nature of procedures assures understanding by
participants, and places all intervenors on a relatively equal footing before the tribunal. The informality of the process, and relaxation of procedures from courtroom format facilitate public access. Procedural rules are described to intervenors prior to hearings, in order that participants may familiarize themselves with the process, which usually includes the submission of evidence, summary and cross-examination.

Legal counsel may be retained by any participant, although the quasi-judicial intervention process characterizing many tribunals is procedurally accessible and understandable to lay intervenors. Further expertise with regards to substantive matters is available through the use of expert witnesses. Funding is frequently made available to secure expertise and aid participants in the preparation of their cases. While corporate and government intervenors are capable of bearing and absorbing the costs of intervention, public interest groups may require subsidization (Engelhart:1981). Trebilcock states, for example, that "consumers as an interest group will not become an effective political force, an effective counterbalance to big business, big labour, and big government in modern power configurations, without state assistance" (1978:103). Public interest participants may then be subsidized as a means of ensuring a more balanced hearing.

Thus, procedures are regarded as politically fair in that they encourage the presentation of a heterogeneity and balance of competing perspectives. This reflects the contemporary pluralist posture of an equalization of opportunity within the hearing. Although participants may possess a differential of
power outside of the hearing, their performance in the forum has been balanced. Hearing procedures are therefore considered to be appropriate to their tasks: the consultation of the public in the investigation, research, and evaluation of a public issue, or the administration or regulation of matters of public interest.

Neutrality of the Decision-Making Process

Decisions (or recommendations) are considered to be made by an impartial Commission, which has been appointed by Government to arbitrate the hearing proceedings. Although the Canadian context infers some degree of state dependency through federal, ministerial, and political association (Doern 1978), the formal separation of and political independence of tribunals continues to be popularly upheld. As former Commissioner Lysyk states, "...although the inquiry relies upon the government for its funding, it is independent in every other respect" (1978:3).

The impartiality of the tribunal is reflected by the independence of Board members or Commissioners from the interest or development under consideration, the fairness of procedures, and the separation of the hearing from its initiating government. Members of the Board or Commission are selected by government, and are assumed to possess some relevant expertise while having no direct interest in the issues at hand. Doern notes that members of Canadian regulatory boards are more likely to represent bureaucratic than industrial backgrounds, which is congruent with the larger Canadian regulatory context.
of state dependency (1978: 25). However, the formal separation of state and entrepreneurial interests, and the pluralist notion of the state as a neutral arbiter correspond to the popular assumption of impartiality which characterizes these Boards.

The Terms of Reference formulating the issue are produced by Government so as to further ensure the independence of the tribunal from those it regulates. The primary role of the public in the decision-making process is seen to be in the intervention process. Intervenors provide the information and evaluation of this information through which the decisions are made. Decisions are considered to be reached by Commission or Board members through the objective consideration of information presented before the hearing. They are thus made independently of direct political and economic concerns.

The decisions or recommendations produced by various tribunals as a result of the public hearing process differ according to the type of tribunal, the statutory provisions regarding the nature and force of the decision, the issues, and the composition of the Board/Commission making the decisions. They range in nature from affirmative or negative statements regarding an administrative matter, to recommendations and proposals concerning government policy. The decisions reached by the Board/Commission are directed to the appropriate government agency, which responds by making a decision or setting appropriate policy or regulations. Thus, the decisions represent the input of an independent body to the process of government. Citizens' access to government is thereby provided
through participation in the public hearing process.

1 Although participatory democracy has roots in Athenian political practice, the exclusion of slaves, women, and other non-citizens from political activity prevents its consideration as a democratic precedent.

2 Corcoran contrasts the concept of democracy—the rule of the masses—with that of polity or timocracy, the lawful view of the many in the true interests of the whole community, and notes that democracy was traditionally viewed as a negative, rather than a positive option (Corcoran 1983:13).

3 See Pateman (1970) and Gutmann (1980) for a discussion of Mill's dilemmas regarding educational ability and capacity, and his evolving position regarding universal suffrage.

4 Although the Paris commune of 1871 and the Russian soviets of 1905 and 1917 contained promises of full participation, these were only temporary. Unfortunately, Marx failed to articulate a theory of political democracy directed to society after the Revolution.

5 Swartz' larger argument is that worker participation acts to "subordinate workers...to the requirements of capital accumulation, and to weaken working class resistance by undermining the independence and effectiveness of trade unions as vehicles for working class struggle" (1981:56).

6 The monopolization of political office (elected and appointed by members of the upper and middle class, indicates the inter-relationship of social class, economic elite, and government (Domhoff 1967).

7 Ratner et. al. (1983) have compared these different perspectives of the "relative autonomy" of the state, identifying instrumentalist, structuralist, class conflict and capital logic positions.

8 I follow Macpherson's definition of "model" as "a theoretical construction intended to exhibit and explain the real relations, underlying the appearances, between or within the phenomena under study" (1977:2-3).
CHAPTER 3
RESEARCH METHODOLOGY AND INTRODUCTION
TO THE CASE STUDIES

3.1-Research Methodology

I have selected case studies of public participation in two public hearings, and will analyze this data through the application of the pluralist model developed in the preceding chapter. The hearings include an administrative hearing and a consultative hearing in which public participation was a primary and visible feature. These tribunals differed in terms of their mandates, statutory provisions, their size and scope, and the issues into which they inquired, although they both concerned matters of scientific and technical debate. I selected different types of tribunals for analysis in order to be able to compare the participation process without emphasizing unduly the legal and administrative structure in which each was located.

The administrative tribunal, the Pesticide Control Appeal Board (PCAB) hearings, took place from 1978-1981 in the Okanagan Valley of British Columbia, and was concerned with the application of the herbicide 2,4-D to the Okanagan lakes system. The consultative inquiry, the Royal Commission of Inquiry
into Uranium Mining (RCUM), took place from 1979-1980, and held hearings throughout the province. These hearings were both inquiries into environmental concerns, and both particularly affected the Okanagan valley of British Columbia (See Map, Appendix 1.1).

Methods of data collection included observation, interviews, ethnography, documentary research and an analysis of written materials. My sources of data were varied, but I relied primarily on hearing transcripts, observation notes, newspaper accounts, and participants' correspondence and research. Research was directed to a description and analysis of participation by the public. In conjunction with this focus, the majority of data and sources reflects the interests, problems, and concerns of public interest groups. My research methodology, although generally similar in both hearings, incorporated the specific character of each.

Four years of the PCAB hearings (1978-1981) were selected for analysis. Within this period, the 1978 hearings were the major focus for analysis, partially because of their length (reflecting the extensive appeal), and also because of the precedent established by the hearing as the first held under its statutory provisions. I attended approximately six and one-half of the seven and one-half days of the 1978 hearing, and was present for the entire appeal of the SOEC, the major appellant. In 1979, I attended several hours of the two and one-half day hearing, and in 1981 was present through the entire hearing process.

My observations of the PCAB hearings included three types
of work: "monitoring", "problem-identification", and ethnography. In "monitoring", I kept notes throughout the observation period regarding time, speaker, type of activity, and topic of discussion. This later acted as a retroactive agenda, providing an index for review of the hearings, and allowing me to locate portions in which I had a particular interest. "Problem-identification" refers to the identification of issues which would affect public participation, such as scheduling, setting, and certain aspects of "making a case", such as the discrediting of witnesses during cross-examination. In addition, I compiled an ethnography describing physical aspects of the research setting and patterns of interaction among participants.

The RCUM included both community hearings, which were held in the interior of the province, and technical hearings, which took place in Vancouver. My observations of the RCUM hearings were similar in many respects to those of the PCAB hearings, and included monitoring and problem-identification activities, as well as an ethnography of the hearings. Two major factors resulted in different observation techniques. The availability of typed, official transcripts of the hearings allowed me to focus on general issues and problems, rather than attempting to capture exact quotations by speakers. Moreover, the length of the hearings and volume of the evidence, and the size and scope of the tribunal required the selection of a finite sample of hearings to observe. (During the course of the Inquiry, over seven months of hearings were held, including two months of
community hearings, and seven months of technical hearings. These amounted to over 70 volumes of printed transcripts, totalling more than 13,000 pages.)

I attended the Kelowna hearings because, as it was the first community session, participants raised procedural issues in which I was interested. The relatively large size of the community and its proximity to a large geographic area in which many mining claims had been staked also pointed to its significance as a locus of discussion. Technical hearing sessions were selected according to several criteria. I attended the entire Overview session and for the remaining phases, attended one to two sessions per week. I tried to attend each Tuesday's proceedings, as this was the day on which procedural and "house-keeping" items were discussed. As well, I selected days for observation in which witnesses who had been identified by participants as controversial or especially interesting would appear.

Transcripts of the hearings provided the other major source of my data. The PCAB proceedings were not officially transcribed, although the Board's secretary tape-recorded the proceedings. The South Okanagan Environmental Coalition (SOEC), the appellant, also taped the proceedings, and I transcribed portions of these tapes which I considered relevant. However, the inferior quality of the tapes, and the volume of material precluded documentation of the entire proceedings. The RCUM produced formal, written transcripts of all its hearings, and a set was made available to me for study purposes. Contextual analysis of transcripts of sessions which I attended
was a means of comparing my observations with the formal documentation of events. I also selected portions of the transcripts which were indicated by participants and the Commission's Index for more intensive study. I used the transcripts both as a means of generating ideas or explanations about the hearing process, and as a source of participants' statements about the hearing process.

I also selected data from the following sources: publications of the case study tribunals, correspondence between tribunals and participants, news releases and media reports, and standard bibliographic references. Official publications issued by the case study tribunals supplemented my documentation of the proceedings. The PCAB documents consisted primarily of communications with the appellants, including procedural rulings and decisions, but the RCUM published and distributed large amounts of descriptive data concerning the issues and the procedures of the Commission. Weekly schedules of sessions, (noting speakers and dates of appearance) were distributed at the beginning of each session. The Inquiry published a weekly report, *The Uranium Inquiry Digest*, in which the issues, speakers, and work of the Commission were discussed. The RCUM distributed regularly an Index of proceedings and holdings.

In addition, I consulted books, articles, and theses from a variety of disciplines concerning various aspects of the hearing process. Publications by citizens' groups provided a variety of interpretations of the issues and the hearing process. As well, I attended numerous public speeches and events
concerning the herbicide and uranium issues during the research period. Media coverage of the hearings and the issues provided yet another source of documentation.

Observation and documentation of the hearings themselves provided a record of all participants, including public interest, government, and corporate intervenors. However, as my primary focus was the accessibility and experience of the hearing process by public interest groups, I directed additional research efforts specifically to these groups. I was especially interested in the pre-hearing organization and resources of intervenors. I assumed that government and corporate intervenors were located within bureaucratic structures of organization through which preparatory activities were mediated in conjunction with other ongoing processes (e.g., research, public relations, program implementation). I was interested in how the public implemented its participatory activity.

Two major forms of research aided in this task: interviews of participants, and access to and use of their files. During the PCAB hearings, and throughout the intervening years, I interviewed the major spokespersons for the SOEC in depth. My membership in the SOEC and marriage to a key SOEC spokesperson contributed to the accessibility of this data. Interviews included both structured sessions and impromptu discussions, as well as "active" eavesdropping, in which I interrupted or queried a conversation. During the active hearing preparations for the PCAB appeals, information on the organization, strategy, research, preparations, and post-mortems of the hearing was generated and documented. Much of counsel's preparation of
expert witnesses took place in my home, and consequently, I was privy to many of the preliminary aspects of the hearing.

During the RCUM hearings, I interviewed participants concerning their views of the Inquiry, with special reference to procedural matters and the cross-examination process. I have continued to discuss the Inquiry process with several of them since the closure of the Inquiry. I also interviewed lawyers for the West Coast Environmental Law Association, one of whom had served as counsel to appellants in the PCAB hearings, and others who had been active in the RCUM.

Another source of research was the files of the participant organizations, particularly those of the SOEC, which were accessible to the public. For the PCAB hearings, the files of the SOEC provided research and documentation of the issues, a chronology of events, press statements, publications of the proponent, correspondence with other public participant organizations involved in similar issues, and research materials used in preparing and mounting their appeal, and correspondence with government organizations, including the proponent and the Board. Communications between the Board and the appellant included statements of appeal, descriptions of procedures, decisions, and other matters. For the RCUM hearings, the more public (e.g., visible, documented and publicized) nature of the proceedings, and the greater number of participants resulted in increased access to background and supplementary materials. The RCUM also maintained a library and librarian, who directly aided my research.
The data from which I have gathered material for the analysis captures the formal procedures of the hearings, through transcriptions and observations, as well as participants' views of the hearing process. Although my conclusions are drawn from study of only two tribunals, I feel that these are generally representative of the hearing participation process. The selection and collection of data reflect my theoretical focus on public participants' perspectives of the hearing.

3.2-Types of Public Hearings

The term "public hearing" refers to the activity whereby submissions are presented and examined publicly before a Board or Commission. Hearings are one stage in a larger investigative or regulatory process which may include the following related activities: establishment or activation of a Board/Commission, articulation of terms of reference, appointment of Board/Commission members, commissioning of research, selection and preparation of expert witnesses, deliberation by Board members, and production of interim and final recommendations and/or decisions. The hearing is thus just one stage of an ongoing policy-making or regulatory process.

Public hearings are held under the differing mandates of administrative and consultative tribunals. The administrative tribunal is a specialized body which oversees the work of government bodies, by acting in regulatory and judicial capacities. Roberts notes that "much of the burden of ensuring justice, equity and fairness in administrative matters has shifted from courts of law to tribunals" (T. Roberts 1980:77).
This delegation of administrative responsibility is explained in the following:

Courts do not have the time to become sufficiently expert in the enormous variety of subjects which tribunals must decide efficiently; similarly government departments do not have enough impartiality and freedom from politics to be credible as impartial decision-makers. Tribunals are seen as a workable compromise: in theory, they are more expert than the courts and less formal; more flexible and speedy than courts. The courts' use of precedent and reliance on authority tend to create a conservative bias which tribunals, not intended to be dominated by legal values, should not share (Roman 1977:4).

Further explaining the comparative value of administrative tribunals vis-a-vis the courts, Roberts notes such advantages as:

....their greater speed, lesser cost, lesser formality and greater flexibility of action than courts. Tribunals can also employ persons with particular expertise in the matter under consideration. Disadvantages are the possibility for denial of a fair hearing, bias in favor of government policy (tribunal members are often appointed by government), the unpredictability of decisions because of the wide degree of discretion allowed, and a narrowness of viewpoint arising from the particular composition of the Board (1980:77-78).

Administrative hearings provide public access to certain regulatory processes. They are governed by statute and hearings function in a judicial capacity (e.g., Labour Relations Board), by hearing disputes between interested parties, or in a regulatory capacity, making decisions regarding administrative policy, rate-setting, or project approval. The variation among administrative tribunals is noteworthy:

....There are literally over a hundred tribunals created by the federal government and roughly 50 to 100 in each province. Tribunals vary enormously in function, personnel and accessibility (Roman 1977:2).

The hearing process is activated through a number of processes, such as the proponent's initiation of a development or applica-
tion for a permit. Decisions produced by the tribunal, such as approval or non-approval of a permit, are implemented by the appropriate Ministry.

The consultative hearing, on the other hand, is established by government within the framework of a public inquiry to investigate issues of concern for the purpose of recommendation (Law Reform Commission 1977). The consultative hearing is one stage in a Commission of Inquiry which is statutorily defined at both provincial and federal levels. The subject matter of the inquiry is typically urgent, of concern to more than one ministry and level of government, and is the subject of some controversy. It is intended to anticipate events and issues—to identify, obtain, and analyze information relevant to its unique terms of reference. The consultative hearing is thus created to investigate issues and formulate policy, rather than to produce final determinations, like its administrative counterpart.

The administrative and consultative tribunals differ as hearing types in three respects: their impetus, procedures, and decision-making powers. The administrative hearing is initiated as a routine administrative/regulatory process by a proponent's proposal or application for development. Administrative hearings are bound by the rules of natural justice; procedures may be dictated by statutory provisions (which may be very general and discretionary). Decisions or recommendations reached through the hearing process are designed to lead to binding decisions on the Ministry in question. Examples of
administrative tribunals are the Atomic Energy Control Board, the British Columbia Utilities Commission and the Workers' Compensation Board.

The consultative hearing is more visibly subject to political, economic, and social pressures, and is invoked at the discretion of government. Its procedures are subject to a greater extent to the Board's discretion. Inquiries may be bound by rules of natural justice. The product of the hearing typically is its Final Report, including research findings and recommendations which are not generally binding, and may or may not be adopted by government.

There is considerable variation within and between these types of tribunals. Some, such as the federal Environmental Assessment Review Panel (EARP), are a hybrid, encompassing features of both administrative and consultative hearings. While the initiating actions of the proponent reflect the administrative origins of this tribunal, the relaxed procedures of the EARP hearings and the information-gathering approach attest to its consultative status. The process of public intervention in these two types of tribunals, although reflecting similarities in form, is subject to differences depending on the costs, status of participants, formal procedural guidelines, and other factors, as the analysis will demonstrate. I have selected one body of hearings from each of the major types of tribunal for analysis. I will now introduce these case studies, discussing their impetus and the issues, areas, and events concerning which the hearings were held.

3.3-Introduction to the Case Study Tribunals
The Pesticide Control Appeal Board Hearings

The Pesticide Control Appeal Board was a tribunal created by the Pesticide Control Act of March 1978, which has since been superceded by the Environmental Control Board. This act provides for public initiation of an appeal hearing process through formal objection to an approved pesticide application. Beginning in 1978, and continuing over the following three years, individual citizens and organizations opposed applications by municipal and government agencies to apply the herbicide 2,4-D in the Okanagan Lakes system to counter the spread of Eurasian water milfoil. My analysis will focus on the Okanagan 2,4-D hearings held under the jurisdiction of the Pesticide Control Appeal Board from 1978 through 1981. I include a description of the legislative context in which the hearing process is situated, as it defines the scope and nature of the public appeal process.

The Legal Context and the Initiation of the Hearings

Legislation governing herbicide use has been criticized as complex, disorganized, and inadequate (Lee 1978). Prior to the 1960's, legal controls on pesticides were limited, but demand for more stringent legislation was voiced increasingly by public interest groups (T. Roberts 1981). The report of the Royal Commission of Inquiry into the Use of Pesticides and Herbicides concluded that the administrative aspects of pesticide control were inadequate, and difficult to enforce (Lee 1978). The lack of citizen input to the existing process of decision-making, and the lack of government credibility were specifically noted:
A major defect in the present arrangement for the control of pesticides in the Province was repeatedly brought to the attention of the Commission...a frustration on the part of citizens about being unable to have any input into the decision-making process on the use of pesticides...There was a general expression of a lack of credibility of government departments in matters of pesticide control (Royal Commission of Inquiry into Pesticides and Herbicides 1975:1:253).

The jurisdiction pertaining to herbicides exists at both federal and provincial levels of government, and is dispersed among ministries within each. The primary federal act with regards to pesticides is the Pest Control Products Act, proclaimed in 1972, which deals primarily with testing, labelling, and registration of pesticides, and is administered by the Department of Agriculture. The Federal Government also governs the import/export of pesticides, and their interprovincial distribution (K. Roberts 1980 Speech).

In general, federal jurisdiction controls the registration and licensing of chemicals for use as pesticides. The application of such products is governed by provincial statute. Federal legislation does not contain mechanisms for public involvement in the regulation and administration of pesticide use. Thus, public intervention must be geared towards the application, rather than the registration or licensing of herbicides, as it is only at this level that such input is possible.

The British Columbia Pesticide Control Act, which has extensive jurisdiction over herbicides, was proclaimed in March 1978. The Act "provides for licensing of all pesticide uses, it permits the administrator to revoke or suspend a license, permit or certificate when a use is likely to cause an unreasonable adverse harm to man or the environment" (Lee 1978:15-
16. The Act created the position of Administrator, responsible for the execution of the Act (s. 12), a Pesticide Control Committee, appointed by the Minister (s. 17), and establishes the Pesticide Control Appeal Board (s. 14) giving the Cabinet power of appointment. The Act is administered by the Pesticide Control Branch of the Ministry of the Environment, whose programs include licensing, certification, and the issuing of permits. It is with the latter area of jurisdiction that I am concerned, as it is through the issuing of permits that the appeal process is initiated.

I will now describe the appeal process through which the administrative hearing is produced. This may be divided into four stages: application for the permit, administrator's approval, public notice, and notification of appeal. (See Appendices 1.2, 1.3, and 1.4) On the average, six hundred permits for pesticide application are issued each year (T. Roberts 1981). Application for permission to apply a pesticide is made to the Administrator of the Pesticide Control Branch in accordance with the Pesticide Control Act:

s.6 Subject to the regulations, no person shall apply a pesticide to a body of water or an area of land unless:

a) he has applied for a PERMIT from the administrator to do so and the administrator, on being satisfied that the application of the permit will not cause an unreasonable adverse effect, has granted the permit, and b) he applied the pesticide in accordance with the terms and conditions contained in the permit (B.C. Pesticide Control Act 1978: s. 6).

This application is contingent upon the schedule (level) of pesticide used (schedule V pesticides are exempt); and the proposed means and place of application. Although all use of
pesticides on public land is technically subject to permit requirements, the use of permits has generally been reserved for large-scale and aquatic public use. Permit applications follow the schedule of pesticide used, and the location of proposed application. The proponent must make formal application to the Administrator of the Pesticide Control Board for such use. Application for the permit initiates a process through which public participation may later occur.

The second step is the review of the permit application by the Administrator of the Pesticide Control Branch, with the aid of a Pesticide Control Committee. The latter is composed of representatives of the agriculture, environment, forestry, health ministries, and other persons deemed appropriate (s. 17). The test used for review of these applications is whether or not use of the pesticide will cause an "unreasonable adverse effect" (s. 4). An "adverse effect" is "an effect that results to damage to man or the environment". There are no statutory guidelines for determining when an adverse effect is "unreasonable", allowing the Administrator and Committee considerable discretion in interpretation. There is some disagreement concerning public access to this review process. Although Kellett reports that the Branch "makes available to appellants...the reports of the committee members" (1978), it has been the experience of several environmental groups that this information is considered confidential (K. Roberts 1981 Interview). Permits may be approved or denied by the administrator, and if approved, may later be revoked if his stipulations are not
fulfilled, or if new evidence of adverse effects appears.

Following the Administrator's approval of the permit application, notice must be made by the permit-holder. This may be done through four methods: publication in the Government Gazette, posting of the permit in a conspicuous place on the land in question, through a press release, or advertisement in the local press. The Administrator decides which method is to be used, and makes it a condition of the permit. Usually, as was the case in the tribunals I studied, notice is given through advertisements in the local press. Objections to the proposed application must be filed in the form of an appeal, within fifteen days after the effective date of the permit (s. 49).

It is at this point that the public may enter into the process. An appeal must be initiated in order for citizens to take part in the hearing. The public may appeal the permit granted by the Administrator through responding to the application notice. Any member of the public may file an appeal (s. 12). However, organizations can only appeal if they have legal standing as "persons" (e.g., if incorporated as a registered society or corporation). In order to appeal, the appellant notifies the Administrator of the Pesticide Control Branch of his/her objection. The Administrator confirms receipt of the appeal, and responds by requesting the appellant to send to the PCAB the grounds of appeal. Although s. 12(3) of the Act stipulates that the appellants may have to cover the costs of the appeal, this was not required in the case study hearings. The Board replies to the appellant, noting the location, time, and
date of the hearing.

Thus, the public hearing is but one stage in an appeal process which itself is located within a complex provincial and federal network of pesticide jurisdiction. I turn now to the issues, location, events, and participants in the case study hearing.

Milfoil and the Herbicide Issue

The rapid increase of Eurasian water milfoil (Myriophyllum spicatum Linnaeus) in the Okanagan Lake system of British Columbia has aroused considerable concern. This perennial water plant has colonized many water bodies in eastern Canada and the United States, and has more recently spread to western North America. It occurs in lakes throughout British Columbia, including the Okanagan Lake system, location of the case study (See map, Appendix 1.1).

The plant is considered undesirable for a number of reasons. Brochures published by the Aquatic Plant Management Program of the B.C. Ministry of the Environment note that milfoil is regarded as aesthetically unappealing, in that it renders previously open areas of water a morass of "slimy, tangled weeds" (British Columbia Ministry of Environment). Decomposition of the weed during summer months results in shore accumulation of odiferous and unsightly fragments. It restricts water recreation use in shallow areas, especially swimming and powerboat use. It is thus viewed as economically and environmentally costly, especially in areas, such as the Okanagan, which are reliant on recreation and tourism. The plant has
been accused of damage to the salmonid environment by contributing to the siltation of spawning beds. Milfoil is referred to as a "nuisance" and a "problem", and its growth has prompted calls for its containment, to be accomplished by a variety of methods, including herbicide use. Other methods of weed management include: root removal by mechanical means such as rotovators and harvesters, suction dredging, lake and river barriers, and public information and quarantine.

Environmental organizations argue that milfoil is not totally harmful. In their view, it provides habitat for fish, filters water and improves its quality, and impedes algae growth. Furthermore, they say the restricted appearance of the weed in water under five metres and enriched bottom environments limits the potential spread of the weed, in the Okanagan example, to ten percent of the lake system (SOEC 1978). A phenomenon of natural decline, or dieback, has also been cited, suggesting that the plant will become more balanced in conjunction with other environmental factors (SOEC 1980). The appearance and increase of milfoil is an indication of environmental change or degradation. From this perspective, environmental groups state that attention should be redirected to the reduction or elimination of the process of eutrophication and nutrient enrichment of the lakes (SOEC 1978).

The means by which milfoil reduction and control is to take place has provided the major source of debate. Most observers, including government and environmental groups, agree that some "control" of the weed is both desirable and practical. The primary conflict around milfoil control has centered
around the chemical means of treatment. The herbicide used in this approach is 2,4-D (2,4-dichlorophenoxyacetic acid), a chlorinated phenoxy compound developed during World War II. The Water Investigations Branch (WIB) of the B.C. Department of Environment has proposed chemical treatment through the use of 2,4-D, in conjunction with other means, to control the milfoil problem. The WIB has advocated the use of this herbicide as efficient, economic, and safe. Approval of the pesticide application permit by the Administrator indicates that he condones the application (with the endorsement of the Pesticide Control Committee), and considers that it will have no "unreasonable adverse effect".

However, citizens and public interest groups have formally opposed the proposed herbicide treatments. Their opposition to herbicide applications has included the following grounds, stated in their notice of appeal to the 1978 pesticide application permit granted the WIB:

1. Risk to the health of human beings, based on the mutagenic, teratogenic, and carcinogenic effects of 2,4-D on living organisms.

2. Risk of harm to fish and wildlife in the general area surrounding the project based on the toxic effects of 2,4-D.

3. Risk of damage to agricultural crops susceptible to the effects of 2,4-D.

4. Risk of harm as described in the above 3 paragraphs, based on the persistence of 2,4-D and the limitations of the testing equipment designed to test for the existence of 2,4-D.

5. Risk of harm as described in paragraphs 1 through 3 as a result of drift occurring from the project application sites.
6. That no cost/benefit analysis has been done on the use of 2,4-D in the Okanagan Lake System and the milfoil control program to determine if the 2,4-D application is economically justifiable—particularly in light of the risks involved.

7. That the use of 2,4-D will not remove the milfoil problem, but will merely necessitate its reapplication over successive years (West Coast Environmental Law Association 1978).

According to the South Okanagan Environmental Coalition, there is substantial evidence that 2,4-D may be unhealthy for humans and animals. They state that there is evidence that 2,4-D acts as a carcinogen, teratogen and a mutagen (Warnock and Lewis: 1978). The aquatic application of the herbicide is viewed as potentially hazardous, due to the possible absorption of the chemical through the skin, the residual effects, the possibility of drift beyond established buffer zones, and toxicity to salmonids (SOEC 1978). Irrigation to vineyards with herbicide-treated water is cited as hazardous to grape crops. The rising cost of herbicide application, especially monitoring, has also been raised as a problem (SOEC 1978).

The controversy over the use of 2,4-D takes place within a wider debate over the health and safety dangers associated with herbicide use. Environmentalists indicate that although the debate is largely recognized as a scientific one, it is on another level an economic conflict. The pesticide industry in the United States is characterized by the following pattern of development, condensed from T. Roberts:

1. Rapid growth in the period between 1950-1975, associated with chemical warfare research during W.W.II; agribusiness, with its reliance on monoculture, mechanization, and capital-intensive production; and emphasis on synthetic organic pesticides. Between 1950 and 1975, pesticide production in the USA increased by 10-15% per
annum. The tendency more recently (1970's +) has been to "integrated pest management", which would be less reliant on chemical pesticides.

2. Synthetic pesticide sales in 1975 totalled approximately $4 billion, or 6% of the gross sales of the chemical industry. Corporate concentration is high.

3. Pesticide demand is now beginning to decrease, and is estimated from 1976 to 1985 at 6% per year. As North American markets have been saturated, new markets in the Third World and Eastern Europe have been generated.

4. The chemical industry has responded to falling markets and growing concerns of the public in the following ways: advertising, government lobbying, and industry involvement in scientific societies (such as CAST, Council for Agricultural Science and Technology) (1981:1-5).

Environmental critics note that 2,4-D is one of the most widely used pesticides in North America; that in Canada, it accounts for 25% of all herbicide and pesticide sales Warnock and Lewis 1982:35). The extensive use of herbicides in British Columbia, according to environmental critics, has promoted an atmosphere of tacit acceptance. These critics therefore argue that government choice of pesticide (chemical) treatment reflects the industry's past growth and current demands.

Environmentalists also note that Agriculture Canada, rather than departments of Health or the Environment, is responsible for the registration of pesticides in Canada. Warnock and Lewis note the potential bias of agriculture specialists in the assessment of pesticides such as 2,4-D (1982:35). Those accepting or advocating pesticide use on the other hand cite the checks and balances by which pesticides are tested, registered, and approved (Ormrod 1982).

Popular controversy over the chemical 2,4-D reflects a scientific debate, as Warnock and Lewis of the SOEC state:
Since its development during the chemical and biological warfare program during World War II and continuing through its use in Vietnam, it (2,4-D) has damaged a great many organisms besides the vegetation at which it was aimed. The scientific community is deeply divided as to its safety, and regulatory decisions are currently based on distorted economics ('we can't afford not to use it') rather than biological research. Many people doubt that it would be registered under today's testing protocols (1982:34).

Those advocating pesticide use reply that testing is adequate, and that pesticide use is "safe", especially if exposure is minimal. Thus, the controversy over pesticide use is complex and unresolved.

A Chronology of the Okanagan Lakes 2,4-D Issue

The increase of Eurasian watermilfoil in the Okanagan Lakes system elicited concern beginning in the 1970's. The Aquatic Plant Management Program within the Water Investigations Branch of the Ministry of the Environment initiated research on the growth of milfoil and the effectiveness of various herbicides beginning in 1972. The Royal Commission of Inquiry into the Use of Herbicides and Pesticides, appointed in 1973, carried out its mandate over a two-year period, making recommendations regarding the regulation of herbicides, including 2,4-D. In 1976, an Advisory Committee on the Control of Eurasian Water Milfoil in the Okanagan Lake system was appointed by the Ministry of Environment. Although the first interim report of this Committee called for the "possible exception of the use of herbicides", the second report endorsed an "all-out attack on the weeds", to include an integrated program of mechanical, hydraulic, biological, and chemical (e.g., 2,4-D) control (Warnock and Lewis 1978). The Advisory Committee held a
series of public meetings in the spring of 1977 regarding the milfoil issue.

On May 5, 1977, the province agreed to finance, design, and implement a weed control program in cooperation with local officials. During the summer of 1977, chemical and mechanical control methods were to be tested in four Okanagan Lakes. More widespread use of 2,4-D was forecast by the Advisory Committee and the Ministry of Environment for the summer of 1978.

A citizens' group, the Okanagan Environmental Coalition, was formed in the spring of 1977, following the public meetings of the Advisory Committee. This group opposed the proposed use of herbicides in controlling milfoil, and engaged in political lobbying, public education, research, and networking with other environmental organizations to this end.

In March, 1978, the Pesticide Control Act was proclaimed, allowing for formal public participation through a system of appeals to decisions approving proposed applications of pesticides. Later that spring, the Water Investigations Branch (WIB) of the Ministry of Environment was granted 15 permits to apply 2,4-D in four of the major Okanagan lakes. These were all appealed by a number of appellants, including individuals, and local and provincial organizations (such as the SOEC, Society for Pollution and Environmental Control (SPEC), and the Consumers Association of Canada). The hearings were held in June, 1978, in Penticton, and will be discussed in greater detail in the following chapters.

In their 1978 decision, the PCAB upheld four of the ap-
peals (on Osoyoos Lake), but disallowed the remaining eleven. The SOEC requested a Judicial Review, which had the effect of extending the hearings, and consequently delaying the pesticide application, causing reduction in the applications which were made. In the fall of 1978, the Minister of Environment stated that no further herbicide applications would be made on Okanagan and Skaha Lakes. In 1979, the use of 2,4-D was confined to Wood and Kalamalka Lakes at the north end of the lakes system. In both 1979 and 1980, appeal hearings took place in Vernon, with decisions by the Board upholding all the permits in both years. In 1981, the Central Okanagan Regional District objected to many of the permits, thereby cancelling them before public hearings could be held. Permit applications were made for Osoyoos Lake by the Okanagan Water Basin Board. These were appealed by the SOEC, and the Board again upheld the permit.

In 1982, the PCAB had been replaced by the Environmental Assessment Board. Herbicide control programs had been cut back, and no permit applications were made. The SOEC claims that its efforts have been effective, by reducing the proposed applications, through the processes of public education, political ecology, and bureaucratic delay, but the possibility of future applications of 2,4-D remains. The "bureaucratic momentum" of the Water Investigations Branch (Warnock and Lewis 1981), the lack of significant public victories in the appeal process, the lack of a shift in agency policy and the continuing existence of the weed promise further controversy.

The Royal Commission of Inquiry into Uranium Mining

The British Columbia Royal Commission of Inquiry into Ura-
nium Mining (RCUM), was established on February 16, 1979. Three Commissioners were named to head the Inquiry—Dr. David Bates, Professor of Medicine at the University of British Columbia and occupational health specialist; Dr. James Murray, Professor of Geology at the University of British Columbia; and Mr. Valter Raudsepp, Civil Engineer and former chairman of the Pollution Control Board and Pesticide Control Appeal Board. The Commission scheduled two sets of public hearings: community hearings, to be held twice throughout the province and technical hearings, to be held in Vancouver beginning in September, 1979. Funding was provided to aid public participants. In the midst of its investigations, the Inquiry was terminated by the government on February 27, 1980, and a seven year moratorium on uranium exploration and mining was put in effect. I will now present an overview of the issues and the events associated with the R.C.U.M.

The Consultative Inquiry

Commissions of inquiry are established by government as independent tribunals to investigate matters of public concern and provide advice to government on policy (Pape 1978). Theoretically, the commission of inquiry supplements and short-cuts the electoral process by securing information and making recommendations which are then taken into account by appropriate branches of government. Although not binding on government, recommendations are rarely completely disregarded (OECD 1978), and in British Columbia, are submitted to the Legislature, becoming public documents.

The Royal Commission of Inquiry into Uranium Mining was
established under the provincial Public Inquiries Act (R.S.B.C. 1960, c.315), which states that the Cabinet may establish a commission of inquiry to advise it on "....any matter connected with the good government of the Province...."(s.3). The Act provides for the appointment of commissioners and outlines their duties (ss.3, 9). Under this Act, Commissioners appointed to the Inquiry are given wide powers in determining the matters under investigation. The Interpretation Act, R.S.B.C. 1960 requires that all enactments, "be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (West Coast Environmental Law Association 1979). The Act thus grants a large share of discretionary powers to the Commissioners.

The Terms of Reference set out by government in Order-in-Council No. 170/179, and adopted by the RCUM are as follows:

(1) to examine the adequacy of existing federal and provincial requirements for the protection of the health and safety of workers associated with exploration, mining and milling of uranium in British Columbia, and for the protection of the environment and of the public, and,

(2) to receive public input on these matters, and,

(3) to make recommendations for setting and maintaining standards for worker and public safety as a result of the exploration for the mining and milling of uranium ores (RCUM 1980).

These explicitly direct the tribunal to "receive public input". They direct the inquiry to investigate the health and safety of workers and the public in the mining and milling of uranium.

The Royal Commission as a mode of inquiry gives its Commissioners a discretionary role. Earlier Commissions are important in shaping the structure and procedures of the Inquiry.
A number of public inquiries preceded the RCUM, setting informal precedents for the procedures and the investigation of issues. The Berger Inquiry (Mackenzie Valley Pipeline Inquiry) was innovative in its provision of funding for public participants, and its establishment of both community and formal hearings (Berger 1977). The West Coast Coast Oil Ports Inquiry, although prematurely terminated, contributed to this tradition of high-profile public participation.

Public inquiries into nuclear issues and uranium mining have also preceded the RCUM. In Australia, the Ranger Uranium Environmental Inquiry was appointed in 1975 by the Labour government, and conducted its hearings in the following manner:

Three commissioners held public hearings from September 1975 to August 1976. They listened to 281 witnesses from both pro- and anti-uranium groups, visited major centres and uranium mining locations all over Australia, and considered 354 written submissions. Unlike the Bates Commission (RCUM), it interpreted its guidelines to investigate the environmental impact and hazards of the Ranger mine for the miners themselves, the Aboriginal landholders and the local ecology, but also the hazards and ethical questions surrounding the entire nuclear fuel cycle—including waste disposal, nuclear power plant accidents, nuclear terrorism, nuclear proliferation and reprocessing (Newell and Hamel-Green 1979:13).

Although the Ranger Inquiry had widespread public support, its recommendations were by-passed by the Liberal government which received them. Continuing opposition to uranium mining has been demonstrated by labour, church groups and environmental organizations in the form of boycotts, demonstrations, and civil disobedience. The Ranger Inquiry provided a vehicle for mobilizing public participation. It promoted public education, and focused the nuclear debate, but the failure of government
to implement its recommendations raised questions concerning state and corporate relations and the force of the tribunal.

Another predecessor to the RCUM was the Bayda, or Cluff Lake Board of Inquiry in Saskatchewan. The Bayda Inquiry lasted 15 months, beginning in July 1974, and addressed questions that ranged from the specific plans proposed for mining in the Cluff Lake area to the dangers of nuclear proliferation. Its final report summarizes the characteristics of nuclear power, deals with the problems of energy supply, and approves the mining of uranium. Although the scope of the Inquiry was wide, and included consideration of social, political, economic, and ethical considerations, the Inquiry has been criticized strongly by opponents of uranium mining, who claim that the disproportionately large resources of government and industry enabled them to slant the process in their favour.

The Issues

The RCUM was established to inquire into the adequacy of regulations concerning the exploration, mining, and milling of uranium in British Columbia, as indicated by the Terms of Reference cited earlier. At the time of the appointment of the inquiry, no uranium mines were operating in this province. Although industry was actively exploring for uranium, public opposition was mounting. Among those issues contested were the following: the health and safety of uranium exploration, mining, and milling for workers and the public; the economics or uranium mining; and the nuclear fuel cycle, in which exploration/mining/milling plays a strategic role.

The issues of health and safety are related to the radio-
active nature of uranium and its daughter products. Although background radiation occurs on a natural basis, the additional radioactivity released through the mining of uranium is recognized as a potential hazard. Effects of exposure to radiation on human health are documented, but the debate is over what amount of exposure is "acceptable", who defines it, and the risks and benefits of uranium mining (Community Interest Research Group 1980:29). Opponents of uranium mining argue that it creates a health hazard for mine workers and the general public. They argue that radioactivity biocumulates in the food chain, that radioactivity would escalate in the water supply in the regions near mine sites, and that radon gas would escape and disperse in the region of a mine. The Canadian Coalition for Nuclear Responsibility states that mine workers run an increased risk of incurring cancer: "...it is known that the number of miners who have died as a direct result of working in Canada's uranium mines runs into the hundreds" (1982:3). The existence of federal health regulations and industry compliance with these standards form the basis for industry's reply.

The persistence of uranium daughter products, and the problems of adequate tailings disposal are among related environmental problems cited by mining opponents. Uranium mining tailings remain radioactive for at least one million years (Canadian Coalition for Nuclear Responsibility 1978). Environmentalists claim that technology for the permanent disposal of tailings does not presently exist:

There is no existing technology capable of disposing of the uranium mining wastes in a manner which would
assure no need for human intervention and no danger from inadvertent human intrusion....(Torrie 1982:17).

....The uranium mining industry continues to demonstrate a lack of environmental sensitivity and social responsibility in its approach to the problem of radioactive waste handling (Torrie 1982:25).

Environmental groups have noted that economics and the role of government in the uranium industry were significant factors in the convening of the RCUM. At the time of the announcement of the Inquiry, uranium mining and milling were already taking place in Ontario and Saskatchewan. Although mining had not yet begun in British Columbia, by the summer of 1978, large amounts of uranium had been located in the Okanagan Plateau and in other areas of the province (Canadian Coalition for Nuclear Responsibility 1978:1). Its price had escalated from $5 a pound for yellowcake (uranium prior to processing into fuel) in 1971 to above $40 per pound in 1978 (Vancouver Sun 1981), creating considerable pressure to mine it.

Opponents of uranium mining cited several factors which they felt would alter the economic climate for uranium mining. They suggested that the nuclear industry faced an imminent demise, due to the high capital costs and government subsidization of much of the industry (RCUM 1979 3:190). Discovery of Canadian participation in an international uranium cartel was announced in 1981. Dissolution of the cartel, it was widely felt, would be followed by a collapse of the market to more "natural" levels of economic viability.

The dramatic increase in short-term profit, combined with forecasts for decreasing values in the 1980's, thus created pressure to mine identified deposits as quickly as possible.
During the technical hearings, it was announced that several Canadian mining companies had signed multi million-dollar contracts to sell B.C. uranium to South Korea. These contracts, for about seven million pounds of uranium oxide over 11 years, beginning in 1983, were estimated to be worth about $300 million. As a result of this disclosure, one major participant, Greenpeace, withdrew from the Commission, stating that the contracts were "in contempt of the uranium inquiry process and will put undue pressure on the B.C. government to adopt health and environmental standards based on economic viability rather than environmental protection" (Vancouver Sun 1979).

A decline in the price of uranium was also predicted because of the limited market. About 90% of Canada's uranium is exported to other countries, and this market is limited to weaponry and power generation (Kinesis 1982:15). Although uranium sales for armament purposes are restricted, sales to third-world countries have been justified on the basis of energy needs (Canadian Coalition for Nuclear Responsibility 1978:1).

Critics cite the conversion of such "atoms for peace" into "clandestine nuclear arsenals" (Spectrum 1979). They are also skeptical of the introduction of centralist and capital-intensive nuclear energy to third-world nations: "in countries in which capital is scarce and labour is abundant but poorly trained, the nuclear option represents a gross misallocation of resources" (Regina Group for a Non-Nuclear Society 1980). Furthermore, mining opponents state that:
......nuclear sales continue because they spell profits to the supplier nations. Reactor orders secure the transfer of desperately needed development capital to the high-technology industries of the western world (Regina Group for a Non Nuclear Society 1980).

Political economists note the extensive state intervention in the nuclear industry. The uranium cartel cited above is one example of this. The Canadian government has been extensively involved in the uranium mining industry through nationalization, incentives and direct equity interest. The Community Interest Research Group (CIRG) notes that in 1944, the federal government nationalized the country's only uranium mine, to secure the limited supplies of uranium and ensure the maintenance of low prices (1980:36). The Federal Uranium Reconnaissance Program provided government subsidization of exploration, through a "10-year, $50 million programme to identify and delineate all potential uranium-bearing zones in Canada" (Community Interest Research Group 1980:21).

Political economists also note that concentration within the energy industry has taken place through vertical and horizontal integration: the former allows utilities to control their oil supplies as well as energy generation; while the concentration of power horizontally links oil, gas, and nuclear fuels in the same corporations. This process has led to the increased power of multinationals, and has taken place with the active support of the federal government, through the cartel, and the provision of a stable operating climate (Community Interest Research Group 1980:42).

The third issue central to the controversy surrounding uranium mining is the role of uranium in the nuclear fuel
cycle, which involves six major steps: mining, milling, enrichment, fuel fabrication, power plants, and reactor wastes. This cycle produces two types of products: weapons (materials for developing nuclear warheads); and energy (electricity is generated from steam in the nuclear power plant) (*Kinesis* 1982:16).

Opponents of uranium mining argue that it must be seen in terms of larger social consequences. The use of nuclear energy for military purposes (weaponry) has been argued since Hiroshima. Opponents say that this source of energy is inappropriate, not only to third-world, less developed nations, but for North American application as well. They refer to the small percentage of electrical power needs which nuclear energy can supply and cite the availability of alternatives such as conservation, solar, wind, thermal and biomass sources (Brooks 1981; Brooks, Robinson et.al. 1983; Lovins, 1977). Opponents of nuclear power warn of the health dangers of nuclear power, and suggest that decentralized, more labour-intensive forms of energy would be socially and economically preferable (Lovins 1977).

**A Chronology of the Uranium Mining Controversy**

The controversy over uranium mining in British Columbia has its roots in the international resistance to nuclear technology. Opposition to all forms of nuclear technology has taken place since 1975 in Britain, through public involvement in government inquiries into reactor safety (The Windscale Inquiry), public demonstrations, and a parliamentary lobby.
In Sweden, this issue has been a focus of elections and a referendum in 1980. Anti-nuclear groups have been active throughout Europe. Opposition to nuclear technology in Japan and the Pacific has accelerated since 1974, when the first Nuclear Free Pacific Conference was held. In the United States, the Three Mile Island incident in 1979 fueled the nuclear controversy, precipitating public demonstrations and political debate over the safety and future of nuclear technology.

Public opposition to nuclear technology has taken many forms. Although demonstrations, such as the annual Peace March are a popular and visible form of political action, intervention at public hearings has also been a significant means of citizen participation in the nuclear debate. Intervention in Atomic Energy Commission regulatory hearings in the United States in the 1960's and early 1970's, led to the imposition of stricter safety standards on the nuclear industry (Kinesis 1982: 21). Participation in Canadian inquiries, such as the Porter Commission in Ontario, and the Bayda hearings in Saskatchewan, contributed to public education and awareness of the nuclear controversy.

Specific events also contributed to the controversy within which the RCUM was announced. Although there was no active mining of uranium when the Commission was announced, there was exploration and staking of uranium, throughout the province. In response to active uranium exploration, approximately twenty-seven environmental groups stated their opposition (Schmitt 1979). In Genelle, B.C., three people were arrested for block-
ing uranium exploration work in the China Creek watershed, the source of the town's water supply. This incident in particular raised public awareness of this issue, and contributed to the government's promise of a public inquiry. Abbott cites Minister of Mines Hewitt's reasons for establishing the inquiry:

(1) There was a need to provide an assessment: '... of the special conditions in British Columbia, which would be of significance if uranium was mined in the province.

(2) There were such significant unknowns that a full and open study of the subject (safety, health and environmental protection) was called for' (1980:8).

These, then, are the issues and events which precipitated the two case study tribunals. In the following chapters, I will present the participants of the tribunals, and describe the procedures and the decision-making process in greater depth.

1 In the case of the National Energy Board, for example, the proponent's application for a development permit sets in motion a hearing process.

2 The Federal Inquiries Act allows the cabinet to establish an inquiry to advise it upon "any matter connected with the good government of Canada or the conduct of any part of the public business thereof"(s.2). Provincial legislation is equally general, entitling the Cabinet to establish a commission of inquiry to advise it upon "...any matter connected with the good government of the Province...."(s.3)

3 In 1982 the PCAB and the Pesticide Control Board were superceded by and amalgamated in the Environmental Appeal Board.

4 Most municipal spraying occurs on public land without permit. Although section Four of the Act requires permits for pesticide applications to land and water, Section 22 of the Regulations requires a permit only for public land/water. In 1979, an order-in-council exempted private land owners from requiring permits on private land for applications of Schedule II, III, or IV pesticides (T. Roberts 1981).
Beginning in 1982, appellants were required to submit $25 for each permit appealed.

For instance, the Regina Group for a Non-Nuclear Society cites Premier Blakeney of Saskatchewan as justifying the export of uranium to developing nations on the basis that "to reduce the energy available to the world is to confine the poorest nations to untold misery and privation" (1980).
CHAPTER 4
HETEROGENEITY OF PARTICIPATION:
REPRESENTATION OF THE PUBLIC INTEREST

4.1-Introduction

Pluralist theory assumes a heterogeneity of participation in administrative and consultative processes of government which will promote the attainment of balanced decisions. In this process, the public interest is represented by a number of organizations which counter the influence of corporate and other participating interests. The diversity of interests represented by hearing participants in this study confirms to a certain extent the pluralist notion of participation. A number of interests, included the public, are represented in both case studies, although the administrative hearing, by nature, is less successful in attracting a diversity of participants. In both case studies, intervention by public participants counters, on a substantive basis, the input by proponents or pro-development forces. The public interest is seen to be represented by a number of intervenors, thereby providing a heterogeneity of input to the decision- or policy-making process.

Nonetheless, I will argue that certain features of hearing participation raise problems when subjected to critical analy-
sis. Representation in the hearing is flexible and discretionary; it fails to ensure the delegation and accountability of speakers. The subjective and voluntary definition of "interest" on which participation is based does not guarantee the identification and representation of all relevant interests. From a critical perspective, the hearing fails to provide for a full heterogeneity of participation—one incorporating "objective" interests such as those of social class and gender, and extending to a full range of affected interests.

This chapter will lay the groundwork for the analysis of the following chapters by introducing to the reader the participants in the hearings under study. I will begin by identifying the participants in the two tribunals, and continue by discussing the process by which the public interest is identified. The heterogeneity of participation is then assessed. I conclude with an analysis of public interest participation as an index of heterogeneity and balance.

4.2 - Identification of Participants and Interests

In this section I will briefly identify the participants of the case study tribunals, to give the reader a sense of their numbers and the range and basis of their interests.

Pesticide Control Appeal Board Hearings

In the Pesticide Control Appeal Board case study hearings, participation is limited to a small number of groups and a few individuals, all of whom have filed objections to the appeal permit application of the proponent. Appellants may appear before the Board directly, or be represented by witnesses and/or by legal counsel. The public cannot take part directly
in the hearing unless they have participated in the appeal process. Table 1 lists the appellants in the 1978-1981 Okanagan 2,4-D PCAB hearings.

**TABLE 1 - APPELLANTS, OKANAGAN 2,4-D PCAB HEARINGS**

1978 - Mr. Jim Foord, Mrs. George Pretty  
Consumers' Association of Canada (CAC)  
Osoyoos Ratepayers Association  
South Okanagan Environmental Coalition (SOEC)  
Society for Pollution and Environmental Control  
Kelowna Greenpeace

1979 - Mr. Ray Worsley  
Individual (not identified)  
Vernon and Kelowna SPEC  
Okanagan Greenpeace Foundation  
South Okanagan Environmental Coalition

1980 - Mr. Ray Worsley  
Vernon and Kelowna SPEC  
Okanagan Greenpeace Foundation  
South Okanagan Environmental Coalition

1981 - Mr. R.G. Johnson  
South Okanagan Environmental Coalition

The PCAB case study covers a number of participants appealing permits of the pesticide 2,4-D in the Okanagan Lakes system over a four-year period. During this time, five individuals and six organizations were formally registered as appellants. In 1978, a small variety of interests were represented, including those of environment, consumers, and local property. During the remainder of the hearings, only environmental interests (SOEC, SPEC) were organizationally represented.

Participation in the PCAB hearings, in summary, was confined to a few individuals and organizations. The dominance of one organization (the SOEC), in its sustained appeals throughout the study period characterize this case of public participation. The nature of the administrative hearing—the
technical nature of the issues, the adversarial nature of the appeal process, and the lack of public funding—effectively restrict participation to a limited number of intervenors. In the case study hearings, the heterogeneity of participants is reflected by the adversarial character of the appeal process structure which is congruent with the pluralist notion of a balance among competing interests.

Royal Commission of Inquiry into Uranium Mining

The Royal Commission of Inquiry into Uranium Mining held two distinct sets of hearings, both of which were open to participation by the public. As stated by the Preliminary Rulings:

...the Royal Commission of Inquiry into Uranium Mining will hold public hearings throughout the Province of British Columbia. To ensure maximum participation the Commission will gather evidence and receive public comments regarding the matters described in its Terms of Reference by holding public hearings, consisting of formal hearings and local hearings, and by receiving written briefs (RCUM 1979).

I will adopt the identification of participants used by the RCUM and recorded in its transcripts. The number of participants and nature of their interests differed between hearing types (community and technical), thus warranting separate discussion.

Community Hearings

Community hearings were held in communities either close to known uranium deposits or in areas of interest to the uranium mining industry, as determined by the Commission. Although two rounds of community hearings were scheduled, the second was never held, due to the early closure of the Commission. The
first round of community hearings was held in June and July, 1979. These were intended to elicit information and concerns from local populations, and to obtain information from the mining companies. Table Two reveals the location, the approximate audience size and the number of participants, and the ratio of individual to organizational submissions.

<table>
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<th>Location</th>
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<th>Organization</th>
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<tr>
<td>Atlin</td>
<td>8</td>
<td>9</td>
<td>100</td>
</tr>
</tbody>
</table>

Those who presented submissions before the Commission were only a small proportion of the total hearing audience. Both "personal" and organizational submissions were presented, although the ratio of these to one another varied among communities. In the Kelowna hearings, there were twenty-eight submissions made to the Commission over a 2-day period. Six of these were from private individuals. Organizations represented the following interests:
TABLE 3 - REPRESENTATION OF INTERESTS BY ORGANIZATIONS

KELOWNA COMMUNITY HEARINGS, RCUM

<table>
<thead>
<tr>
<th>INTEREST</th>
<th>ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining Industry</td>
<td>Placer Development Ltd.</td>
</tr>
<tr>
<td></td>
<td>PNC Exploration (Canada) Co. Ltd.</td>
</tr>
<tr>
<td></td>
<td>Norcen Energy Resources</td>
</tr>
<tr>
<td>Environmental</td>
<td>Vernon Branch, SPEC</td>
</tr>
<tr>
<td></td>
<td>South Okanagan Environmental Coalition</td>
</tr>
<tr>
<td></td>
<td>Greenpeace (Okanagan) Foundation</td>
</tr>
<tr>
<td></td>
<td>Sierra Club of Western Canada, Okanagan Group</td>
</tr>
<tr>
<td>Health</td>
<td>Kelowna Chapter of Registered Nurses</td>
</tr>
<tr>
<td></td>
<td>Nurses Association of B.C.</td>
</tr>
<tr>
<td></td>
<td>South Okanagan Similkameen Union</td>
</tr>
<tr>
<td></td>
<td>Board of Health</td>
</tr>
<tr>
<td></td>
<td>Canadian Public Health Association</td>
</tr>
<tr>
<td>Church</td>
<td>B.C. Conference, United Church of Canada</td>
</tr>
<tr>
<td></td>
<td>InterChurch Committee Anglican Church</td>
</tr>
<tr>
<td></td>
<td>St. Paul's United Church - Kelowna</td>
</tr>
<tr>
<td></td>
<td>Holy Spirit Parish</td>
</tr>
<tr>
<td></td>
<td>Summerland United Church</td>
</tr>
<tr>
<td>Agriculture</td>
<td>South and East Kelowna Okanagan Mission</td>
</tr>
<tr>
<td></td>
<td>Local, B.C. Fruit Growers Association</td>
</tr>
<tr>
<td></td>
<td>South East Kelowna Irrigation District</td>
</tr>
<tr>
<td>Native</td>
<td>Union of B.C. Indian Chiefs</td>
</tr>
<tr>
<td>Labour</td>
<td>International Association of Machinists</td>
</tr>
<tr>
<td>Peace/Anti-Nuclear</td>
<td>Canadian Coalition for Nuclear Responsibility</td>
</tr>
<tr>
<td>Women</td>
<td>Kelowna Business and Professional Women's Club</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>International Hostess Service</td>
</tr>
<tr>
<td></td>
<td>Total—22 Organizations</td>
</tr>
</tbody>
</table>

94
Participants thus represent a diversity of interests. Each of these listed presented separate submissions. Although the ratio of various interests vis-a-vis one another differed among hearings, each exhibited some minimal diversity of representation.

Technical Hearings

Technical hearings were held by the RCUM in Vancouver, and were also open to public participation. The Commission defined participants to these hearings in its preliminary rulings, as follows:

1.1 Any person who advises the Commission in writing of his intention to appear and give evidence at any formal hearing or who actually appears, gives his name and address to the Commission and states his intention to give evidence will be deemed a participant.

...1.3 The Commission shall, from time to time, identify certain parties as 'major participants in the proceedings in the sense that they either have indicated an intention to participate in the proceedings on a more or less regular basis or have been identified as possessing information of particular interest and relevance to the work of the Commission. The participation of these major participants shall be governed by further procedural rules of the Commission (RCUM 1979).

Two forms of participation in the technical hearings of the RCUM are described. The Commission itself thus formally distinguishes between occasional and/or limited participation, and continuing, or major participation. Major participants are recognized formally by the Commission, and may apply for funding by the Commission. (See Table 4 on the following page for a list of major participants). During the tenure of the RCUM, the cast of major participants was altered only slightly, to incorporate additional participants, and to dismiss inactive
participants.

**TABLE 4 – MAJOR PARTICIPANTS, RCUM TECHNICAL HEARINGS**

<table>
<thead>
<tr>
<th>INTEREST</th>
<th>ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry (5)</td>
<td>B.C. and Yukon Chamber of Mines</td>
</tr>
<tr>
<td></td>
<td>Consolidated Rexspar Minerals and Chemicals Ltd.</td>
</tr>
<tr>
<td></td>
<td>Mining Association of B.C.</td>
</tr>
<tr>
<td></td>
<td>Norcen Energy Resources</td>
</tr>
<tr>
<td></td>
<td>PNC Exploration (Canada) Ltd.</td>
</tr>
<tr>
<td>Government (3)</td>
<td>B.C. Ministry of Energy, Mines, and Petroleum Resources</td>
</tr>
<tr>
<td></td>
<td>B.C. Ministry of Environment</td>
</tr>
<tr>
<td></td>
<td>B.C. Ministry of Health</td>
</tr>
<tr>
<td>Commission (1)</td>
<td>Commission Counsel</td>
</tr>
<tr>
<td>Labour (2)</td>
<td>Confederation of Canadian Unions</td>
</tr>
<tr>
<td></td>
<td>B.C. Federation of Labour and United Steelworkers of America</td>
</tr>
<tr>
<td>Environment (5)</td>
<td>Greenpeace Foundation</td>
</tr>
<tr>
<td></td>
<td>West Coast Environmental Law Assn.</td>
</tr>
<tr>
<td></td>
<td>Yellowhead Ecological Association</td>
</tr>
<tr>
<td></td>
<td>Clearwater; and Kamloops</td>
</tr>
<tr>
<td></td>
<td>Environmental Alliance Against Uranium Mining</td>
</tr>
<tr>
<td>Community/Regional (3)</td>
<td>Atlin Community Association</td>
</tr>
<tr>
<td></td>
<td>Coalition of Concerned Citizens</td>
</tr>
<tr>
<td></td>
<td>of the Bulkley-Nechako</td>
</tr>
<tr>
<td></td>
<td>Joint Committee Uranium Technical Hearings</td>
</tr>
<tr>
<td>Peace/Anti-Nuclear (3)</td>
<td>Kootenay Nuclear Study Group</td>
</tr>
<tr>
<td>Agriculture (1)</td>
<td>South Kelowna Irrigation District</td>
</tr>
<tr>
<td>Native (1)</td>
<td>Union of B.C. Indian Chiefs</td>
</tr>
<tr>
<td>Church (1)</td>
<td>B.C. Conference United Church of Canada</td>
</tr>
<tr>
<td>Health (1)</td>
<td>B.C. Medical Association</td>
</tr>
<tr>
<td>(Total—25)</td>
<td></td>
</tr>
</tbody>
</table>

Table Four above identifies the major participants of the
technical hearings of the RCUM, as designated by the last edition of Preliminary Rulings, on October 10, 1979. Participants represent a spectrum of interests, including those of government, industry, and a number of public interests—including health, environment, anti-nuclear, and labour. This introduction to the participants of the case studies indicates certain characteristics of the tribunals which uphold the pluralist model. A plurality of organizations, and interests are represented at both sets of hearings. The RCUM as a consultative tribunal is characterized by representation of a wider spectrum of interests than the administrative PCAB hearings. Extensive publicity, the availability of funding for public participation, the investigative orientation of the Inquiry, the nature of the issues, and the province-wide scope of the Inquiry have been factors conducive to eliciting more widespread input and support.

4.3 - The Identification of the Public Interest

Individuals and groups identify themselves as representing the public interest, or one of many public interests. The nature of this process is voluntary and subjective, although it is mediated by and may be defined by the tribunal. The sense of representation that I use here is a "speaking on behalf of", and does not include the specificity and economic relationship of legal representation, nor the formality and accountability of political representation. Representation in the tribunal is rather an informal but routine feature by which speakers extend their presentations to an identified constituency and interest.
Although formal criteria for identifying interest are absent, speakers routinely refer to a social organization which locates, expands, and credits their submissions as "public".

**Personal Submissions**

Individual speakers connect themselves to a social organization which ranges from family to occupational and community bases. Speakers claim to speak for their children, spouse, parents, or the family as a unit. Speakers refer to a "community" with which they identify, referring to geographic and social, groupings. A community may be represented through a speaker's reference to others living in the same area or sharing similar points of view. Speakers claim residence and geographic, regional, or community membership in an area by providing a minimal or expanded address. In the RCUM community hearings, speakers frequently prefaced their presentations with an address in the area: "My name is Nan McGarvie and I live in Rock Creek." (RCUM 10:1406) During the PCAB hearings, appellants introduced themselves as residents of the South Okanagan, citing their addresses, the locality of their work and affiliations. Speakers also enhance claims of community membership with chronological and biographical support. Speakers in the community hearings of the RCUM often specified that they had lived in an area a number of years, or had spent their childhood in the area.

Individual speakers also extend their representative capacity through topical, or substantive representation. That is, speakers may refer to a community of beliefs or perspectives with regards to an issue. They refer to a shared ideological
or political perspective, as in the 1980 PCAB hearings when Mr. Worsley of Vernon stated that he spoke for himself and "others like me", referring to a community of shared perspectives. This reference to a social organization of others extends the personal to the public:

...my name is Doug Pitney, I'm a resident of Kelowna. I'm speaking on behalf of, I guess, Joe Public (RCUM 5: 507).

Thus, individual participants in the public hearing present themselves as speaking on behalf of general, and frequently unspecified populations. Their presentations indicate a representative capacity which conveys the speaker's extension beyond the "personal", to the "public", (and in the context of this study, to the "political"). However, this extension is indirect, informal, and has no official status. "Personal" speakers are not accountable; their constituents are not officially counted and labelled. Participation in the tribunal by individuals personalizes the political process—it illustrates the accessibility of the decision-making process. The public interest is identified in this context as both cumulative, built on the sum of the presentations of individual speakers, and collective in its informal representative nature.

Public Interest Organizations

Participation in the public hearing, in keeping with the contemporary pluralist model, is primarily exercised by and oriented to the representation of organizations or groups. This theoretically provides for greater institutional efficiency, avoids redundance and adds force to submissions. In the case
studies, the consultative tribunal's formal identification and funding requirements of major participants reinforced this organizational thrust of public interest intervention. Dr. Bates of the RCUM presented the following guidelines for funding at the first of the hearings, an overview session.

There should be an ascertainable interest that ought to be represented at the Inquiry. It should be established that separate and adequate representation of that interest will make a substantial contribution to the Inquiry. Those seeking funds should have a record of concern for or should have demonstrated in one way or another, the interest which they represent.

It should be in general shown that those seeking funds do not have sufficient financial resources to enable them to bring those concerns before us and will require funds to do so, and those seeking funds should have a fairly clear proposal as to the use they intend to make of them and should be sufficiently well organized either as individuals or as groups to account for the funds. In order to avoid duplication, various groups of similar interests in different parts of the province, will be encouraged to jointly work towards a brief for presentation to avoid duplication and also to assist such groups in any way we can (RCUM 1979:9-10).

Identification of the public interest is thus directed by the consultative tribunal for economic and bureaucratic purposes. Organizations who met the criteria of the RCUM were designated major participants. The separation of interests, organizational credibility, financial need and coordination of efforts called for by the tribunal was a method of negotiating who and how all interests, including the public interest would be represented. For the administrative tribunal, interests were defined through the adversarial nature of the appeal process, and the Board did not play an active role in the construction of interests.

Although there is no formal prescription for the identifi-
cation of interest, a similarity of methods is used to construct a public interest. As in the production of personal submissions, speakers rely on occupational and organizational features to produce an identity. Speakers often present themselves as a member of a profession or trade, whose work is characterized as relevant to the issues at hand. As representatives of organizations, speakers incorporate their occupation as well as the organization of that occupation to establish both relevance and the grounds of their intervention. Health practitioners, such as doctors and registered nurses, are among the occupations cited by speakers at the RCUM hearings. In the following example, a doctor in the town of Clearwater defines the nature of the interests for which he speaks:

Dr. Woollard: My name is Robert Woollard. I live here in Clearwater. I'd like to, if I may, wear two hats today, on separate occasions.

Initially, my hat as the Chairman of the Environmental Health Committee of the British Columbia Medical Association and break (sic) a brief statement and presentation to the Commission of Inquiry, after which I would like to make a personal brief on behalf of myself and my family.

The initial discussion, is on behalf of the B.C.M.A. The B.C.M.A. has been, as you're aware, actively concerned about the uranium mining issue for two years now and we have, through the Environmental Health Committee, attempted to establish a responsible attitude and to help to formulate the issues and to, most particularly formulate public involvement in the decision making leading up to the possible introduction of uranium mining into British Columbia (RCUM 1979:636-637).

The organizational basis and the substantive interest of the speaker are revealed in this statement. The formal organization of groups, and especially the designation of office, infer the delegation of a speaker. In addition, substantive rele-
vance connotes a participant's "right" to speak. Through Dr. Woollard's brief description of the perspectives and activities of the Environmental Health Committee, he establishes relevance, commitment, and knowledge concerning the issues at hand.

Through the identification of their work and the perspective to be adopted concerning the issues, participants establish relevance and concern; they justify their participation. Most importantly, in the present context, they extend the base of their representation. Let us examine a few more examples of representation constructed through substantive interests. In the community hearings of the RCUM, one participant prefaced her remarks with the following:

I am Doreen Burnstill and a representative for the Inter-Church Committee who works for world development and education. We are a very small group and the Anglican representative, we work with third world people and with the interest of the Natives and we sponsor SPEC and People's Food Commission, Native Rights and C.C.N.R. in their endeavours (RCUM 4: 251).

This speaker identifies the interests she represents (church, world development, education). In addition, she extends her potential constituents (those for whom she speaks) through description of her organization's liaisons.

New organizations may be generated by the tribunal, as in the case of those groups with similar interests who combined forces in concurrence with the RCUM funding criteria noted earlier:

Mr. Garrick. Thank you very much. We welcome the establishment and opening of the public inquiry into uranium development in British Columbia. My name is David Garrick with SPEC, whose address for the record is 1603 West Fourth Avenue, Vancouver V6J 2L8.
I have been asked to present a joint opening statement to the British Columbia Public Inquiry into Uranium Mining, on behalf of the Canadian Scientific Pollution & Environmental Control Society, the Western Canada Chapter of the Sierra Club, the Federation of British Columbia Naturalists, the Telkwa Foundation and the Greenpeace Foundation.

We are also represented here by legal counsel, Ann Rounthwaite, who will outline our procedural recommendations, after I present our recommendations on content (RCUM 1: 84).

Some speakers describe their delegation as representatives, either through noting their position in the organization (as in the earlier example with Dr. Woollard) or through a description of the mandate of their selection, as in the following RCUM excerpt.

My name is Wayne McGrath. I reside at 3102 13th Street, Vernon. My telephone Number is 542-7744.

I'm here today representing the B.C. Branch of the Canadian Public Health Association. I presently serve as Vice-President of that Association.

The Canadian Public Health Association, commonly referred to as CPHA, is a nonpolitical, non-government association, and it's considered to be the major voice of Community Health in Canada.

On May 4th of this year, the Annual General Meeting of the B.C. Branch was held at which time a resolution was presented and carried by the membership of the B.C. Branch. Obviously we haven't had much time to prepare a brief and it is our intention, and it was the stated intention of the membership at the Annual General Meeting to present a more formal or technical brief this fall in Vancouver...(RCUM 4: 389-90).

Another method of establishing a mandate for a speaker's delegation is to refer to the office, or function of the speaker within the organization, as in the above example. In the 1978 PCAB hearings, for instance, the spokespersons for the SOEC present themselves as "Information Director", and "Research Director" of that organization.
Thus, speakers routinely introduce themselves, the organization and the interest which they represent through construction of a social organization. Although the process is flexible and informal, it is routine. However, this construction of representation does not always go unchallenged. Congruent with the adversarial nature of the administrative tribunal, it is subject to cross-examination. In the following example, Mr. Parchomchuk of the Okanagan Water Basin Board, (the proponent), cross-examines Mr. Lewis, of the SOEC, (the appellant), during the 1981 PCAB hearings.

Mr. Parchomchuk: Mr. Lewis, you stated that the Environmental Coalition has 200 members. The latest audited report indicates that there are presently only 32 voting members and 32 non-voting members. Can you explain this discrepancy?

Mr. Lewis: Well, we have a large number of people who are active in Coalition activities, who come to our meetings and so on and so on. As you're probably aware, if you have our Financial Statements and so on, we've only been incorporated under the Societies Act for one year. And so, all of our membership, and our mailing lists, that we maintain active correspondence with, have not become dues-paying members yet.

Mr. Parchomchuk: The Annual Report also states that none of the members have paid dues, as required in the Constitution. If this is part of the Constitution, does your Society in fact exist? If it does not exist, are you then representing yourself or the Society?

Mr. Lewis: The Society exists. We have no word from the Registrar of Societies that we don't exist.

Mr. Parchomchuk: But the members have not paid their dues as required, so how can they be considered as members?

Mr. Lewis: ...all our dues were paid up before our last annual general meeting....

Mr. Parchomchuk: Are you currently a resident of the Okanagan valley?
Mr. Lewis: Yes I am.

Mr. Parchomchuk: Your report indicates your address as being 3970 West 17th Avenue, Vancouver.

Mr. Lewis: Yes, I've been working down there part-time.

In this example, the public interest characterization of the appellant organization and the speaker's relationship to the issues and a constituency is queried under cross-examination. The membership of the appellant organization, and the geographic basis of the speaker's representative capacity are challenged. This excerpt is instructive because it reveals the potential force of any speaker's representative capacity. Although the pluralist model assumes a notion of balance, there is no means to assess and compare the weight of any interest vis-a-vis others. In the above example, the cross-examination process is an attempt to discredit the numerical basis and the local character of the appellant interest group. This points to the undisplayed and taken-for-granted character of representation. Within the tribunals, all interest groups are assumed to have the same weight, and are capable of challenging any other intervenor. However, through speakers' constructions of interest, both structural and substantive, the disparity among interest groups becomes more visible.

The participation of individuals and groups in the public interest, although formally unspecified, is systematically produced by speakers. The constituents, organizations, and interests on behalf of whom submissions are made, are taken to indicate the participation of the public. The means by which public interests are defined range from presentation of perso-
nal submissions to a more elaborate identification of representation. This practice is congruent with a pluralist perspective, which assumes the representative nature of public participation to be both appropriate and effective.

4.4-Heterogeneity and Public Interest Re-examined

According to the pluralist model, the heterogeneity of participation in the tribunal contributes to a balance among competing interests, and representation of the public interest ensures this balance. Examination of the participation process has revealed general accordance with this model, although differences between the tribunals and particular features of the intervention process raise additional problems.

In the administrative (PCAB) hearings participation was defined through the appeal process. There were few appellants, but these represented in 1978 a number of public interests, identified nominally as consumer, local economic, and environmental as well as personal interests. In the ensuing years only environmental interests were represented, the bulk of the appeal being carried over time by the SOEC. This experience does not reflect the diversity assumed by the pluralist perspective, but is explained in part by the nature of the tribunal. The administrative tribunal by nature requires only one appeal to trigger its hearing process. The lack of extensive appeals may be explained by the complex statutory regulations governing the appeal process, the lack of hearing and tribunal publicity, the lack of public funding, and the technical nature of the issues. The administrative tribunal is essentially an
adversary forum, and its conformity to the pluralist model is in its provision of balance to the decision-making process through presentation of competing input.

The RCUM hearings present a much more expansive picture of participation, both at community and formal/technical hearings. The spectrum of interests covered by the participating groups included government, industry, labour, and a variety of public interest groups, including church, anti-nuclear, health, labour, native, and environmental groups. The range and number of participants in this forum are more compatible with a pluralist concept of heterogeneity, and provide a variety of pro- and anti-mining forces.

A heterogeneity of participating interests, and intervention by public interest groups display congruence with the pluralist model. Moreover, the flexibility and informality of tribunal procedures is seen to encourage public interest groups' intervention. Speakers routinely call upon a social organization of the public, whether representing public interest organizations or a more diffuse and amorphous collective identity. Motivation for participation, in keeping with a liberal perspective, reflects civic responsibility and the existence of an open and publicly receptive decision-making process.

Nonetheless, a participatory critique of the hearing process challenges the extent of heterogeneity and the basis of representation exhibited in the tribunal. Interests are individually and subjectively identified by participants. There are no provisions in the hearing process for ensuring that all
relevant interests be identified and represented. The tribunal process fails to address the existence of objective interests, which Balbus defines as: "an effect by something on the individual which can be observed and measured by standards external to the individual's consciousness" (1971: 152). Thus, there is no guarantee that interests which stand to be affected by a proposed development (e.g., outdoor recreation, women, native) will be consulted by the tribunal. Although the proponent may be required by law to participate, both the incentive and the means of public interest participation remain discretionary and voluntary.

The genesis for participation is thus structurally imbalanced, with those with an economic or bureaucratic interest having economic and administrative incentive. In contrast, non-producer interests tend to be diffuse, and to lack an economic basis (Trebilcock 1978). Not only is there an imbalance in terms of motivation for preparation, but the differential abilities and resources available to competing interests result in a further disequilibrium. An imbalance in resources outside the hearings is reflected by the range and depth of participation within the tribunal. Moreover, the form of public representation practiced in the public hearing gives no assurance that speakers are accountable to their represented organizations or constituents. From a participatory and developmental perspective, the process displays a representation which may exist only on a formal procedural level. The actual involvement of the public in the issue (research, education,
lobbying) may be minimal. The emphasis, rather, is on the instrumental character of the hearing process—the nature of the decision to be made.

The lack of formal methods of counting and weighing the relative constituents and contributions of public and other participants is taken to indicate the balance of participants within the tribunal. However, it may indicate a failure to make visible the relative power of participants. The financial basis of organizational support, and the relationships between public, corporate, and government interests, do not surface as relevant issues. The potential for over- and under-representation of different interests is not disclosed by hearing procedures which in the pluralist fashion, need only to present the appearance of a multiplicity of differing points of view.

In a similar vein, not all representatives are present at all times during the hearings. For the PCAB hearings, although there is a formal plurality of appellants, the SOEC dominated the hearings, in the amount of time it took in presenting its submissions, cross-examining and being cross-examined, and in the number and scope of its arguments. In the RCUM hearings, Abbott notes the frequency of participation by a few major participants—B.C. Medical Association, B.C. Council for the United Church of Canada, Union of B.C. Indian Chiefs, South East Kelowna Irrigation District, West Coast Environmental Law Association and Environmental Alliance Against Uranium Mining (1980:49).

Thus, although a variety of interests may be officially represented, not all participants spend the same amount of time
in preparing and submitting presentations, in being present at proceedings, nor do all have available the same resources in making their submissions. What may seem from a pluralist perspective to be a balanced and heterogeneous sample of public participants may in practice be a number of disproportionately active or powerful participants, which challenges the purported balance of the forum.

While some of these problems, such as the lack of heterogeneity in the administrative hearing, indicate the inadequacy of the tribunal, others point to the pluralist model itself as the difficulty. From a critical perspective, therefore, representation of the public may be minimal and restricted in practice to a participatory elite which has little or no accountability to its constituents. The conformity of the hearing process to the pluralist model in terms of its provision for public representation is consistent with the critical perspective of state relations. The discretionary methods by which the tribunal mediates representation allow for the state to claim that a diversity of participation exists, and that the public is represented, which contributes to the legitimation of the forum. The appearance of public participation further endorses state and industry activity in the areas under discussion (herbicide applications, uranium mining).

1 The proponent was the Water Investigations Branch of the Ministry of Environment from 1978 to 1980. In 1981, the proponent was the Okanagan Basin Water Board.

2 Audience numbers ranged from zero to twelve, although the majority of the sessions attracted only two to three observers.
Audience Figures are approximate, and from Abbott (1980: 84). Other figures are drawn from RCUM transcripts.

See Appendix 2.2 - Participant Funding, for a description of the funding allocated to various public interest organizations.

Trebilcock notes that the total resources of 77 public interest groups are under $5 million, in contrast to corporate, trade, and professional lobbies, who in Ottawa alone number 300, with budgets totalling more than $120 million a year (Ross 1981:24).
CHAPTER 5
FAIRNESS OF PROCEDURES:
PREPARATION AND ORGANIZATION OF INTERVENTION

5.1-Introduction

Hearing procedures are assumed by the pluralist model to be governed by political standards of fairness. Descriptive accounts of the hearing process emphasize its objectivity and balance. However, formal descriptions of intervention procedures are typically restricted to quasi-judicial activities—presentation of submissions, cross-examination, and summation. They neglect the process and organization by which participants prepare to make a case. This includes assuming a burden of proof, research, accessing information, identifying and securing witnesses, complying with rules of evidence, and other procedures, some of which are initiated prior to the actual hearing process. These activities take place within a social organization which is often temporary, voluntary, and external to professional and bureaucratic networks. Recognition and description of these activities and the organization through which they are produced reveals an imbalance among intervenors in the preparation and practice of the hearing process which is not reflected by the pluralist model.
In this chapter, I will analyze the hearing procedures of the two case study hearings. I will begin with an overview of hearing procedures, referring to both the legal and political literature. A description of procedures of the case study hearings follows. I then describe the preliminary activities and social organization through which participants prepare for and engage in intervention, and discuss the implications of this analysis for the pluralist model.

Procedural Fairness

The pluralist model of participation which I developed earlier in the Dissertation addresses the public hearing process from a political perspective. The legal approach adopts a perspective of the hearing process which is concerned with procedural entitlement and procedural rights of affected interests. The majority of the literature on the public hearing has legal origins, and it is necessary to understanding the limitations of this perspective for a social and political analysis. In a general sense, the study of procedures is:

...the study of the procedures agencies are required to use and should use; more particularly, it is the study of the procedural rights that individuals and groups have to participate in making decisions...essentially rights to present information, analysis, and opinions from other sources (Evans:1980:27).

There is no universality with regards to hearing procedures. Generally, the procedures are decided through a mixture of the common law, legislation, and regulations. The law made by legislation and regulations "differs greatly among the provinces, and in each one it is a bewildering and diverse array, which defies generalized description" (Evans: 1980:28). The Law
Reform Commission of Canada has recommended that "general legislation should be enacted incorporating minimum administrative procedure safeguards or providing the means for the development of common procedural guidelines" (Law Reform Commission of Canada:1980).

The two concepts which I will briefly explore with regards to hearing procedures are those of "natural justice", and "fairness". Traditionally, fairness was associated with administrative matters, while the rules of natural justice applied to judicial concerns. The tendency towards judicial, as opposed to administrative functions, resulted in greater procedural entitlement. Since 1978, that distinction has been diminished, with greater emphasis on the second question, the choice and range of procedures. There has been a tendency to move away from the characterization of tribunals as either administrative or judicial/quasi-judicial, which has the effect of opening up more tribunals to court review in procedural matters. The distinction between judicial and administrative matters has eroded, and a concern for fairness is being increasingly articulated, although "fairness is still in the developmental stage in Canada" (Jordan: 1983). Natural justice is thus usually understood as including fairness (Evans 1980:32).

Principles of "fairness" and "natural justice" are key to a legal concern with procedures. They are used in the legal profession as a means of focusing attention on procedural matters—as concepts on the basis of which procedural issues are contested. The pluralist model of participation draws on the legal understanding of fairness, which is a concern with
procedural entitlement. Natural justice, or procedural due process, addresses two elements primary in the public hearing: procedures and bias. The two basic rules of natural justice are: "Audi Alteram Partem", or "let the other side be heard", and "Nemo Judex in Sua Causa", or "let no man be his own judge." Thus, in the legal context, rules of natural justice or fairness mean that participants are treated equally, and that they have certain rights, such as that of an unbiased decision, the opportunity to hear the other side, and the ability to cross-examine. The legal concept of fairness does not imply that participants have the same resources within the tribunal.

A political understanding of procedures further introduces concepts of competition and balance. The pluralist model suggests that hearing procedures are fair in that they are neutral, objective and rational. Through participation in these procedures, citizens are engaged in a form of competition, which, mediated through a mode of neutralized opposition, results in a balance of decisions, a compromise. It is assumed that the neutrality of the hearing procedures will eliminate, or dissolve, the inequalities among participants. Corresponding to the rules of natural justice, a pluralist model of hearings assumes that each participating interest will have a chance to be heard, and that the proceedings will be arbitrated by an impartial Board or Commission.

However, using a critical political perspective, one can challenge both the pluralist and legal models of the hearing process as inadequate. A concern with procedural entitlement
fails to provide a basis for assessing and comparing participants' resources for intervention. The liberal characterization of intervention as triggered and mediated by a variety of relatively equal interests disregards the economic interests and motivation, and disproportionate abilities of some interveningors. The pluralist model can be recognized as predicated on the individualized rights orientation of the legal model. Its inadequacy is only revealed by extending the analysis beyond the legal framework.

5.2-Description of Hearing Procedures

Quasi-Judicial Procedures

Although the lack of statutory provision for procedural guidelines has led to some divergence among tribunals, there are certain relatively standard procedures which have been adopted by a number of administrative agencies. The notions of balance and compromise reflected in the pluralist model are embodied in two general practices. The hearing is held before and mediated by a Board or Commission which is characterized as an impartial body. Hearing procedures call for a dual structure of participation, a dialogue among participants. Each participant speaks, and is held responsible for and cross-examined on this submission; each cross-examines others. Rules of presentation apply equally to all participants.

Participation in the public hearing typically involves the following steps:

1- Participants produce their witnesses. In administrative hearings, the proponent is usually the first to present evidence. Witnesses are typically chosen on the basis of expertise. The witnesses present their evidence, either through statement (written or verbal), or
2- The witness is cross-examined. The order of cross-examination is specific to the tribunal. Cross-examination may be done by the sponsoring participant, the Board, other participants, or the proponent, depending on the procedural rules adopted by the tribunal.

3- Summation of evidence may be presented by the participant, depending again on the procedural rules adopted by the tribunal. Then the process is repeated for other participants.

4- The Board or Commission makes a decision or recommendations and/or files a Final Report.

Through this process it is assumed that all participating interests have a similar opportunity to present their position, to query others, and to be heard before an arbitrating body.

Procedures of the Case Study Tribunals

The Pesticide Control Appeal Board

In Chapter 3 I described the appeal procedure, by which the hearing process is formally initiated. Prior to the hearings, the Board mails the prospective appellant basic procedural guidelines (Appendix 1.5). Section 49(4) of the Regulations provides that, "the Board in hearing an appeal may determine its own procedure and shall notify the appellant and other interested parties of the procedures to be taken". Although the Board must not breach the rules of natural justice, I have noted that these allow much variation in interpretation. Thus, the Board holds discretionary power with respect to issuing procedural guidelines. In the following, I will describe the procedures by which the PCAB appeal hearings take place, and which any appellant must follow. The procedure is a multi-step process, as follows:

1. Appellants first produce their witnesses. Witness-
ses give evidence through a question and answer format, or by statement. If a statement is read, it may be typed, with copies given to the Board and permit-holder.

2. The permit-holder cross-examines each witness, following their presentation.

3. Then the Board cross-examines the appellant's witness.

4. The appellants can then re-examine if new information has been disclosed at steps 2 or 3.

5. Following the presentations by the appellants, the permit-holder calls witnesses.

6. The appellants cross-examine the permit-holder's witnesses.

7. The Board cross-examines the permit holder's witnesses.

8. After all witnesses on both sides have been called, each side sums up their evidence. The permit-holder goes first, and the appellant gets the "last word".

9. Then, the Board makes a decision, which is usually mailed to both parties within a period of one to two weeks.

In addition to these procedures, there are a number of administrative activities which govern the documentation or recording of the proceedings. In the PCAB hearings, the proceedings are taped by the Board's secretary. They are not transcribed. Appellants must make records of the proceedings at their own time and expense in order to readily access past material. Other processes such as those governing the rules of evidence, are established by the Board and are less formal than courtroom procedures. Evidence should be relevant to the case, and the PCAB allows some flexibility in its acceptance of evidence. Hearsay is accepted, as are documents and exhibits and letters of opinion or fact from absent persons (McDade
Royal Commission of Inquiry into Uranium Mining

Under the provisions of the Public Inquiries Act, the Commissioners appointed to the Inquiry, Messrs. Bates, Murray and Raudsepp, are given wide powers within the Terms of Reference in determining the matters at issue. Like the Pesticide Control Act, the public hearing procedures are not articulated specifically within the statutory provisions of the Act. The Terms of Reference specified by the Order-In-Council establishing the RCUM required the Commissioners to "receive public input on these matters" (e.g., uranium mining, worker and public health and safety). Thus, although the powers of the Commission regarding hearing procedures were not stipulated by the B.C. Public Inquiries Act, like the PCAB, the Commission had considerable latitude to design and implement whatever procedures they considered in order.

The Commission first held an inaugural meeting in Vancouver on March 6. This meeting was held to give members of the public the chance "...to advise us on your views concerning our terms of reference, the timing and conduct of the Inquiry, and to discuss how you or other members of the public may most effectively participate in the work we have to do" (RCUM 1:6). At this time, the Commission announced its intention to hold public hearings in communities throughout the province, as well as technical hearings in Vancouver. Although the Commission intended originally to hold two sets of community hearings, one preceding the technical hearings, and one following, the latter were pre-empted by the cancellation of the Inquiry. In addition
to these hearings, the Commission announced it would accept written briefs. Thus, participation in the Inquiry would be possible in one or more of the following ways:

(a) by coming forward at the Community Hearings held in the various communities where uranium mining was of interest, or

(b) by attendance at the Technical Hearings where evidence would be presented and witnesses cross-examined on their evidence, or

(c) through written briefs filed with the Commission (RCUM 1980:279).

The Commissioners approved procedural rulings (which are contained in Appendix 2.1), for the information of participants. These rulings also contained the names of Major Participants and announced the structure of the Technical Hearings. I will discuss the procedures in greater depth below, with reference to the two major hearing types.

Community Hearings

The RCUM announced a series of "community" hearings:

"It is our intention to visit for as long a period of time as is required, every community close to known uranium deposits or areas of interest to the uranium mining industry" (RCUM 1:6).

The hearings were intended "to help the Commissioners better understand local concerns and hear evidence based on personal experiences." (RCUM 1980:279). Selection of the communities included the following considerations:

....Communities located near uranium exploration sites and showings known to the Commission at that time; the weight of public interest in a particular interest in a particular region as expressed in letters and telephone calls to the Commission; the response at the Inaugural Meetings; and regional representation (RCUM 1980:3).

During June and July, the Commission visited the following
communities, holding hearings in each: Kelowna, Clearwater, Kamloops, Rock Creek, Grand Forks, Castlegar, Williams Lake, Vanderhoof, Fort Nelson and Atlin.

The following procedures were adopted for the community hearings:

1. Mining companies presented submissions, discussing their interests in the area.

2. Members of the public presented their briefs, under oath, and according to a list drawn up by the Commission from previous correspondence with participants.

3. After hearing each brief, the Commissioners, if they wished, questioned the witness or commented on the brief. There was no provision for cross-examination. However, if anyone in attendance wished a matter to be clarified, this could be done at the time through the Chairman or later in the Technical Hearings.

Community hearing participants, as a rule, were not represented by lawyers. The proceedings were intended to be as informal as possible, "to permit and encourage participation by organizations, groups of concerned citizens, and individuals. Apart from rules of decorum, there were no formal rules established to govern these Hearings" (RCUM 1980:1).

Administrative procedures include the documentation of the proceedings. A complete transcript of the proceedings was kept, requiring the presence of official reporters and microphones. Participants presenting detailed or technical evidence at the community hearings were encouraged by the Commission to file presentations in advance with the Commission.

Technical Hearings

Following the Community Hearings, Technical Hearings were scheduled in order to "bring before the Commissioners, partici-
pants, and the public the extensive mass of technical evidence having a bearing on the Commission's Terms of Reference" (RCUM 1980:2). In these hearings, technical, environmental, and health problems related to the exploration, mining, and milling of uranium were to be discussed. The Technical Hearings were held from September 25, 1979 through February, 1980, when the Moratorium on uranium mining was announced.

The Technical Hearings were all held in Vancouver, at the Hotel Devonshire. They were held on a regular basis from Tuesdays through Fridays of designated weeks. The hearings were originally scheduled to run from September 25, 1979 to February 8, 1980. However, they were re-scheduled twice, each time lengthening the schedule to allow for cross-examination of all participants. The time had been extended to June 30, 1980 at the time of the announcement of the moratorium and the hearing cancellation.

The Preliminary Rulings drawn up by the Commission (and presented in Appendix 2.1), identified 10 distinct phases of the hearings as a means of ordering the scheduling of witnesses and presentation of evidence. These phases were as follows:

- Phase I. Overview
- Phase II. Exploration
- Phase III. Mining
- Phase IV. Milling and Chemical Extraction
- Phase V. Waste Management
- Phase VI. Environment Impact
- Phase VII. Public and Worker Health
- Phase VIII. Social Impact
Phase IX. Ethical Questions

Phase X. Jurisdiction, Regulations and Enforcement

In Chapter Four, I discussed the formal identification of participants by the Commission. Anyone advising the Commission that they wished to take an active part in the proceedings was deemed a participant, reflecting the subjective and voluntary basis of participation assumed by the pluralist model. Those wishing to participate in the proceedings on a regular basis and take an active part in cross-examination were designated "major participants". Although there was no cross-examination at the community hearings, a major emphasis of the technical hearings was the cross-examination of witnesses. The number of major participants fluctuated slightly throughout the hearings, but twenty-five had been named by the termination of the hearings (RCUM 1980:2). Certain major participants--mining companies who had ceased uranium exploration in B.C.-- withdrew from the Commission because their interests were no longer affected. Other participants, such as the SOEC, withdrew due to inadequacy of funding. Still others resigned due to economic and political issues, such as the Greenpeace withdrawal following the announcement of the Korean negotiation by Premier Bennett (See Chapter 3). Thus, major participants were not fixed entities, but the majority of them participated in a continuous manner.

A summary of the procedures of the Technical Hearings follows. (See Appendix 2.1 for a more complete description).

1. Sworn witnesses present their evidence. They are allowed 15-20 minutes in which to summarize their evi-
dence. Full statements have been filed previously with the Commission.

2. Witnesses are then cross-examined by Commission counsel, then by major participants, and finally, by members of the public.

3. Where time is inadequate for submission and cross examination, hearings are re-scheduled to continue the process.

At the Technical Hearings, the participants did not present evidence, but arranged with the Commissioners to have experts present evidence on their behalf. Participants actively cross-examined, however. Thus, in the Technical Hearings, as compared to the Community Hearings, and, to a lesser extent, the PCAB hearings, the primary role of participants was that of cross-examination. Many of the major participants were represented by legal counsel, but not all.

Administrative procedures were specified to a greater degree in the technical hearings, due to the closer conformity of the hearings to courtroom procedures. It was required that evidence be submitted to the Commission, and circulated among major participants two weeks prior to the appearance of the witness presenting it. All evidence submitted or referred to was filed as an exhibit. Proceedings were documented by court reporters and copies of the transcripts were available the following day for major participants. Proceedings were videotaped as well, and shown in Vancouver and Victoria on television.

The RCUM thus formally established procedures through the designation of two types of hearings: community/informal and Vancouver/technical. The dichotomy of hearing procedures used
under this format was not rigid. Many of the submissions presented in the Community Hearings, most notably those of mining companies, but also those of individuals and organizations, included a considerable amount of technical data. The Commission attempted to reduce the technical/lay dichotomy, and facilitate community participation in technical discussions through two mechanisms. It intended to hold a second set of hearings in the communities, following the technical sessions, in which local concerns could be presented, informed by the technical data which had been presented in the interim. It also attempted to disseminate the technical information to the communities through a regional library system, dispersal of videocassettes of each phase of the technical hearings and complete transcripts of the proceedings as well as other information. As I noted earlier, termination of the Inquiry prevented the second set of Community Hearings from taking place.

The above procedures are those considered to be the essence of tribunal activities. They are generally compatible with the pluralist model's criteria for fairness. As a means of contributing to greater public access, procedures are characterized as quasi-judicial, and attempts may be made by the Board/Commission to relax procedures. Instructions to prospective appellants explain the process in relatively simple and non-legal terms. Standardization of these essential procedures ensures fairness in that all participants in each forum are formally entitled to engage in the same process, irrespective of their interest. The submission--cross-examination--summation process contributes to a dialogue among participants, and en-
sures the possibility of a reply to each position. Hearing procedures are thereby considered to mediate and equalize the competition among various interests.

5.3-Making A Case -- The Preparation and Organization of Intervention

The hearing procedures described above, from the perspective of the pluralist model, produce a balance of input to the tribunal. Competing interests, whether the permit-holder and the appellants in the PCAB, or the variety of positions adopted with respect to uranium mining in the RCUM, are enabled to present and defend themselves and to cross-examine their opponents through compliance with these procedures. The pluralist model assumes that different groups will engage in competitive strategies which use the various resources and abilities accessible to them. Differences in resources reflect more than economic bases—they are also related to leadership, commitment, organizational strategies and membership. These different resources, although affecting participants' success to some degree, are balanced by the diversity of intervenors and the neutrality of the hearing process. Thus, the formal procedures adopted by the tribunals generally reflect the pluralist model.

Participants' preparation for and organization of the intervention process is largely ignored by these official descriptions. Preparation for intervention is individual and subjective, which obscures two major aspects of the activity. First, although unacknowledged and invisible within the formal
hearing process, preparation is extensive. Secondly, preparation and intervention for all participants require organizational support; skills and resources. In this section of the chapter, I will discuss this preparation for and organization of intervention.

Preparation for the hearings requires intervenors' activity in one or more of the following: research; communication with prospective witnesses; preparation of a brief/submission; communications with government agencies; organization of sponsoring group; and "networking" with kindred organizations. Research skills include a variety of procedures. The appellants must secure information with which to defend their case. In the herbicide case study, research required knowledge of and familiarity with a technical vocabulary, methodology, experiments, cases, and issues. The procurement of such information involves consultation of a variety of sources which include technical/science libraries (journals, textbooks, encyclopedias), researchers or professors engaged in the production and dissemination of such information, and lay information networks. Information must be continually updated, especially in reoccurring appeals, such as the PCAB example.

The intervenor's submission presents the grounds, or evidence, and the logic of one's appeal. Preparation of a submission, whether verbal, written, or both, requires extensive work. Materials in support of one's position must be organized, presented, and documented. I refer to this presentation of evidence and argument in support of one's appeal or stand as "making a case". In making a case, the participant
must summon up resources, information, "evidence" which supports her/his perspective on a given issue. I emphasize the production of evidence (the making of the case), rather than the substantive nature of the evidence as the immediate concern here. Making a case includes a number of activities for public participants, including the identification of issues, research of the issues, networking with other participant groups to secure information and contacts, correspondence with government agencies and technical staff, contacting persons to appear as expert witnesses, and the articulation of strategy around which the case will be made. Thus, in "making a case", participants engage in the following: they prepare for and enter into activities which "produce" a case; their efforts are mediated through an organization of procedures; and finally, their interests are substantively presented as ordered by these features. The burden of proof, the rules of evidence, access to information, and other factors will affect the success of any participant's ability to enter into and compete in the hearing process. Although these are essential to the ordering of participation, they are obscured in the majority of hearing accounts.

Making A Case - The Organization of Intervention

Making a case requires participants to engage in activity which will enable them to present evidence in support of their views before the hearing. This activity involves an extensive organization, which does not just involve the material activity of procuring research findings and witnesses, and carrying out the bureaucratic requirements of intervention. It also re-
quires a strategic and substantive organization, including an understanding of the issues, and a securing of materials to prove and disprove one's position.

In the administrative hearing, the legal concept of the "burden of proof" is a primary organizational feature. It is not so in the consultative hearing, due to the investigative nature and the structure of the process. The burden of proof refers to the "degree to which the party on which the onus is placed has to establish the validity of his case" (UBCIC 1980: 3-4). Typically, "the onus is on only one of the parties to demonstrate that its interpretation of the evidence has an essential validity" (UBCIC 1980:3). The burden of proof, from a legal perspective, involves the judgment of competing versions of the truth, and the attempt to discern which is more likely to be true.

The practical burden of proof must be distinguished from the legal burden. It involves producing the story, and includes those processes which the intervenor must engage in to put together a convincing argument for his/her case. Assuming the burden of proof involves challenging the status quo in these examples—making a case against the current regulatory and administrative rules. In my analysis, I am concerned especially with the assumption of the practical burden of proof.

The Pesticide Control Appeal Board

The burden of proof in the PCAB hearings is placed on the appellant through the tribunal's appeal structure. As I pointed out in Chapter Three, intervention in this administrative
hearing takes the form of an appeal of the Administrator's decision to approve an application permit for pesticide applications. Section Four of the Pesticide Control Act states that the Administrator must be "satisfied that application of the pesticide will not cause an unreasonable adverse effect."

While the onus was on the proponent at earlier stages in the decision-making process to establish the validity of his case, the appeal process shifts that onus to the appellant. Thus, in appealing the Administrator's decision, the appellant must make a case which will satisfy the Board that the pesticide will cause an unreasonable adverse effect.

In making a case the appellant is required to amass evidence which will indicate the potential harmful effects to be incurred through the application of the pesticide. The real possibility of harm must be demonstrated.

...Though an appellant does not seem to have to go as far as proving actual harm will directly occur, he or she should expect to have to show a real probability that the pesticide will contact the potential victims in concentrations in which it will likely be harmful, which is as close as one can come before-the-fact to showing that harm will occur. Thus, an appellant is advised to present evidence relating to concentrations, to run-off, to degradation and persistence, and similar technical facts (McDade 1981:4).

Thus, in participating in these appeal hearings, the appellant is required to assume the practical and legal burdens of proof. This involves an organization of intervention through the presentation of material in such a way that it will contribute to a case for an "unreasonable adverse effect".

The appeal process requires at the outset the appellant's identification of grounds for the appeal, which are submitted
in general form with the launching of the formal appeal. (See Appendix 1.6.) In the case study hearings, all appellants engaged in some preparatory work. All identified grounds for the appeal of the proposed application, which included a risk to human health, fish and wildlife, and agricultural crops, economic costs, design and/or application of the program and environmental degradation.

An analysis of the temporal structure of the hearings is one means of examining the hearing process as a competitive and balanced activity. Table 5 on the following page examines the use of hearing time, (including submissions of evidence, cross-examination, and summation) by appellants and proponents during the 1978 hearings, and here the appellants' assumption of the practical burden of proof is illustrated. Although "time" alone cannot be taken to indicate the weight and force of a participant's submissions, it provides a rough indication of the volume of evidence submitted, especially because the Board does not have to accept irrelevant evidence.

In succeeding years, the hearings were greatly reduced in time, due partially to the SOEC's diminished use of expert witnesses, and the utilization of evidence presented in prior years without renewed presentation. However, the ratio of appellant/permit-holder time continued to illustrate the appellant's assumption of the practical burden of proof throughout the study. For instance, the 1980 hearings lasted approximately two days. The appellants used about 8 hours of hearing time (with about 1/2 hour allocated to Mr. Worsley, an indivi
### TABLE 5 - USE OF HEARING TIME - 1978 PCAB

<table>
<thead>
<tr>
<th>1978 Hearings</th>
<th>Speaker</th>
<th>Approximate Hearing Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 May</td>
<td>Mr. Jim Foord</td>
<td>2 hours 2+ hours</td>
</tr>
<tr>
<td></td>
<td>Osoyoos Rate-Payers Association</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mrs. George Pretty</td>
<td>1+ hour</td>
</tr>
<tr>
<td>31 May</td>
<td>Consumers Association of Canada (T. McComas)</td>
<td>3 hours</td>
</tr>
<tr>
<td>6 June</td>
<td>SOEC (and co-appellants)</td>
<td>4 hours (1 hearing day)</td>
</tr>
<tr>
<td>7 June</td>
<td>SOEC</td>
<td>5 hours (1 hearing day)</td>
</tr>
<tr>
<td>8 June</td>
<td>SOEC</td>
<td>7-8 hours (1 hearing day)</td>
</tr>
<tr>
<td>9 June</td>
<td>SOEC</td>
<td>5 hours (1 hearing day)</td>
</tr>
<tr>
<td>12 June</td>
<td>SOEC</td>
<td>6 hours (1 hearing day)</td>
</tr>
<tr>
<td>13 June</td>
<td>SOEC WIB(proponent)</td>
<td>3 hours 5 hours</td>
</tr>
<tr>
<td>14 June</td>
<td>SOEC WIB</td>
<td>1 hour 2 hours</td>
</tr>
</tbody>
</table>

**Total Hearing Time:** 40 hours

**Total Hearing Time, SOEC and co-appellants:** 32+ hours

" Proponent @7 hours

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...dual appellant), while the proponent, the WIB, presented and was cross-examined on its evidence for about 2 1/2 hours. In the 1981 hearings, which lasted only one day, the SOEC required about 4 hours to make its case, and be cross-examined, and an individual appellant required approximately 1/2+ hour to do the same. The proponent, in this case the Okanagan Basin Water...
Board, utilized about 1/2 hour of the hearing in making its case. The ratio of hearing time occupied by the SOEC ranges from three times that of the proponent (1980) to eight times that of the proponent (1981).

The imbalance created by this appeal structure also affects the appellant's ability to cross-examine the proponent. In the appeal hearing, the permit-holder is not required to present any evidence as the onus is on the appellant to make a case for the "unreasonable adverse effect". However, the appellant cannot cross-examine the proponent unless s/he has produced evidence. Also, unless the proponent has submitted evidence, the Board must make a decision based on the appellant's evidence, but within the context of prior administrative decisions favoring the proponent. In the 1978 hearings, the WIB did not initially produce any evidence, as this cross-examination between the appellant's counsel (McDade) and the permit-holder, represented by Newroth and Buchanan, illustrates.

McDade...Now what we're talking about here is evidence before the Board. Now is there any evidence that you have to present to the Board that 2,4-D is safe besides the fact that somebody told you it was safe?...

...So there is no evidence that you can give us—no studies, no citations of any material that shows it's safe at these levels? Yes or no?

Buchanan: I'm not going to answer the question.

McDade: It's not an unfair question, Dr. Buchanan. I'm asking you if your case, if you have any material to present to the Board that shows that 2,4-D is safe at those levels.

Buchanan: (No answer)

McDade: Nobody's asking you to prove that it's absolutely safe. Do you have any material, any evidence to show that at .001 ppm. it seems to be safe?...
McDade: You have nothing.... There are 120,000 people in this valley and you're telling us that you've seen nothing to indicate that it's safe.

Buchanan: I guess so.

McDade: So what, eh? Have you seen any tests showing lack of harm in the Prairies? There's been a lot made here about the use of 2,4-D in the Prairies....

I'm suggesting that if there had been a study showing that something was safe in the prairies we would have seen it here today but there is no study. We've brought in experts to show that 2,4-D is harmful; you've had a number of days to present evidence showing that it's not. Where is that evidence? We're waiting for it (PCAB 1978:10).

Mr. Warnock, speaking for the SOEC, discussed the implications of the appellant's assumption of the burden of proof for the decision to be made by the tribunal:

Warnock:...Now as our counsel has pointed out, we find it very difficult to imagine how the Board can make a decision when all the facts are presented by us...that we don't have any facts presented by the permit holder. The permit holder is not going to be here for seven days presenting their evidence and we're cross-examining it. ...We can't quite comprehend the basis upon which you are going to make that decision. If you're only going to consider our evidence, you'd have no alternative but to decide on our side. Our evidence is all on one side of the question (PCAB 1978:8).

In response to the appellant's submissions and cross-examination of the permit-holder, the Board decided "that the permittee would be required to show that the exercise of the permits would not cause any unreasonable adverse effect" (B.C. Supreme Court: 1978). The proponent subsequently submitted evidence in the PCAB hearings, as Table Five above indicated. Members of the SOEC have referred to the imbalanced presentation of evidence during the 1978 hearings, stating that
although they produced the bulk of the information, the Board decided against them:

The SOEC presented 6 1/2 days of evidence, using top experts. The WIB testified for 3 hours and gave no evidence. People couldn't figure that out. People think these Boards are impartial. They think if they can provide enough evidence, the Board will logically decide on their behalf, and they're stunned when they don't...since we had all the evidence they'd have to decide for us (Warnock 1980: Film).

Appellants have criticized the PCAB's structure of appeal, and the organizational and technical burden that this places on the appellant. They claim that the onus should be placed with the proponent, who has initiated the situation, as their witness, Dr. Van Seters states:

....I have grave doubts about the ability of the scientific community to establish safe levels...I think the responsibility lies with those who apply the chemical to prove that no untoward effects will be found at any concentration, not only immediately, but in the decades and future generations hence (PCAB 1978).

How would the pluralist theory explain this apparent imbalance in the administrative tribunal? The model, as I established earlier, assumes that the procedures of the hearings ensure a balance between competing interests. For each formal procedure in the hearing (i.e., cross-examination), competing interests have equal ability to take part. In accordance with a legal interpretation of the appeal process, the organization of intervention is thus compatible with pluralist notions of balance.

The proponent has initiated the permit process, and has made and won their case for the pesticide application, having convinced the Administrator and the Pesticide Control Committee of their position. This decision is being reviewed by the
appeal process, and not the permit-holder's case. To oppose this position, and to introduce a competing view, material must be introduced from the appellant. Thus, within the greater context of the administrative process and the appeal structure, the appellant's submissions counter the previous position of the Administrator. The administrative tribunal upholds the pluralist model to the extent that the larger decision-making structure provides this adversarial context.

Although the larger administrative context accommodates the appellant's difficulties to a certain extent, there is nonetheless an uneasiness in this pluralist explanation. From a critical political perspective, the structure of intervention within this administrative tribunal is recognized as imbalanced for the appellant. The lack of public access to earlier decision-making processes reveal a bureaucratic bias favouring the proponent. The appellant's assumption of the legal burden of proof, is stymied by a lack of access to earlier decisions which have been a basis for the decision. In addition to this imbalance, the appellant in the case studies submitted a disproportionate amount of evidence relative to the proponent. These critical views challenge the pluralist assumptions of competition and balance.

The organization of intervention, in the experience of the PCAB, also fails to reflect a balance of competing interests. Public participants must thus bear the practical onus of extensive preparation in making their case. The practical assumption of the burden of proof accompanying the legal onus creates
difficulties for appellants who as public interest intervenors, have relatively less technical, bureaucratic, and professional support than their opponents. While in the case of the PCAB, the proponent was actively involved in the research and administration of aquatic plant management, the SOEC and other appellants' efforts were produced by organizations or individuals whose preparations were voluntary, external to bureaucratic and scientific networks and small in scale, personnel, and resources. Familiarity with technical issues, research experience, and strategic organization are fundamental to participation in areas of technical knowledge, such as herbicide use. Moreover, this onus requires the appellant's expenditure of financial resources. It assumes an investment in time and persons to engage in research activities, procuring witnesses, and networking with other groups which have adopted similar organizational strategies.

Thus, a description of the practical organization and preparation of hearing activities reveals an imbalance among participating interests which is not revealed by a legal perspective of the process. The conformity of the hearing process to the pluralist model reflects an orientation to the larger administrative structure and a failure to incorporate "externa-lities" of participation as crucial to intervenors' success or failure.

The Royal Commission of Inquiry into Uranium Mining

The structure and organization of intervention in the RCUM conforms more readily to the pluralist model in its characterization of a balance among competing interests. This is due to
the preliminary and investigatory nature of the Inquiry, and also to the relative non-specificity of the issue. Dr. Bates noted, "Because the inquiry was not 'project-oriented', there was no one 'proponent' who would have the onus of presenting the bulk of the technical data" (RCUM 1980:279). The multiplicity of participants and lack of a direct adversary relation among them also tends to contribute to the image of a balanced hearing structure.

In making a case, participants organize their interventions both practically and substantively. The terms of reference of the RCUM set out general parameters which required participants' demonstration of the health and safety of uranium mining or its dangers, depending on their interest. Although no formal and legal burden of proof was established, public participants would place the onus of proving this case with mining interests, rather than on the public:

....it is implied that the onus is upon those advocating a more stringent standard to establish its necessity. We cannot accept this position and it is our assertion that the onus must be placed upon industry and regulatory agencies to defend their position (UBCIC 1980:4).

....Given the technical evidence presented to the Commission to date concerning the hazards of uranium, its mining and handling and transportation; the imperfect "state of the art" concerning long term storage of tailings...we believe the burden of proof clearly rests at this time on the case for mining uranium in B.C. (BCCUCC 1980:20).

The Commission itself took a primary role in organizing and mediating intervention. The Commission identified issues, scheduled phases and witnesses, and selected and called witnesses. It presented itself as the mediator of activities which
would be carried out in a collegial atmosphere. Although the Commission noted the polarity of opposing views, its assumption of the task of ordering the investigation, in conjunction with its adoption with quasi-judicial procedures, presumes to effect a balanced and relatively balanced hearing. As Chairman Bates says:

\[...\] The Commission found that it was necessary to bring two or more witnesses before it with different perspectives based on their expertise to ensure that the issue was fully and fairly canvassed, because there was no single witness who would be regarded as credible by the range of participants (Bates 1980:279).

Certain factors discouraged this balanced participation of competing interests. Although the Commissioners selected witnesses, appellants claimed that these over-represented industry (as I will discuss in Chapter Six). The scheduling of phases and abrupt cancellation of the remainder of the hearings also resulted in an imbalance, in that the majority of technical (e.g. Mining) phases had been heard, while those of a broader and social nature (Environmental Impact, Public and Worker Health, Social Impact, Ethics and Jurisdiction) had not been. Although the latter phases had been scheduled to include the appearance of more expert witnesses requested by public participants, this evidence was not cross-examined.

Nonetheless, the tribunal allowed for a balance through cross-examination of all witnesses by all participants. However, if we review the patterns of cross-examination in the phases which were heard, there is a tendency for major participants representing the public to play a far more active role than those representing government and industry. In the re-
search compiled by Abbott, major participants are listed according to the frequency of cross-examination of expert witnesses (1980:183). Of the 18 major participants listed, 5 represent industry, and only 1, government. Of 10 witnesses, cross-examination occurs 66 times, an average of 6 1/2 times per witness. Industry cross-examines 7 times within this sample, and government, once. Thus, the public participants engage in by far the majority of cross-examination exchanges, some 58 out of 66.

Such a count completely ignores the quality of cross-examination, and may not reflect redundancy. It does indicate a general tendency for public representatives to take on the burden of the practical activity, as reflected in cross-examination. In keeping with the pluralist model, a balance is thereby reflected, countering the dominance of pro-industry witnesses with public intervenors' cross-examination. The checks and balances of the formal procedures of the hearing may thus be said to encourage a balance among competing interests.

Making A Case -- Preparation for Intervention

Participants' preparation for intervention is assumed by the pluralist model to be an individual matter, reflecting the different approaches of intervenors. Yet, participants' abilities and success in making a case hinge on their preparation and organization of intervention. Preparation requires information on several levels, including both general background knowledge of the issues and positions, and case-specific information. Some information may be inaccessible due to the gene-
ral organization and production of knowledge in the scientific community, while other information may be strategically inaccessible, due to the adversarial nature of the hearing and the issue. In the case studies, access to information included access to scientific research and government data concerning regulations and programs. If information relevant to the case is inaccessible, it will be a problem for participants to assemble a cogent and forceful argument. In the case study hearings, much of the information formally available was strategically inaccessible to public interest participants, yet was available to other interests. This reveals an imbalance among participating interests, and a structural disadvantage to public interests.

The Pesticide Control Appeal Board

The issues of concern to the case study hearings are of a scientific and technical nature, and as such, pose problems for participation by lay persons. The pesticide issue requires a general understanding of biology and chemistry. But, beyond these basics, there are arguments in the field of pesticide use and in the scientific literature, citations of experiments, political discussions, controversy regarding regulations, testing, and so forth with which appellants should be familiar prior to embarking on an appeal. It is assumed by the pluralist model that such information is accessible to all competing interests.

How did the appellants in the PCAB hearings acquire the information necessary to make their case? The SOEC engaged in research in the area of pesticide use in the years prior to the
hearings, and in 1978 published *The Other Face of 2,4-D*, a book on the phenoxy herbicides and chemical contamination of water. The research involved in writing and publishing this Report prepared Coalition members for the appeal hearing by acquainting them with the research, terminology, concepts, and debates in the field of phenoxy herbicides. In addition:

...the publication of the book also had two other unexpected functions. It almost immediately connected the SOEC with a large number of other individuals and organizations working on the same issue around the world. At the same time, our organization became a magnet for data being developed in the field...Soon the Coalition's files contained more citations on 2,4-D than did those of the U.S. Environmental Protection Agency (Warnock and Lewis 1982:34).

Although much technical information is available in the area of pesticide research, it requires research skills, time, and physical accessibility to secure this material. Members of the lay public living in rural areas experience difficulties in accessing this material, as the following excerpt from the 1978 hearings illustrates. In this example, Mr. Warnock of the SOEC is being cross-examined by the proponent's counsel.

...You have to recognize that we are full-time in other professions,...in the Interior. We don't have staff members. We don't have access to libraries. It's very difficult to do a research project in this type of environment up here.

Whenever we had to do research, we've had to go to Vancouver. It takes a lot of effort, and time and money, to get away from a job and go to Vancouver. To go to Macmillan... Library to find out that half the articles on 2,4-D are checked out and wondering who's got them out. So it's difficult to do that kind of work....(PCAB:1978).

In addition to the physical and technical obstacles involved in obtaining information on pesticides, other difficul-
ties regarding information are presented. In the PCAB hearings the Board has not been interested in questions such as risk, nor has it been willing to explore the larger scientific controversy with regards to pesticide use when this information was not presented by the scientists directly involved (K. Roberts: 1984). Rather, the Board has been concerned with the proposed applications of the herbicide specified in the permit, and thus, to specific programs of the WIB. This material has often been inaccessible to the public.

Appellants have noted that information regarding the programs of the proponent has been difficult to acquire, although this information has been considered by them to be essential in their production of a case. In the 1979 hearings the appellant's counsel, Mr. Roberts, argued that this information should be available prior to the hearings, and that an adjournment would be acceptable until this information was delivered.

....the reason that I was making a request for this evidence is simply that for the appellant to make a fair assessment of the 1978 and 1977 programs, and make presentations before the Board, it would seem that it would be in everyone's best interest to have that information available....the appellant can then make presentations on the basis of this data, rather than shooting in the dark, because we don't have this data available (PCAB 1979).

The appellant must be able to identify, as well as to secure, information relevant to the making of her/his case. In 1980, the WIB as permit-holder again failed to present to the appellant, or make public, that information which it considered essential to its case. In a letter dated March 28, 1980 to appellant's counsel, Dr. Newroth of the WIB states:

....it is not customary for permit holders to provide information to appellants under the Pesticide Control Act
for the purpose of supporting the appellants' case. The Pesticide Control Appeal Board must presuppose that the appellants have evidence to support their case, without the permittee providing it for the appellant (Newroth 1980).

Thus, although information relevant to a specific issue may exist, it may not have been released to the public in time for the appellant's preparation for the hearing. In the 1979 and 1980 hearings, the SOEC made requests prior to the hearings to the Board, to the WIB, and to the Minister of the Environment to secure relevant information. Although most of the information was provided by the permit-holder, it was only presented during the hearing itself, and in the 1979 hearings, after the SOEC had requested an adjournment. In the 1980 hearings, the SOEC again experienced difficulty in securing the information. The absence of a subpoena to secure necessary information thus places additional problems for the appellant in this tribunal.

In addition to the lack of access to relevant program data, other specific information on which decisions by the Administrator and the Pesticide Control Committee had been based were unavailable to the appellant. The information on which decisions are made favouring the registration of the pesticide by Agriculture Canada has also been unavailable to the appellant.

Thus, in the administrative case study, access to general information has been more accessible than has specific program-based material. The securing of background scientific research and more general scientific information, although posing financial and strategic problems for the appellant, was possible, in
keeping with the pluralist model. Nonetheless, from a participatory critique, the inaccessibility of specific materials proved a disadvantage to the appellant, deterring from their competitive abilities and bringing into question the neutrality of the forum.

The Royal Commission of Inquiry into Uranium Mining

For the uranium hearings, preparation for intervention was facilitated by the Commission, whose library, staff, and fact-finding functions were accessible to all participants. Prior to the community hearings, the Commission sent a liaison person, Ms. Stairs, to the communities, to aid in coordination and preparation of intervention. Nonetheless, access to information was a major problem, and was referred to by participants as such throughout the hearings. Access to information was limited because of the defense nature of the nuclear issue, the controls maintained by the Atomic Energy Control Board, as well as by certain competitive features of the industry.

The issue of uranium mining, as I observed in Chapter Three, is located by public interest participants within the context of the development of nuclear power. Lack of access to general information was cited by major participants as a problem for them in making their case. The regulations and jurisdiction of this issue are complex, interdepartmental, and often clandestine. The following statement from the West Coast Environmental Law Association's Final Submission discusses the public's right to information on these issues.

The regulatory requirement that 'information obtained by the Atomic Energy Control Board, arising out of the
business and operation of a nuclear facility' (Vol.39,p.65-67) be confidential has allowed that agency to make policy which has far-reaching effects without having to inform the public of either the policy or the effects....While this oath of fidelity and secrecy may have had justification when the Act was first promulgated, on the now specious ground of 'national security', such justification can no longer be accepted, if for no other reason than the public must be informed in order to accurately assess the risks inherent in and possible benefits derived from the front-end of the nuclear fuel cycle....WCELA believes that people in Canada are entitled as of right to information on this 'peaceful' use which will clearly affect the nature and health of society (WCELA 1980:15).

The issue of uranium mining is defined by technical and scientific knowledge. It is to participants' advantage to have an understanding of chemistry, physics, and the nuclear fuel cycle to be able to recognize the issues associated with the mining of uranium. Community and technical participants required some basic grasp of the issues involved in order to make a case before the Commission. In addition to this general foundation of knowledge, major participants were required in practice, to have or secure an understanding of the regulation and economics of uranium mining, as well as to digest the technical information which was presented in the course of the hearings.

Access to information was germane to the community hearings, both in acquainting the public with the issues and the positions of various interests, as well as in providing motivation for participation. Abbott notes the inadequacy of Ms. Stairs' community educational and liaison work, due to lack of time and funding (1980). Participants complained about the lack of information throughout the community hearings, as illustrated by this excerpt from the Kelowna hearings:

146
Moelart: The other point and probably one of the most important points of concern that we have is the secrecy that surrounds the information to which other people have alluded and no matter how much and how intensely this may be denied by both government officials and executives of the mining industry, I have prima facie evidence...that shows that this is continuing...

....the report...that was deliberately withheld from the public...contains information to which I believe the public is entitled. I do not think there is any merit in treating the public as a group of imbeciles that aren't intelligent enough to reach their own conclusions. Wherever their health and their environment stands to be affected adversely or otherwise, that type of information....should be made available to them.

I can find no reason whatsoever for withholding that from them and the reason that is so often used by government departments is, the public may misinterpret it or we may unduly alarm him or whatever. If these reports are reliable and I assume based on what they cost, they should be, then this information must be made available to the public (RCUM 4:288-89).

One specific problem in accessing information related to mining was the identification of sites in which uranium exploration was taking place. Under the regulations, the sites of uranium exploration are only made available on request one year after the filing date. In order to identify these locations, members of the public had to engage in a lengthy search process. Thus, although the Commission had scheduled hearings in communities in areas known to be of interest to mining companies, the public did not necessarily know of the identity and location of proposed mining sites. In one instance, a participant revealed information of which the Commission was unaware. Ms. Madsen's submission identified the existence of exploration for uranium of which the Commission itself had not been informed.

Ms. Madsen: ...There are some 54,000 people living on
the west side of Okanagan Lake system from Summerland to the border...which is quite a few people.

Up until a few weeks ago, I would hazard a guess that 99 percent of these people did not know there was any uranium exploration going on in the immediate area. Those who did know were probably prospectors, mining company officials, those working for the Mining Division of the Provincial Government and the Federal Government, or others on the fringe...

Why was such a large segment of the population ignorant about uranium exploration in the area? Was it, one, because we were all very stupid or unwilling to learn anything; or, was it because the British Columbia Provincial Government and/or the Federal Government, and the Mining Fraternity were being very careful to keep the matter as quiet as possible? I think number two is the answer, and I will tell you in detail about my efforts to date. If this is the way we're supposed to get our information, I think there should be courses available in all secondary schools, colleges, and universities entitled "How do you ask questions when you don't have a clue of what you want to know?"...(RCUM 4:422-23).

The identification of uranium deposits had significance for participation in the hearings. Public knowledge of potential mining activity in their area may have prompted additional community input to the RCUM process.

Although the securing of information was cited by community participants as difficult, several major participants regarded the mandate of the Commission in alleviating this problem during the Technical Hearings as potentially useful. The Commission counsel, Mr. Anthony, chose not to use the subpoena powers of the Commission, although this was requested several times by participants as a tool for securing information. In the following example, Mr. Paterson, counsel for Yellowhead Ecological Association requests use of the Commission's subpoena powers, both for the securing of specific and general knowledge.
They (the mining companies) are not going to give this Commission any more information than they feel they want to, and it will be based on their historical experience of approaching the disclosure of information. It will be attended to with all of their historical concerns and caution and conservatism about that issue.

Even more so with the uranium industry, particularly in the uranium area which is noted to have a long record of the use of the false notion of confidentiality for commercial purposes to keep relevant information from the public....

The subpoena should not be left hanging in the closet like some kind of ill-used, seldom used skeleton and then trotted out, maybe, after we go through a few days of warnings and rumblings to be used when you know that there is something they won't give you. You use a subpoena to find out what's there, then you decide what's relevant....(RCUM 32:4896-7).

Although requested in additional instances, as well, the subpoena powers of the Commission were not used. As Abbott notes, "Mr. Anthony's interpretation of the subpoena power is time consuming in practice and puts the onus on major participants to demonstrate relevancy of a witness or document" (1980:56). In contrast, Mr. Anthony suggested that this was unnecessary, as all the information requested was forthcoming without recourse to this}. (RCUM 32:4899-4901). In addition, as Anthony later informed Abbott: "...the Commission is involved in an on-going competitive field. We are looking into an industry, not just one company.... "(RCUM 1980:46). The competitive position of companies vis-à-vis one another was used by the Commission and mining interests during the hearings as a rationale for keeping industry information confidential. This assumption of a liberal competitive economic framework is a further indication of the Commission's accordance with the pluralist framework.
Another procedural issue related to access to information is related to the legal notion of disclosure. In accordance with Preliminary Ruling No. 1, B.6.2, the Commission was allowed to retain certain privileged information in confidence. Questions of privilege arose twice during the hearings. The first concerned a document on young uranium deposits; the second, Norcen's contract with Korea Electric Company. In the hearings, the companies involved stated that they had the information, but insisted on its confidentiality. Following requests from major participants, however, the Commission released most of this information.

Thus, access to information within the RCUM has been cited by participants as a problem in making a case. According to public intervenors, formal procedural activities, in the form of subpoena and privilege have presented some problems for their ability to intervene successfully. These were not regarded by Commission counsel as critical to public intervention. The major problems for public intervenors seem to be associated with the more general lack of information, a product of the regulatory situation and the nuclear issue. According to the Commission, these problems extend to all participants, regardless of their interest. The Commission diminishes the structural inaccessibility of this information by referring to the problem as one of "communication". Nonetheless they address access to information specifically in the following excerpt from the First Interim Report on Uranium Exploration:

13. It has been brought to our attention at a number of the Public Hearings...that there have been difficulties with communication between all levels involved in
uranium exploration. Not only has the public found it difficult to get information to which one would have supposed it was clearly entitled,....but the extent of information distributed to local health officers seems to have been exceedingly variable; the communication between mining inspectors and health officers and the public seems to have been deficient; the communication between the exploration companies and the public has been variable and in some instances unsatisfactory; and the Atomic Energy Control Board, which has been issuing licenses for uranium exploration, seems to have been too distant from the problems in the area to have provided an effective source of information.

14. The public testimony that we have heard has provided us with a great deal of evidence of the frustration encountered by concerned members of the public, including physicians, ministers, and representatives of cattlemen, fruit growers or other food producers. It is clear that an improvement of this aspect of the present situation should be a priority (RCUM 1979:4).

Thus, access to information is formally recognized as problematic, revealing the inability of the tribunal to comply with the pluralist model of participation in all respects.

5.4-Procedural Fairness and The Pluralist Model

In this chapter, I reviewed the political fairness of procedures in the public hearing. I distinguished between formal methods of intervention, those typically described as equivalent to the hearing process, and informal methods by which participants prepare to intervene and proceed to organize their intervention activities. Hearing procedures, in the experience of the case studies, largely confirm the pluralist model, reflecting accessibility to public interest participants and a procedural balance among intervenors. However, there are exceptions to this pattern, some of which reflect inadequacies of specific tribunals, and others which point to more general problems within the pluralist model itself.

I have observed in the formal procedures of the hearing a
general compliance of the case study hearings to the concept of a balance among competing interests. Those primary procedures of submission, cross-examination, and summation by turn-taking ensure, at a procedural level, that all participants have available the same structure of intervention.

Making a case, however, involves far more than compliance with a set of established procedures. It calls into play a strategy of intervention, that is, a preparation and organization of intervention to which the pluralist model does not directly attend. Rather, preparation for intervention is regarded as the subjective concern of individual appellants. Differences among participants external to the hearing are recognized by the pluralist model to have some bearing on their ability to intervene. However, these differences do not appear in random patterns, but are a function of the interest of the intervenor. Differences among intervenors' resources and organizational support point to competitive imbalances which will affect the decisions produced by the tribunal.

Participants' organization of intervention is assumed to reflect differences among participating interests in approaches, concerns, and abilities. Yet, intervention is directed to and mediated by the hearing structure. In the administrative hearing, public interest appellants assumed the legal burden of proof which indicated a structural imbalance among participants. However, the legal explanation upholds the pluralist model as the appellant's onus is required to overcome prior decisions in the permit-holder's favour. Thus, a structural
balance in the larger administrative context is maintained. The consultative hearing is more consistent with the pluralist model. In this case, the Commission assumed much of the onus for organizing and scheduling phases, securing witnesses, identifying issues, and directing the Inquiry. The Commission's assumption of organizational activities, securing and distribution of funding for the intervenors, and bureaucratic support, facilitated participants' abilities to make a case. Nonetheless, relatively more preparation was required by public interest participants, who lacked a foundation of information, bureaucratic relations and academic networks from which to draw. Thus, the structural disadvantage of the public interest points to the imbalance among competing forces.

I observed participants' access to information as one stage in the preparation for intervention. In the administrative hearing, the appellants demonstrated their ability to secure a variety of general scientific information with respect to the case, both in publication of a research study and in their securing of expert witnesses. However, lack of access to specific material and data from the permit-holder regarding the pesticide application program was cited by appellants as a hindrance. The RCUM on the other hand acted as a facilitator to participants requesting information. Access to information, in this instance, was formally incorporated in the administrative function of the Commission (e.g., funding, library, staff). However, in this tribunal, general scientific information was less accessible due to the technical and defense nature of nuclear physics. The inaccessibility of specific
information was formally recognized by the tribunal as related to a competitive economic situation and inter-jurisdictional complexities.

The emphasis on the formal hearing process promotes the conformity of the hearing process to the pluralist model. Public accessibility to the forum and procedural balance among participating interests are generally illustrated by the tribunal experience. Divergence from the pluralist model can be explained as a bureaucratic and legal problem, resulting from administrative and statutory provisions for the tribunal. For instance, the inability of the administrative tribunal as an adversarial forum to address larger political, philosophical and scientific issues, and its mediation of specific issues explain to a certain extent the inadequacy of the tribunal to access and fund a greater diversity of participants. Other problems such as the appellant's assumptions of the burden of proof also may be explained by the administrative context of this tribunal.

The pluralist model of public participation in the tribunal has a limited utility for analysis of hearing procedures. The emphasis on formal procedures obscures access to information as an essential means of hearing preparation, and fails to recognize the disadvantage of public interest groups in securing information which is produced by administrative and corporate interests. The economic and regulatory context of state intervention is a factor in access to information which challenges the pluralist model of separation and competition among
multiple interests.

I argue that differences among participants affect the quality of their intervention, and that these differences are not random, but reveal a structural imbalance among public and other interest groups. These differences reflect the nature of the interest, its commitment to and incentive for participating, its organizational size, status, and resources, and its professional and technical liaisons. Although there is a great variety among public interest groups with regards to size, resources and staffing, they share a common disadvantage relative to their corporate and bureaucratic counterparts. Common attributes include the lack of direct economic interest in the issues under discussion, a lack of resources and manpower, and their exclusion from bureaucratic and professional networks.

Public interest groups, as illustrated by the experience of the case study hearings, have no direct economic interest in the scientific issues under discussion. Moreover, they are outside of an institutional context in which communications among corporations and government are ongoing. They are often supported by inadequate funding, and may be temporary in nature, generated by issue-specific concerns. Their small scale and relative lack of bureaucratic and institutional connections and credentials suggests that making a case for them involves disproportionately greater preparation than that of corporate and government participants. In the PCAB example, staff and resources of the Aquatic Plant Management Program of the Ministry of Environment were engaged in research, public relations, administration which contributed to their application. The
appellant, as members of the public and public interest groups, were required to voluntarily initiate the appeal process and make a case at their own cost and initiative. Preparation for intervention is made more difficult for public interest groups by the lack of staff and services, as well as the geographic alienation from sources of research and information. In addition, the kindred association of experts, and the professional organization of information and skills largely excludes lay participants from ready access to skills and information. Government and corporate interests, on the other hand, have the knowledge, resources, and motivation (largely in economic but also in professional and bureaucratic terms) to compete from an advantaged position vis-a-vis their public interest opponents.

Thus, analysis of participants' preparation and organization of intervention is consistent with criticisms of the pluralist model. Although balance among competing interests is assured by formal hearing procedures, preparation and organization for intervention requires resources which are differentially distributed. This reflects an imbalance among competing interests, with public interest groups additionally disadvantaged by their lack of economic incentives and resources. These social and economic inequalities are obscured by the quasi-judicial process.

Another limitation of the pluralist model stems from its inability to recognize the alliances among competing interests, most notably those among and within corporate and bureaucratic
interests. The bureaucratic context and alliances of the administrative tribunal are illustrated by an ongoing decision-making process concerning the herbicide application on the basis of proponent and government input. The RCUM, for instance, in its reluctance to publicize exploration sites and its context of ongoing uranium exploration, upheld the competitive liberal economic framework while claiming a posture of independence. These examples and others have indicated a challenge, not only to the policies and provisions of specific tribunals, but to the legitimacy of the pluralist model.
CHAPTER 6
FAIRNESS OF PROCEDURES: THE PRACTICE
OF INTERVENTION

6.1-Introduction

The practice of intervention reflects not only the preliminary and organizational activities, but the spatial organization of the hearing and the procedural and substantive expertise utilized by participants. According to the pluralist model, public participation and a balance of competing interests are ensured by the provision of physical and technical access to the hearing process. To some extent, this expectation is borne out by the experience of the case studies. Yet, a participatory critique of intervention practices reveals a competitive imbalance in which public interest groups are disadvantaged relative to others, questioning the neutrality of the hearing. In this chapter I will describe the setting in which the hearing occurs, and the availability of and use of expertise. In summary, I will reconsider the political fairness of hearing procedures, from the perspectives of the pluralist models and its critique.

6.2-The Participatory Setting

Although description of the hearings is neglected by the
majority of accounts, the location and physical organization of the hearings have implications for the interaction that takes place within the forum, and for the larger hearing process. Although the settings are formally accessible to the public, the spatial organization of the hearing demands oratorical skills and experience which are not equally available to all interests, which challenges concepts of public access and competitive balance.

The Pesticide Control Appeal Board

In discussing the setting of the PCAB hearings, I will describe both the geographical location and the micro-ecology, or immediate physical context and interaction of the hearings. The geographic location of the PCAB hearings reflected the location of the proposed herbicide application. In 1978, the proposed application sites ranged from Osoyoos Lake, in the south Okanagan, to Kalamalka Lake, in the north. (See Appendix 1.1). The hearings took place in Penticton, in a conference room at the Penticton Inn, a hotel in the downtown area. The setting was accessible to the public, and seating for public attendance was provided. The physical layout of the conference room is portrayed in the drawing on the following page.

In the 1978 hearings, Board members sat at a table in the "front" of the room, facing towards the entry. The appellants were seated at a table facing the Board. The permit-holders, representatives of the Water Investigations Branch of the Ministry of Environment were seated at right angles to the appellants and the Board, (and in-between them). Witnesses sat adjacent to the appellant. There was no witness stand.
The audience was located behind the appellant, and facing the Board. During the 1978 hearings, there was intermittent and slight audience attendance. The press table faced the permit-holder. Although the press was active and visible at the beginning of the hearing, the press table was not typically a source of major activity during the bulk of the proceedings.

The 1979 and 1980 PCAB hearings were held in Vernon, in proximity to the proposed application site. The specific setting was the Village Green Hotel, located in the northern area of the city and on the major highway. Here again, as visible in the drawing below, the Board members sat directly facing the appellants. The permit-holder was seated again at right angles.
and in-between the others. The audience, in which attendance was again minimal and sporadic, was seated behind the appellant. The drawing below reflects the physical organization of the 1979 hearing.

ILLUSTRATION 2 PCAB - 1979 HEARING SETTING

The 1981 hearing was held again in Penticton, although the proposed application site was in Osoyoos. In this case, unlike the earlier examples, the permit-holder sat facing the appellants and at right angles to the Board. In support of the permit-holder, the Okanagan Water Basin Board, a group of approximately 46 members of the Solana Bay Residents Association were seated behind and adjacent to the permit-holder, as illustrated on the following page.

The physical organization of social space which occurred within these hearing settings had ramifications for the inter-
action of the hearings. Access to the public was provided by the Board's geographic selection of a setting in proximity to the proposed pesticide application, as well as by its location of the hearings within "public" space. Seating was provided for audience members during all hearings, but the focus of the administrative hearing is in the courtyard—the U-shaped, or rectangular area bounded by appellants, permit-holder, Board members, press, and administrative staff.

ILLUSTRATION 3 PCAB - 1981 HEARING SETTING

The seating arrangement reflects the adversary nature of the proceedings. Participants are grouped together according to their role as proponent or appellant which reflects the opposition inherent in the process. The seating arrangement is characterized by a "relaxed formality". Seating at tables according to one's participatory status provides participants
with support and feedback among their "allies". Witnesses appearing for the participant may engage in informal discussion with their sponsor prior to and during the cross-examination process. The close physical proximity and joint common space of the table allow participants, their witnesses and counsel (if these are present) to discuss their task during the proceedings. It also provides reinforcement, and avoids the isolation and vulnerability which may be imparted by the relative isolation of the witness stand.

The settings in which the PCAB case study hearings took place are thus less formal than a courtroom setting, as the "quasi-judicial" description suggests. However, in comparison to other forums for social interaction they are relatively formal. The agenda follows the quasi-judicial procedures outlined earlier. The Board calls appellants, who make their case through the presentation of submissions, cross-examination, and summation of their case. Then the permit-holder follows suit, and the Board adjourns the hearing to reach their decision.

Royal Commission of Inquiry into Uranium Mining

Community Hearings

The community hearings of the RCUM were held throughout the interior of the Province, in towns and cities near uranium exploration and possible mining development. Although the setting of the community hearings varied considerably, depending on the size of the community and the exact location of the hearing, their proceedings were similar. I will now describe
the Kelowna hearings from my own observations.

ILLUSTRATION 4 - RCUM - KELOWNA COMMUNITY HEARING

The Kelowna community hearings were held in the Sandman Inn, not far from the downtown area. The Commissioners were seated in front of the room, before a table. Behind them, on the wall, were posted topographic maps and other display materials. The witness stand was placed to the right of the Commissioners. Further to the right was the press table, and to the right still further, and adjacent to the entry-way, the information officer of the Commission. Other Commission staff members, the Executive Secretary and Commission counsel, were seated at a table to the left of the Commissioners. To their left were the transcript reporters. The majority of the room was dedicated to audience seating, and there were over 100 people in attendance on the day of my observations. Indeed, the
room was expanded so as to accommodate the "overflow" crowds in attendance at this, the first of the community hearings. Each witness was seated alone, addressing the Commissioners and the audience. The considerable size of the audience was a dominant feature of this community hearing, especially in comparison with the administrative hearing discussed above.

The Commissioners characterized the community hearings as "informal" or "relatively informal".

The Community Hearings were planned to be held in as informal a manner as possible to permit and encourage participation...Apart from rules of decorum there were no formal rules established to govern these Hearings....All witnesses were sworn in and allowed to give their evidence whatever way they found most comfortable (RCUM 1980:1).

Yet, there were certain features which intervened to promote a sense of formality. The first of these was the size of the audience. Speaking before an audience of one hundred or more requires a formality of intent and address. Although one may speak extemporaneously and colloquially, large audience size and the recording of one's speech characterize it as public address. Related to this was the technical apparatus required for rendering the spoken word acoustically clear and intelligible to the audience. Microphones, cables, and recording mechanisms crowded the foreground of the setting. Speakers were called following the Commission's list, and they presented submissions under oath. The proceedings were amplified and recorded for transcription purposes. They were also documented by the media and videotaped for the Commission. The Commissioners were formally attired (suits and ties), although audience
members were dressed both formally and informally. In the view of some participants, the community hearings were far from "informal", as a speaker at the Rock Creek hearings noted:

We found ourselves in a physical arrangement which, in our opinion, was not designed to encourage dialogue or maximize participation. The position of the Commissioners on a raised platform facing the assemblage suggested adversaries rather than comrades in a common search for truth. The necessity of being called upon and of walking to a microphone before one could speak discouraged spontaneity and overlooked the fact that many people are more comfortable with speaking off the cuff than reading a prepared statement....What we are getting at is the process....seems formal enough to intimidate some people (RCUM 9:1282-83).

Although Dr. Bates as chairman encouraged a relaxed participation through his verbal informality, the size, technology, and setting of the hearing precluded a genuine informality.

Technical Hearings

The technical hearings of the RCUM were held at the Devonshire Hotel in downtown Vancouver, from September, 1979 through February, 1980. The physical organization of the hearing space remained similar throughout this time, although attendance varied, depending on the Phase and the witness being examined. The drawing on the next page illustrates the arrangement of the hearing space and the location of participants on September 25, 1979. This was the first day of the technical hearings, and although the room itself was expanded to accommodate greater audience participation, the general spatial layout was maintained through the remainder of the hearings.

The technical hearings were spatially arranged to accommodate four participating forces: Commissioners and their staff; witness(es); Major Participants; and audience and other parti-
Participants. The hearings utilized a large spatial area. In addition, during coffee breaks, participants would assemble in the outer hallway, and discuss issues pertaining to the hearings and the witnesses' testimony.

ILLUSTRATION 5 RCUM - TECHNICAL HEARINGS

However, during the hearings, most attention was oriented to the front of the room. The Commissioners sat at the very front of the room, facing all other participants, and backed by maps illustrating identified uranium deposits. Immediately to the Commission's left were Commission support staff, including the Executive Secretary and two secretaries. To their left were the videotape crew, court reporters, and the media. To the Commission's right was the witness stand. The information desk of the RCUM was located to the left, upon entering the room.
Facing the Commissioners and witness were several rows of tables at which were seated the major participants. Behind the major participants, were about twelve rows of chairs for audience observers. On September 25, during the morning hearing, there were approximately one hundred participants in the hearing/conference room. Of these, about sixty were audience participants, or observers. During the opening day of the forum, about three-fifths of participants were participants, another one-fifth were Commission staff, and another one-fifth major participants. Audience members declined after the initial hearings and represented only one-fifth of total attendance through the majority of the hearings.

The technical hearings have been characterized by the Commissioners as "formal". Although this designation was directed to the procedures, the setting reflected this formality as well. The relative isolation of the witness stand and the linear rows of audience seating are examples. However, major participants were seated at tables, allowing some informal and unrecorded discussion during the hearings. Tables were arranged in rows, but were not explicitly sited so as to encourage or reflect a division or opposition among participants. Public interest groups and mining groups were usually seated adjacent to one another during the hearings, reflecting the collegial nature of the proceedings. The focus of attention during the technical hearings was directed to the witness box, where cross-examination took place. The agenda was specified by the Commission, which scheduled expert witnesses to speak in accor-
dance with the formal hearing procedures, and in conjunction with scheduled phases of the hearing.

The Hearing Setting and Participation

In a comparison of the two tribunals, procedures and setting vary, depending on the number of participants and the size of the space, the technology, and the Board/Commission's intent and characterization of the hearing. In only one of the case studies, the community hearings of the RCUM, was the audience a significant factor numerically. During the other two hearings, and especially in the administrative hearing, the audience was generally passive and peripheral to the proceedings. Indeed, in the technical hearings of the RCUM the major participants (and the Commissioners) became, in effect, the audience. Thus, in characterizing the hearings as "public", the emphasis of the case study tribunals was directed to the immediate participants, rather than to the larger mass public audience. This is compatible with the pluralist model in terms of the provision of public access and a representative mode of participation.

From a critical participatory perspective, however, the formality of the tribunals is problematic for public access and a balance of participation. Public hearings occur in a culture in which public speaking is rarely undertaken by members of the lay public, but is confined to "public" (and largely political) figures. One cannot reduce the anomalous character of this mode of speech by a posture, however genuine, of "friendliness". The semi-formality of the setting is, from this perspective, a deterrent to widespread "grass-roots" popular participation.
The setting of the forum can also be perceived as a deterrent to a diversity of participating interests. Those interests represented by persons with less public speaking skills and experience, such as native groups and women, are placed at a competitive disadvantage in the public hearing, especially when the issues under investigation are scientific and technical in nature. The pluralist model has accommodated this problem by moving towards the expansion of opportunity for differing interests. A diversity of interests is accessed through these tribunals and funding for various public interests is available through tribunal-specific means, as in the consultative tribunal, or through subsidization of interest groups and provision of advocacy skills by other government mechanisms.

Nonetheless, from a critical perspective, access to the tribunal is not equally available to all affected interests, reflecting their different locations and experience in society. There is relatively greater access to the tribunal to bureaucratic and corporate interests who operate in a similar domain, and whose personnel and resources are complementary to the tribunal. The case studies reveal the under-participation of "minority" public interest groups, those disadvantaged by gender, race and class. Women, for instance, were under-represented as speakers, counsel, witnesses, as well as in the formal representation of women's interests. The under-representation of women may be explained by the technical and scientific nature of the issues, and the disproportionately low number of
women active in these fields. The paucity of women also reflects the public nature of the forum, the formality of the setting, and the inexperience of women in engaging in public discourse. Although the tribunal cannot rectify the societal imbalance of class and gender, nor can it claim to have eliminated this inequality through procedural provisions.

According to the pluralist model, the provision of access to all relevant interests and the additional financial support acts to expand and equalize the participatory option. The tribunals cannot respond to the cultural and social limitations of participation except as these are problems for procedural fairness. The formality of the hearing has been relaxed relative to other judicial forums, but must reflect the size and scope of the tribunal. The standardization of procedures enhances procedural fairness for all participants. Thus, in the experience of the case studies, the pluralist model is generally upheld with regards to the provision and organization of physical access to the hearing forum. From a critical perspective, nonetheless, inequalities in access originating beyond the hearing contribute to the disadvantage of public interest groups within the forum.

6.3-Expertise in Participation

The hearing process is characterized by orientation to, and reliance on, procedural and substantive expertise. The tribunals examined in the case studies are characterized as "quasi-judicial" forums, but they are nonetheless patterned generally after the judicial process and reflect a legal character. The technical and scientific nature of the issues
addressed by both tribunals also implies the reliance on and orientation to the assessment of scientific evidence.

Participants' use of expertise has certain ramifications for a discussion of procedures. Legal expertise is called on to define, argue and negotiate the formal procedures adopted by a Board/Commission. As these studies illustrate, it is also relied upon in doing cross-examination and becomes a weapon in the struggle among competing interests. Substantive expertise in the issues (pesticides, uranium) under discussion provides the basis and force of a participant's case. Substantive expertise is produced, defended and dismissed through participants' submissions and summations, presentations of expert witnesses, and the cross-examination process. Cross-examination is the method by which Board members and proponents or other participants query the appellant/intervenor concerning the submission s/he has presented.

In conjunction with the technical and scientific nature of the issues of these case studies, a pluralist perspective assumes that competing interests will be able to summon up resources such as expertise to aid in making a case. Funding provisions in the consultative tribunal have contributed to this access. However, the pluralist model understands the specific accessing of expertise by participants as a discretionary matter. Expertise is not addressed by formal procedures, except in the administrative functions of the RCUM. Here, the selection and preparation of expert witnesses were central to the investigative and facilitating roles of the tribunal. Thus,
expertise becomes the material of competition, the means by which interests become successful or fail.

I will now describe participants' reliance on and utilization of expertise, and demonstrate the extent of this reliance. For the purposes of this discussion, I want to clarify the use of the term "expertise". I am using "expertise" to denote certain skills, education, experience which characterize its user as a professional in her/his field. Expertise is being used in contrast with the term "lay", or non-expert. The "public", in the case studies, is largely represented by lay representatives. Although representatives of public interest groups, may be professionals in another field, they are not generally regarded by the tribunal as experts in the field under discussion. Thus, expertise is negotiable; it is a point of debate and strategy for all participants throughout the hearings.

Legal Counsel as Expertise

Legal counsel act as procedural experts for their clients. Both tribunals in this study allow for, but do not require, legal representation within their articulation of procedures. However, it is assumed that the public can participate without legal counsel in that procedures are explained prior to the hearings, and are quasi-judicial in nature. In the 1978, 1979, and 1980 PCAB hearings, legal counsel was retained collectively by the SOEC, SPEC, and Kelowna Greenpeace through the public advocacy services of the West Coast Environmental Law Association. Individuals, and the remainder of the appellant groups were not represented by counsel.
As legal counsel, the WCELA engaged in several activities on behalf of the appellant. They filed the appeal, communicated with the Administrator and the Board, and aided the appellants by preparing witnesses, including both expert witnesses and SOEC spokespersons. This included the identification of areas to be examined in the submission, preparation for cross-examination, and strategic organization for making a case.

During the 1978-1980 hearings, cross-examination was done both by counsel and SOEC spokespersons. However, appellants have stated in interviews that lack of experience was a hindrance to the success of their case. Mr. Warnock has stated, "Obviously, even though I knew the stuff really well, I knew his material, I knew how to get at it, I couldn't do it because I didn't have the experience" (1982). The spokesperson for the SOEC, unrepresented by counsel in 1981, later stated in an interview that four major issues arose during the course of the hearings which might have been negotiated, if not resolved, by the presence of counsel (Lewis 1982). These included procedural questions with regard to the status of observer/witnesses in the hearing, the status of evidence submitted to the Board in previous years and the question of re-submission of this evidence, the Board's restriction of cross-examination, and the introduction of evidence by the Board and proponent during cross-examination (Lewis 1982). Mr. Lewis states that the presence of counsel "allows you to keep your mind on the case and not have to think about the procedures" (1983).

Retention of counsel is considered to be an option rather
than a necessity. Counsel may be retained, but the appellant must individually assume the costs of this service. In the PCAB example, the WCELA provided its service on a gratis basis, but other legal preparation and support costs such as copying and correspondence, and provision of counsel's accommodations were borne by the appellant.

The SOEC and its co-appellants retained counsel in three of the four years of study. The proponent and the Board also had counsel for the same hearings. In 1981, no counsel were present in that capacity for any participants during the hearings. This indicates a relative equality of resources, in that both appellant and permit-holder as well as the Board were "backed" by legal resources during the same period of study.

In the RCUM hearings, the retention of counsel was linked to the type of hearing, as well as to funding. During the community hearings, participants were primarily, although not exclusively, lay spokespersons with the uranium interests represented by counsel. In the community hearings, participants' activities were limited to the presentation of submissions, with some questioning by the Commission, and occasional questions from the audience mediated through the Commission. There was no formal cross-examination. This is not to say that there was no need for legal counsel. Procedural problems did arise. In the first of the community hearings, for example, a participant questioned the Commission about their characterization of the hearings as "hearings", rather than "community meetings". Dismissed by the Chairman, he requested that his counsel be allowed to intervene:
Mr. Chataway (Okanagan Greenpeace Foundation): It seems to me according to your opening statements that--...I feel that this is not a public hearing, but a community meeting, and that your own correspondence has indicated this to us...and we...are not prepared at this point to go through the public hearing process. We have not funding, we have no checks, that is to do research, we have not time and if it is a public hearing may I ask you who is the hearing for....

......May I ask, is the--are the companies going to be presenting rationale and justification, or merely data?

The Chairman: The companies will present what they wish to present...I must ask you to sit down please.

Mr. Chataway: Well, could I ask for a moment's adjournment, could I get a clarification from my legal counsel, because I think there's a grave error taking place at the present moment.

The Chairman: No, I'm going to proceed. I would like to ask the Placer Company if they're ready to proceed.

Mr. Chataway: Could I ask you to allow my legal counsel to make a presentation on my behalf at this point on the preliminary procedural matters?

The Chairman: I would like him to consult with Mr. Anthony (Commission counsel)...(RCUM 3:811).

In this example, a lay participant's challenge to proceedings was dismissed by the Commission, and legal counsel was necessary to effect consideration of an objection.

In the technical hearings of the RCUM, legal counsel were far more conspicuous. This was partially a function of the more formal posture of the hearings, and the extensive cross-examination which took place. The presence of legal counsel is an indicator of the significance of the procedures for the policy-making process. The technical difficulty of the subject matter, and the additional value of procedural guidance in areas of technical information were other factors conducive to
the retention of counsel. Another factor was the availability of funding to public participants, which provided public participants with the possibility of retaining counsel to represent their interests.

As of October, 1979, many major participants were represented by counsel. The table on the following page indicates which interests were represented by legal counsel and which by lay speakers. Of the twenty major participants, ten of twenty or just slightly less than one-half, were represented by legal counsel. The ratio of lay spokespersons to legal counsel varied according to the interest represented, as Table Seven indicates. Thus, for all major interests, both lay and legal speakers were representatives. Thus, legal skills were considered to be necessary and were attainable by half the participants.

Nonetheless, relative to other interests, public participants are underrepresented by the legal profession. Although one half of speakers for all interests are legal counsel, less than one quarter of public interest groups were represented by counsel. The under-representation of lawyers in public interest groups reflects both lack of funding and ideology.

Major participants have remarked on the amount and benefit of legal expertise in the hearings. In their final report to the Inquiry, the United Church comments:

....there was no shortage of lawyers; in fact at times there seemed to be a "Legal Overloading." Of the 35 people who attended the final meeting of Commissioners and participants, 12 were lawyers, 2 were graduate legal workers and one an articling law student. Does each ministry of the government require its own lawyer?.... (BCCUCC 1980:39).
TABLE 6 - RCUM - LEGAL REPRESENTATION OF MAJOR PARTICIPANTS

<table>
<thead>
<tr>
<th></th>
<th>Counsel</th>
<th>Lay</th>
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<tr>
<td><strong>Commission</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission Counsel</td>
<td>X (+ 1 support)</td>
<td></td>
</tr>
<tr>
<td><strong>Government</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.C. Energy, Mines, &amp; Petroleum Resources</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>B.C. Ministry of Environment</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>B.C. Ministry of Health</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>Labour</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.C. Federation of Labour and United Steelworkers of America</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Confederation of Canadian Unions</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Mining Interests</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining Association of B.C.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Rexspar</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Norcen</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public Interest Groups</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atlin Community Association</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>B.C. Conference of the United Church of Canada</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>B.C. Medical Association</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Canadian Coalition of Nuclear Responsibility</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Environmental Alliance Against Uranium Mining</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Joint Committee--Uranium Technical Hearings</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Kootenay Nuclear Study Group</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Southeast Kelowna Irrigation District</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Union of B.C. Indian Chiefs</td>
<td>X*</td>
<td></td>
</tr>
<tr>
<td>West Coast Environmental Law Association</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Yellowhead Ecological Assn.</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Total 10 11

* - Articling Law Student

Although many public interest participants lacked their own counsel, counsel for other public interest groups acted on
their behalf to negotiate their demands before the Commission. For instance, the WCELA acted on behalf of the Atlin Community Association in putting forth its request for the subpoena, and the Confederation of Canadian Unions presented an argument for the use of the subpoena on behalf the Yellowhead Ecological Society.

<table>
<thead>
<tr>
<th>Interest</th>
<th>Counsel</th>
<th>Lay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td>1 (+ 1 support)</td>
<td></td>
</tr>
<tr>
<td>Government</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Labour</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Industry</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Public</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10</strong></td>
<td><strong>11</strong></td>
</tr>
</tbody>
</table>

Given the quasi-judicial format of the tribunal, and the legal preoccupation with procedures, lawyers have certain advantages over lay persons. The transcripts of the hearings document procedural disputes which occur throughout the hearings. A lawyer who represented one of the major participants indicated the following advantages:

"...if we've had litigation training, we're trained to see that he's (the expert witness is) paid for what he says... We're trained to be aggressive, and not to be intimidated... We have had training in logic, in argument, in reasoning. You could follow their (the expert's) argument, and say, 'that doesn't make sense.'... In addition, as a lawyer, the setting was familiar... (Boggild 1983)."

In the technical hearings, the proceedings were directed to the accumulation and investigation of information. The daily
activities of the hearing included witnesses' submissions and cross-examination. The primary activity of the major participants was thus in cross-examining witnesses, although they also were involved in preliminary activities such as the selection and preparation of witnesses. As lay witnesses, many major participants were inexperienced in cross-examination.

Very early in the technical hearings, when some of us realized how important to the hearings was the cross-examination of witnesses and how little we knew about this procedure, participants asked Commission Counsel to conduct a workshop on cross-examination. It didn't happen (BCCUCC 1980:39).

Legal counsel provide skills, knowledge and experience to their clients appropriate to the preparation of expert witnesses, the submission of evidence, cross-examination, and the request for and negotiation of procedural changes or activities. In spite of the Commission's "distaste for the legal mechanism" (Boggild 1983), the Inquiry's procedures followed an informal, but legal and professional format. The general conformity of the hearing to the pluralist model is indicated by this reliance on a standardized quasi-judicial format, and formal accessibility to legal counsel, which theoretically provide any participating interest with means of accessing and participating in the tribunal. From a critical perspective, however, the relative under-representation of public interest groups by counsel further indicates the competitive imbalance in the tribunal.

Expert Witnesses

In making a case, participants also draw on substantive expertise—knowledge, skills and experience relevant to the
issues under consideration by the tribunal. The consideration of scientific and technical issues poses particular problems for public interest intervenors who lack both general and specific knowledge in these domains. In the case studies, participants' submissions referred to research done or cited by others in academic, trade, government, and popular/lay articles, bibliographies, and reports. Participants also called and or cross-examined expert witnesses as a means of examining this expertise. In these tribunals, expertise is thus both the grounds of competition, the material being debated by various interests (i.e., health and safety of pesticides, or uranium mining), as well as the means by which the competition takes place. (i.e, discussion of phenoxy herbicide experiments, description of witnesses' credentials).

The characterization of a witness, or a speaker, as an "expert" is an activity central to the hearing. It is negotiable. Much of cross-examination is devoted to attempts to discredit witnesses' expertise. This may involve attacks on the relevance of their research, the adequacy of their training and experience, research methodology, and the standards of their publications. If one's expertise is challenged, one's submissions before the Commission are similarly rendered suspect. Thus, the presentation of any expert's credentials are a matter of consequence for the success of a participant's case. From a pluralist perspective, this expertise is being debated by and from competing perspectives. Participants' ability to make a case and to introduce and use expertise indicates their competitive prowess.
In the earlier discussion of the PCAB hearings, I noted that the legal and practical burdens of proof rest with the appellants. Throughout the duration of the hearings, the SOEC presented a great deal of evidence before the Board, in the form of written reports, verbal submissions, bibliographies, copies of reports they had acquired in the course of research, and the testimony of expert witnesses. The two speakers for the SOEC referred to themselves as "lay-experts" in that they considered themselves to have amassed "expert" knowledge on the phenoxy herbicide issue, although they had no formal qualifications, training or work experience in this area.

The SOEC also presented expert witnesses to testify before the Board. In 1978, they presented seven witnesses; in 1979 and 1980, the SOEC presented only two expert witnesses, and in 1981 it presented none. Throughout the hearings, however, the appellant presented documentation of secondary and tertiary evidence, as noted above. During this same time span, the permit-holder presented two expert witnesses and data on application programs, published by the Ministry of Environment. Thus, the appellant, reflecting their assumption of the burden of proof, produced the bulk of expert witnesses.

In the PCAB hearings, the appellants themselves presented the bulk of the submissions made to the Board, utilizing experts as a "backup" to their case, to supply specific expertise on a first-hand basis. The appellants selected the experts, and arranged for their appearance. They paid for the appearance of the appellants, including travel, room, board, and where appro-
priate, honoraria. Thus, the appellant assumed the practical burden of securing evidence which they thought would support their production of a case. The permit-holder, the WIB (1978-80) and Okanagan Water Basin Board (1981), also assumed the costs of presenting their witnesses.

In the RCUM hearings, formal recognition of and provision for the submission of "expertise" was provided by the division of the hearings into community (non-expert) and technical hearings. As noted earlier, the community hearings did not allow for the examination of evidence through a formal cross-examination process. The technical hearings were the major arena for the presentation and examination of expertise. In the RCUM hearings, the selection of witnesses was done by the Commission, after discussion and suggestions from major participants. Although, as noted earlier, the Commission's Final Report states that it sought a balance in experts, that is, in pro- and anti-uranium mining witnesses (RCUM 1980:279), this balance was offset by two structural considerations.

The first had to do with the structure of the hearings. The phases of the hearings were organized so that technical mining issues—Exploration, Mining, Milling and Chemical Extraction, and Waste Management—were held first, with the health, environmental, social, ethical, and judicial issues to be held later. However, with the cancellation of the Inquiry during the Worker and Public Health Phase, the remainder of these phases were not heard. Thus, although there were additional witnesses scheduled to appear on behalf of the public participants, these were pre-empted by the premature closure of
the hearings. The bulk of the witnesses appeared on behalf of industry and the commission, as the following Table illustrates.

### TABLE 8 - RCUM - APPEARANCE OF WITNESSES ACCORDING TO INTEREST

<table>
<thead>
<tr>
<th>Phase</th>
<th>Commission</th>
<th>Industry</th>
<th>Government</th>
<th>Labour</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6</td>
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<tr>
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<td>8</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Continuation of Above</td>
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<td>2</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>35</td>
<td>15</td>
<td>8</td>
<td>1</td>
<td>8</td>
</tr>
</tbody>
</table>

Total Witnesses -- 67

The above Table is only a partial list of the total of scheduled witnesses (and witness panels). It presents the number of witnesses who actually appeared prior to the cessation of the Inquiry. Of the total sixty-seven witnesses, almost half of these were provided by the Commission. Of these thirty-five witnesses, thirteen were from government, ten from industry, eight from universities, and the remaining four from hospitals and other locations. Here, there is a general trend of securing witnesses from government and industry.

This imbalance in representation is partially accounted for by the premature termination of the hearings.
....several essential categories were not dealt with prior to the termination of the Hearings but especially because the broad range of perspectives is not well represented in the testimony on record. Indeed, it is fair to say that it is predominantly the view of the nuclear industry including the mining companies, government research and regulatory agencies, and their consultants that is reflected (BCCUCC 1980:12).

Another problem in obtaining a balance among experts is the availability of credible witnesses for a given area of expertise. Public interest speakers noted the lack of witnesses to testify against uranium mining. They noted the employment of the majority of experts by government and industry, and the professional disadvantage of testifying against their peers.

During the Bates Inquiry into uranium mining, there could have been real disbenefits for a faculty member of a department such as Geological Sciences to have appeared as a witness for a group questioning the desirability of mining uranium...these disbenefits could apply to the career opportunities of the faculty member, the research grants he would receive and the employment opportunities for his students, inasmuch as mining companies provide research grants and employment opportunities for geology students (BCCUCC 1980:35).

With regard to the PCAB hearings, the appellants noted the general unavailability of witnesses to testify on their behalf:

To date, only one university professor in British Columbia has come forward in support of the public interest research groups' position...Other members of the academic community who were willing to lend their expertise had to be brought in from the United States.

On the other hand, there was no reluctance on the part of a number of professors to become involved on the government's side...The answer to this question of why there is persistent university support of government and industry may be that they are not convinced we are right. Or they may realize that public interest organizations have little money or power. Furthermore, we suspect there is a fear that professors who side with activist groups find it difficult to fund research programs, retain graduate students and get tenure. In British Columbia, it is uncommon to find University faculty taking a strong public stand against a government program. Per-
haps this situation is to be expected, but it is discouraging nonetheless for people struggling in remote areas on complex issues (Warnock and Lewis 1982:37).

From a pluralist perspective then, the tribunal has increased the parameters of the decision-making process by allowing for public participation in technical and scientific matters. In the case studies, all participants were capable of acquiring expertise and experts to testify on their behalf, especially in the RCUM where the tribunal acted as a facilitator for this process. In the case of the consultative tribunal, the Commission has attempted to "demystify" the technical realm of discourse, by encouraging questions and providing staff and expertise to aid participants. The lack of comparable expertise among opposing interests is seen to reflect a difference in resources, strategies, and perspectives.

However, from a critical perspective, the dichotomy between lay and expert knowledge is only superficially minimized by the hearing process. Although the case study tribunals diverged, due to their separate structures and provisions for funding, differential access to expertise has marked both tribunals. Public interest groups have been disadvantaged in accessing expertise relative to their government and corporate counterparts.

6.4 Hearing Procedures: Theory and Practice

Participation in the public hearing is enacted through a number of procedures which have been discussed in this and preceding chapters. The official description of hearing procedures emphasizes certain formal features of the hearing, including submission, cross-examination, and summation, which re-
reflect the quasi-judicial basis of the forum. These give each participant in the hearing the occasion to present her/his case, and then to be questioned by the Board and the opposing forces. A neutral and balanced "competition" among a variety of interests is thus displayed by the hearing process. I have observed that formal hearing procedures, as evidenced by the case studies, are consistent with the pluralist model.

However, I have shown how a description of formal procedures is insufficient as an analysis of the hearing process. It fails to address those informal and preliminary processes by which participants engage in making a case. The location and spatial organization of the hearings are influences which contribute to or detract from individuals' ability to participate. Access to procedural skills and expertise on the issues under discussion are critical to any participant's success in the forum. These must be incorporated into a description of hearing procedures.

I have observed that the pluralist model applies to a limited extent to these informal procedures. The location and the physical organization of the hearing setting are consistent with the pluralist expectations of public access inasmuch as they formally provide for members of the public to speak before or attend the tribunal. The standardization of procedures allows different interests to compete in the process on similar terms. Access to general information and expertise is available to a certain extent to all participating interests, and the subsidization of public interest groups by the consultative
inquiry contributes to the equality of participatory opportunity provided by the tribunal. However, the experience of public interest appellants in carrying out preliminary and organizational procedures reveals their competitive disadvantage in the tribunal. The pluralist model treats this inequality among participants as individually and subjectively produced. It fails to recognize the imbalance among participating interests as structurally located, the reflection of a larger societal inequality. Thus, differential access to expertise, and systematic under-representation of public interest groups must be recognized as a function of the nature and location of interests, rather than an anomalous and random occurrence.

Making a case is assumed to reflect the differential abilities and approaches of participants. In the PCAB, the regulatory process was located within a bureaucratic context in which public (non-producer, non-administrative) interests were structurally disadvantaged. In this tribunal, the appellant assumes the burden of proof. Lack of access to previous bureaucratic decisions and to current program and research information reflects the disadvantage of non-regulatory interests. Lack of funding for the appellant further discourages an effective appeal. The consultative hearing reflects more of a balance among intervenors. As an investigative tribunal, the RCUM itself actively assumed the functions of contracting research, securing expert witnesses, and educating participants and the public. The availability of funding for public interest organizations increased public access to the forum and contributed to their ability to make a case on behalf of their inte-
rests. Nonetheless, obstacles to public access to both general and specific information characterized the public interest experience. Thus, although there were differences between the tribunals in making a case, bureaucratic and entrepreneurial relations of proponents presented structural advantages not available to public interest groups.

Hearing settings, although technically available to all, may be seen from a critical perspective to discourage participation by the lay public and contribute to an imbalance among participating interests. The setting of the hearings organizes the process of participation through relatively formal means—participants are required to enter into a form of address which can be intimidating and alien to those inexperienced in public speaking. Public interest participation then becomes a process in which a restricted number of middle-class individuals take part. This limits the spectrum of interests represented, discourages widespread popular use of the forum, and contributes to the imbalance in competitive interests, with state and corporate interests financially and professionally capable of securing more experienced participants. The issues of the case study hearings, and the size and scope of the consultative hearings were further factors discouraging public input. Although the RCUM attempted to increase public access to the forum through public education (both substantive and procedural) and a posture of informality, the funding, issues and character of the tribunal limited the success of its efforts.

Access to procedural expertise was treated by the tribu-
nals as a competitive feature, in keeping with a pluralist mandate. Reliance on legal counsel was, although procedurally accessible, and practically helpful, addressed as an individual and optional aspect of participation. "Legal" and "lay" skills are not sharply differentiated by official accounts of hearing procedures. Although the RCUM distinguished between community and technical hearings, Dr. Bates stated that there was no different status in the evidence submitted at either hearing.

All the evidence whether verbal, written or whatever is accepted by the inquiry on exactly the same basis. There are no kind of Class 1 hearings and Class 2 hearings. All the evidence is accepted as evidence in front of the Commission on the same basis (RCUM 3:2).

In a similar vein, substantive expertise is regarded as generally accessible, accessed by research skills and individual motivation.

However, from a critical perspective, the professional and technical nature of the hearing process contributes to the imbalance among competing interests. Public participants, who lack resources and organizational strength comparable to those of government and industry, are placed at a disadvantage in a forum predicated on these skills. Moreover, the lack of recognition of hearing costs as a competitive factor allows participation to be regarded as accessible to all, rather than the product of resources which are unequally distributed. The appellant must bear the cost of sponsoring an expert in the PCBAB case, and even the funding measures provided by the RCUM, fail to ensure an equality of resources among participants. Moreover, the availability of credible expert witnesses willing to testify on behalf of public interest groups may be dimi-
nished by other factors, such as the professional interest of the expert, the links between her/his profession, government and industry, and the lack of personal, financial, and professional remuneration for an appearance.

Thus, from a critical perspective, the public hearing remains essentially a formal and professional process. Procedures may be less strict than in the courtroom tradition, but they nonetheless require knowledge of legal procedures and issues. Procedural expertise is differentially available to competing interests. Preliminary activities, by which participants muster their resources, organize their knowledge, and make their case, absorb a considerable amount of time, yet are largely ignored as essential elements of participation. Moreover, due to the extra-bureaucratic, inadequately funded, and temporary character of much public interest organization the public has relatively fewer resources with which to participate. The tribunal fails to recognize this inadequacy as structurally produced and systematically effecting an imbalance among competitors.

Thus, the pluralist model of participation presents a view of hearing procedures which is upheld at a general and formal level. In this perspective, competing interests interact through the intervention process to produce a balance of information and knowledge upon which decisions and recommendations are made. However, the ideal of fairness of procedures and public access through a balance among competing interests differs considerably from the experience of public interest parti-
cipation. Rather than acting as a "neutralizer", the proce-
dures may be viewed from a participatory perspective to contrib-
ute to the structural imbalance through which the public participates. The professional nature of the hearing which is
revealed by this analysis poses basic problems of inequality
and inaccessibility for those (in this case, public interest
groups) relatively lacking in those skills, or the ability to
procure those skills. Enthusiasm, alternative networks, and
having God or the common good on one's side do not undermine
the force of material factors and organization of production.
The reliance on professional skills and the lack of access to
resources, may be viewed to reflect and perpetuate societal
imbalance which are not visible in nor remedied by the plura-
list model.

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1Media attendance was not a prominent feature of the case
studies, especially in the administrative hearing. In the PCAB,
press coverage was only significant in 1978. In the RCUM,
media attendance fluctuated, increasing at times of economic
events regarding uranium or the attendance of controversial
speakers. Although the consultative hearing attempted to at-
tract greater news coverage as a means of extending public
access to the discussion, the technical nature of the issues
and standardized format of exchange discouraged this.
2

The West Coast Environmental Law Association provides
advocacy services for public interest intervention in environ-
mental matters.
3

In the Kelowna RCUM hearing, approximately twenty-five
women and one-hundred ten men attended the first day of the
hearing. There were no daycare facilities, and several women
with babies and small children were seated to the rear of the
room. Only one scheduled speaker of fifteen was a woman on
June 5. For the entire Kelowna hearings, nine participants of
thirty-eight were women.

During the first weeks of the technical hearings, about
one-third of the audience was composed of women (about fifteen
each day). Among the major participants, of whom twenty were
present during my observations, only two were represented by
women. None of the expert witnesses who appeared before the Commission were women.

In the PCAB, three appellants were, or were represented by, women. The SOEC produced several women as witnesses, but there were no women representing the permit-holder. In 1981, two women representing the Solana Bay Property Association appeared in support of the Okanagan Water Basin Board, the proponent. There were no women on the Board.

From a legal perspective, the quasi-judicial procedures of the case study hearings differ markedly from courtroom practice.

I adopt the tribunals' labelling of experts in this discussion, as I am not interested in whether or not an expert is an expert, but how expertise is used in the hearing process.

In 1981 the SOEC was not represented by legal counsel.

Not all participants were hindered in securing legal expertise because of finances. Some intentionally chose to "de-professionalize" and popularize the process by using lay representatives. Others selected speakers with appropriate technical backgrounds in the issues.

See Appendix 2.6 for a description of funding allocation by the Commission.

The Commission was responsible for securing Commission witnesses, preparing them, directing questions to them, and paying the costs of their appearance. The Commission also paid the costs of some major participants' witnesses, but the participant selected them and arranged for their appearance.
CHAPTER 7

THE NEUTRALITY OF THE DECISION-MAKING PROCESS

7.1-Introduction

Decision-making is assumed by the pluralist model to be a neutral activity, performed by an impartial Board/Commission on the basis of information brought before it by a number of interests, including those of the public. The experience of participants in the case studies generally conforms to the pluralist model. Decisions/recommendations are produced by Boards or Commissions and are seen to reflect consideration of the material brought before them. However, the regulatory structure of the administrative decision-making process, the "technocratic" composition of decision-making bodies and the limited extent of public participation in the actual decision-making process indicate from a critical perspective an imbalance in participation which creates a disadvantage for public interests and questions the independence of the tribunal from the state.

I will briefly review the pluralist model as it applies to the decision-making process prior to examining the administrative structure of the case study hearings. The composition of Board members and their role in the tribunal is next examined, followed by a summary and analysis of the neutrality of the
According to pluralist theory, the public hearing and other extra-electoral forums are means for expanding public input to the regulatory and policy-making processes of government, especially with regard to scientific and technical issues. The role of the public in the hearing is to present its opinions and information to the process through the appeal or intervention process. The public makes submissions, calls experts, and cross-examines regarding the issues under discussion, and its participation is assumed both to supplement the information assessed by the tribunal and to counter the material presented by competing interests. Decisions are understood to be made by an impartial Board/Commission, on the basis of this diverse information brought before them in the hearings.

7.2 - The Decision-Making Process in the Administrative Tribunal: The Pesticide Control Appeal Board

The Pesticide Control Appeal Board was designed primarily to hear appeals, and exercised its regulatory capacity in that way. The products of the hearing process, then, were decisions to either uphold or disallow the decision of the Administrator of the Pesticide Control Branch to approve a permit application. Before discussing the administrative context, grounds, and reasons for these decisions, I will review the actual decisions made by the Board regarding the case study hearings from 1978-1981.

Decisions of the Pesticide Control Appeal Board

One week after the 1978 2,4-D hearings were completed, a decision was reached by the Board. (See Appendix 1.6). The
Administrator's decision to allow the use of 2,4-D by the Water Investigations Branch was generally upheld by the Board. Only those permits for Osoyoos Lake were not allowed. In the remaining years of the case study, 1979-1981, the Board's decisions all favoured the Administrator's decision, that is, allowing the permits, and against the appeals. In 1979 and 1980, permits were requested for only Wood and Kalamalka Lakes, while in 1981, the permit was for Solana Bay in Osoyoos Lake. Thus, the decisions made by the Board in the case study hearings reveal a trend to the disallowing, or rejection of appeals, and the upholding of the Administrator's decision. During four years of appeals, only in one year (1978) were permits disallowed. Other decisions of the PCAB also reflect a tendency to support the administrative status quo. Kellett examines the decisions of the PCAB in the first two years of its existence, 1978-1979 (1980:10). Only seven appeals out of forty-six were allowed. Analysis of the 1981 record of the PCAB indicates that of one hundred sixty-five appeals, all were overturned (West Coast Environmental Law Research Foundation 1983). The decisions of the tribunal thus indicate their general support of the administrative status quo, and from a critical perspective, indicate an imbalance in the participatory process favouring bureaucratic interests.

The Administrative Context of Decision-Making

In Chapter Three I briefly examined the appeal process within which the hearing took place. The structure of the regulatory system and the reliance on earlier closed decision-
making processes point to a disadvantage for public interest appellants, and challenge the pluralist model. The procedure for permit applications follows this general pattern:

**TABLE 9 - PCAB APPEAL PROCEDURE**

<table>
<thead>
<tr>
<th>Permit Application</th>
<th>Administrator, Pesticide Control Branch</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Pesticide Control Committee</td>
</tr>
<tr>
<td></td>
<td>(Representatives from Ministries of Health, Agriculture, Forests, Environment, Recreation and Conservation)</td>
</tr>
<tr>
<td></td>
<td>Administrator, Pesticide Control Branch</td>
</tr>
<tr>
<td></td>
<td>(Accept/ Reject Permit)</td>
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<tr>
<td></td>
<td>(If Accepted)</td>
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<tr>
<td></td>
<td>Public Notification</td>
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<tr>
<td></td>
<td>Appellants Register Appeal</td>
</tr>
<tr>
<td></td>
<td>Pesticide Control Appeal Board</td>
</tr>
<tr>
<td></td>
<td>Appeal Hearing</td>
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<td></td>
<td>Decision</td>
</tr>
<tr>
<td></td>
<td>(Permit allowed, disallowed, modified)</td>
</tr>
</tbody>
</table>

The application is first submitted to the Administrator,
who, in conjunction with the Pesticide Control Committee, decides whether or not to approve it. If approved, the public is notified, and appellants may initiate an appeal. (The public is not notified of rejected appeals.) Following the appeal hearing, the Board makes a decision regarding the Administrator's approval. Thus, the hearing does not appear at the beginning of the consideration of pesticide use. Rather, it follows and counters an earlier decision made by the Administrator of the Branch, in conjunction with his advisors. The PCAB, located within the same Ministry is thus making a decision which will accord with, or nullify, that of the Administrator of that branch.

Prior to this process, a decision has been made at the federal level concerning the registration of a pesticide. Agriculture Canada has the responsibility for the registration of a pesticide, as well as for its labelling and classification. The PCAB formally referred to this regulatory context beginning in 1981, when it submitted the following statement to appellants:

Appellants should be aware that the responsibility for registering (and approving) chemicals for use as pesticides is vested with the Federal Government in Accordance with the Federal Pest Control Products Act. This Act and its Regulations detail the procedures and data that must be provided by an applicant wishing to register a chemical for pesticide use. It would also be the responsibility of the Federal Agency to ensure that the data upon which it bases its decision is reliable. Before a permit is issued, the application is assessed by a Provincial Pesticide Control Committee composed of people knowledgeable in agriculture, forestry, occupational health, and fish and wildlife.

The Pesticide Control Appeal Board acts to ensure that no unreasonable adverse effect will result from the implementation of permits that are appealed. In hearing an Appeal, the Board is concerned with on-site problems
which may not have been identified in processing the permit application. The Appeal Board depends upon the Appellants to provide information on those problems. The Board does not have the extensive organization or background experience available to the Federal Government Agency who made the decision to register the chemical. The Board will give considerable weight to the decision of the administrator and the committee, as well as to the decisions of the Federal Agency, and that substantial and convincing evidence would be required before the Board would (a) disregard a safety decision made by the Federal authority, or, (b) in the absence of new evidence or arguments, interfere with a decision made by the administrator or the committee regarding unreasonable adverse effect (PCAB 1981).

This statement formally recognizes the priority of decisions made at the Federal level concerning the registration, classification, and labelling of a pesticide. It also states that the hearing is primarily concerned with the specific problems of (on-site) pesticide application, rather than general questions concerning the pesticide. Thus, the existence of two sets of decisions, at the Federal level (Agriculture) and at the provincial level (the Administrator and the Pesticide Control Committee), approving the herbicide in general terms, supports the position of the permit-holder, and works to the disadvantage of the appellant. However, this statement provides a pluralist rationale for this process: the administrative structure is itself a system of checks and balances, and it is assumed that prior levels of government scrutiny act as a regulatory gauntlet; in addition, the heterogeneity of input again assures balanced consideration of any issue.

The reliance of the Board on prior administrative decisions has been criticized:

....this 'Statement' indicates that the Pesticide Control Appeal Board is biased in favour of the Administrator of the Pesticide Control Act and the Pesticide Control Com-
mittee. The Appeal Board states they 'will give considerable weight to the decision of the Administrator and Committee' even though they do not have before them in evidence, any information received and analyzed by the Committee, nor transcripts of the Committee's deliberations....

Further, the Appeal Board assumes, without evidence available to the Board or to the appellants, that the Federal Agency and the Provincial Administrator and Committee have absolutely accurate information available to them and they operate exclusively in the public interest whereas 'substantial and convincing evidence' would have to be presented to the appellants before the Board would 'disregard' or 'interfere' with decisions by the Federal and Provincial Pesticide Authorities (Skelly 1981).

Legal critics have noted that the decision made by Agriculture Canada in registering the pesticide is a closed process. K. Roberts notes that the data according to which their decision is made is primarily produced by the company which is attempting to register the pesticide. In addition, Roberts has stated in a lecture that the agriculture industry has an interest in pesticides, and is not an impartial judge of pesticide use (1982).

Furthermore, the public has no access to these earlier decisions. This excludes the public from information with which to attack the Administrator's decision, in making their case. When an application for a pesticide permit is made, there is no provision for public knowledge of this application. Denial of public access to the early stages of the application submission has been criticized:

Under the Pesticide Control Act, the Administrator and the Pesticide Control Committee do not publish the fact that applications have been made for pesticide control permits nor are their meetings public. No minutes or transcripts of these meetings are made available to appellants. It is therefore impossible for appellants to know what information was available to the Pesticide Control Committee during their consideration of a permit.
- if in fact they considered any material at all other than that provided in the application by the proponent (Skelly 1981).

During the 2,4-D hearings, Greg McDade, counsel for the appellants, noted the difficulty of making a case, given this administrative structure and the lack of access to information concerning the Administrator's decision:

Every step of this appeal we've been fighting the problem that we have no knowledge of what the administrator considered. We're fighting a secret decision, and we have to always come up with evidence that proves that someone made a wrong decision, without knowing what grounds they made their decision on. I'm just trying to determine what grounds the decision was made on. Now, if the WIB doesn't know what grounds the decision was made on--who does? The administrator, maybe. But the Board has already ruled that we can't talk to the Administrator. I'm trying to determine if the WIB does in fact know anything or whether they don't (PCAB 1978).

The administrative structure of the Pesticide Control Branch within the Ministry of Environment is also problematic from a critical perspective. The Pesticides Branch, in which the Administrator and the PCAB are located, and the Water Investigations Branch (the permit-holder) are parallel branches within the Ministry of the Environment. In the 1978-1980 2,4-D hearings, the Water Investigations Branch of the Ministry of the Environment applied to make a pesticide application to the Administrator of the Pesticide Control Branch, located in the same ministry. The application was considered by the Administrator of the Pesticide Control Branch, with review from the Pesticide Control Committee, again within the same ministry. Although the connections among these various bodies may be administratively separate, the existence of bureaucratic networks and professional alliances, indicates the propensity
of the tribunal to act in accordance with these interests.

At the approval stage, the pluralist model would assume that the heterogeneity in composition of the Pesticide Control Committee guarantees a balance of competing perspectives through which a decision can be made. Pre-permit inspection of a proposed pesticide treatment area by the ministry most affected by the application can result in the permit's rejection.

The pluralist model would thus depict the application process as governed by checks and balances within the greater legislative framework. The Pesticide Control Committee's watchdog function, heterogeneous composition, and the separation of provincial and federal jurisdiction are further indications of the tribunal's compatibility to the pluralist model. In contrast, a critical analysis of the administrative context observes an imbalance in the decision-making process, with public input restricted to the appeal and structural administrative bureaucratic alliances further disadvantaging the public.

Basis of and Reasons for the Decision

There is no direct means to ascertain the basis of the Board's decision, due to the closed character of the actual decision-making process, the lack of statutory guidance, and the lack of reasons cited in a decision during the first three years of the tribunal. The Pesticide Control Act and Regulations fail to stipulate criteria with which the Board can evaluate a proposed pesticide use. The stated criteria (section 6) is "unreasonable adverse effect", the latter referring to "an effect that results in damage to man or the environment". In other words, the Board must be satisfied that the proposed
use of the pesticide will not produce an unreasonable damage to man or the environment. In the 1978 hearing, the Board said that it would make a decision on the basis of the "unreasonable adverse effect" which application of the pesticide would cause. (The 1978 decision is reproduced in Appendix 1.6.) In the 1978 hearing, a lengthy discussion between counsel for the appellants, and the chairman of the Board took place concerning the basis on which the decision would be made. Kim Roberts of the West Coast Environmental Law Association, counsel for the appellants, states:

I think that the Board should be making its decision based on all the evidence that is introduced that is before the Board when we're present to hear it to be able to answer it, and I think it's essential to a fair hearing that both sides have a chance to respond to it.

And I guess what I'm saying is, for instance, we present all our material directed to the adverse effect of 2,4-D, and the unreasonableness of these adverse effects. Now if you didn't hear anything from the permit-holder, the evidence you had before you would indicate that 2,4-D shouldn't be used. That's our submission, that 2,4-D shouldn't be used, and if the permit-holder disagrees with that, they should be calling evidence with respect to that....

Mr. Raudsepp, you've just agreed with me that it's essential to a fair hearing that the Board makes its decision based on the evidence presented before it.... If we're going to have a fair hearing, it has to be simply on the evidence placed before the Board at this hearing. We were not represented before, and we have no idea what documents, except the Royal Commission Report that you referred to... so our submission is that the Board will be making a decision only on the information presented before it.... (PCAB 1978).

Throughout the hearings, the appellants referred to two problems concerning the basis of the Board's decision. They were concerned not only with their assumption of the burden of proof, but also about the prior knowledge which the Board
members might introduce in their production of a decision.

It is the practice of many tribunals to provide "reasons" in accordance with the rules of natural justice. The PCAB did not submit reasons for its decision until the 1981 case study. Prior to 1981, decisions concerning the appeal stated: "that the Board is (not) satisfied that the application of the herbicide will not cause an unreasonable adverse effect resulting from the exercise of the following permits..." (See Appendix 1.6). Additional conditions were specified separately.

The lack of stated reasons gives the Board additional flexibility. However, it is a problem for appellants in that it gives them no means of preparing for another appeal, which, as we have seen in this case, has been a fact of the ongoing appeal process. There is thus no way of knowing what criteria the Board used in evaluating an appeal, and no way of knowing the extent of the onus which rests on the appellant. This is not only critical for future appellants, it is also of concern if the appellant initiates a judicial review of the hearing.

In summary, the PCAB conforms to the pluralist model through its location in a larger administrative context in which there is some diversity and balance among decision-makers. However, from a critical perspective, prior closed decisions and structural alliances within the administrative framework indicate the presence of bureaucratic alliances which create an imbalance among competitors and work to the disadvantage of the public interest.

7.3 - Decision-Making in the Consultative Tribunal:
The Royal Commission of Inquiry into Uranium Mining

The decision-making process of the RCUM differed significantly from that of the PCAB, due to the investigative function of the Inquiry, the number and scope of the hearings, and the Moratorium and premature cancellation of the Inquiry. The Terms of Reference by which the Inquiry was convened (see p.78) were directed to the examination of worker and public health and safety in the exploration, mining, and milling of uranium. They directed the general organization and orientation of the hearings, requiring public input, which was interpreted by the Commissioners to indicate public hearings. Although they reflect a largely discretionary orientation to the Board's procedures, they have delineated, in general principles, the issues to be addressed by the Commission.

These Terms of Reference were summarized by Dr. Bates at the inaugural session of the Commission:

The general question before us is the future of the uranium mining industry in the province. Our task is to study all of the issues in depth and consider the views of the people affected, so that we can lay before the government when our work is completed, recommendations, general and specific, as to the constraints which should be exercised (RCUM 1:4).

Some of the public interest participants stated their preference for an expansion of the mandate to study other aspects of the nuclear fuel cycle. For instance, the Environmental Alliance Against Uranium Mining (EAAUM) stated in their Opening Statement to the Inquiry, "It is our position that uranium mining cannot be viewed outside the context of the entire nuclear fuel cycle" (RCUM 1:89). Another major participant,
the Canadian Coalition for Nuclear Responsibility, (CCNR), stated in its Report:

In our view the commission's terms of reference as formulated by the provincial government, prevented it from addressing the most important question on this subject, i.e., is uranium mining in the public interest? The B.C. government, in charging the commission 'to make recommendations for setting and maintaining standards for worker and public safety and for the protection of the environment as a result of the exploration for the mining and milling of uranium ores in our view clearly exposes its bias in favor of uranium mining. The terms of reference clearly presuppose that uranium mining will be allowed by the B.C. government to go ahead in this province. The terms of reference do not allow an in-depth consideration of the cost-benefit aspects of uranium mining, nor, indeed, meaningful ethical considerations. At least not to the extent where such considerations would permit the commission to recommend against uranium mining (CCNR 1980:3).

Participants also questioned the independence of the Commission because of the Government's decision to allow exploration for uranium to continue during the Inquiry. Some requested a moratorium on all aspects of uranium mining during the Inquiry. Although public participants perceived an interdependence of tribunal and government, and an alliance among entrepreneurial and regulatory interests, the RCUM nonetheless regarded itself as an independent and neutral agent.

In fact, the Government did call for a moratorium on all aspects of uranium mining. But, it did so in February, 1980, just over a year after the Inquiry was commissioned. In conjunction with this Moratorium, the Inquiry was also disbanded, although a Report was to be produced by the Commission. The announcement of the Moratorium, and the associated termination of the RCUM, occasioned considerable speculation concerning the reasons for the Government's decision. The Premier noted, "The
fears expressed by the people of this province relating to uranium mining and the dangers involved in its exploration and mining are too real to ignore" (EAAUM 1980). The decision was popularly viewed as a victory for public interest groups. The effectiveness of the tribunal as a vehicle for public participation, the responsiveness of government to the pressures of competing groups, and the power of the public interest as a competitive force are thus reinforced, in conjunction with the pluralist model.

The Moratorium and Termination of the Inquiry

Order-in-Council 442, announcing the Moratorium on uranium mining and consequent termination of the Inquiry, was approved and ordered by the Premier on February 17, 1980. At this time, Dr. Bates was travelling in Australia, on a mining observation tour, and the major participants were involved in preparation for the next session of the hearings. The announcement came as a shock to most participants in the Inquiry. It also precipitated a number of arguments regarding the closure of the Commission and its writing of a Report.

The termination of the Commission was coupled with the Government's announcement of a Moratorium on uranium mining activity. The Government requested the submission of the Commission's recommendations on or before May 31. However, the Commissioners felt an extended period was necessary in order to produce a "meaningful" report (RCUM 1981:vi-xii). Meetings and communications between Government and the Commissioners were required before a mutually acceptable deadline was agreed upon. The Inquiry continued to receive written submissions until
April 15. Major participants were requested to submit their reports by May 1, and the Commission was directed to submit its Report and Recommendations by October 30, 1980. Although the Commission's funding was extended until its official closure, that of major participants expired as of March 31, a previous deadline. Thus, as some major participants noted, they were not officially funded through the Commission so as to be in a position to produce their Reports to the Commission (British Columbia Conference, United Church of Canada 1980:28).

At the time of the termination of the Inquiry only Phases I through VII (see pp. 122-123) had been heard, and much of this evidence was incomplete, scheduled for continued input at further dates. The remaining Phases, on Social Impact, Ethical Questions, and Jurisdiction, Regulations and Enforcement, do not simply reflect missing or incomplete evidence that the Commission and major participants were unable to hear. They also represent a body of knowledge which public participants felt would present a case in their interests, against uranium mining, and an area in which public groups had called the majority of their expert witnesses. Thus, the termination of the hearings at this point in the schedule signified the elimination, or undermining, of the majority of the public's "case". As the CCNR noted in a Press Release following the announcement of the Moratorium:

The case against Uranium Mining that public interest groups have been preparing to present before the Bates Commission has been effectively censored by this move.... We have gone through all of the technical aspects so that the ethics of supplying Uranium could be aired. The technical data is in but the social, environmental, and
ethical concerns of the people of this province have not been adequately heard or understood by Government (1980).

The SOEC in its reply to the moratorium notice also notes the imbalance caused by the premature cancellation of the Inquiry:

Whatever incomplete report emerges from the half-finished Uranium Mining Inquiry, it must clearly acknowledge the fact that a very high percentage of the expert evidence presented so far has come from sources connected with or favourable to the nuclear industries. Major testimony has not yet been heard on the social, environmental, and public and worker health hazards of uranium production; the ethical questions; or the difficult problems with jurisdiction, regulation and enforcement of regulations... (SOEC 1980).

Some participants felt that the Moratorium was to be greeted, but that it need not and should not herald the closure of the Inquiry.

BCCUCC: In view of repeated charges that the credibility of the Inquiry was being undermined by continued exploration for uranium once a moratorium had been declared, why did the Commissioners consider it inappropriate to conduct further public hearings (1980:27-28).

BCMA: While we were pleased by the note of caution sounded (by the Government's announcement of the Moratorium and termination of the Commission) we are disturbed by the discontinuance of the Bates Commission...the B.C.M.A. feels strongly that the Bates Commission should not have been so summarily discontinued after such an excellent start... (1980:1-2).

Some participants felt that the Commission should not prepare and submit a Report and Recommendations at all, given the cancellation of the hearings and the incomplete store of information that was produced. The Moratorium and termination of the hearings were seen to affect the Commission's ability to produce recommendations in that only certain phases had been completed, and that cross-examination on material submitted after the cessation of the hearings would not be possible. The termination also meant that the second-round community hearings
would not take place. Participants advised against the Commis-
sion's ability, therefore, to produce a complete report. The
following excerpts from letters and statements of major parti-
cipants illustrate these issues:

BCCUCC: We are convinced that the work of the Inqui-
ry should not be finalized at this time, when less than
half the technical evidence that was intended to be heard
has been presented and subjected to cross examina-
tion....(1980:26).

EAAUM: The Alliance contends that the final report
of the Commission cannot contain findings since all of
the evidence has not been heard. The report can only be
a summary of evidence heard to date. As such, of course,
it will be a useful, although limited document (1980:1).

JCUTC/SOEC: The SOEC and the Joint Committee
strongly oppose any attempt by the Bates Commission on
Uranium Mining to partially complete its research and
produce a report. Such an action would subvert the
inquiry process and produce second rate work which is
likely to be adopted as a standard for uranium mining
around the world... The Coalition and the Joint Committee
feel that the Commission should produce only a descrip-
tive report covering the few areas which have been fully
examined... (1980).

The lack of participants' opportunity to cross-examine evidence
still forthcoming was seen as a critical factor in the Commis-
sion's ability to formulate a Report on this evidence. As
participants stated:

BCCUCC:....Undoubtedly all facets of any uranium
development would be impacted by economics, social, envi-
ronmental and health concerns. However, much of this
evidence has not been received and that which was in
preparation and received...is not being subjected to
cross-examination or critical review by all Major Parti-
cipants. Therefore, we fail to understand how any kind of
meaningful report can or should be attempted...(1980:29).

WCELA: The WCELA believes that 'evidence' presented
after the termination of the hearings, having not been
publicly evaluated and tested through open cross-examina-
tion and discussion, will not be as useful to the RCIUM
in its recommendatory function...(1980:19).
Participants accused the Inquiry of neglecting the ethical issues associated with uranium mining, thereby adding to the imbalance resulting from the early termination.

CCNR: We are deeply concerned that the ethical considerations, which in our view supersede all other considerations in terms of importance, have received only marginal attention during the inquiry process. We are furthermore disturbed by indications that the ethical aspects of mining and uses of uranium will play a very minor role (if any role at all) in the formulation of the commission's final report....It is alarmingly clear that the inquiry commissioners seek answers in the realm of science rather than ethics. Of nearly 10 months of technical hearings only four days have been set aside to consider the ethical aspects of uranium mining... (1980:15).

Thus, these concerns—that the Report represented incomplete testimony with regard to the complete and original intention of the Inquiry, the pro-nuclear bias which the dominance of completed testimony would bring to bear, and the lack of cross-examination on evidence brought to the Commission after the hearings had been terminated—are all issues which participants felt would impinge on the ability of the Commission to produce neutral recommendations. The correspondence of the tribunal to the pluralist model of a neutral decision-making process is thus challenged by the premature termination of the RCUM. Although this termination was popularly interpreted as supporting the public interest, the decision-making process was viewed by critics to favour industry. Nonetheless, the statutory separation of the tribunal from government, and the formal diversity of information and interests brought before the Commission uphold the pluralist model.
The basis of selection for Board members is not articulated by statute. According to a pluralist perspective Board members are impartial in that they are not directly connected to or affiliated with the specific issues they will be examining. However, they may have some general experience in or knowledge of those areas which would increase their competence in making decisions. Some diversity of expertise among Board members is also expected.

The Royal Commission of Inquiry into the Use of Pesticides and Herbicides recommended the establishment and composition of the Pesticide Control Appeal Board. It was envisaged primarily as a board having the "capability to hear and assess the merit of technical arguments brought before it" (RCIUPH 1975 1:268). The Royal Commission had suggested the following composition of the Board: a private citizen interested in environmental matters, a farmer or rancher, a physician, a lawyer, a forester, an engineer, a biologist, an individual with expertise in the pesticide industry, a food scientist, a weed scientist or a plant pathologist, an agrologist or a veterinarian, and an entomologist (RCIUPH 1975). Dr. Mackenzie, one of the Commissioners responsible for writing this Report, says, "We saw it as a mixed Board, with both experts and lay members" (1983). However, other observers have commented that, "The board's composition is clearly technical and does not include a lawyer or environmentalist, both of which were recommended by the Royal Commission" (T. Roberts 1981:37).

The Pesticide Control Appeal Board was appointed by the
provincial cabinet in March, 1978, in conjunction with the approval of the Pesticide Control Act. The Board was initially composed of seven members, but in 1980 was expanded to nine. The following excerpt from a News Release of January 4, 1980 announcing this appointment reviews the "credentials" of Board members:

A new and expanded Pesticide Control Appeal Board for British Columbia has been announced by the Honourable Stephen Rogers, Minister of Environment. Appointed for a two-year period, January 1, 1980 to December 31, 1981 are:

Dr. Francis Murray, Chairman, Ph.D., P.Eng, Professor, Dept. of Chemical Engineering, University of B.C. (former vice-chairman of the Board)

Dr. William Godolphin, Ph.D., Professor, Dept. of Pathology, University of B.C., and Director of Research and Development, Vancouver General Hospital. (former board member)

Mr. James E. Harris, Director of the B.C. Federation of Agriculture, and Secretary, Fraser Valley Pea Growers' Association. He is a Delta vegetable grower. (former board member)

Mr. Robert G. Holtby, B.Ag.Sciences, M.Sc., a consulting agrologist from Prince George. (new board member)

Mr. E.E.(Ted) Jeffreys, President of Cascade Chemical Commodities, Ltd. of Vancouver. His expertise is extensive in the industrial and agricultural chemical fields related to paints, plastics and pulp and paper industries. Mr. Jeffrey's company neither manufactures or distributes pesticides. (new board member)

Mr. Valter Raudsepp, former chairman of the Board and retired Deputy Minister of Water Resources for B.C.

Dr. Nicholas Schmitt, M.D., an environmental health consultant and chief instructor, Dept. of Health Care and Epidemiology, University of B.C. (former board member)

Dr. Dale Alsager, M.Sc., Zoology. He is owner-operator of the Gang Ranch in the Cariboo and has several years' experience with the pesticide control branch with the government of Alberta (new board member). (B.C. Ministry of Environment 1980).

The Press Release also stated:
The appointment of new members...along with...the former board...gives the appeal body an excellent balance of academic expertise, practical business and landuse experience, and more extensive knowledge of British Columbia's various regional needs (B.C. Ministry of Environment 1980).

The PCAB purports to represent a diversity of occupational training and experience regarding pesticide use. The lack of direct affiliation between Board members and pesticide production infers impartiality. Of ten board members reviewed above, four are UBC professors, three have agricultural occupations, one is a career civil servant, one a forester, and one, president of a chemical company. The number of Board members, diversity of occupational backgrounds, and professional/technical experience contribute to the pluralist characterization of the tribunal.

However, a critical perspective would challenge the pluralist version as elitist and biased. Members of the appellant organizations have charged that the Board is composed solely of experts, that "there are no lay people on the Board" (Warnock 1981: Interview). They have stated that lay representation is required in the decision-making process, especially in areas of risk assessment. The appellant claimed that the Board generally represented a technical orientation, rather than a genuine plurality of interests. Agricultural and academic qualifications together account for roughly 70% of the Board's membership. Moreover, members are seen to represent professional and managerial interests, rather than those of labour.

Although the Board was viewed as representing some occupational and geographic diversity, certain interests were per-
ceived as having been denied representation. The most obvious is a division by gender: there were no women on the board. Warnock notes that this is critical given the potential adverse effects of pesticides on women, due to their reproductive capabilities. He also notes that trade unions are not represented by the Board, although, "forestry workers are heavily exposed to pesticides, and their trade unions have a major concern about workers' health and safety" (1981: Interview). Although the Board does not purport to represent all interests, public interests affected by herbicide, such as native and environmental interests, lack representation. Thus, although the Board purports to represent a diversity of interests, the exclusion of public interests and the preference for professional and largely technical occupational credentials characterizes its composition.

Criticism has also been directed to the impartiality of the Board, and members of the SOEC have suggested that an institutional pro-chemical bias exists:

....The present Board was recommended by the Minister of the Environment and includes several members whose disciplines or organizations implicitly or explicitly endorse the widespread use of agricultural chemicals. The argument has often been made that these people have a great deal of expertise in the field and are therefore best qualified to make these decisions. No doubt foxes know a lot about chickens, but we don't station them in our hen houses for security" (Warnock and Lewis 1982:37).

The appellants have pointed to certain alliances among Board members and the pesticide industry. They suggest that commercial agricultural interests have supported pesticide use. Specific bias has been attributed to the chemical company
president who is a Board member. In addition, Warnock notes that:

...one of the medical representatives on the Board has written an article saying 2,4-D and other pesticides do not cause problems to humans at low levels, and contrary to established medical and scientific positions, argues that there is a threshold level for all pesticides, including carcinogens. That is a strong bias" (1981).

Members of the SOEC have stated that an institutional, pro-pesticide bias has surfaced in their cross-dexamination by the Board, with Board members submitting information to the detriment of their case (Lewis 1981: Interview; Warnock 1981 Interview).

Pluralist theory would respond to these charges in a number of ways. To the "elitist" characterization of the Board, the pluralist position would recognize the necessity for competence and experience necessary to address the issues. The diversity of membership mitigates against any unilateral decision and ensures compromise. However, a critical participatory perspective questions the diversity of tribunal composition, pointing to the professional, technical, and managerial backgrounds of Board members as positions jointly upholding the professional and administrative status quo. Impartiality is also suspect, due to the nature of members' involvement in and experience with pesticide issues.

The Royal Commission of Inquiry into Uranium Mining

The provincial government announced in September, 1978 that there would be an inquiry into uranium mining/milling in British Columbia. Then on January 18, 1979, it was announced by Order in Council Number 170-79 that three Commissioners had
been appointed to inquire into: "the adequacy of existing measures to provide protection in all aspects of uranium mining in British Columbia." The Commissioners and their credentials were publicized as follows:

(1) Dr. David V. Bates (chairman), professor of medicine and physiology and associate member of the Department of Health Care and Epidemiology, Faculty of Medicine, University of British Columbia (UBC) with a considerable knowledge of occupation and environmental health hazards;

(2) Dr. James W. Murray, professor, Department of Geological Sciences, Faculty of Geological Science, UBC;

(3) Mr. Valter Raudsepp, P. Eng., Civil Engineer, former Deputy Minister in the British Columbia Department of Lands, Forests and Water Resources, and former chairman of the Pollution Control Board and the Pesticide Control Appeal Board (PCAB) in British Columbia, with a thorough knowledge of water resources and hydraulic engineering (RCUM Uranium Inquiry Digest 10).

There was no formal provision for public input regarding the terms of reference, or the selection of Commissioners and procedures of the tribunal. Some public groups had presented the government with recommendations for the future inquiry, but there was no means to ascertain if and how this was utilized.

During the three-month interval (between the preliminary and official announcements) a number of groups throughout the province met and prepared a position paper regarding selection of Commissioners, terms of reference and suggested procedures for the Inquiry, etc. According to information provided to us, there were numerous unsuccessful efforts, by various groups which had endorsed the position paper, to meet with the Minister of Energy, Mines, and Petroleum Resources.

Eventually a meeting was arranged, but not until after the Commissioners had been named and the terms of reference enshrined....We had not had any part in preparing the position paper, but were invited to be part of the delegation. Surprisingly, there were still hopeful people, willing to take the time and pay the costs of travelling to Victoria for a predictably fruitless meeting with the Minister of the Environment...and the Ministry of Energy, Mines, and Petroleum Resources (BCCUCC
Of the three Commissioners appointed to the Commission, two were UBC professors and the third, Mr. Raudsepp had experience as an engineer and as tribunal chairman. Dr. Bates was presented as especially qualified, as the Fact Sheet of the RCUM indicates:

Dr. Bates, former Dean of the Faculty of Medicine at U.B.C., is highly qualified in the field of occupational and environmental health and was the Chairman and author of the recently published report of the Science Council on 'Politics and Poisons' in the environment and the working place (RCUM 1979).

The selection of Commissioners with technical and professional backgrounds was treated as appropriate to the subject matter of the hearings, which had been characterized as highly technical. Dr. Bates' worker and environmental health knowledge, Dr. Murray's geological expertise, and Mr. Raudsepp's technical and administrative experience presented them as well-qualified to review the issues of uranium mining.

Although the pluralist model would support the choice of these three Commissioners as representative of a range of expertise, some participants were critical. The CCNR stated in its Final Report:

The B.C. Government's narrow perspective is further indicated by its choice of commissioners. It is our view that it is not in the public interest to limit the choice of commissioners to people whose training and experience lie primarily in the field of science; nor do we see any justification for limiting the choice of commissioners to men only (CCNR 1980:3).

Some participants felt that the composition reflected a scientific and technical bias which was reflected in the proceedings and in its recommendations:
...we are not surprised that the hearings have been structured so lopsidedly in favor of scientific data. After all, the commission is made up of a physiologist, a geologist and an engineer. As the Kelowna Conference position paper...points out, the issues in uranium mining go far beyond the realm of science and should therefore have been addressed by a commission not made up exclusively of people trained in science (CCNR 1980:15).

In reviewing the role of the Commission in the RCUM, several characteristics of the decision-making process emerge. The discretionary power of the Commission and the investigative nature of the inquiry have produced extensive decision-making powers on the part of the Board. The basis for the selection of Commissioners is not articulated, although it is presented as predicated on the criteria of scientific and technical occupational experience. In accordance with the pluralist model, this expertise is appropriate for the assessment of technical issues such as uranium mining. Furthermore, intervenors are excluded from the actual decision-making practice, and there is no means to assess their force in the process.

7.5-The Neutrality of the Decision-Making Process

A pluralist model of the decision-making process in the public hearing emphasizes certain features contributing to the neutrality of this process. The independence of tribunals from government, the impartiality of and diversity among Board-/Commission members, and the balanced input, from multiple (including public) participants, are primary tenets of this model. In reviewing the case studies, I have found that the data support these features to some extent.

The decision-making process is first defined by its statutory provisions and administrative context. Tribunals are re-
garded by the pluralist model to be relatively independent from other agencies of government. The structure of decision-making has important ramifications for the neutrality of the process. The administrative tribunal does not exist in isolation, either organizationally (within the Ministry of the Environment), or substantively, from previous decisions. Federal legislative precedents, recommendations of consultative inquiries, and the advice of its own Pesticide Control Committee provide decisions regarding pesticide use which are a basis for the current deliberations of the committee. Pluralist theory assumes an independence between these separate levels and agents of decision-making which is provided by their formal differentiation. The location of the appeal process within this more extensive regulatory context contributes to its characterization as balanced. As for the consultative tribunal, a different set of structural and administrative criteria exist. The Royal Commission of Inquiry is formally and administratively located in, and responsible to the Ministries of Health and Energy, Mines, and Petroleum Resources. However, unlike the PCAB, the ad hoc and temporary basis of the RCUM and its interdepartmental accountability diffuse its bureaucratic base and provide it with greater autonomy, thus suggesting its greater conformity to the pluralist model.

The pluralist model also assumes the appointment of an impartial Board/Commission which has relevant expertise and reflects a heterogeneity of perspectives. In the tribunals studied, Board and Commission members reflected a diversity of technical and occupational expertise.
In accordance with the pluralist model, scientific decision-making processes have been expanded to incorporate public participation. Nonetheless, the public, as one of many participating interests, is understood to be restricted from participation in the production of the final decisions. The public played a more extensive role in the RCUM (input concerning Terms of Reference, organization of hearings, procedural rulings) than it did in the PCAB. Indeed, the confinement of public participation to the appeal in the regulatory process reflects a more restricted interpretation of the pluralist model.

However, in spite of the general conformity of the case study tribunals to the pluralist model, criticisms of the decision-making process have been made by many participants. Public interest groups have noted problems which I will address from a critical democratic perspective. From this stance, the structure and nature of the hearing process favour the proponent, and counter the pluralist notion of a competitive balance. The existence and weight of previous decisions, and the administrative location and bureaucratic interdependence of the tribunal especially in the PCAB case, indicate the tribunal's propensity to favour the proponent.

The appointment of Board or Commission members by government indicates further that the autonomy of the tribunal from the state is questionable. The technical, professional, and managerial composition of the Board detracts from the assumed diversity of the Board, and points to the interdependence of
state and entrepreneurial interests. From elitist and instrumental points of view, decisions are the product of technical, scientific, bureaucratic, and professional relationships. The relatively large number of academic and administrative Board members, indicates the imbalance among material class interests. In contrast to an impartial decision-making process, a critical perspective notes professional alliances within and among tribunal members and proponents, a structural predisposition in favour of administrative interests, and a general and subsequent disadvantage to public interests.

Although the limited role of the public is viewed by the pluralist model as appropriate, this is challenged by critical democratic arguments. In the case studies, in accordance with the model, the public is generally limited to intervention in the hearings, while the Board/Commission, recognized as an independent body, takes responsibility for the actual production of decisions. Some participants have been critical of this restricted interpretation of public participation. For example, the RCUM's First Interim Report was criticized by one public group in that public input had not been requested specific to its release:

"...the Commission issued its 'First Interim Report on Uranium Exploration without inviting any submission from participants. The Alliance believes that it would have been appropriate for the Commission to announce that it contemplated issuing such a report and request submissions from participants before finalizing that report (EAAUM 1980:12).

I have observed that the public is not represented in the selection of Board members, nor in the articulation of terms of reference. An apparent exception to this exclusion of the
public from procedural decisions is the experience of the RCUM, in its inaugural hearings in Vancouver and Kelowna, which were held (according to Dr. Bates) for the following purposes:

....the purpose of this inaugural meeting is not to hear formal submissions on substantive issues before us, but to give you an opportunity to advise us on your views concerning our terms of reference, the timing and conduct of the inquiry and to discuss how you or other members of the public may most effectively participate in the work we have to do (RCUM 1:6).

From a developmental perspective, the restricted concept of public participation as only intervention or appeal minimizes the experience and knowledge to be gained by the public. In the administrative tribunal, the public has no input to and is not privy to the many decisions prior to the appeal. Nor have public interest groups had any say in the formulation of the statutory provisions for hearings. They are not informed on a routine basis concerning pesticide decisions. They are not consulted regarding the appointment of the Board, and they have very little access to the basis for the Board's decisions--information which will directly affect their next appeal. The role of the public is reactive, rather than anticipatory.

The consequences of this restricted embodiment of participation for the public are several. The expansion of public understanding and ability to participate in decision-making are restricted to the largely formal and professional context of intervention. Access to legal counsel and expertise, although important to the success of a case, may restrict the development of public skills, and encourage an increased reliance on professional experience. The public thereby fails to acquire
the skills and knowledge which are features of these additional
decision-making processes. Of greater consequence is the im-
plication of this under-representation of the public interest
for the decisions produced by the tribunal. The systematic
under-representation of the public interest in the larger ad-
ministrative process, and the lack of public interest represen-
tation in the decision-making body indicate a structural imba-
lance to the detriment of the public interest.

The experience of the case study tribunals thus supports
to a limited extent the pluralist model regarding the role and
extent of public involvement. While the public is considered
to play a primary role in the bringing forth of information and
perspectives, the actual production of decisions is allocated
to the Board or Commission. From a participatory democratic
perspective, however, this practice of public participation is
perceived as restrictive and elitist. The role and power of
public interest groups in the case study tribunals is viewed as
minimal. The appointment of Board members by government, and
the professional and technical composition of Board members
brings into question the autonomy of the state, and points
instead to the dominance and interdependence of state and
entrepreneurial influences.

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1 Of fifteen permits for pesticide applications, four were
disallowed, while eleven were upheld. In addition, five permit
dates were also extended by the decision.

2 The decision to extend the permit dates was rejected by
the judicial review of the hearing.

3 Of forty-six appeals before the Board, twenty-one were
dismissed, seven were allowed, and two were allowed in part.
In sixteen appeals, the Board did not reach a decision, due to
various circumstances (e.g., withdrawal of application by permit-holder, exemption of certain areas from herbicide application).

4 In a speech presented at a 1982 Conference on Pesticides at Simon Fraser University, W. Ormrod of Agriculture Canada noted the contributions of different perspectives in the regulation of pesticides, including those Federal Departments of Environment, Health and Welfare, and Agriculture.

5 In 1981, the permit-holder was the Okanagan Water Basin Board, a regional planning body.

6 T. Roberts (1981) cites the 1979 example of the denial of eleven forestry permits due to possible effects on the salmon fishery.

7 In response to the above charges, as noted in the previous chapter, the WIB did produce evidence.

8 According to the appellants, the reasons continued to demonstrate the Board's bias:

The SOEC presented three researched documents (68 pages total) and 46 separate studies, in their submissions to the Board. This evidence was summarized in three paragraphs in the Board's decision, which took one page. The proponent, the Osoyoos landowners, presented one three-page statement to the Board, which was reproduced word-for-word in the Appeal's decision.

Moreover, the Board's decision included data against the SOEC's case which was not presented at the hearing. And, while over the previous years the appellant had presented numerous documents on the effectiveness and the low cost of harvesting, in their 1981 decision, the Board concluded that harvesting was 'not effective', and that 'no reasonable alternative to 2,4-D existed', although no evidence on this had been presented at the 1981 hearings (Warnock 1982: Speech).

9 The SOEC requested a judicial review of the 1978 PCAB decision on two grounds: that they had been denied a fair and proper hearing; and that the extension of the expiry date on five of the permits was not within the power of the Board. They lost the former, but won the latter, with the effect that further hearings were necessary later in the summer.

10 Activities of the RCUM included organizational tasks such as staffing, scheduling of hearings, and arrangements for media and publicity. Other activities, including the identification of issues and articulation of "questions" to be asked, selection of expert witnesses, and commissioning of additional research were also of significance to the production of recommendations by the Commission.
The announcement overlooked the appointment of Dr. Renney, U.B.C., Professor of Weed Science and former Board member.

Appellants claimed that native land adjoining the Okanagan lakes would be affected by the proposed applications.
CHAPTER 8
CONCLUSIONS

8.1 Introduction

I have examined the process of public participation in two environmental hearings as applied versions of pluralist democratic theory. The practice of public participation generally conforms to the pluralist model, and the public hearing is accordingly understood to provide public access to regulatory and policy-making activities of government. The inability of the tribunals to comply with all the expectations of the model reveals shortcomings which to some extent are remediable within the mainstream liberal political framework.

In contrast, the application of a participatory critique of pluralist theory to the experience of public interest participants poses a challenge to the fairness and impartiality of the hearing process. Difficulties cited by public interest participants, such as inadequate funding, are from a critical perspective understood to result in a competitive disadvantage for public interest groups, and to be rooted in systematic social and political inequalities which the model fails to address. A structure of administrative relationships within the state, and between state and entrepreneurial interests, al-
though obscured by the pluralist claim to state autonomy, challenges the concept of a balance among competing interests and brings into question the neutrality of the process. This perspective points to recognition of the tribunal as an instrument of state hegemony, and public interest intervention in the hearing becomes interpreted as an instrument of social control and legitimation. In contrast to those who hear the public voice as effective civic involvement, a critical perspective views the production and orchestration of a public voice as subject to the ongoing requirements and relations of a liberal and capitalist society. In this final chapter I summarize the findings of the Dissertation and draw conclusions for pluralist theory, the public hearing, and the political process.

8.2-The Pluralist Model and the Public Hearing

I have demonstrated that the concept of public participation in administrative and consultative tribunals is articulated from the perspective of pluralist theory. Competing interest groups participate as appellants and/or intervenors in the tribunal by presenting information in support of their perspective. From a pluralist position, representation of a diversity of interests, including those of the public, ensures a balance of perspectives regarding any issue. Procedural fairness is assured by adherance to a standardized, symmetrical and quasi-judicial format for all intervening interests. Moreover, public access to legal advocacy, technical expertise, funding, and other resources indicates an equality of opportunity among participants. Although pluralist theory recognizes that there may be differences among participating interests in power and
expertise, these are offset by the tribunal's egalitarian measures and the unique capabilities of each participating interest. Finally, the neutrality of the decision-making process is assured through the formal separation of the decision-making body from other forces (government, industry) and the heterogeneity and impartiality of its members.

Heterogeneity of Participation

In the experience of the Pesticide Control Appeal Board and the Royal Commission of Inquiry into Uranium Mining hearings, there is general conformity to the pluralist model of hearing participation. The public is represented, or is seen to be represented, in both sets of hearings, ensuring a plurality of input to the tribunal, and providing a balance among diverse and competing forces (e.g., industry, labour, state and public interests). Participation takes place to a limited extent through direct intervention by individuals but primarily through the representation of organized interests. This is consistent with the pluralist emphasis on representation as both efficient (accessing a greater number of people) as well as effective (through the utilization of those qualified with appropriate knowledge and skills).

Fairness of Procedures

The procedures of both tribunals indicated a general conformity to a pluralist perspective of fairness. Procedures were standardized so as to grant uniform access to all intervenors, and were characterized as quasi-judicial, or relatively informal, to accommodate greater public access. Hearing proce-
dures in both tribunals followed a standard format which included submission of evidence, cross-examination, and summation, which allowed participating interests to present their cases, and query all others. All intervenors, regardless of interest, followed similar procedures. Pluralist theory maintains that differences in competitive abilities among intervenors will be minimized to a certain extent through this process.

In preparing for intervention, the pluralist model assumes that participants engage in diverse strategies which are individually determined, according to the resources, skills and abilities of the intervenors. In the consultative hearing, funding for public interest groups was provided as a means of expanding public access and assuring a competitive position. Differences in intervenors' abilities are not seen as jeopardizing an intervenor's chances of success in the competitive realm, but rather as elements of diversity and potential success.

Although the experience of public interest groups conforms to the general requirements of the pluralist model, certain characteristics of the tribunals detracted from a balance among participants. The hearing setting was formally accessible to the public in both tribunals, but the issues, and the size and technological requirements of the RCUM hearings imposed certain limitations to lay intervention. Expertise was formally available to and utilized by all intervenors in both hearings in the form of legal counsel and expert witnesses. However, funding for public interest groups was provided only in the
consultative tribunal. In addition, the appellant's assumption of the burden of proof in the regulatory tribunal required them to make a case which was not directly countered by the proponent, detracting from the balance of the forum.

Neutrality of the Decision Making Process

The pluralist model posits an objective, neutral, decision-making process mediated by an impartial and independent Board or Commission. Decisions are made on the rational assessment of the information brought before the Board. Board members reflect diversity and competence through their varied professional and technical backgrounds. The discretionary powers allotted to the Board reflect the tribunal's autonomy and the capabilities of Board members in exercising their authority. Thus, the decision-making process appears to follow the criteria of the pluralist model.

The general conformity of the case study tribunals to the pluralist model reaffirms the liberal social and economic ideology. A capitalist economy which accommodates state corporations and is regulated by state intervention is the foundation for liberal theory. If aberrations to the pluralist model exist, they are seen as remediable within this context. Accordingly, increased funding for public intervenors, and geographic decentralization of hearings have expanded participatory access. The existence of independent tribunals staffed by impartial Board members concurs with the concept of state autonomy. Public participation in policy-making and regulatory issues is taken to be compatible with the individual, competi-
tive, and increasingly interventionist tendencies of this contemporary liberal framework. Production of the public voice is compatible with the liberal framework, in that it is voluntarily initiated by those with a civic spirit and interest in the issue, mediated by independent tribunals, and effective in influencing government.

8.3 - The Participatory Critique and the Pluralist Model

Analysis of the case study hearings, however, reveals a major shortcoming of the pluralist model. The model fails to reflect the actual experience of public interest participation, and it obscures the disproportionate power among competing interests through the tribunals' guise of fairness, objectivity, and impartiality. From a participatory critique, characteristics of public participation include: the subjective definition and voluntary motivation of public interest representation; the non-productive economic character of the public interest; the lack of formal recognition of hearing preparation and organization; and the limited extent of public participation in the decision-making process. From this perspective, the hearing's characterization of "public participation" is restrictive and elitist in nature. The public hearing process is seen to be marked by a systematic and structural disadvantage to the public interest which reflects the social inequalities embedded in the capitalist foundations of the society. Moreover, a critical analysis points to the administrative alliances of the tribunal and the composition of its staff as problems for both balance and autonomy. A critical perspective suggests that public participation is generated and mediated by
the state for purposes of social control and legitimation.

Heterogeneity of Participation –
Representation of the Public Interest

From developmental and anti-elitist perspectives, representation of the public interest is restricted to a small number of persons or groups who lack formal accountability to a constituency. There is no provision for the knowledge and skills acquired by representatives "trickling down" to a broader public. Indeed, intervention by speakers or representatives removes the mass of the public from the bulk of the decision-making process. Although this is not inconsistent with the pluralist model, a critical perspective would note as problematic the possible emergence of an elite of hearing technocrats, and the perpetuation of the inaccessibility of decision-making which now characterizes much of the political process.

Furthermore, the general orientation of the hearing to a dependence on legal and technical skills forces the participant to rely extensively on expertise. Legal skills are a competitive weapon which avails participants of procedural knowledge; expert witnesses are secured to defend one's substantive position. However, these resources are routinely less available to public participants. "Making a case" in the tribunals which I have examined involves a substantive challenge to the professional and administrative status quo, and public interest groups have noted the lack of experts capable and willing to testify to this position. When witnesses are available, they can be costly, and the differential resources of participants
indicate a competitive disadvantage for the public interest.

Further, the heterogeneity assumed by the pluralist model is viewed from a critical perspective as inadequate to a full spectrum of affected interests. Formal representation by social class, region, sex, and other fundamental demographic characteristics is absent. A Marxist reading of hearing representation would note the subjective and discretionary definition of "interest", which results in the under-representation of unorganized, or disempowered interests. The lack of economic incentive and lack of formal organizational support (funding, continuity, membership) for public interest groups reveals an imbalance in the motivation and resources among competing interests. Although labour interests have an implicit economic base, they are represented minimally in the case study hearings. There is little formal representation of native and women's interests, for instance, both of which stand to be affected by the issues of the two tribunals. What becomes visible as "representation of the public", especially in the adversary context of the regulatory tribunal, is intervention in the hearing by a person or organization representing other than official industry or government interests—a symbolic counterweight to the interests of the proponent. Although participants claim and are generally acknowledged to represent public interests, this delegation is based on individual and informal construction of a social organization of representation. There is no formal means of assessing the weight and force of a representative's constituency. Although the flexibility of this form of representation is generally approved,
the ambiguity of the practice also points to the lack of overall power of citizens' organizations in the hearing process, and, on a more general level, in the political process.

**Fairness of Procedures**

The participatory critique recognizes an imbalance in participants' experience of the hearing process which works to the disadvantage of public interest groups relative to entrepreneurial and state interests. In this analysis, preparatory and organizational features of participation are described and recognized as significant to participants' competitive abilities. Systematic inequalities among competing interests external to the hearings are seen to be consequential to their performance within the tribunal. Public interest groups are frequently represented by members of the lay public. For them, the setting of the hearings may be formal and potentially intimidating. The physical isolation of speakers, the formal arrangement of seating, and the stance of public address, although required for documentary and bureaucratic purposes, pose problems for members of the public who lack skills, confidence, and experience in public speaking. This results in a competitive disadvantage for public interest groups. Moreover, the professional character of hearing skills fosters public reliance on skills not directly accessible to them, and contributes to their alienation from the forum.

From a developmental perspective, the process of intervention is professional and technical in nature. When lay public participants engage in the process without legal advocacy, (ei-
ther because they are under-funded or because they choose to do so) they are at a competitive disadvantage in that they are less experienced and prepared than their opponents. When they retain counsel, however, the skills and knowledge which are acquired within the tribunal experience accrue only to these representatives, and not to public, or lay members. The educational and social benefits (e.g., learning substantive and procedural skills, group cohesion) which are derived from the process are not expanded to a general membership.

Preparation for the hearing places a disproportionate burden on the public interest intervenor, who lacks the resources of state and entrepreneurial interests. I have described a considerable amount of additional work prior to and during the hearing which is unreported by formal accounts of the hearing. Although these activities, such as the establishment and maintenance of networks, organization, research, lobbying, and public education, are not directly visible in the hearing process, they are essential to the making of any case. These activities are mediated for state and entrepreneurial interests through professional and regulatory activities. The lack of public interest access to, and force in, these ongoing relations results in a disadvantage to public organizations in comparison to corporate and government intervenors.

From the perspective of the participatory critique, the public interest is perceived as economically anomalous, external to both the entrepreneurially-motivated and bureaucratically-regulated force of its fellow participants. The disadvantaged position of the public interest relative to other compe-
ting forces is also a function of its institutionally anomalous position. The lack of integration with state organizations, and the frequent lack of bureaucratic support, (which extends from use of duplicating equipment, professional connections among staff, to access to research sources and information) presents serious obstacles to the public interest group seen by pluralists to be competing on a relatively equal basis with industry and government opponents. In addition, the common ties among professionals who share a common vocabulary, education, work experience, and social status, suggest alliances within and among state and corporate interests which further deprive the public interest from a position of power. In addition to the unequal distribution of resources required for intervention, the domination of the forum by state and corporate interests is indicated by the professional and administrative composition of Board members, and the scientific and professional nature of the hearing procedures.

The structure of the hearing further benefits administrative and corporate interests. The public interest participant as appellant assumes the burden of proof (as in the PCAB), opposing an administrative status quo. This means that the public intervenor must prepare an offensive strategy on an issue in which s/he lacks institutional clout, support, and networks. The lack of access to information as well poses a significant obstacle to the intervenor's ability to engage in a successful intervention. I noted that there are two levels of information involved in making a case: general background in-
formation, and specific technical data. The public is at a disadvantage in both of these, but especially the latter, due to difficulties in professional and administrative access.

The Neutrality of the Decision-Making Process

A participatory critique of the decision-making process questions the impartiality of Board/Commission members as well as the limited power of the public in the actual decision-making process. Board members in both case studies were all male, and were representative of managerial, professional, and technical interests. In contrast to the diversity of membership which a pluralist approach would claim, Marxist and state instrumentalist critiques would note the domination of the forum by bourgeois interests and the power and extent of professional alliances among Board members, administrators, and corporate personnel.

The structure of the decision-making process is also problematic, in that public involvement in decision-making is primarily confined to substantive input in the hearings themselves. The structure of prior decisions, although contributing to the administrative status quo, excludes public participation. The organization of the hearings and articulation of terms of reference, selection of Board members/Commissioners, procedural decisions, and final production of a decision exclude the public.

The participatory critique also points to the decision-making process as acting in accordance with the interests of the state. The structure of the decision-making process and the composition of the Board can be seen to produce decisions
congruent with state interests, and its relations among various factions. The tendency for decisions to favour the proponent (in the administrative hearing), and for state control of the agenda (e.g., terms of reference) can be understood from state instrumentalist and structuralist positions. Thus, from the economic background material presented in Chapter 3, one can recognize in the PCAB decisions a tendency for the tribunal to affirm administrative as well as industry interests.

Although this interpretation is appropriate to the decisions of the PCAB, which generally upheld the proponent, the moratorium and closure of the RCUM suggest several possible interpretations. The decision appears to favour public interests at the expense of those of industry (e.g., uranium mining). Pluralist theorists would argue that this reflects the impartiality of the tribunal, and its autonomy from state and entrepreneurial interests. State hegemony theorists such as Mahon however, would argue that there is conflict within the power bloc (1974:169), thus challenging a unilateral and direct interpretation of the decision, and confirming the struggle among and within bureaucratic structures. Extensive state intervention in the uranium industry in the cartel, nationalization and incentives indicate the multi-faceted nature of state relations and interests. The RCUM's closure could also be argued to be to the long run advantage of the industry, because the continuation of the tribunal might have resulted in public and/or official recognition of health and safety hazards, which could have placed severe burdens on the industry. The morato-
ruin and inquiry closure can also be viewed as a legitimation activity, illustrating the relative autonomy and neutrality of the tribunal, but upholding the long-term regulatory and capital accumulation functions of the state.

I have used the participatory critique as a means of understanding the limitations and biases of pluralist theory. I have demonstrated that although a pluralist model of public participation appears to be an appropriate guide for the practice of tribunal intervention, it fails to reflect the larger social, political and economic context in which it is located. The capitalist character of pluralism is typically obscured by the liberal ideology, which results in the understatement of the power and force of entrepreneurial interests as primary political forces, and the lack of popular recognition of the extent of state intervention in corporate activities.

The participatory critique redirects attention to this larger political and economic framework as consequential for the activities that transpire within it. Thus, the apparent heterogeneity and competition of the pluralist model is replaced in the participatory account by recognition of an imbalance of power among competing interests and the extensive interests and alliances of the state. From a participatory critique, therefore, public interest participants are at a competitive disadvantage in the hearing, reflecting their economically non-productive and politically powerless character. The participatory critique's recognition of extensive state intervention in entrepreneurial activity also views the tribunal as less than independent, and helps to explain the lack of
effectiveness of public interest competitors. Thus, problems of public interest intervenors are perceived not as idiosyncratic, but as rooted in larger structural inequalities which permeate the tribunal. In spite of the expansion of public access and the movement towards an equality of opportunity in the tribunal, the larger social and economic order is thus seen to limit its democratic potential.

Within the participatory critique, I have included several complementary critical perspectives, which reflect both the development of my own views, as well as that of the literature. The developmental critique has been used to challenge the restricted nature of the pluralist concept of public participation. Marxist and elitist critiques have been useful to understand the professional bias of tribunal composition and process. The more recent literature on the state promises to further explain the public participation process, as I have indicated in the analysis.

A structural state critique of the public hearing points to the increased role and powers of the state, and to the functions of public participation for the state as means of explaining public participation. The increasing power and relations of the state described by a number of Canadian writers (Panitch 1977; Doern 1978), and the expanding administrative powers of the state are relevant to the tribunal experience:

...with the move to 'depoliticize' and 'render more efficient' the activities of the state, the administrative apparatus has come to play a key role, not only in the 'implementation' but also in the 'formation' of public policy (Mahon 1977: 172).
Other statist literature promises to provide fruitful explanations of tribunal activity when applied to public interest intervention. For instance, public interest participation is seen by some as an exercise in "dissent management" which helps the state to maintain social control, and to continue to provide legitimation for its policy. Loney would observe public interest intervention as a measure of social and ideological control facilitated through state funding practices:

What Canada has witnessed is not a genuine increase in grass-roots democracy but a move to increasingly sophisticated strategies for reincorporating potentially dissident groups into the mainstream of society. Simultaneously, government funding has ensured the domination of ideas and practices which sustain the existing socio-economic order either directly or by maintaining the illusion of a genuine pluralism (1977:446).

This is not to say that public interest groups have no power in the public hearing, nor that they are an insignificant factor in the decisions produced by the tribunal. Indeed, there is some indication that they are of consequence to the decisions of the case studies as well as in other tribunals, such as the notable Berger Commission. Public interest groups exert considerable influence through the media. Although media coverage of the two case study tribunals was not extensive, the adversarial or oppositional nature of public interest perspectives contributes to the publicity of the issues.

Nonetheless, I have demonstrated in this analysis that the pluralist concept of democracy, and the practice of public tribunal intervention, are limited by the social and economic constraints of liberal capitalism. The critical participatory perspective of the hearing process therefore explains the dis-
advantage of public interest groups within the tribunal as a function of their opposition to and exclusion from administrative and entrepreneurial power. Production of the public voice is thus recognized as generated and mediated by the state in its orchestration of numerous relations and forces.

8.4 - Towards a Participatory Democracy

Although the pluralist model is limited for use as a participatory democratic construct, it has nonetheless contributed to the expansion of public access to government. The provision of public access to regulatory and policy-making activities through tribunal intervention has been a means of expanding the information evaluated by tribunals, and of focusing and "publicizing" perspectives and information which may contradict the status quo. Within the parameters of a liberal pluralist framework, the tribunal provides a relatively autonomous means of providing public access to the decision-making process.

The pluralist rationale for public participation is upheld by the process of democratization. Increased diversity of information, greater government responsiveness to citizens, a balance among competing interests and social and psychological benefits remain central justifications of public input. Democratization of the tribunal provides the public with a genuine voice with which to counter dominant factions of power. But this analysis suggests that public participation must become more extensive and more powerful in order to rectify the imbalance in the present formulation of the hearing. There are two approaches to the democratization of the hearing process. One exists within the parameters of pluralist democratic theory,
while the other requires more fundamental changes to the larger social and economic structure.

Public Participation and the Pluralist Model

Administrative and consultative tribunals have increased public access to policy-making and regulation in areas of scientific and technical decision-making. There is formal provision for public intervention in the production and appeal of decisions, and funding for public interest groups has effected a greater diversity in participating interests. The effectiveness of public participation has been demonstrated in such inquiries as the Berger Commission, in which the recommendations concurred largely with public interest positions. Yet, within the contours of a pluralist framework, the public hearing fails to display the balance which would result from an equality of access and opportunity among participating interests. The forum may be further democratized within the parameters of pluralism so as to expand public access and to further balance the competitive framework.

The heterogeneity of the tribunals has complied with pluralist expectations, especially in the consultative tribunal. In the regulatory tribunal, the appeal structure provides for an adversarial format which corresponds to pluralist notions of competing interests. However, prior administrative decisions exclude public participation although they are factors in the tribunal's assessment of an appeal. This imbalance could be addressed through public access to the administrative process prior to the appeal.
In a similar vein, "sunrise" legislation in the United States requires public involvement prior to the hearing stage of decision-making: the public is involved in the definition of terms of reference, selection of procedural rules, and other basic decisions prior to the hearing. Access to information legislation such as that passed in the United States would expand public access to administrative programs and decisions, thereby enabling public intervenors to better research their case and to provide a better balance to other participants in the process.

The formal procedures of the tribunals have been described as concurring with pluralist expectations of fairness. However, description of the preparatory and organizational features of hearing participation reveals an imbalance among participants. Democratization of the hearing process would require recognition of the disproportionately greater burden of intervention placed on public interest groups, calling for a greater equalization of participatory opportunity. In the administrative tribunal, some critics have requested that the onus be shifted from the appellant to the proponent, as the initiator of the activity.

In the democratization of the hearing, access to resources such as procedural and substantive expertise must be recognized as factors in the success of any intervention. Attempts to enhance public access to the forum through legal advocacy or para-legal training would have to be ensured. Education of the lay public, and interpretation of technical issues in lay terms and vocabulary would also promote public access to the tribunal.
process, and contribute to a general understanding of public issues and policy. Although the RCUM attempted the latter, its funding and time parameters prevented its success (Abbott 1980).

However, the major method of expanding public access and an equality of opportunity has been through subsidization of the participatory experience. In the administrative tribunal, the lack of funding for public interest appellants is a deterrent to participation. In the consultative tribunal, although funding was provided for intervenors, the limited amount of funds was perceived by public groups to hamper their efforts. One means of providing for public interest participation in the regulatory and decision-making processes is the establishment of public interest advocacy centers which provide advocacy skills for public interest groups.

Beyond the Pluralist Model

According to the participatory critique, the democratization of the tribunal process requires recognition of the constraints of the pluralist ideology. I have indicated that from a critical perspective, public participation in the tribunal is limited and elitist. The social and economic inequality of the larger capitalist society is recognized to be perpetuated within the tribunal, adversely affecting the competitive abilities of interests external to dominant state and entrepreneurial concerns. A critical perspective recognizes the imbalance of the tribunal as derived from and reflecting the larger capitalist economic structure. The participatory critique adopted in
this dissertation indicates that a more genuinely egalitarian society, achieved partially through socialization of the economy is necessary to a full democratization of the hearing process. Moreover, recognition of the tribunal as an extension of the state, if relatively autonomous, requires reconsideration of the functions of the tribunal.

A primary criticism raised by this analysis has been directed to the nature and force of public interest representation within a capitalist context. The anomalous economic and administrative position of public interest groups has been recognized to deter their effectiveness in the tribunal process. Deprived of adequate funding and organizational base, and external to the information and networks of the dominant power sources, the public interest must be recognized as relatively powerless, in comparison to its tribunal opponents.

Although the pluralist model recognizes differential abilities among competing interests, it fails to take into account systematic differences among competing interests and to see these as a factor affecting intervenors' competitive abilities. A recognition of the disproportionate access to resources now enjoyed by state and corporate interests (e.g., tax advantages, bureaucratic support, access to information) contributes to an understanding of the disadvantage of the public interest intervenor.

Thus, the lack of economic viability of public interests in a capitalist context, their inability to sustain themselves economically, and their dependence on inadequate state subsidization raise problems for their empowerment in the political
process and continue to mute their voice. Support of the public interest through state financing however is regarded by many organizations to jeopardize their independence as a force of social change. Within the capitalist context, the public interest organization could alternatively be funded through its own means, as the Sierra Club's success in publications has demonstrated, which would grant them more autonomy and a stronger economic base. However, in a participatory model which moves beyond the constraints of capitalism (e.g., the generation of profit), the viability of public interest organizations could be less directly subject to current economic constraints. The potentially greater political and economic force of public interest groups within a post-capitalist society suggests a more egalitarian participatory experience within the tribunal.

The democratization of the public hearing structure in a participatory scenario would expand the scope and nature of public participation by incorporating statutory provisions for routine and extended public input. Public participation within a larger participatory political framework could assume a greater advocacy role, redressing the unequal structure of representation and insufficient definition of public interests which now exist. Public involvement through all stages of the policy and decision-making processes could be legislated to ensure that concerns of the public are voiced in the formulation of policy, and not only in reaction to specific development. For instance, various public interest organizations (SPEC, WCELA, Telkwa Foundation, Sierra Club) have called for a public tribu-
nal into provincial energy policy, as a means of anticipating and perhaps circumventing hearings into specific energy development projects. These would include public involvement in the definition of Terms of Reference, selection of Board/Commission members, articulation of funding mechanisms, rulings on procedures, and public representation on Boards/Commissions. Yet these recommendations require acceptance of public interest organizations as a legitimate socio-economic force, which is unlikely in the contemporary capitalist framework.

In response to developmental and elitist critiques, the extension of public participation beyond the liberal pluralist model would be accompanied by socialization practices which would inform the lay public about hearing procedures and familiarize them with issues and research. Public education in hearing skills would be necessary for the more popular utilization and understanding of the forum essential to a democratic institution. The popularization of the hearing forum would benefit members of the public, through their education in substantive and procedural matters, an increase in skills and knowledge, and possibly greater social cohesion.

From a practical perspective, the above recommendations regarding the democratization of the hearing stand little chance of implementation. The current (1984) economic recession, increasing unemployment, and politically conservative climate (as witnessed in the 1983 Social Credit victory) do not augur a shift to the popularization of the hearing forum. The British Columbia Government has restricted intervenor funding as part of its 1983 restraint program. Trends within the
hearings themselves, with the dependence on technical and scientific expertise, and the assessment of appeal costs (Environmental Appeal Board) indicate a decrease in the role of the public in the hearing process.

The threshold of acceptable changes to the public hearing process reflects the limits of the larger capitalist economy and the expansion of the state, as well as the particulars of the current recession. While it is argued that funding for public interest activities is beyond the means of a stricken economy, the extent of current government funding in the interests of development, such as the Uranium Reconnaissance Program (a $50 million program to identify potential uranium-bearing areas for industry) must be acknowledged (CIRG 1980:21). The state could provide increased employment through an increase in advocacy funding and tribunal-relevant skills and resources to public interest groups.

Additional problems with an increase in the scope and participation of hearings would be associated with the increased bureaucratization of the institution, both within and beyond the pluralist model. I have previously noted the expansion in the ranks of hearing "technocrats"—those with expertise in the organization and management of the public hearing. This problem would be not only one of institutional expansion and extra expense. The bureaucratization and accommodation of those involved in the process are also tendencies which will affect the nature and goals of the process. As public interest spokespersons have noted, subsidization of increased parti-
cipation would thus be even more subject to control by the state.

Other problems for a democratized hearing process are rooted in the technical and scientific nature of the issues. The dichotomy between lay and professional knowledge and experience may be made less abrupt by some of the practices mentioned above (e.g., public education, legal advocacy), but it remains as a structural and class differentiation perpetuated by institutional practice. Thus, public interest access to increased advocacy resources would be seen by many public interest critics as a continuation of the societal imbalance which already confines professional activity to the work of the few.

There are also problems of size and scale for contemporary democratic practice which have not yet been resolved, either in theory or in practice. From a participatory perspective articulated by classical democratic theorists, some ideas promise a certain utility. Following the ideas of Jefferson and Rousseau, one could argue for public expression concerning all matters of civic interest in a direct democratic framework. (The equality of condition assumed by these early theorists must be noted as a factor in a more balanced form of participation). Mansbridge argues along the same lines, that a smaller scale, "unitary" democracy, would be appropriate for civic and workplace government (1979). The issues, contexts, and bases of public participation have been expanded as a means of increasing public access to the political process.

8.5-Concluding Remarks

251
From the participatory critique, therefore, certain problems in the public hearing, as revealed by the analysis of the case studies, must be addressed, not as problems of individual tribunals, but as larger issues of social class and state intervention. A participatory model would recognize the contributions of the public as even more essential, to offset the dominance of state/entrepreneurial interests. The increase in state intervention and legitimation activities such as the public hearing has been noted by a number of theorists. While this analysis has demonstrated the inadequacy of the pluralist model, future analysis of public participation requires in-depth analysis of the state's involvement in public participation, as Loney states:

It is clear that in English Canada increased dissidence poses no immediate threat to the status quo. But in the long term as governments seek to resolve the economic crisis by increasing state management of the economy, while continuing to try to secure their political constituency, a continued growth in the state's legitimation activities can be anticipated. One of the very real consequences of this must be a substantial transformation of the political system itself. As the state moves into new areas of society the notion that it is the citizens who govern through their elected representatives must surely give way to a more thorough exploration of how the governing apparatus of the state itself controls the citizens and moulds and determines their political behaviour (1977:470).

In conclusion, I have described the production of the public voice through the analysis of public participation in the hearing process as an exercise of contemporary democracy. I have demonstrated the failure of pluralist theory to ensure the full democratization of this process. The public voice created through hearing participation is recognized to lack
APPENDIX 1 - PESTICIDE CONTROL APPEAL BOARD

APPENDIX 1.1 - MAP OF OKANAGAN VALLEY

THE OKANAGAN BASIN

Source: Okanagan Basin Implementation Board 1980

254
power and control within the boundaries of the tribunal. I argue that the inequality of competition within the tribunal reflects the larger social inequalities and economic basis of the society. A participatory critique of public interest participation suggests that the sporadic effectiveness and apparent force of the public voice contribute to the legitimation of the tribunal and the state. From this analysis, the public voice is seen to remain a minor part in an ongoing drama directed and produced by others.

1 Although Engelhart and Trebilcock begin to grapple with these costs, they fail to recognize the constraints of the capitalist economic structure, and the relative economic bases of intervenors as critical factors (1981). Also, see McCallum and Watkins (1975) and Estrin (1979) for further discussion of funding.
PROVINCE OF B.C. REQUIREMENTS WHEN SUBMITTING APPLICATIONS TO APPLY PESTICIDES

Seven copies of proposed treatment (including seven maps showing treatment areas) are required. Seven copies of proposed treatment must be supplied to the Chairman, B.C. Interdepartmental Pesticide Committee, B.C. Department of Agriculture, P.O. Box 1172, St. A., Surrey, B.C. V3S 4P9 at least six weeks prior to treatment date. We will forward one copy to Environment Canada for their comment to you.

Proposed Treatment:

- Herbicide: 2,4-D
- Insecticide: ____________
- Other Pesticide (specify): ____________

Name of Applicant (Company Name):

Ministry of the Environment

Address: Parliament Buildings, Victoria, B.C.

Name of Applicator (Contractor if applicable):

Address: ____________

Project Location:

- a) general (i.e. nearest town): Penticton
- b) specific: Skaha Lake - northwest side

Project Number: 139-14-78

Purpose of Project:

Eurasian water milfoil control (e.g. alder seed tree control, conifer release, range improvement, right-of-way maintenance)

Total Acreage of Project: 35 acres

Estimated Acreage Actually Receiving Treatment: 27 - 35 acres

Name of Pesticide: (e.g. Esteron 99, malathion) Aqua-Kleen 20

Pesticide Control Products Act No. (as on container): 9907

Active Ingredient: (e.g. 2,4,5-T amine or 2,4-D iso-octyl ester) 2,4-D butoxyethanol ester

Concentration to be used (express in lbs. of active ingredient per acre): as per covering document

Total chemical used on project (express in lbs. of active ingredient): Maximum 1,400 lbs.

Carrier or Diluent: (e.g. water, oil) attaclay granules

Application Method: (e.g. basal notch, mist blower, helicopter, fixed wing, boom sprayer) spin spreader

Approximate Dates of Application: April 15th - September 31st

(Target as close as possible expected time of application)

Target Species: (e.g. mosquitoes, competing cedar-hemlock, red alder) Myriophyllum spicatum

Are lakes, rivers, streams or other water bodies involved? Yes No

If “yes” are they used for municipal or other domestic water supply? Yes No

Maps Attached? Yes No

Please not covering document for situations involving water intakes.

The above treatments will be conducted under the supervision of (name and title)

Government Certified Supervisor - not appointed at this time

Pesticide Applicator Certificate (number and type): Contact Person: D.P. Spillie - 387-5221 - Is Non-M.-Non-Fos. Vegetation Control Certificate #5137

Date February 15, 1978 Signed (name) Chemical Treatment Coordinator (title) Aquatic Plant Management Program

(SEE REVERSE FOR "BASIC REQUIREMENTS OF B.C. GOVERNMENT TO SATISFY STATUTES AND SAFE USE OF PESTICIDES").

Source: T Roberts 1981:45.
April 19, 1978

Dr. P.R. Newroth, Project Manager
Aquatic Plant Management Program
Water Investigations Branch
British Columbia Ministry of the Environment
Parliament Buildings
VICTORIA, B.C. V8V 1X4

Dear Dr. Newroth:

Re: Pesticide Control Act Herbicide Use (Aqua-Kleen 20) Permit
for Control of Eurasian Water Milfoil
-Skaha Lake, Northwest Side

The Pesticide Control Branch in consultation with the British Columbia Inter-
Ministry Pesticide Committee and the Advisory Committee to the Minister of
the Environment on the Control of Eurasian Water Milfoil in the Okanagan Lake
System has completed its review of the above project as outlined in your
pesticide use permit application of February 15, 1978, and you are herewith
advised that the project may be carried out subject to the following conditions:

1. That all herbicide applications be made under the direct
   supervision of an individual who possesses a current
   B. C. Pesticide Applicator Certificate.

2. That if a contractor is hired to carry out the work that
   he possess a current B. C. Pest Control Service Licence.

3. That this project not be undertaken until such time as the
   federal pesticide regulatory authorities have approved the
   use of Aqua-Kleen 20 in areas where herbicide treated
   water may subsequently be used for irrigation, livestock
   watering, or potable purposes. Please contact the Control
   Products Section, Plant Products Division, Agriculture
   Canada, Ottawa in this regard.

4. That the size of this project be reduced in size from the
   proposed 14 hectares to 4 hectares. Consideration will be
   given upon written request to amending this permit to provide
   for additional treatments once the initial 4 hectare
   treatment has been completed in a manner that complies with
   the provisions of this permit.

5. That the project not be undertaken until such time as the
   Fish and Wildlife Branch has been contacted regarding the
   specific location of mountain whitefish spawning beds in the
   proposed treatment area. Herbicide use must not be undertaken
   in these specified areas as herbicide use may adversely affect
   the life cycle of this species. Please contact R. L. Morley
   of the Fish and Wildlife Branch, Victoria (387-1493) on this matter.

6. That the effective date of this permit is May 5, 1978 and that
   the project be carried out within the period June 1 to September 30, 1978.
1. The hearing of the appeal will be public. No transcript of the hearing will be made by the Board.

2. Each appellant will present the reasons for the appeal, either personally or through a representative and witnesses.

3. The evidence given by each appellant will be followed by questions put to the appellant and witnesses, if any, by the permit holder.

4. This may be followed by questions put to the appellant by the members of the Board and their advisers, if any.

5. In case the permit holder wishes to bring forward relevant evidence or does so in responding to questions from the members of the Board, the appellant will have an opportunity to put questions to the Permit Holder.

6. At the conclusion of cross-examination of the evidence presented at the hearing, the Board will give (a) the permit holder and (b) the appellant an opportunity to summarize the arguments.

Ten copies of all submissions are requested for the information of Board members and appellant/permit holder.

7. This will conclude the hearing of the appeal. The Board will reserve its decision. The Board may or may not give reasons for its decision which will be forwarded to the appellant and the Permit Holder as soon as the decision has been made.
APPENDIX 2 - THE ROYAL COMMISSION OF INQUIRY INTO URANIUM MINING

APPENDIX 2.1 - PRELIMINARY RULINGS, NUMBER 1

Province of British Columbia

ROYAL COMMISSION OF INQUIRY
HEALTH AND ENVIRONMENTAL PROTECTION
URANIUM MINING

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY

COMMISSIONERS:
JAMES W. MURRAY, M.D., F.R.C.P.C., F.R.C.S.C., F.R.C.P.
WALTER RAUSDLEPP, P.ENG.

EXECUTIVE SECRETARY:
BRIG.-GEN. E. D. DANBY (RETIRED)

COMMISSION COUNSEL
RUSSELL J. ANTHONY, Q.C., LL.B., LL.M.

May 14, 1979

PRELIMINARY RULINGS NO. 1

RULES OF PROCEDURE

In fulfilling its Terms of Reference as outlined in Order in Council No. 170 dated January 18th, 1979, the Royal Commission of Inquiry Into Uranium Mining will hold public hearings throughout the Province of British Columbia. To ensure maximum participation the Commission will gather evidence and receive public comments regarding the matters described in its Terms of Reference by holding public hearings, consisting of formal hearings and local hearings, and by receiving written briefs.
A. PROCEDURE FOR LOCAL HEARINGS

1. The Commission will, through the Executive Secretary, advise the various communities likely to be affected by proposed uranium exploration, mining or milling in British Columbia and the major participants of the locations and times for local hearings. The dates, location and time of the community public hearings will be advertised through the local media well in advance of the hearings.

2. Apart from rules of decorum and courtesy there will be no formal rules governing the local hearings. Those who have something to say will be asked to come forward and be sworn and then can give their evidence in whatever way they are most comfortable. Several persons may make their presentation in a group rather than individually if they so wish. Individuals presenting detailed or technical evidence are encouraged to file their presentations with the Commission in advance.

3. The Commission members will be entitled to ask questions of persons making presentations but no one else will be accorded this privilege. If someone wishes a matter clarified he may request the Commission to seek such clarification of the person making the presentation or request the attendance of such witness at the formal hearings where the evidence can be tested under cross-examination.
B. **PROCEDURE FOR FORMAL HEARINGS**

1. **Participants**

1.1 Any person who advises the Commission in writing of his intention to appear and give evidence at any formal hearing or who actually appears, gives his name and address to the Commission and states his intention to give evidence will be deemed a participant.

1.2 The Executive Secretary shall maintain a list of participants and the list shall be available for public inspection at the Commission's office.

1.3 The Commission shall, from time to time, identify certain parties as "major participants" in the proceedings in the sense that they either have indicated an intention to participate in the proceedings on a more or less regular basis or have been identified as possessing information of particular interest and relevance to the work of the Commission. The participation of these major participants shall be governed by further procedural rules of the Commission.

2. **Phasing of Formal Hearings**

2.1 The formal hearings shall be divided into the following phases:
Phase I: Overview

This phase will consist of evidence called by Commission Counsel designed to deal generally with the occurrence and geochemistry of uranium and the physical environment of identified uranium deposits in B.C.; describe exploration, mining, milling, transport, and disposal techniques and outline the jurisdiction and authority of monitoring and regulating bodies.

The purpose of this Overview is to present information of a background and introductory nature and is designed primarily as a public information session. For that reason cross-examination, except for questions by the Commissioners themselves, will not be allowed. All issues raised in the Overview will be reviewed at the appropriate time during the subsequent formal hearings of the Commission and, at that time, further evidence and cross-examination will be allowed. A copy of the witnesses' statements shall be circulated for comment before the witnesses appear. This phase of the Inquiry will be held in Vancouver.

Phase II: Project Descriptions

Included will be a description of the geology and physical environment at specific sites; a description
of the present and proposed project development plans, including consideration of the design, engineering and construction techniques proposed and an examination of alternatives.

Phase III: Impact of Uranium Exploration, Mining and Milling on the Physical and Living Environment

This phase will examine the impact on the environment of each of the major activities associated with uranium mining - exploration, mining, milling, processing, tailings and waste disposal and transportation; identify the impacts on the atmosphere, biosphere, hydrosphere and terrasphere, in both the short and long term; review the techniques available for environmental protection, conservation and reclamation and examine the adequacy of environmental monitoring and regulation.

Phase IV: Impact of Uranium Exploration, Mining and Milling on the Human Environment

This phase will examine the potential impact on individuals and society at large of the various aspects of uranium exploration, mining and milling. This will include an identification of hazards to workers, the effects on the public at large particularly the communities adjacent to uranium sites, an analysis of the
proposed monitoring and protective measures respecting the human environment and the social and economic impact of proposed uranium mining.

2.2 The division of the formal hearings into phases is for purposes of convenience only. Commission Counsel will invite participants to consult with him from time to time to determine whether there should be any further divisions of the hearings within each phase, whether additional phases are required or otherwise determine the most efficient and fairest way to have all the relevant evidence presented before the Commission.

2.3 The Commission will determine the place and date for the commencement of hearings for each of the phases as soon as it is in a position to do so. After the date and place for a particular phase are determined the Executive Secretary will send to each participant a notice of hearing. In addition, the Executive Secretary will, through the news media, advise the public generally of the commencement date of each phase, the place of hearing and the matters to be considered during such phase.

3. Production of Studies, Reports and Other Documents

3.1 Commission Counsel will be responsible for requesting that reports and documents of interest to the Commission
in the possession or power of the government of British Columbia, the Federal Government and various boards and agencies, both provincial and federal, are made available. To that end, Commission Counsel will communicate with these various governments and boards and arrange for them to provide the Commission with the documents and reports required.

3.2 All of the major participants and the Commission Counsel shall, no later than June 15, 1979, file with the Commission and circulate to the other major participants a list of the reports, studies and other documents within their possession or power which are relevant to the subject matter before the Commission, including those for which privilege may be proposed to be claimed.

3.3 Supplementary lists are to be filed from time to time as further reports, studies or other documents come to the attention of major participants.

3.4 Each list of reports shall to the extent possible identify the study, report or document by stating,

(a) the name of the person or persons who made or compiled it;

(b) The date it was made or compiled;

(c) A brief description of the subject matter with which it is concerned;
(d) Whether the study, report or document is available to the general public and, if it is, the name and address of the publisher or distributor;

The list shall also contain the name, address and phone number of the person to be contacted to review the documents listed.

3.5 The list of documents shall be available for inspection by any participant and, upon notice to Commission Counsel and to the major participant filing the list, any participant may demand production of any document on the list for review.

3.6 Upon reasonable notice being given to the Commission and to Commission Counsel, any participant may bring before the Commission an application for production of any listed document if production has been refused or for a further or better list of documents. A participant may, in addition, request production of any reports, study or document relevant to the subject matter before the Commission known to them and in the possession or power of any of the participants.

3.7 If any dispute arises as to any claim of privilege or confidentiality made respecting a document, such dispute shall be referred to the Commission for a ruling.
3.8 For purposes of Rule 3 only (Production of Studies, Reports and Other Documents) the following shall be regarded as major participants required to file a list of documents:

(1) Commission Counsel, on behalf of the Commission staff and Government Departments and Agencies;
(2) Alliance Against Uranium Mining
(3) The Atlin Council
(4) Boundary Environment and Outdoor Club (Grand Forks)
(5) British Columbia & Yukon Chamber of Mines
(6) Canadian Coalition for Nuclear Responsibility (Kelowna)
(7) Canadian Kelvin Resources Limited
(8) Committee for a Clean Kettle Valley
(9) Consolidated Rexspar Minerals & Chemicals Ltd.
(10) E & B Explorations Ltd.
(11) The Greenpeace Foundation (Vancouver)
(12) Greenpeace (Okanagan) Foundation
(13) Indigenous Peoples of the Western Hemisphere
(14) The Kootenay Nuclear Study Group
(15) The Mining Association of British Columbia
(16) Noranda Exploration Company Limited
(17) Norcen Energy Resources Limited
(18) Placer Development Ltd.
(19) PNC Exploration (Canada) Co. Ltd.
(20) Shell Canada Resources Limited
(21) South Okanagan Environmental Coalition
(22) Union of B.C. Indian Chiefs
(23) The United Church of Canada - The British Columbia Conference
(24) United Fishermen and Allied Workers' Union
(25) West Coast Environmental Law Research Foundation
(26) Yellowhead Ecological Association - Clearwater
(27) Yellowhead Ecological Association - Kamloops
(28) Chinook Construction & Engineering Ltd.
(29) Stampede International Resources Ltd.
(30) Solar Alternatives to Nuclear Energy
4. **Notice of Evidence to be Presented**

4.1 Every participant before giving evidence or calling witnesses on its behalf at the formal hearings shall file with the Commission (5 copies) and circulate to the major participants and Commission Counsel, at least two weeks before giving or calling such evidence, a text or full synopsis of that evidence, a text or full synopsis of that evidence together with a list of any reports, studies or other documents to which the witness may refer or upon which he may rely and a biographical note on the witness.

4.2 Where a witness is called by subpoena the participant requesting the subpoena shall comply with Rule 4.1 as much as possible indicating the issue the witness is expected to address and his qualifications.

4.3 If a participant cannot comply with the two week rule that will not necessarily preclude the taking of evidence of the witness in question but it may mean the witness will have to be recalled later for cross-examination.

5. **Examination of Witnesses**

5.1 The participant calling a witness shall be permitted to examine him first. The witness shall then be cross-examined by Commission Counsel and by the other participants. The participant calling the witness shall be entitled to re-examine.
5.2 The order for presenting evidence and cross-examining will be determined by the Commission from time to time as the nature of the evidence requires. Generally, Commission Counsel will lead off the cross-examination to be followed by Counsel for other major participants and finally by any other participant.

5.3 Witnesses may give evidence individually or as part of a group or panel testifying concurrently. In the Commission's discretion, any witness or witnesses may be called more than once.

6. **Documentary Evidence**

6.1 Any study, report or other document relied upon in the evidence of any witness shall be filed as an exhibit at the hearing unless the Commission otherwise directs.

6.2 Where appropriate, the Commission may seek information from parties, whether they are participants or not, by having Commission Counsel communicate with them. The questions posed and the answers received shall then form part of the evidence before the Commission. The Commission may, in its discretion, require that the person providing such answers appear at a hearing to verify his evidence and be cross-examined.
6.3 Where a participant claims that a study, report or other document, or any part thereof, is of a confidential or privileged nature, the participant shall produce such study, report or other document for inspection by the Commission and the Commission, without disclosing the contents thereof, shall rule upon the claim.

6.4 The Commission may, in their discretion and if they think it just and necessary for carrying out their Terms of Reference, consider as part of the evidence before them any study, report or document or any part thereof though it may be ruled to be confidential or privileged.

7. Applications to the Commission

7.1 Subpoenas may be issued by the Commission, at its discretion, upon application by any participant provided such participant has demonstrated he has attempted to obtain the attendance of the witness or the documentary evidence without success, that a subpoena is necessary to obtain the witness or document, and that the witness or document is necessary and relevant to the Terms of Reference of the Commission.

7.2 Notice of an application for a subpoena to obtain the attendance of a participant or an employee of or consultant to a participant or for production of a document in the possession or power of a participant shall be given to that participant.
7.3 An application may be made by a participant to the Commission for any relief whatsoever provided it is made upon reasonable notice to the Commission, Commission Counsel and the major participants as well as any other participants that may be affected.

8. Changes in These Rules

8.1 The Commission retains the power to add to, alter or modify these rules, to suspend the operation of any or part of them or to require any participant not already bound by them to comply in whole or in part, as well as the power to exempt any participant from complying with these rules in whole or in part, as the justice of the situation demands.

C. Rules relating to Written Briefs

1. The Commission shall at any time accept written briefs from anyone, whether a participant in the proceedings or not. If possible, the brief should be typewritten and five copies provided.

2. The Commission may request that the person or group presenting a written brief attend before it so that the issues raised in the written brief may be explored before a public hearing.
## APPENDIX 2.2 — PARTICIPANT FUNDING

### ROYAL COMMISSION OF INQUIRY INTO URANIUM MINING

PARTICIPANT FUNDING—$225,000.00

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BIBLIOGRAPHY

Abbott, Rebecca J.

Almond G. and S. Verba

Anderson, T.

Andrew, Caroline and Rejean Pelletier

Aron, Raymond

Balbus, I.D.

Bay, C.

Berelson, B.R. et al.

Berger, T.

Block, F.

Boggild, K.

British Columbia Royal Commission of Inquiry into Uranium Mi-
ning
1979 - Fact Sheet 9/31/79
1979 - Uranium Inquiry Digest #10
1979-80 - Proceedings

British Columbia Royal Commission of Inquiry into Pesticides and Herbicides
1975 - Final Report

British Columbia Council of the United Church of Canada

British Columbia Ministry of Environment. Aquatic Plant Management Program.
1978 - Some Facts About 2,4-D.

British Columbia Supreme Court

Brooks, D.

Brooks, D. and J. Robinson

Burton, T.L.

Canadian Coalition for Nuclear Responsibility
1980 - Uranium Mining is Not in the Public Interest. Kelowna, B.C.

Chapin, H. and D. Deneau

Checkoway, Barry and Jon Van Til

Christiansen-Ruffman, L. and B. Stuart

277
Clement, W.

Community Information Research Group
1980 - Uranium Mining and the Nuclear Industry.

Corcoran, P.

Curtis, M

Dahl, R.A.

Davis, Lane

Doern, G. Bruce

Doern, G.B. and P. Aucoin
1979 - Public Policy in Canada. Toronto: Macmillan.

Domhoff, G.W.

Domhoff, G.W. and H.B. Ballard, eds.

Draper, J.
Duncan, G., ed.

Duncan, G. and Lukes, S.

Ebbin, S. and R. Kaspar

Elder, P.S.

Emond, D.P.

Engelhart, K.G. and M.J. Trebilcock

Environmental Alliance Against Uranium Mining
1980 - Final Submission, RCUM. Vancouver.

Estrin, D.

Evans, J.M., Janisch, Mullan and Risk

Evers, Adalbert and Juan Rodrigues-Lores

Fox, D.
Franson, R.T. and A. R. Lucas  

Fraser, B.  

Freedman, A. and C. Smith  

Gibson, R.B.  

Gormley, W.  

Gutmann, A.  

Hadden, S.  

Harding, B.  

Hart, D.K.  

Heberlein, T.A.  

Howard, R.  

Hunnius, C., ed.  
Jordan, D.  

Kariel, H.S., ed.  

Kellett, S.  

Kootenay Nuclear Study Group  
1980 - Summary Report to the RCUM.

Krouse, R.  

Law Reform Commission of Canada  

Lee, J.  

Legal Information Services  

Lenny, David M.  

Levin, M.  

Lewis, J.  

Lipset, S. M.  

Loney, M.  
Lovins, A.

Lowrance, W. W.

Lucas, A.R.

Lucas, A.R. and T. Bell

Lysyk, K.M.

McCallum, S.K. and G. Watkins

McCoy, C.A. and J. Playford

McDade, G.
1978 - Counsel, SOEC et al., PCAB Hearings

Mackenzie, C.
1983 - Regulating the Regulators, Lecture, UBC, 2/10/83.

McLachlan, M.

Macpherson, C.B.

Mahon, R.

Mankoff, M.

Mansbridge, J.
1979 - Beyond Adversary Democracy.

Marchak, M. P.

Marx, K.

Milbrath, L.W.

Miliband, Ralph

Mill, J.S.

Mills, C.W.

Mishler, W.

Morris-Jones, W. H.

National Film Board of Canada
1978 - The Inquiry Film.

Nelkin, Dorothy

Newall and Hamel-Green

Newroth, P.R.

283
Okanagan Basin Implementation Board

Ono, S.

Organization for Economic Cooperation and Development, Committee for Scientific and Technological Policy.

Ormrod, W.

Panitch, L.

Pape, A.

Pateman, Carole

Pearse, P.H.

Pennock, J.R.

Pesticide Control Appeal Board
1978-1981 - Proceedings, Okanagan 2,4D Hearings. Penticton, Vernon, B.C.

Porter, J.
1965 - The Vertical Mosaic. Toronto: University of Toronto Press.

Poulantzas, N.

Presthus, R.

Ratner, R.S.
1984 - Capital, State and Criminal Justice.

Ratner, R.S., J. McMullan and B. Buritch

Rawls, J.

Regina Group for a Non-Nuclear Society
1980 - The Economics of Nuclear Power. Regina.

Resnick, P.

Rich, R. and Rosenbaum, W., ed.

Roberts, K.
1979 - Interviews
1980 - Interviews
1981 - Interview 11/12/81
1983 - Lecture: Regulating the Regulators. Vancouver: UBC 2/10/83
1984 - Interview 5/23/84

Roberts, T.

Robinson, J.B.

Rogers, J.
1983 - Interview

Roman, A.J.
1979 - Training for More Effective Public Participation.

Rose, A.M.  

Ross, V.  

Rounthwaite, Ann  
1983 - Interview

Rousseau, J.J.  

Sadler, B.  

Salter, L.  

Schattschneider, E.E.  

Schmitt, D.  

Schumpeter, J.A.  

Skelly, R.E.  

South Okanagan Environmental Coalition  
1978-1981 - Submissions to PCAB.
Correspondence with PCAB.
1979-1980 - Communication with RCUM.

Spectrum
1979 - Uranium Mining Controversy. 2/22/79

Susskind, L. and Elliott, M.

Swartz, D.

Tataryn, L.

Torrie, R.

Union of British Columbia Indian Chiefs
1980 - Interim Summary Argument to the RCUM.

Vancouver Sun
1981 - A8 10/6/81.

Walker, J.L.

Warnock, J.W.
1978-1983 - Interviews

Warnock, J.W. and Lewis, J.P.
1978 - The Other Face of 2,4-D. Penticton, B.C.

Wengert, Norman

West Coast Environmental Law Association

287
1978 - Letter of Appeal to Administrator, Pesticide Control Branch.
1979 - Submission to RCUM.
1980 - Interim Summation to RCUM.

West Coast Environmental Law Research Foundation

Wigmore, Judy

Wilson, V. Seymour